

# **COMPROMISING WITH EVIL**

AN ARCHIVAL HISTORY OF GREATER SUDAN, 2007 – 2012

## **Annex X: Elections of 2010**

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## **Preface**

This Annex offers a running historical account of three elections that occurred in Sudan, as well as one that did not: the self-determination referendum for Abyei, which was scheduled for January 9, 2011 per the terms of the CPA.

The three elections are the “national elections” of 2010 (originally scheduled for 2009), the self-determination referendum for South Sudan (January 9, 2011), and the rigged elections for the South Kordofan governorship (May 2011). The first and third of these elections were clearly fraudulent; the Southern self-determination (January 9, 2011) could not have been a more dramatic representation of the will of the people of South Sudan: 99 percent voted to secede from the north. Rarely is such a figure credible in an election, but in the case of South Sudan it certainly was.

The national elections of April 2010 were based upon a flawed census conducted by the NIF/NCP regime and revealed Khartoum’s powerful ability to manipulate electoral procedures. The 2010 vote in the South—for a range of positions, but most important the president of the Government of South Sudan—was hardly a model of electoral propriety, but at this point the South as a whole had little interest in “national” elections. In the end the SPLM did not even field a candidate for the position of President of all Sudan, which was held as a vote for president of the Government of National Unity. Unity was by now thoroughly unattractive to the South, whose real attention was focused on the self-determination referendum that would occur only nine months later.

The election for the governorship of South Kordofan occurred in May 2011—the same month that Khartoum’s military seized the disputed region of Abyei. The primary role of senior military figures in this decision would later become clear. Khartoum’s candidate in the election was Ahmed Haroun, then indicted by the International Criminal Court on 20 counts of crimes against humanity and 22 counts of war crimes; he was opposed by the popular Abdel Aziz el-Hilu of the Nuba, who now leads the Sudan People’s Liberation Movement/Army-North in South Kordofan. Although the election was relatively close, there is abundant evidence that Khartoum had again rigged the results to give its war criminal candidate a victory that virtually guaranteed a return to war. In retrospect, it is clear that Haroun was sent to South Kordofan to continue the kind of ethnically-targeted human destruction of which he was so conspicuously guilty in Darfur.

In a decision based on seriously deficient data, the Atlanta-based Carter Center

of former president Jimmy Carter declared the election results legitimate. This decision became the subject of a detailed and highly critical assessment by the Rift Valley Institute; in the immediate wake of the Carter Center decision I also wrote the piece that appears here as “Carter Center Fails to Consider Key Issues in the South Kordofan Gubernatorial Election.”<sup>1</sup>

The Carter Center statement marked a shameful conclusion to international oversight of elections in greater Sudan.

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## **Sudan Elections and Southern Self-Determination: At Growing Risk**

*June 28, 2009*

Sudan's significantly delayed national elections, now scheduled for February 2010, have been very poorly supported by the international community and are at risk of even further delay. A host of technical, logistical, administrative, as well as legal and policy issues have yet to be resolved. A complex electoral calendar is far behind schedule in many critical respects, even as the rainy season has begun in both Southern Sudan and Darfur; this will badly hinder the critical task of effective voter registration, only now getting underway. The Sudanese census seems badly skewed in some of its results, and was conducted with far too little international supervision. Census issues are critical in determining legislative power in the National Assembly that will be formed on the basis of elections less than eight months from now. An abuse of illegitimate and excessive legislative power by the National Islamic Front/National Congress Party (NIF/NCP) could result in a pernicious re-writing of the terms of the Comprehensive Peace Agreement (CPA; 2005), which stipulated the current elections and legislative make-up—or amendments to the Interim National Constitution could be passed with the same effect.

Elections in Darfur amidst the current violence, insecurity, and displacement are hopelessly problematic, and it is highly doubtful that anything resembling a representative vote will take place. The electoral process may break down entirely, allowing the NIF/NCP a free hand in construing the Darfur results how they will. Violence in the South has also accelerated in recent months, and President Salva Kiir of the Government of South Sudan has a good deal of evidence for his recent ominous remarks, hinting at Khartoum's stoking of ethnic and tribal tensions:

The Comprehensive Peace Agreement, that we concluded as a result of enormous sacrifices, is seriously threatened by enemies of peace from without our realm and without. This is a well-designed strategy to discredit you [Southerners] as a people who cannot govern themselves, particularly as we approach general elections and [the self-determination] referendum.<sup>2</sup>

There is also growing evidence that the Khartoum regime is again arming and supplying the maniacal Lord's Resistance Army in Western Equatoria State, as well as providing weapons to competing ethnic groups in Southern Sudan, all with precisely the aim Salva Kiir articulates.

Censorship has actually increased in recent months, and seems likely to increase further in the months before the election. The “Press and Printed Materials Bill of 2009” was passed on June 8, 2009 with several disturbing new features that will inhibit already severely limited freedoms of the press and public expression. The bill contradicts several features of the CPA as well as the terms of the Interim National Constitution mandated by the CPA. Most notably, interference in political expression by the regime’s security apparatus is not prohibited by the new law, and pre-publication censorship remains the prerogative of the intelligence services.

Moreover, twenty years after its military coup and the radical remaking of Sudanese governance, the NIF/NCP has consolidated its stranglehold on national wealth and power in a wide variety of ways, many of which work to ensure control of the electoral apparatus. By far the most authoritative analysis of this consolidation of power, and the way in which it is exercised, comes from Gillian Lusk in the current issue of *Africa Confidential*, where she is Associate Editor.<sup>3</sup> With an unrivaled understanding of the inner workings of the regime, Lusk details the history and consequences of the National Islamic Front military coup of 1989; reveals the deep continuities within today’s National Congress Party, particularly its leadership; and gives a compelling account of NIF/NCP methods, strategy, and outlook. The conspicuous failure to understand this strategy and outlook stands as the greatest obstacle to the success of efforts such as that currently being led by US Special Envoy to Sudan Scott Gratton.

Edward Thomas has also argued in a recent Chatham House Report (“Against the Gathering Storm: Securing Sudan’s Comprehensive Peace Agreement”) that “Power is being more securely entrenched in the informal and inaccessible networks of security men and business men that run the National Congress Party.” And that as a consequence, “there is a real risk that elections will be managed through patronage systems that no longer provide meaningful political services for their people.”<sup>4</sup>

There have been a series of reports such as Thomas’s over the past year, several quite recent, surveying the prospects for national elections and the subsequent Southern Self-Determination Referendum: all present extremely gloomy outlooks (with more or less indirection) and highlight a set of strenuous challenges that continue to go unmet. The present analysis surveys this now substantial body of literature (see brief bibliography at section end), and traces out their collective implications. I survey additional reports bearing on the specific conditions in Darfur, other marginalized regions of Sudan, as well as the continuing shift in US policy toward accommodating Khartoum’s behavior.

The broadest conclusions are that the national electoral process leading up to February 2010 will be unacceptably compromised, and that the NIF/NCP will wage

a deeply unfair campaign culminating in rigged election results. These results, translating into a dominant majority in the National Assembly, may seem so threatening to the Southern Self-Determination Referendum that it becomes the occasion for tensions that explode into violence in the near term. The most likely flashpoints remain Abyei and the Nuba Mountains, though recent fighting provoked by Khartoum in Malakal suggests that much of the South is a tinderbox. An alternative outcome would be a wary, distrustful, and halting movement toward the 2011 Referendum. The risk that the NIF/NCP would ultimately undermine the Referendum is extremely high, either by “legislative” or military means. If the Referendum is compromised in any way, the Government of South Sudan will be compelled to opt for war. The international community has very little time in which to avert this catastrophe, which can be achieved only by securing the kinds of meaningful agreements and cooperation from Khartoum that have been nowhere in sight during the four and a half years since the signing of the CPA.

To be sure, some are already casually writing off the national elections, arguing that the Self-Determination Referendum should be the only focus of attention. As Sudan commentator Alex de Waal has rather euphemistically put it: “The result by now is pretty much a foregone conclusion. The NCP will navigate the elections without difficulty.”<sup>5</sup>

But de Waal, in his casual acceptance of fundamentally compromised national elections, stands well outside the majority opinion of those who have researched these elections and their specific implications for the very Self-Determination Referendum that he declares to be “the centre of gravity of [Sudan’s crisis], and the other [Sudanese] problems are derivative from that.” Much of the balance of this analysis argues that such acquiescence before Khartoum’s corrupting of the 2010 election will make the Self-Determination Referendum all the more difficult to hold, and in the event (or its absence) a catalyst for renewed war.

## **Sudan’s National Census**

Gerard McHugh articulates the most fundamental truth that seems to have been ignored in discussions of Sudan’s elections: “elections in the Sudan cannot be the end goal in and of themselves. Rather, they must be a means to an end, and that end objective must be effective and sustainable mutual accommodation of oft-competing political interests and perspectives in the whole of the Sudan.”<sup>6</sup>

This is an enormous challenge in a country as vast and variously diverse as Sudan; achieving demographic clarity is an imperative, though one clearly not felt as such by the international community. Sudan’s opportunity to count its population

in a persuasively fair and representative way—the key to legitimating elections—has passed. The results of the 2008 census have now been announced, and while yielding a plausible gross total, there are serious anomalies that demand attention.

[a] Of particular concern is the enumeration of displaced Southern Sudanese living in the north (and excluded from the population of Southern Sudan), particularly in the Khartoum environs. Even the former NIF/NCP director of the Census Commission has acknowledged a highly significant undercount:

The former director of the census commission, Awad Haj Ali, said that he believed the census had undercounted Southern Sudanese living in the north, and that their number might be nearer 1.5 million, rather than just 500,000, as found by the census.<sup>7</sup>

Others put the number of uncounted Southerners higher yet, and given the range in estimates of internally displaced Southerners during the war years (4 to 5 million human beings), this is certainly plausible.<sup>8</sup> Awad Haj Ali declared that “the total number of southerners in the north might be 26 percent.”<sup>9</sup> Southern Sudan’s population was inevitably undercounted because the NIF/NCP insisted that the census form have no indication of place of birth or origin.

[b] Luka Biong, until very recently the Government of South Sudan Minister for Presidential Affairs, makes a number of telling observations about the results from Darfur:

The process in the south could be described as transparent, but the problem was in the north where the data and results were not logical, such as the reports of a 60% increase of the population in Darfur since the last census in 1993, and the population of South Darfur increased by 90% during that period. We also have information that the census did not include the IDPs in their camps—leave alone the refugees in the neighboring countries. The strangest thing is that the results show a 322% increase in the population of the nomads [migratory Arab tribal groups, and likely to vote for the NIF/NCP]. What does this mean? Did they bring in people from outside Sudan?<sup>10</sup>

In fact, there is compelling evidence that Arab groups from Chad, Niger, and Mali have indeed been settled by the NIF/NCP in various towns and rural areas, including villages and lands destroyed or confiscated by the *Janjaweed*. The newcomers were also provided Sudanese identity papers. This demographic stratagem is consistent with ambitions outlined in an August 2004 memorandum from a senior

*Janjaweed* official. Nicholas Kristof of the *New York Times* (February 23, 2005) received the memorandum from someone with access to the classified African Union archive of photographs and documents from the first years of the genocide. It was leaked to him, subsequently vetted, and confirmed as almost certainly authentic. The African Union itself believes the document to be real, as do Alex de Waal and Julie Flint, who indeed identify the document as a “directive from [Musa] Hilal’s headquarters.”<sup>11</sup> It calls for the “execution of all directives from the president of the republic,” and is addressed to both regional *Janjaweed* commanders and Khartoum’s three main security services (including Military Intelligence, which has dominated security policies in Darfur). It declares bluntly the purpose of the conflict going forward: “Change the demography of Darfur and make it void of African tribes.” It encourages “killing, burning villages and farms, terrorizing people, confiscating property from members of African tribes and forcing them from Darfur.”

Certainly a “changed demography” appears to be reflected in the new census results for Darfur.

[c] Reservations about the census figure for Eastern Sudan have also been expressed by the Beja Congress. But it is the deep distrust of the results by Southerners (who were given no opportunity to examine or contest census data in advance of their release by Khartoum), and the prospect of 3 million Darfuris being disenfranchised by virtue of displacement, that fundamentally threaten the national elections and any National Assembly constituted on the basis of these electoral results.

As to the broader integrity of the census, *Africa Confidential* recently provided a highly informed account of circumstances on the ground:

Census Monitoring Commission boss Abdel Bagi el Geilani Ahmed had declared census coverage was “100%” in the North, with 85–90% in Darfur. Even the normally quiet United Nations noted that coverage was low in Darfur. Amid complaints nationwide, one veteran politician told *Africa Confidential* how he waited for three days in his village near Khartoum but no one came to count him or his neighbours. As criticism mounted, the NCP began praising the “international monitors.” No one AC contacted, including a UN official, had seen any—perhaps because there were only 34 for Sudan’s 2.5 mn. square kilometres. This gave the regime a free hand.<sup>12</sup>

The census as it presently stands is a source of deep, perhaps irreconcilable disagreement between the NIF/NCP and the SPLM. Southern skepticism about the results is certainly animated by the electoral implications of losing what may amount

to millions of votes in a process that gives compelling evidence of systematic exclusion and reworked data (the example of a 322 percent increase in the population of migratory Arabs in Darfur is only the most conspicuous anomaly). If the new national government is constituted on the basis of present census percentages, the SPLM will go from a 28 percent representation in the National Assembly to something approximating the 21 percent of the population the census deems “Southern.” In a report appearing before release of the census figures and percentages (January 2009), Thomas presciently articulated the scenario that most concerns the SPLM and other opposition parties:

[Worst case scenario]: 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.<sup>13</sup>

This scenario is far closer to being realized, and suggests further the foolishness of dismissing the implications of national elections for the Southern Self-Determination Referendum. Khartoum is working hard as well to divide Southern votes, covertly funding and supporting political efforts such as that of the grossly expedient Lam Akol. His factitious “Sudan People’s Liberation Movement-Democratic Change” is simply a means by which the regime hopes to sow division among dissatisfied Southerners, and to create leverage in dealing with the SPLM itself.

The international community has done far too little to heed these clear warning signs, which have come in many forms over many months. Indeed, delayed reaction seems to be the order of the day in the world’s response to Sudan’s growing electoral crisis.

## **Logistical, Technical, and Administrative Obstacles**

The greatest obstacle to free and fair voting is the enormously compressed electoral calendar that Khartoum has engineered through policies of delay, obstruction,

reneging, and bad faith. It is worth looking at this calendar and its relationship to the time-frame envisioned in the Comprehensive Peace Agreement (CPA):

**Census:** mandated by the CPA to be conducted by July 2007 (the exercise occurred almost a year late);

**National Electoral Law governing the elections:** mandated by the CPA to be enacted by January 2006 (passed only in July 2008, two and a half years late);

**National Election Commission (NEC):** mandated by the CPA to be established within one month of the election law (the NEC exists only formally; nothing remotely adequate to the challenges of national elections has yet emerged, despite last year's passage of the National Electoral Law)

**Determining the North/South border,** critical for any accurate census, for oil revenue-sharing, and for the establishment of voter constituencies: a central demand of the CPA, it has yet to be addressed in any serious fashion by Khartoum, four and a half years after signing of the Agreement;

**Southern Self-Determination Act:** mandated by the CPA to be enacted by mid-2007 (the Act did not come up for a vote during the now-completed legislative session; the Act may not pass for a number of months, creating a delay of well over two and a half years);

**National Elections:** mandated by the CPA for July 2009 (these have been delayed until February 2010, further compressing the time-frame between national elections and the Southern Self-Determination Referendum);

**Southern Self-Determination Referendum:** mandated by the CPA to be held in January 2011 (currently scheduled for February 2011);

**July 9, 2011:** end of the "Interim Period" stipulated by the CPA

Writing a year ago, Heilman and Chelius argue that "adhering to the mandates and timetable of the CPA is in the best interest of all parties, including the international community." But this optimism about how the NIF/NCP construes what is in its "best interest" seems naive, given how "interests" are calculated in Khartoum. Nonetheless, their larger point about what has happened to the timetable was prescient in June 2008 and is now completely compelling:

[The electoral] timetable has already been voided by the extreme delays in meeting many of the critical milestones in the Agreement. There are indeed many operational obstacles to meeting the July 2009 target for General Elections, including:

Lack of an electoral law

Lack of an electoral system

Lack of a voter registration system

Lack of an electoral management body

The logistical impossibility of performing many activities during the rainy season

Lack of an agreed-upon North-South boundary (necessary for boundary delimitation)

Lack of Census data (also necessary for boundary delimitation) and likelihood of its lack of acceptance once released.<sup>14</sup>

The lack of an electoral system, the beginning of voter registration only as the region enters into the present rainy season, and the absence of a clearly defined North/South border loom as especially threatening to the integrity of elections. Using these delays and their aggregate effects, Khartoum is in a position to ensure that the provisions of the Election Law will be implemented in the ways least threatening to NIF/NCP control of the electoral process. Given the host of difficulties and the sheer scale of many tasks, election outcomes will almost certainly be determined by vote rigging, voter intimidation, bureaucratic obstacles, and coercive patronage voting patterns.

Some of these difficulties have been detailed in the reports surveying elections prospects:

[a] Demarcation of individual election constituencies was supposed to be based on the census results. Because of disputes about the census (which, for example, left the Abyei region without the votes necessary to become an electoral constituency), constituencies cannot be demarcated. As Hafiz Mohammed of Justice Africa has put the matter:

[The census dispute] is the main problem. How to solve it, no one knows. You have to come out with the demarcation [of constituencies] first, and then the registration of voters and then the other processes, and all that has to finish before February [2010].<sup>15</sup>

Given the nature of single representation constituencies, their demarcation becomes an extremely important issue, and particularly in contested regions.

[b] Voter registration is only now beginning, even as the rainy season has already begun in both the South and Darfur. Even in the best of circumstances this would be a monumentally difficult task. Many people have never voted before; a high

percentage of those in the South are illiterate; the balloting is excessively complex (twelve ballots are required in the Southern elections, with the possibility of run-off elections); and the absence of a fully constituted electoral management body guarantees that these problems will become more severe as the registration process proceeds. One NIF/NCP official is already speaking of delaying the registration process until November:

The deputy chairman of the National Elections Commission, Abdullah Ahmed Abdulla, told Reuters the commission was behind schedule because of delays in announcing results of a vital census and in setting up election committees in states. “We are considering a modification, an adjustment of our old timeframe to accommodate the delays that have taken place,” Abdulla said on Tuesday [June 9, 2009], adding it would “not be very much of a delay.” Abdulla did not suggest any new timeframe but said voter registration—originally set for June—would now likely start in November after disruptive rains have finished.<sup>16</sup>

But without a commitment of the appropriate resources—managerial, logistical, transport, and staffing—delays will only compound themselves, inevitably working to the benefit of the NIF/NCP.

[c] This shortcoming points in turn to a critical difficulty identified in the Carter Center Report:

Substantial responsibility for implementation of the electoral process falls on the 26 subsidiary elections High Committees, one for each state and one for Southern Sudan. The National Election Committee appears to be close to appointing these committees, which will be an important first step. However, with a little less than one month to go until an extensive voter registration process is due to begin, there is a rapidly shrinking window for the High Committees to begin their work and make the necessary preparations for an inclusive registration process. It remains unclear what powers and authorities will be devolved from the NEC to the High Committees. Therefore, a critical priority for action is to clarify the delineation between national, regional, and state election management body responsibilities as the electoral process moves forward.<sup>17</sup>

A month and a half later, little if anything has been done to address the critical issues the Carter Center Report highlights.

[d] Willis et al, in their detailed survey of the history of elections in Sudan, highlight areas of particular concern:

[T]here are many other kinds of malpractice [besides “ballot box stuffing and switching”], and in the light of previous experience the report draws attention to the need to support the following areas in particular:

Ensuring press freedom and equal media access.

Ensuring freedom of movement and association to allow proper campaigning.

Preventing improper use of government resources in campaigning.

Monitoring campaign spending as the campaign proceeds, rather than afterwards.<sup>18</sup>

What we find is that the Khartoum regime is moving in precisely the opposite direction. To be sure, the idea that the NIF/NCP would “monitor...campaign spending” during or after the election, or would refrain from “improper use of government resources,” is hopelessly quixotic—and misleading in suggesting that such monitoring and restraint are even remotely possible. But “freedom of movement and association” seems even more imperiled by recent legislative actions and inaction, as well as regime pronouncements. President Omar al-Bashir has threatened the Sudan People’s Liberation Movement (SPLM) with a prohibition of campaigning in the North on wholly contrived grounds; the regime is holding up a new National Security Law that would constrain its most potent electoral weapon, the National Security and Intelligence Service (NSIS); the new censorship law fails to provide real “press freedom,” let alone “equal access” to the news media.

Idealistic exhortations are certainly in the spirit of human rights standards being consistently promulgated, even when the chances of these standards being met is vanishingly small. But to urge that the National Election Commission “must use its powers to ensure both greater equality of access to media, and the end of the current routine censorship” is indeed mere exhortation, and instead of working to explain Sudan’s electoral history under the NIF/NCP ignores it.<sup>19</sup> So, too, with the insistence that “more effective enforcement of regulations on campaign spending are essential.”<sup>20</sup> No doubt. But as the authors well know, the regime in its twenty years of dominating the economy, banking, and business world of Sudan has created unlimited opportunities to buy votes in any number of ways that escape all scrutiny. The patronage system is fully mature, and more than adequate to escape any nominal “ceiling on expenditures.”

[A revealing and very recent account of this patronage system comes from Sudan Human Rights Organization/Cairo [SHROC] and its report on the shamelessly corrupt investment deal offered to NIF/NCP cronies for the vast Gezira (Agricultural) Scheme:

SHROC reported on Sunday that Minister of Agriculture Abdel-Haleem Al-Muta'fi and the new Governor of Gezira Alzubair Bashir Taha took measures to purge hundreds of the Gezira specialized engineers and other key professionals from the cotton gins and the railway department, in addition to planned displacement of hundreds of thousands of the farmers' families that have lived in and served for almost a century the Gezira Scheme.

“The new Governor, formerly a minister of interior with a violent record against unarmed civilians protesting government policies, launched a massive assault by armed regiments of the police force, the armed forces, and militias of the NCP ruling party, on the markets of Medani, the capital city of Gezira, that terrorized the population, especially the low-income farmers' families selling tea or other local products. Hundreds of the terrorized citizens were then put on custody in appalling conditions,” stated SHROC.

The next day, the Minister of Agriculture promptly acted to sell cheaply the Scheme's agricultural engineering establishments and machineries to members of the NCP ruling party in a closed private tender. Another sale was made of the Gezira Railways Department, which serves to ship raw cotton bales to the Maringan Ginning Mills. According to the Cairo-based rights watchdog, the railways department was cheaply sold to GIAD, a company of the international Muslim Brotherhood. NCP party members also allegedly bought the major spare-parts workshop of Maringan, which for decades had ensured high productivity of the gins.

These sales provide yet more electoral leverage for the NIF/NCP and illustrate perfectly how the regime has operated for the past twenty years.]

## **Censorship**

So great is the issue of censorship in any imaginable election in Sudan, and so completely does the regime control the news media, that as an obstacle in the electoral

process it deserves treatment as an issue unto itself, not least because of what it reveals of the character and methods of the NIF/NCP.

The basic logic of censorship in the current environment was outlined this past February (2009) by Human Rights Watch:

The Sudanese government's active repression of journalists and human rights defenders not only violates the human rights of those who are directly abused, it severely impedes freedom of expression and access to information throughout Sudan. This repression is particularly critical in light of the national elections scheduled for mid-2009-Sudan's first national elections in more than 20 years-and the ongoing International Criminal Court (ICC) investigation into crimes in Darfur. Severe limitations on freedom of expression and repression of media and human rights defenders will act as a huge barrier to the holding of free and fair elections. Human Rights Watch is concerned that the elections and the ICC investigation may be used by the Sudanese government as excuses to further intensify repression.<sup>21</sup>

Human Rights Watch details the slow demise of modestly increased press freedoms that followed the signing of the CPA (January 2005) through increasingly sharp crackdowns. It is in this context that we should see the implications of the recently passed Journalism and Press Publications Bill (June 8, 2009). As Reuters notes in its dispatch on the new law,

[T]he new press bill leaves room for state interference on the grounds of national security or public order and it remains unclear if censorship will be reduced.<sup>22</sup>

Actually, as a Human Rights Watch spokesperson noted, censorship remains quite "clearly" the predominant reality of all Sudanese news media:

"National Security has incredible sweeping powers of arrest for ill-defined acts against the state. Without its reform the new [press and media] act is not going to be enough to ensure freedom of the press," Selena Brewer from the US-based Human Rights Watch said.<sup>23</sup>

Press freedom in the new law is at once asserted and undermined: no restrictions will be placed on freedom of the press except on "issues pertaining to safeguarding

the national security and public order and health.” And of course, as Brewer of Human Rights Watch rightly asserts, national security forces decide what is required to “safeguard national security.” The newly created Press Council is nominally the organ responsible for determining the extent of press freedoms, but finally the Council falls under the authority of regime officials or appointees. Most fundamentally, the 1999 National Security Forces Law specifically empowers the National Security and Intelligence Service to censor news reports and arrest journalists. The new law does not change this fundamental fact, and we will see that no honest reporting is permitted on the ICC arrest warrant for Omar al-Bashir, charging him with crimes against humanity; there will be no reporting on the regime’s support for Chadian rebels seeking to oust President Idriss Dby in N’Djamena; there will be no reporting on the May 2008 attack by JEM rebel forces on Khartoum; there will be no reporting on current violence in the south. And there will be no honest reporting on the reasons for the many and long delays in the electoral provisions of the CPA. All these topics will fall under the rubric of “national security issue.”

## **Khartoum’s Efforts to Destabilize the South**

The NIF/NCP has engaged for well over a year in a clear pattern of instigating violence in Southern Sudan and the transitional areas (primarily Abyei and Southern Kordofan). This is in addition to the violence that the regime has continued to orchestrate in Darfur, despite assertions to the contrary from various quarters.<sup>24</sup> A particularly dangerous moment came in May 2008, when Khartoum’s Sudan Armed Forces (SAF) destroyed Abyei town itself and a number of nearby villages, displacing as many 100,000 civilians, the vast majority of whom have not attempted to return. This has resulted in an ongoing humanitarian emergency.

The assault on Abyei was deliberately engineered out of tensions created by the SAF. We have an unusually authoritative account of what led to the assault from the highly experienced and knowledgeable Roger Winter, who was present at Abyei in the months before the attacks and the days immediately following:

During my visits in February and March of 2008, I documented the illegal presence of Sudanese Armed Forces (SAF) in the Abyei area. During this period, the Sudan Armed Forces’s 31st Brigade used terror tactics to systematically clear the population from the villages outside of Abyei town. The village of Todaj, for example, was rendered devoid of population due to nightly shooting by the Brigade. A nearby International Organization for Migration reception center, set up to assist

returning people who had been displaced by Khartoum-inspired violence years earlier, was shut down.

The tension in the Abyei area was palpable. On May 13, an incident between the Sudan People's Liberation Army, or SPLA, police and SAF occurred in Dokora village, about four miles north of Abyei. Violence exploded, quickly spreading across the area. On the afternoon of May 14, local officials reported heavy bombardment of Abyei's civilian areas, as well as looting and burning of markets and homes by SAF forces. This precipitated the mass flight of thousands of civilians to safety in the South.

Arriving in Abyei on May 16, 2008 Winter described the aftermath of Khartoum's brutal assault:

[The town of Abyei] was empty. You could look the full length of streets and see no one. I counted only 1012 civilians, several of whom appeared to be mentally unstable. The others, sneaking back to where their homes once stood, were evidently attempting to salvage any remaining blankets or belongings. The market had been looted and burned to the ground. Many structures were still smoldering. Block after block of traditional homes were reduced to ashes. Approximately 25 percent of the town's structures were totally destroyed. Shortly after our visit, we received reliable reports that most of the rest was aflame. Abyei, as it had existed several days earlier, had ceased to exist.<sup>25</sup>

Despite signing the Abyei Protocol, as a key part of the Comprehensive Peace Agreement, the NIF/NCP refuses to abide by what was to have been a binding determination by the Abyei Boundary Commission, international experts who performed scrupulously in demarcating the boundary of the Abyei enclave. Such bad faith reflects directly on the credibility of the NIF/NCP as an electoral partner, as well as on its willingness to use violence to destabilize Southern Sudan.

The Nuba Mountains in Southern Kordofan, allied with the SPLM/A during the civil war, reflects many of the same trends toward violence as a means of controlling the elections.<sup>26</sup> But even in the south itself there is growing evidence of a determination to precipitate violence. In Malakal (Upper Nile), for example, there have been two major breaches of the cease-fire that undergirds the CPA. The most recent was a deliberate provocation by the regime, as Human Rights Watch clearly implies in a letter to President al-Bashir:

The Sudan Armed Forces (SAF) contingent of the [north/south] Joint Integrated Units [JIU] in Malakal comprises former militia from several groups led by former militia leaders. Tensions surfaced on February 23, 2009, with the arrival of SAF Maj. Gen. Gabriel Getwech Chan, known as Gabriel Tanginya (“Tang”), a notorious former militia leader whose followers include thousands of soldiers currently serving in the SAF unit of the Malakal JIU.

Tang’s arrival inspired particular panic because of his role provoking previous clashes. In November 2006, his presence in Malakal contributed to clashes between the same JIU contingents that resulted in some 150 deaths, and Tang is wanted by the Government of Southern Sudan in connection with those clashes.

In other words, sending Major General Tang to Malakal was a deliberate effort by the NIF/NCP to precipitate fighting, and succeeded precisely as planned (Tang was withdrawn shortly after the fighting started). The signal was clear: particularly in areas where the Joint Integrated Units are operating, Khartoum can undermine whatever civilian security exists and can provoke fighting that weakens not only SPLM authority, but creates unhappiness that has electoral implications (Malakal, for example, is close to the Southern Kordofan border and has a growing Arab population and character).

There is also evidence that the recent inter-tribal and inter-ethnic fighting, so worrisome in Southern Sudan at this point following the CPA, is being stoked by weapons provided by the NIF/NCP. And even the suspicion that weapons are being provided by Khartoum has precipitated fighting at various points of tense confrontation, especially in Jonglei and Upper Nile. Other SPLM sources insist that they have clear evidence that Khartoum has been providing weapons to some of the combatants in ethnic fighting, particularly the Murle, who have been involved in some of the most deadly violence.

To date, this fighting at various locations in the South has exceeded the control of the Government of South Sudan (GOSS). This is in large measure because of the deeply felt imperative by many in the Southern government, and Southerners generally, that they will themselves be the only military guarantors of the 2011 Self-Determination Referendum, and must plan now accordingly. This has forced some hard choices in the allocation of military and security resources, and ultimately financial resources (this is one reason Khartoum keeps its payment for oil revenues to the South so far in arrears—hundreds of millions of dollars are owed at present).

For an excellent discussion of the particular dilemma confronting the GOSS,

see “Conflicting Priorities: GOSS security challenges and recent responses.”<sup>27</sup> The report concludes by noting that,

As the CPA enters a critical period, Southern Sudan is under pressure from ceasefire violations [by Khartoum] as well as internal instability and security challenges. The GoSS’s focus on preparations for a possible military confrontation with the North has limited its ability to address divisions and community security concerns within the South, which are equally destabilizing. This dynamic has not been recognized by many outside observers. A better appreciation of the realities on the ground is crucial to assisting the southern government to reduce the risk of further political, ethnic, and social crisis.<sup>28</sup>

The most obvious contribution to a solution could be made by the UN force in Southern Sudan (UN Mission in Sudan [UNMIS], to be sharply distinguished from UNAMID in Darfur). This poorly conceived and badly undertasked operation should be much more active in the field and in using that part of its mandate that comes under Chapter 7 of the UN Charter. The Small Arms Survey report puts the matter squarely:

First, UNMIS can make a significant contribution to building confidence in the peace by more effectively monitoring the ceasefire and security arrangements of the CPA—arguably the most fundamental task of the peacekeeping mission—through more direct interaction with local actors. Playing this role calls for more dynamic patrolling by military and civilian observers, greater interaction and cooperation at an operational level between the UN military, police, and their counterparts at all levels, and improved information sharing, analysis, and reporting.

To counteract the current perception that there is little recourse to address CPA violations and the tendency of peacekeepers to respond only after outbreaks of violence have occurred, UNMIS could work more with local actors to address concerns before they escalate. Part of UNMIS’s mandate falls under Chapter VII of the UN Charter but it has yet to effectively operationalize this on the ground. This will require a substantial shift in the focus of current assets and human resources. A first step would be to patrol key areas more proactively, as is currently beginning to take place through a deployment in Jonglei. It is from this starting point that a discussion about more effective response mechanisms and protection could be developed.<sup>29</sup>

The electoral implications are not fully drawn, but the report does speak to the dilemma that is at the center of this important assessment of how the GOSS should deploy its security and military assets:

A more realistic analysis and acknowledgement of possible future scenarios and threats would help enable the GoSS to plan for the Referendum and beyond, to create the conditions for peaceful secession—should this be the outcome of the Referendum—and to overcome the South’s internal divisions after 2011. In the interim, a short- to medium-term strategy is also needed to realistically assess and manage internal threats to security, mitigate the potentially destabilizing impact of the financial crisis and upcoming elections, and moderate the ongoing internal conflicts and criminality that impact on the daily lives of ordinary people.<sup>30</sup>

Though eminently sensible, these recommendations are unlikely to be pursued by UNMIS, which—like UNAMID—seems excessively deferential, even fearful in dealing with Khartoum and its Sudan Armed Forces. But any reduction of inter-tribal and inter-ethnic violence will contribute to a more conducive electoral environment going forward over the critical next 19 months. They will not affect the outcomes of the national elections, but may indeed help work to diminish the crisis that looms ever closer with the inevitable decision by Southerners to secede from the North.

There is as yet no clear evidence that Khartoum is supporting the resurgent Lord’s Resistance Army [LRA] in its predations in Western Equatoria, but there are nonetheless disturbing claims being made by Southern officials. Martin Tako Moyi, deputy chairman of Gender, Social Welfare, Youth and Sports committee, urged an Egyptian delegation to encourage Khartoum to make unity attractive to Southerners. In the course of his comments he declared, “I have seen with my own eyes Antonov aircrafts [which belong only to Khartoum] dropping arms and ammunition to the LRA, as well as helicopters dropping weapons to some tribes in the south.”<sup>31</sup> Dr. Anne Itto, a former commander in the SPLA, declared two weeks earlier:

“We have our [sources] in the region, especially in Western Equatoria, who found debris of Sudanese broad beans and dates.” Itto explained that the debris was packaging from high-energy foods typically used in desert regions by Sudanese armed forces and that the bags and packets had Arabic letters. “So it must have been air dropped to LRA by Sudan armed forces.”<sup>32</sup>

If Khartoum is indeed again supporting the LRA, its intention to destabilize Southern Sudan at any cost will be transparently clear.

## **Elections in Darfur**

In “Conducting Elections in Darfur: Looking ahead to Sudan’s 2009 Elections” (March 2009), Stephanie Schwartz summarizes the results of a workshop held earlier this year at the US Institute of Peace (USIP). Some of the observations about the difficulties of holding elections amidst the violence and insecurity in Darfur seem rather obvious; other observations are more incisive. Certainly the broadest generalization is unavoidable:

While establishing voting and electoral infrastructure [in Darfur] may be difficult but feasible, securing the environment for electoral activities, making it safe for parties to hold rallies, for candidates to campaign with freedom of movement and expression, and for citizens to register and go to the polls on election day will require political will from both the Government of Sudan (GoS) and the Darfurian opposition movements. Evidence thus far from the implementation of the census shows that the GoS has been extremely slow to take on preparations for the elections, and that competing priorities are a significant barrier to government action. Without an active commitment from the government and the opposition movements to hold free, fair and non-violent elections, the elections will not be successful.<sup>33</sup>

Other, more specific difficulties suggest an even gloomier prospect. Concerning the 2.7 million displaced persons living in camps throughout Darfur, Schwartz notes:

The election law presents particular problems for Sudan’s millions of internally displaced persons (IDPs), many of whom are originally from Darfur and may be sympathetic to opposition movements. The electoral law requires prospective voters to register in the constituency where they have lived for the last three months and present some form of personal identification. The registration lists will then be published three months prior to the election. This means that unless provisions are put in place, IDPs would have to relocate to their homes or re-settle at least six months before the election to vote in their home constituencies—a highly unrealistic expectation. In reality, IDPs will

likely have to vote in their current place of residence. Because those who were displaced are more likely to be opposed to the government, spreading their votes across the constituencies where they are currently living may skew the vote in Darfur in favor of the more pro-government forces who remain.<sup>34</sup>

Ominously, as Thomas notes, Khartoum announced “coverage rates of 85–90% [in Darfur], even though many in the huge population of displacement camps refused to take part.”<sup>35</sup>

Moreover, the likelihood that voting can take place in the camps without intimidation from one side or another is exceedingly small; and yet without the votes of those in the camps, the results will be hopelessly skewed. The “single-constituency” electoral framework also prevents groups that are dispersed from gaining representation:

Even if IDPs and other minority supporters voted in their current locations for single party, because their presence is so dispersed the single-seat constituencies prevent them from gaining a seat. A 2007 study conducted by Tufts on IDP profiling showed that IDPs comprise 18–23% of the population in Khartoum. However, only one district in Khartoum, Omdurman, has a majority of IDPs. Therefore, unless carefully drawn, the single seat constituencies might marginalize these IDP voters.<sup>36</sup>

In fact, such marginalization is part of NIF/NCP electoral strategy and even without fraud certainly guarantees a disproportionately large representation in the National Assembly. With vote rigging, fraud, and the use of an enormous patronage system, the regime will simply decide how many seats it wishes.

The question, then, is whether there should be an election in Darfur in the midst of current insecurity and extreme levels of displacement. There is no simple answer, and the question is really about what sort of elections should be held:

Given the security constraints, lack of potential political accommodation and minimal incentives for opposition movements to participate, the question remains if elections should be held in Darfur. The elections will most likely not be free, fair and inclusive without a peace agreement prior to the election. However, the majority of experts [meeting at the US Institute of Peace] agreed that at least some elections must still be held in Darfur. Because the CPA requires elections, and absent

a postponement decision by the CPA partners, a national election will be held. If those elections do not include Darfur, either side may reject the results as illegitimate and the situation may become worse.<sup>37</sup>

Indeed, given prevailing circumstances, Darfur becomes yet another means by which Khartoum can manipulate election results. Under these conditions, and given the likelihood of an organized boycott—by rebel groups, camp sheiks, and civil society leadership—it would seem better not to legitimate Khartoum’s claims that “normalcy” has returned to Darfur, and to forego participation in national elections whose results are already determined. A vote that gives voice to Darfuri aspirations and hopes for regional governance, as well as reasonable terms for wealth- and power-sharing, would be fairer and less likely to work in favor of Khartoum’s propaganda machine.

Certainly given Khartoum’s behavior over the past six years and longer in Darfur, given the deliberate efforts to subvert the CPA in Southern Sudan, the recommendation of “cooperation” by the regime may be appropriate, but exceedingly unlikely to be heeded in any meaningful way:

All of these stipulations [concerning security, transparency, transport logistics, early planning, civic education] will require cooperation from the Government of Sudan. From a logistical standpoint, electioneers will need support in establishing security and logistics, such as approving visas for staff and getting the required equipment through customs. On a political level, maintaining security and an atmosphere conducive to free and fair elections will require full government support for the elections process.<sup>38</sup>

Even to speak of “full government support” for the elections is to indulge in fantasy. There is not a shred of evidence that such “support” will be forthcoming; on the contrary, as the others reports on elections make clear, there is every reason to expect the opposite. To make such “support” the necessary condition for success is simply to acknowledge failure by other means.

## **US Policy Towards Khartoum and the Elections**

Despite the high-profile Sudan gathering in Washington, DC this past week, there has been no indication or claim of a breakthrough—or even specific progress on the key North/South issues, national elections, the Southern Self-Determination Referendum, the failing peace process for Darfur, and Sudan’s critical humanitarian

and development needs in marginalized regions. Representatives of the NIF/NCP, the GOSS, and the US, as well as other interested national and international actors, met, confabulated—and then departed. US Special Envoy for Sudan General Scott Gration convened the meeting, and there can be no gainsaying the importance of the occasion for raising the profile of issues that had been left unaddressed by the Bush administration. But these are also issues that have received far too little attention from the Obama transition team and administration. With almost eight months of opportunity, and a vigorous campaign commitment to respond to ongoing destruction in Darfur, there is still no coherent Sudan policy in place.

The Sudan inter-agency working group (State Department, US Agency for International Development, National Security Council, Defense Department, intelligence community) has still not reached consensus on this policy, and it is not at all clear that we will be provided with a forthright account of how claims about Khartoum's "cooperation" in the war on terror insulate the regime from greater US pressure, in particular pressure on our feckless European allies to do more, and on strategic rival China. For now we are best able to gauge the intentions of the Obama administration by the words and actions of Special Envoy Gration, and the tensions between the views he expresses and those of other administration officials.

One such comment that received particular attention was General Gration's assertion that Darfur now reveals only the "remnants of genocide," "the consequences of genocide, the results of genocide."<sup>39</sup> This is of course at odds with the words of President Obama, who recently spoke of "ongoing genocide" in Darfur, a comment echoed by Susan Rice, US Ambassador to the UN and former Assistant Secretary of State for African Affairs. But more troublingly Gration, like so many others, fails to take seriously the actual language of the 1948 UN Convention on the Prevention and Punishment of Genocide, even as the US has failed along with the rest of the world in making good on the Convention's two titular obligations. The Genocide Convention specifies a series of genocidal acts, including "deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part." In March, Khartoum expelled 13 international humanitarian organizations and shut down three critical Sudanese humanitarian and human rights organizations. This effectively reduced humanitarian capacity in Darfur by approximately 50 percent (even more consequentially in other marginalized regions of the North).

Such expulsions and shutdowns had long been desired and threatened by the regime; they were timed to occur on the occasion of the International Criminal Court's issuing an arrest warrant for regime head al-Bashir, charging him with war crimes and crimes against humanity. Here it is critical to see that the arrest warrant was pretext for, not cause of, the expulsions. There is no evidence whatsoever for

Khartoum's preposterous claim that all these organizations had assisted the ICC and exceeded their humanitarian mandate by spying and engaging in what was allegedly espionage. The same men making such claims also continue to argue that the Darfur conflict is of Western manufacture, an assertion made most recently by powerful Presidential Assistant Nafi'e Ali Nafi'e in Lebanon.<sup>40</sup> Until very recently, Nafi'e was in charge of the Darfur portfolio.

What is most disturbing about Gration's comments is not the ill-informed claim about the end of genocide, which was promptly disowned by a State Department spokesman from the very podium Gration had used the day before (notably, when in Darfur Gration visited only camps approved by the regime, which has sanitized the appearance and increased the security of several camps for just such visits by foreign dignitaries). Rather, with so many millions of lives and livelihoods threatened or destroyed, Gration chose to make casual and ill-informed comments about the restoration of humanitarian capacity in Darfur. Gration claimed, according to [www.America.gov](http://www.America.gov) ("Engaging the World"):

some of the aid levels currently are not sustainable because they are being implemented through emergency methods. "But with the new NGOs that are going back in right now, we believe we'll be able to sustain these operations and actually get more capacity than we had," he said.

This is deeply, culpably deceitful.<sup>41</sup> There is no conceivable way that the operational capacity, international staff, historical memory, resources, or facilities of, for example, Save the Children/US can be replaced except in the long-term by Save the Children/Sweden; the same is true of the replacement of CARE/US by CARE International, and Mercy Corps/US by Mercy Corps/Scotland (Padco, an international development consulting firm has also been allowed to operate, but does not bring the same direct humanitarian capacity of the other expelled organizations represented). The organizations themselves are quite frank about all this.

Nor does Gration mention the enormous losses in capacity that remain with the expulsions or Oxfam/Great Britain, Medecins Sans Frontiers (MSF) sections (including France and Holland), the International Rescue Committee, Action Against Hunger, and five other major international relief organizations. Only unsustainable emergency actions by UNICEF and the UN's World Food Program have managed to avert catastrophe so far, even as a large number of lives have certainly been lost, particularly among the very young who were beneficiaries of supplementary and therapeutic feeding centers, a number of which were shut down as a result of the expulsions. Primary medical care, which will be critical in responding to waterborne diseases during the present rainy season, is fundamentally compromised by

the expulsion of MSF. The loss of Oxfam/Great Britain and the International Rescue Committee will seriously compromise the ability to sustain delivery of clean water. Action Against Hunger and Save the Children/US were key implementing partners for the UN's World Food Program; without their presence, and that of other implementing partners, food distribution will become increasingly random and unsupervised throughout the rainy season.

The overall quality of humanitarian care, often as important as the quantity, has suffered a sharp blow from which it has not begun to recover.

What does all this suggest about elections in 2010 and the 2011 Self-Determination Referendum? If US relations with the Khartoum regime are defined by the evident perspective of General Graton, if his failure to see the connection between the genocidal destruction of the past and the regime's current policy of humanitarian attenuation governs ongoing diplomatic communication, then it would appear extremely unlikely that he will be able to extract any of the cooperation that all election observers agree is fundamental to even marginal success:

The stakes are very high [in Sudan]. If the [2010] election should lack credibility, it is hard to see how the Comprehensive Peace Agreement can survive.

The 1996 [NIF/NCP controlled] election was an extreme example of electoral pretence. However, it illustrates how it is possible to go through some of the motions of free and fair elections without actually offering any significant degree of choice or ensuring any substantial popular participation.

The Government of Sudan and National Election Commission should take every opportunity to secure electoral assistance—in the form of physical resources and training—from the international community, and the provision of such assistance should be treated as a priority in that community. Failures in procedure will undermine the process as swiftly and completely as will malpractice. (Willis et al)<sup>42</sup>

Citizens of South Sudan are more interested in voting in [the Self-Determination Referendum] than they are in the General Elections that are supposed to precede the referendum. However, little planning has taken place to prepare for the referendum. As with the General Elections, the Self-Determination Referendum has already fallen behind its timetable. Passage of the Referendum Act is a year late [now over two years late, without any near-term prospect for passage] and the [US-

AID] assessment team detected little forward movement there. (Heilman and Chelius)<sup>43</sup>

The primary objective of this paper was to explore whether elections can achieve effective political accommodation in the Sudan. The assessment presented here has found that the process and likely outcomes of elections, in the absence of other modalities, will not achieve political accommodation in the Sudan, and as such will not deliver on the desire for equitable sharing of power at the core of the Comprehensive Peace Agreement. (McHugh)<sup>44</sup>

Continued delay in the amendment and implementation of laws incompatible with the CPA and the Interim National Constitution threatens to undermine the electoral process. Reform and implementation of these laws is critical to ensuring key democratic rights of Sudanese citizens and civil society. (Carter Center)<sup>45</sup>

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. To implement this, the current broad powers of the security services to arrest and detain people without charge for up to nine months needs 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. (Thomas)<sup>46</sup>

All of these stipulations [concerning security, transparency, transport logistics, early planning, civic education] will require cooperation from the Government of Sudan. From a logistical standpoint, electioneers will need support in establishing security and logistics, such as approving visas for staff and getting the required equipment through customs. On a political level, maintaining security and an atmosphere conducive to free and fair elections will require full government support for the elections process. (Schwartz)<sup>47</sup>

In turn, these observations force the question articulated by Adam O'Brien:

The NCP is notorious for ignoring the rule of law, persecuting dissenting Sudanese voices, breaking existing agreements, and using ruthless force against civilians. Why should international diplomats believe the NCP will behave any differently during the course of an election, and what guarantees and safeguards will be put in place to prevent cheating?<sup>48</sup>

This is precisely the question that Gration, the US, and other international actors should be asking—urgently, forcefully, relentlessly. Only realistic answers can serve as an effective basis for policy toward Khartoum. Instead, Gration offers soothing words to the regime, speaks with irresponsible ignorance about the humanitarian crisis in Darfur, and simply gives no evidence of understanding the fatal threats facing national elections or the Self-Determination Referendum.

On present course, both elections and peace in Sudan are doomed.

## **Sudan: Election Crisis Reveals a Country Lurching Toward War**

*November 9, 2009*

With growing inevitability, Sudan has begun what the evidence suggests is a final lurch toward renewed North-South war—and the likely spread of intense fighting to other marginalized areas, including Kordofan, southern Blue Nile, Kassala and Red Sea states, Nubia, and most ominously Darfur. For the Darfuri rebel groups will certainly see the outbreak of war between Khartoum's forces and the Sudan People's Liberation Army as an occasion for overcoming the prevailing military stalemate in the west. War will begin when Khartoum decides that it has nothing further to gain from its merely nominal commitment to the Comprehensive Peace Agreement (CPA)—or when Southerners become convinced that the bedrock principle of the Comprehensive Peace Agreement—a Southern self-determination referendum guaranteed in the Machakos Protocol (July 2002)—will not be honored by the National Islamic Front/National Congress Party (NIF/NCP) regime. Whether in the form of a unilateral abrogation of yet another agreement by Khartoum or a unilateral Southern declaration of independence, the moment of most desperate truth for millions of Sudanese will have arrived.

In the short term Khartoum may still decide that its interests lie in making temporary concessions on the referendum legislation that was to have been passed more than two years ago. But recent public comments, from both the Southern political leadership and Khartoum officials, suggest that this is growing less likely. Moreover, several other key issues impinge on the final meaning of the self-determination referendum, including a demarcation of the North-South border; the final status of Abyei (which is to have its own self-determination referendum, with the choice of joining the South); the role of a deeply compromised census favoring Khartoum on virtually every demographic issue; and the use to which the regime will put the April 2010 national elections, which have already been delayed twice and now lie

only five months off. Further delay would push these elections into the rainy season and make an already overwhelming logistical challenge utterly impossible.

Moreover, Khartoum's manipulation of the electoral results has already begun in earnest, reflecting an understanding that neither party to the CPA can now afford to be seen as initiating a call for further delay of the elections. The SPLM in particular would be inviting postponement of the self-determination referendum with any call for delay, a point recently made by long-time Sudan observer John Ashworth in a powerfully informed report on the CPA.<sup>49</sup> Ashworth goes on to note:

A further danger lies in recent statements by the [NIF/]NCP "that any action to stop the next year elections would threaten the political stability in the country and endanger the implementation of the Comprehensive Peace Agreement" in response to calls from opposition parties to boycott the elections. This is a very worrying statement as it could be seen as a precursor to a State of Emergency and other drastic security-led actions in the name of "political stability," and could be an excuse to put implementation of the CPA on hold "temporarily."<sup>50</sup>

Given the virtual certainty that Southerners—if afforded the chance—will vote for secession, and by a margin likely in excess of ninety percent, urgent negotiations should begin now on the terms with which the new country of South Sudan will be established. Facilitating such negotiations between Khartoum and the present Government of South Sudan should have been central to the highly belated Sudan policy announced by the Obama administration on October 19. Clear recommendations should have been made for diplomatic roles by Sudanese parties (including non-CPA signatories), the African Union, the European Union, and the US itself. Instead, the State Department's "comprehensive" policy document of October 19, 2009 speaks only vaguely of

implementation of the North-South CPA that results in a peaceful post-2011 Sudan, or an orderly path toward two separate and viable states at peace with each other,

[and working]

with international partners to support the parties in developing a post-2011 wealth-sharing agreement and other post-2011 political and economic issues.<sup>51</sup>

But there are a great many such "political and economic" issues, and it is not at all clear that the Obama administration understands just how difficult negotiations

will become as the deadline for the referendum looms closer. Division of oil wealth will surely prove the most contentious issue, even as it has been the primary reason for the long delay in resolving the status of the Abyei region, and the continuing failure by Khartoum to negotiate and demarcate the North-South border. Most of the oil reserves lie in the South and along the border, even as the oil pipeline and infrastructure lie in the north; some equitable sharing of oil wealth will have to be established if the border region is ever to be stabilized, but this will require both time and good will, both of which are diminishing quantities. The newly announced US policy speaks of quarterly interagency assessments of progress. But one quarter hence and the April 2010 elections will lie only two months further off; the self-determination referendum itself will lie less than a year off.

There are other extremely difficult bilateral issues to be negotiated, none made easier by the increasing compression of the electoral calendar: customs, tariffs, and immigration regulations must be determined; overland and air transport arrangements finalized; the terms of citizenship for Southerners in the North decided; the massive external debt the NIF/NCP has run up (much used for military acquisitions) fairly apportioned; and a military stand-down overseen by an international peacekeeping force (the present UN force—UNMIS—will need substantial reconfiguration and redeployment). All will demand near-term and intense negotiations if a “soft landing” is to follow the inevitably wrenching effects of secession. For the truth could not be clearer: Khartoum has failed miserably in “making unity attractive” to the people of South Sudan.

Perhaps of greatest concern is that this failure has been deliberate—part of Khartoum’s ongoing effort to convince the world that ethnic strife, endemic violence, and poor governance will be the defining features of an independent South Sudan. It is hardly surprising that recent comments from senior officials of the Sudan People’s Liberation Movement (SPLM) have made explicit the prevailing views of Southerners. Pagan Amum, Secretary General of the SPLM, has spoken of a unilateral declaration of independence by the South in the event that Khartoum refuses to bring to the National Assembly enabling legislation for the referendum during the present session. Recently Deng Alor is reported to have said in Khartoum, “Let us make it a peaceful divorce, [ ] let us part ways peacefully and remain as neighbours and friends.” And President of the Government of South Sudan, Salva Kiir, has declared:

“When you reach your ballot boxes the choice is yours: you want to vote for unity so that you become a second class in your own country, that is your choice,” Kiir said addressing worshippers Saturday [October 31, 2009] at Juba cathedral. “If you want to vote for independence

so that you are a free person in your independent state, that will be your own choice and we will respect the choice of the people,” he stressed.<sup>52</sup>

Although there were efforts by the SPLM to “walk back” Kiir’s statement, to point out his debt to a speech by the late SPLM leader John Garang, his words too clearly speak a fundamental truth felt by Southerners.

Southern passion for secession is but one reason to regard the role of US Special Envoy Scott Gration with deep suspicion. It is not simply the dangerous foolishness of his assessment of how to confront the machinations of the NIF/NCP (“We’ve got to think about giving out cookies. Kids, countries, they react to gold stars, smiley faces, handshakes, agreements, talks, engagement”), but his willingness to compromise on the CPA itself:

This week [Government of South Sudan President Salva] Kiir disclosed that an unspecified US official hinted to him that postponement of the 2011 referendum might be needed but said that he [Kiir] rejected any such proposal.<sup>53</sup>

One highly reliable source reports that the US official was Gration himself; in any event, it is certainly the case that such a consequential proposal—delay of the Southern self-determination referendum—could never have been made without the explicit approval of Gration. There are other reliable and well-informed reports that Gration is attempting not to secure compliance from Khartoum on implementation of the terms of the CPA but rather opening up issues that were in fact resolved by the CPA.

The immediate task of the Obama administration should be to move from the abstract formulations of the October 19 policy announcement to a specific set of publicly articulated demands and expectations of Khartoum concerning the April 2010 national elections. In the absence of Khartoum’s meeting a clear set of benchmarks, the US should refuse to accept the election results, and should deal with the NIF/NCP regime only as a party reneging on its commitments to the CPA, which will have been fundamentally violated if present trends continue. The greatest risk of accepting the elections as engineered by Khartoum—a risk now recognized by many—is that this will inevitably confer an undeserved legitimacy, and make easier the regime’s task of aborting the Southern self-determination referendum. The means may be legislative (with a sufficiently large majority in the National Assembly, the NIF/NCP may simply revise the terms of the CPA and self-determination referendum, as well as the Interim National Constitution)—or military (declaring

on the basis of a “security threat” a state of emergency in the oil regions, and pre-emptively moving forces to secure concession areas and infrastructure). Either will trigger war.

## **National Elections, April 2010**

What we cannot doubt is that the NIF/NCP regime is brazen enough to engineer, by any and all means, a national electoral victory that it believes will serve its strategic purposes. We see signs of this brazenness in the present obstruction of international election monitors, who have not been accredited individually to oversee the voter registration process that began November 1 and runs through November 30. The Carter Center, based in Atlanta, Georgia and the primary monitoring organization for Sudan’s elections, has

expressed concerns about the obstacles facing election observers, including delays in finalising their accreditation procedures and delays in election preparations, as well as continued reports of harassment of political party and civil society activity.<sup>54</sup>

Aly Verjee, deputy director of the Carter Center’s election monitoring mission in Sudan, offers a revealing account of the bureaucratic obstacles Khartoum has perfected over many years:

Verjee [ ] says that despite having been formally invited to observe the election process, the national election commission is not being fully cooperative. “On an individual person-by-person basis, nobody has accreditation. The organization itself has been invited, but officially no individual has the right to observe registration at this point,” he said.<sup>55</sup>

Of course the fundamental problems run much deeper than bureaucratic obstructionism. As Human Rights Watch observed in a recent press release:

Although Sudan is scheduled to hold national elections in April 2010, the country currently lacks conditions for free and fair elections. The armed conflict in Darfur is ongoing. In addition, over the last year the National Congress Party-led government has stepped up repressive tactics against civil society throughout the northern states with arbitrary arrests and detentions, as well as censorship and harassment of activists and journalists.

Human Rights Watch documented these trends in its October 2009 report, [“The Way Forward: Ending Human Rights Abuses and Repression across Sudan.”](#) “The United States should not support an election process that is unlikely to be free and fair just so they can check it off their list,” [Africa Director Georgette] Gagnon said. “The US should make it absolutely clear that Sudan needs to improve human rights now, ahead of elections.”<sup>56</sup>

This assessment was echoed by the London-based African Centre for Justice and Peace Studies, which notes in a recent report an

increasing crackdown on freedom of expression in Sudan, targeting public discussion of, and preparation for, the elections. Since the beginning of August [2009], Sudanese authorities have systematically targeted any activities, symposia, public rallies or lectures related to the elections.<sup>57</sup>

Early reports on the registration process bear out fears that fraud, intimidation, and bureaucratic obstruction will be the essential tools of a NIF/NCP victory. There are already numerous reports from the ground of electoral registration fraud. A Reuters dispatch ([Khartoum], November 8, 2009) reports on recent allegations:

Opposition political party monitors told Reuters they had evidence of intimidation, buying of votes and other irregularities by Sudan’s dominant National Congress Party (NCP), headed by President Omar Hassan al-Bashir. [ ]

“The (NCP) are using government resources for their campaign,” said opposition Umma Party official Mariam al-Mahdi. She told Reuters her observers had seen many cases of faked papers and other fraud. “We are going to double up efforts in the coming week to collect this (evidence),” she said. [ ]

Registration made a slow start on November 1 with an information blackout in Khartoum and confusion outside the capital. The SPLM said the [NIF/]NCP was bussing in hundreds of people without identity cards to register at centres where they are not resident. An SPLM monitor had been offered a bribe to turn a blind eye and had refused to take it.

The UN Integrated Regional Information Networks (IRIN) reports from Juba (November 5, 2009):

Sudan has started registering voters for presidential, legislative and regional elections, but officials in the south and international observers say the process has begun on a flawed note. “This process could easily be referred to as ‘dead on arrival,’” Anne Itto, secretary-general for the south of the Sudan People’s Liberation Movement (SPLM), said on 3 November. [ ]

“In the context of Southern Sudan, where you don’t have [telephone] networks, where you don’t have roads, where you don’t have public transport, it is very unrealistic to expect registration to be completed by 30 November,” Itto told reporters in the Southern capital, Juba. Should the National Election Commission fail to take immediate and drastic action, warned the SPLM, fewer than 10 percent of eligible voters in the south would be able to register and vote. “If things go the way they are going now, I believe less than 10 percent of the total population will be registered,” Itto said.

The radical flaws in the 2008 census only magnify the implications of Khar-toum’s efforts at manipulation; John Ashworth again provides a useful overview, one deeply informed by the views of Southern civil society:

It is generally accepted that the results have been rigged in favour of the north. Various conditions made the census in the south difficult, particularly logistics, weather, availability of personnel and census forms, and availability of funding for census personnel. Anecdotal evidence from workshops suggests that more than 40% of the southern population may not have been counted. [ ]

The census did not include questions on religion or ethnicity. Since identity (both religious and ethnic) is one of the main root causes of the conflicts in Sudan, it seems incredible that this was omitted. SPLM was outmanoeuvred by NCP into allowing the papers to be printed without these questions. One week before the census was due, SPLM dug in its heels and cancelled the census, but by this time it was too late and eventually it had to back down and allow the census to take place a week late.

After the census, the southern census body freely shared its raw data with its northern counterparts, but those in the north refused to reciprocate. It is generally believed that this is the point where the census was deliberately rigged, with northern statistics being changed in the light

of southern figures. The southerners involved were mistakenly treating it as a technical rather than a political exercise. [ ]

Nobody in the north or south believes the elections will be free and fair. The [NIF/]NCP held two sham elections during the war, and is experienced at rigging them. The conflict in Darfur will make elections there extremely difficult. Within the south there is a strong perception that the elections have already been rigged as a result of the census, which will be used to prepare the election and particularly constituency boundaries. Given the census claim that only 20% of the population is in the south (instead of the more widely accepted 33%), there is a strong possibility that even in a “free and fair” vote, northern parties would win a large enough majority to be able to change the constitution and potentially derail the CPA.<sup>58</sup>

In short, national elections now loom as a threat to the process of “democratic transformation” that is so often and uncritically invoked in discussions of any electoral exercise that may occur in Sudan. Whatever might have been true a year ago—and the signs from the census exercise should have given serious cause for alarm—evidence now at hand makes clear that elections controlled by Khartoum will have the opposite effect: consolidating the NIF/NCP stranglehold on national wealth and power, providing the legislative means for aborting the Southern self-determination referendum, and affording the veneer of legitimacy that is all that many in the African Union and Arab League are concerned to see preserved (the unctuous language of the Report of the African Union High-Level Panel on Darfur [October 29, 2009] reveals all too clearly that no serious thought was given to the implications of national elections in the region or for Sudan as a whole).

## **Conducting National Elections in Darfur**

Conducting national elections in Darfur represents an even more daunting challenge and, if conducted, a flagrant abuse of the electoral process, given the displacement of some 3 million civilians (approximately 2.7 million Internally Displaced Persons and more than 250,000 refugees in Eastern Chad). An environment of brutal intimidation prevails in many areas, including IDP camps, preventing any secure participation in the registration and electoral processes; hundreds of thousands are in rebel-held territory or areas too insecure for voter registration. Khartoum’s census results are particularly distorting of Darfur’s demographic realities. And yet the decision by the regime to proceed with elections in Darfur has yet to receive appropriate criticism from international actors claiming to support the people of Darfur.

There is of course an understandable desire that the people of Darfur not be disenfranchised; but a vote taking place under the circumstances that will prevail five months hence simply cannot be credible or representative.

Precisely because of these circumstances, the regime has pushed forward with plans to include Darfur's electoral results (or at least selective results), and to include the outcomes from geographic constituencies where concerted gerrymandering is already in evidence. The likely nature and circumstances of the electoral exercise in Darfur are aptly reflected in findings by the UN Panel of Experts in its October 29, 2009 overview of the human rights situation in Darfur, as well as the obstruction experienced by Panel members in their efforts to identify violations of the weapons and munitions embargo imposed on all armed actors in Darfur by UN Security Council Resolution 1591 (March 2005). All of these observations have direct bearing on any potential election monitoring as well as the voting behavior of those threatened by violence and abuse:

The Government of the Sudan, while demanding respect for its privileges as a sovereign State, also falls short in exercising transparency and accountability. Government officials often object to inquiries made by the Panel under its mandate and offer lip service while committing sanctions violations. Restrictions placed by the Government of the Sudan on the freedom of movement of UNAMID flight operations have had a direct impact on the Panel's ability to conduct some of its independent monitoring missions.<sup>59</sup>

The Government of the Sudan remains intransparent and unwilling to account for its efforts to disarm and control its various auxiliary and formerly affiliated forces, in particular combatants commonly referred to as members of Arab tribes or as Janjaweed. Many individuals identified by internally displaced persons as Janjaweed continue to carry arms and engage in frequent violent behaviour against and harassment of internally displaced persons and, according to the Panel's findings, enjoy impunity for their offences. This remains one of the major reasons cited by internally displaced persons in describing their lack of physical security.<sup>60</sup>

In the aftermath of the issuance by the International Criminal Court of an arrest warrant against the Head of State of the Sudan, the Panel has received reports of severe violations of international humanitarian and human rights law, involving the harassment, persecution and torture of collaborators and individuals opposed to Government policies.<sup>61</sup>

The crackdown by the security apparatus of the Government of the Sudan on the rights of Darfurians and their sympathizers to political affiliation, freedom of expression and peaceful assembly has manifested itself in violations of a catalogue of human rights and fundamental freedoms. These abuses, some of which have been documented by the Panel, were further exacerbated in the aftermath of both the Omdurman attacks [May 2008] and the issuance of the arrest warrant by the International Criminal Court [March 2009], and have resulted in the departure from the Sudan of scores of activists and human rights defenders.<sup>62</sup>

## **Reform of the National Security Laws**

Beyond controlling the armed forces, Khartoum depends for its political power chiefly on the 1999 National Security Forces Act, which grants the National Security and Intelligence Services (NSIS) sweeping powers of arbitrary arrest and detention. NSIS is active throughout Northern Sudan, including Darfur and Eastern Sudan, and the capital area, and political opposition has long been suppressed by this fearsome and ruthlessly efficient organization, which by law enjoys complete legal immunity for crimes committed in the name of “national security.” This immunity stands in clear violation of the Interim National Constitution that is an integral element of the Comprehensive Peace Agreement, and legislation to reform the NSIS has been a high priority for both the SPLM and Northern political opposition.

But all too predictably, the NIF/NCP is unwilling to forego this potent tool of self-preservation and refuses to allow reform legislation to move forward; this in turn has led the SPLM to boycott the current session of the Legislative Assembly, the last session prior to the April 2010 national elections. For the power of the National Security Forces Act precludes precisely the conditions necessary for free, fair, and open elections. The hopeful talk of “democratic transformation” that has so long defined discussions of these elections is finally starting to dissipate, and even the feckless Ban Ki-moon is obliged to note in his most recent report to the UN Security Council that “the new National Security Bill of 2009, a critical step towards a credible electoral process, has yet to be passed.”<sup>63</sup> And judging by the lack of progress to date, it is increasingly unlikely that meaningful reform will emerge.

The present Assembly session is also one of the last opportunities to pass legislation that will govern the Southern self-determination referendum. This legislation

is critically important, and at present the source of deep and rancorous disagreement between the NIF/NCP and the SPLM—disagreement that seems only to harden. US Envoy Gration left Sudan on November 8, unable to bridge the differences on two key elements of the referendum: the quorum for Southern participation necessary to consider the referendum vote binding, and the percentage of votes for secession that will constitute a decision. The willingness of the parties to compromise seems to have been exhausted, with Khartoum cleaving to an unreasonable 67 percent participation as the quorum. Such a turnout would be impressive in many developed Western democracies, but as a quorum for Southern Sudan it is almost inconceivable: illiteracy, lack of voting experience, faltering registration, inadequate transport to polling stations, poor communications, intimidation by Khartoum’s proxies, and other difficulties abound. The necessary percentage of those voting for secession is also disputed: Khartoum at one point was demanding a 90 percent vote for secession to be legitimate; the SPLM is declaring that a simple majority should determine the outcome.

But Khartoum is very likely prepared to see the current Assembly session proceed without either reform to the security law or enabling legislation for the Southern self-determination referendum. For its part the Obama administration has made no specific statement about the consequences for Khartoum if it fails to reform the security law that will serve as a primary instrument of electoral fraud and intimidation. In turn, Special Envoy Gration seems unable to move the parties closer to agreement on the terms of self-determination legislation, and is rapidly losing credibility as an interlocutor, both among Southerners and Darfuris. To date, the new Sudan policy he represents is mere hortatory language with no effect on regime behavior.

It certainly doesn’t help that the Europeans have committed even less to an effective multilateral Sudan policy, and it is intensely dismaying that EU foreign policy chief Javier Solana should have presumed to judge what is best for the people of South Sudan:

Javier Solana said shortly after holding discussions with Egyptian President Hosni Mubarak that he favors a united Sudan.<sup>64</sup>

But Ezekiel Lol Gatkuoth, head of South Sudan’s mission to the United States, rightly observes that this is deeply presumptuous:

The statement is not in line with the Comprehensive Peace Agreement spirit because in the CPA one of the options is united Sudan and another option is separation of the south to be an independent state. So, yes all

of us have agreed that we are going to make unity attractive to the southerners so that they can vote for unity in 2011. But if the unity is not attractive to them at all, then they also have another option, which is separation,” Gatkuoth said.

Europe may find it convenient to accommodate Egypt on this issue (the Cairo regime is dead-set against Southern self-determination, despite conciliatory words of late), but by pre-judging the referendum, the EU is denying itself any role in arbitrating between the two parties. This in turn creates even greater need for a US policy that maintains pressure on Khartoum—something that runs directly counter to Gration’s “smiley faces” and “gold stars” approach.

## **The Next War in Sudan**

What will war look like in the event that the Southern self-determination referendum is aborted or its results are not accepted by Khartoum? The answer lies primarily in the geography of oil reserves and infrastructure, including the location of many all-weather roads constructed by the Chinese and Khartoum’s other oil development partners (these dual-use—construction/military transport—roads are in both Unity State and eastern Upper Nile State). The roads will allow for an unprecedented projection of mechanized military power by Khartoum into the South, even during the rainy season. But the task of creating a defensive perimeter for continuing oil extraction and transport activities is enormous, and the vulnerabilities of the 900-mile pipeline running to Port Sudan on the Red Sea will be exploited relentlessly by the SPLM.

Ashworth again provides an authoritative overview of the “third southern civil war” (key excerpts):

Both parties are clearly preparing for the possibility of war. “We don’t want war,” southern President Salva Kiir says, but “we will be prepared to fight if it comes...I will not be the one to take this country back to war, but if war was to be imposed on us we can all feel assured that we are capable of defending ourselves.”

The third southern civil war in Sudan will be more terrible than the first two, and will have some very different characteristics:

Both the previous wars began with the northern government controlling the south. The liberation movements began in the bush and had to fight to control territory gradually. The third war will begin with the SPLA

in control of virtually the whole south, except perhaps parts of the oil fields which are still occupied by northern security forces.

Organised fighting [ ] will begin on the north-south border. Depending on the scenario, either northern forces will invade, and may quickly capture some of the towns close to the border, or SPLA will attempt to reoccupy southern territory being held by the north.

SPLA will maintain its hold on most of the south, giving it secure rear bases and an undisputed border with friendly neighbours. It will be able to reinforce its forward bases rapidly and maintain its military logistics flow.

A limited war to annex the oil fields of Greater Upper Nile and the rich agricultural lands of Renk, Kordofan and Blue Nile may be all that Khartoum wants, but southerners will not rest easy while any of the south remains in northern hands. And next time round they might go the extra mile to secure a referendum for their comrades-in-arms in the contested areas too.

This time it will be the north which uses insurgents in the bush in the south. These will be made up of ethnic groups and militia such as those who supported the north in the last war, and LRA.

Southerners have vowed that they will take the third war to the north. Both previous wars were fought in the south, apart from Abyei, the Nuba Mountains and southern Blue Nile. When Kurmuk, a town which the northerners perceive as northern, was taken in 1987 and again in 1997, there was consternation throughout the north.

SPLA will have air power during the next war. "Air power" does not have to be very sophisticated. In the second civil war Khartoum found itself unable to make effective military use of its jet fighter bombers and helicopter gunships as they got shot down by ground fire too easily. In fact its air power had very little military value at all. Helicopter gunships were used in support of militias against civilians in various ethnic cleansing exercises, and the notorious Antonovs bombed civilians for several years; both these activities continued in Darfur. The north theoretically has air-to-air and ground-to-air interception capability, but in the 2.4 million square kilometres which make up Sudan's air space it is likely that SPLA Antonovs and gunships will have plenty of opportunity to cause panic amongst civilians in the north.

Both sides are preparing for war. In the two previous civil wars, the south was unprepared, and its liberation armies began from very small

ad hoc forces. This time the south will begin with a large standing army and with arms and materiel which it could never have dreamed of before. The north will probably have more sophisticated weaponry and will have more of everything, but it lacks committed troops. Much of Khartoum's front line army consisted of southerners and westerners; it is by no means certain that they will do their master's bidding a third time. "Real" northerners have shown a marked reluctance to get their hands dirty in real fighting. The Popular Defense Forces, a mixture of mujahidiin and reluctant conscripts, has not proved too effective as a fighting force. Much of the real fighting was done by militias, and their loyalty cannot be guaranteed in the next war. SPLA troops, on the other hand, will be fighting on their home ground to defend their own nation. Their morale will be high.<sup>65</sup>

On the issue of weapons in the arsenals of the North and South—and the arms flow throughout Sudan—an excellent new study has recently been published by the Small Arms Survey.<sup>66</sup> It details what we know about the role of various international actors, primarily state actors, in providing weapons to both Khartoum and Juba, and thus provides a snapshot

of what is known about arms transfers to Sudan's state forces since the signing of the CPA, as well as the distribution and circulation of weapons to non-state armed groups. [This report] argues that arms flows to and within Sudan remain substantially characterized by patterns, actors, and methods established during the second Sudanese civil war.<sup>67</sup>

China continues to be the dominant arms supplier to Khartoum as it prepares for renewed war in the South, even as Chinese weapons and munitions predominate in Darfur (notably, the UN Panel of Experts establishes that a great deal of the Chinese weaponry and ammunition in Darfur was manufactured after the date of the arms embargo established by the UN Security Council in March 2005). But in an important finding, "Skirting the Law" declares that:

Evidence indicates that the government's acquisitions of heavy weaponry as well as small arms and light weapons are embedded within military governmental relationships established during the NorthSouth civil war in the 1990s. Yet these involve much more international, commercialized, and, crucially, *Europeanized* [italics in original text] networks of

supply actors than has been acknowledged by many humanitarian and human rights advocates.<sup>68</sup>

Despite a nominal EU arms embargo on Sudan, the report “presents new evidence that EU nationals and companies continue to be involved in the supply of military equipment, including small arms and light weapons, to SAF and SPLA forces.”<sup>69</sup>

Given Khartoum’s penchant for conducting war by proxy, a further finding of the report is not surprising:

arms originating from the Sudan Armed Forces [Khartoum’s regular military forces] and its regional and international suppliers dominate the holdings of armed groups on all sides in both Southern Sudan and Darfur.<sup>70</sup>

There are many reports from the ground, including from church and civil society groups, that current violence in South Sudan has been deliberately fueled by Khartoum’s profligate distribution of weapons to particular ethnic groups and to militia forces defined on an ethnic basis. “Skirting the Law” certainly provides additional support for such reports.

This important account also details the growing arms flow to the Sudan People’s Liberation Army (SPLA), but does so in the context of two critical considerations:

[1] Commercial documentation and informants close to SPLA arms procurement [ ] indicate that in fact negotiations for major new SPLA arms acquisitions began in early to mid-2006, forming part of a longer-term process of developing the SPLA’s post-war capacities. The extent of the 200709 arms shipments to the SPLA illustrates the considerable scale of the arms build-up on both sides since 2005. The symmetry of this build-up should not be overestimated, however: despite their substantial new arms acquisitions, the SPLA’s capabilities remain dwarfed in comparison to the sustained and increasing flows of military equipment to the SAF since 2000

And most significantly,

[2] Post-2005 SPLA rearmament must thus be understood in terms of the SPLA’s assessment of its capability needs as a force charged

with responding to internal armed security threats in Southern Sudan as well as its aspirations to become a national force capable of protecting Southern Sudan's territorial integrity. Recently arrived arms shipments form part of a long-term SPLA procurement plan rather than an immediate response to the deterioration of the CPA since 2008.

Despite the enormous expenditures on weapons and military salaries as a percentage of both the national budget and GDP, the Government of South Sudan rightly believes that the SPLA alone can serve as military guarantor of the security arrangements negotiated in the CPA. There will be no military assistance of real consequence from other international actors in the event that Khartoum abrogates security agreements, and the South will have only itself to count on. An earlier report from the Small Arms Survey makes this point emphatically:

The Government of South Sudan's security planning continues to be driven by the belief that a future confrontation with the North is likely, and this orientation constrains its ability to address insecurity and conflicts emerging within the South. GoSS faces a combination of internal divisions and external pressures from an increasingly hostile National Congress Party (NCP) in the North; numerous violations of the CPA have been left unresolved, and there has been associated violence in a number of areas throughout Southern Sudan."<sup>71</sup>

## **The Elections Dilemma**

Should the international community attempt to shift gears and work to postpone national elections in Sudan? Should the empty rhetoric of "democratic transformation" —which would celebrate the mere occasion of elections in Sudan, no matter how fraudulent they are in the event—be replaced by clear demands for an end to the tyranny of the state security apparatus and its comprehensive censorship of news and political discourse? Should elections be supported in the absence of concrete and measurable commitments to observe international humanitarian law and to disarm proxy militia forces in Darfur? Do uncritically supported national elections pose a near-term threat to implementation of key elements of the CPA? Is there any international will to address these concerns? Even to enumerate the issues is to see how very little commitment exists, and why support for national elections and their putatively "transformative" effects has been the default diplomatic position of so many. But elections held in April 2010 simply cannot fulfill the ambitions to reform the Khartoum regime; on the contrary, they are almost certain to be used as a

means for the NIF/NCP to claim legitimacy and perhaps even a legislative majority sufficiently great to alter the terms of the CPA.

Should the international community then work to delay the elections until some of the key benchmarks in Darfur and the South have been met? The great danger, of course, is that this is a slippery slope: if the national elections can be postponed, the regime will declare, then so too can the Southern self-determination referendum. And once a firm date for the referendum has begun to slip, it will be exceedingly difficult if not impossible to re-set a firm deadline. The CPA spells out clearly that enabling legislation for the referendum was to have been drafted and passed into law over two years ago; it remains uncertain whether this legislation will be tabled during the current session of the National Assembly.

Whether to proceed will be a difficult national discussion, particularly since the views of Sudanese in Darfur, in other parts of Northern Sudan (including the Nuba Mountains and southern Blue Nile), and in the South are guided by very different perceptions of what lies in their own interest. But on matters of human rights, ending impunity for those committing the most egregious of international crimes, and bringing a close to the reign of intimidation and brutality that is Sudan's security state, Sudanese in the marginalized regions have much they can agree on. But without vigorous international pressure on the regime in Khartoum, of a sort that seems less and less likely, this national discussion will have no resonance, no force, and no chance of avoiding the worst of outcomes: elections in April 2010 that end up deeply compromising the self-determination referendum of January 2011, whose slim chances of being realized should now be clear to all.

## **False Democracy—Or What to Expect from the Upcoming Elections in Sudan**

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With a terrible predictability, Sudan's impending elections have degenerated into a chaotic mixture of massive fraud, vote-rigging, boycotts, intimidation, and abuses of national power by the ruling National Congress Party (known as the National Islamic Front during previous fraudulent elections).

Celebrated by various international actors as a move toward "democratization," Sudan's April 11–13 elections, however, have little chance of producing significant political change. With no serious competitors, Omar al-Bashir—indicted by the International Criminal Court for war crimes and crimes against humanity—will

almost certainly retain the presidency he has held since the military coup he led in 1989.

Last week, the presidential candidate of the southern Sudan People's Liberation Movement, Yassir Arman, withdrew from the race because of widespread electoral fraud and the ongoing violence in Darfur. Northern opposition political parties—long disorganized and mainly irrelevant to the larger dynamics of power in Sudan—are also undecided about their role in the election and will either boycott them or participate in some truncated fashion.

The sectarian Umma Party, the most important of these parties, has declared that it will compete in the elections only if there is a delay until May and eight conditions are met—conditions so broad and sweeping as to constitute a virtually complete reformation of governance. The party's demands are little more than posturing—a weak attempt to demonstrate the party's own purportedly “democratic” credentials—and even if their partial boycott denies al-Bashir any claim to electoral legitimacy, it will still do nothing to reduce the stigma attached to his ICC indictment.

The SPLM also plans to boycott the presidential election and the elections to be held in Darfur, where any vote will be meaningless under present circumstances. But it will continue to field candidates for the National Assembly in order to prevent the NCP from attaining a “super majority” that would allow for unilateral changes to the Comprehensive Peace Agreement—an agreement that created both the Interim National Constitution and the electoral schedule.

Present national elections have already been delayed for two years, and the SPLM is afraid that if the NCP attains a super majority, the southern self-determination referendum that is scheduled for January 2011 will be delayed. The referendum—the key demand of the SPLM for many years—has secession as one of its options, and well over 90 percent of southern Sudanese are expected to vote for independence. As a result, all SPLM political calculations are informed by their desire to preserve the timely holding of the referendum.

Despite his claim to ensure electoral integrity, al-Bashir has also warned international election monitors, including the Carter Center, not to interfere in the upcoming elections. Suggesting a delay of a few days to deal with some of the massive logistical problems that alone have hopelessly compromised the election, the Carter Center and other monitoring countries have been told by al-Bashir that that they would be expelled for such suggestions. “If they interfere in our affairs, we will cut their fingers off, put them under our shoes and throw them out.”

The U.S. special envoy for Sudan, retired Air Force General Scott Gration, has dismayingly gone along with the NCP demand that there be no delay in elections,

and he has failed to speak out forcefully about the alarming findings of human rights groups and other election observers. Accommodation of the regime has consistently defined his tenure, which is now over a year old. When Khartoum expelled thirteen major international humanitarian organizations from Darfur in March 2009—organizations responding to the needs of some 4.7 million civilians—Gration insisted that this would not fundamentally compromise the humanitarian effort in the region.

It was clear then that this was not true, and any honest assessment of humanitarian capacity now reveals serious deficiencies and gaps in coverage, particularly in treating victims of rampant sexual violence. To add to this, Gration gained considerable notoriety for insisting that the Khartoum regime would be more likely to respond to “cookies...gold stars, and smiley faces” than to increased pressure from the United States and its allies. And in his effort to make the regime a more tractable partner, he has also fashioned the U.S. diplomatic position so that it has permitted Khartoum every electoral advantage and has offered it a clear field in Darfur peace negotiations.

In the process, Gration has alienated much of the rebel leadership in Darfur and—even more critically—Darfuri civil society, which has come to despise his appeasement of the regime. During Gration’s trip to Darfur last September, representatives of a number of displaced persons camps declared that they “reject any dealings with [Gration]” and called on President Obama to replace him, “not only because of his failure to improve the security and humanitarian situations [facing Darfuris], but also because he is acting against their interests in the areas of peace and justice.”<sup>72</sup> He has also lost the trust of the SPLM leadership, particularly with his suggestion last August to Salva Kiir—President of the Government of South Sudan and leader of the SPLM—that the referendum be deferred. The move so angered Kiir that he refused the U.S. suggestion publicly, though he did not name Gration as its proposer.

But perhaps most consequentially the U.S. envoy has sent Khartoum the signal that the United States will not object in any meaningful way to the electoral machinations that began in earnest with the 2008 census. When the results were released in early 2009, it was clear then that extraordinary distortions had been introduced. The slow-growing, nomadic Arab population of Darfur, for example, was [reported as registering a 324 percent increase](#) from the previous census. This is a population that the NCP counts on heavily for votes.

Coupled with pervasive voter registration fraud and intimidation, such statistical misrepresentation has ensured that Darfur—with approximately 20 percent of Sudan’s population—will yield rich electoral dividends for the NCP and will exclude

many of the 3 million mainly non-Arab or African Darfuris who have been uprooted from their homes and exist as Internally Displaced People (IDPs) or refugees. As [the International Crisis Group recently reported](#), “Since the [April 2010] vote will impose illegitimate officials through rigged polls, Darfuris will be left with little or no hope of a peaceful change in the status quo, and many can be expected to look to rebel groups to fight and win back their lost rights and lands.”

Census manipulation is also evident in the massive undercounting of marginalized Sudanese from all over the country who have fled to Khartoum to escape violence or abject poverty. There is strong evidence that this abused population has been undercounted by as many as 1 million people. There is also large-scale rigging, especially conspicuous during the voter registration process late last year, with its attendant gerrymandering of constituency boundaries.

But the real obstacle to free and fair elections in Sudan is the character of the regime and its unbridled use of both the state security apparatus and a vast, illegal patronage system funded by national wealth (Sudan is regularly found to be at the very bottom of international corruption indexes). This has long been evident to all who look, but the United States, the African Union, the EU, and the UN have all convinced themselves that there is sufficient value in an electoral exercise in Sudan, no matter how conspicuously compromised the process.

Having invested many tens of millions of dollars in these elections and convinced themselves that the NCP can be cajoled into behaving acceptably, Western nations have accepted the party’s continued domination of print and broadcast media, its flagrant abuses of the electoral machinery, and its unconstrained and unrelenting use of the National Intelligence and Security Services. General Gration, despite evidence to the contrary, has gone so far as to declare that he has “confidence” in the Khartoum-dominated National Election Commission and that elections would be “as free and fair as possible.”

Human Rights Watch, however, offers a different view:

In northern Sudan, security forces arbitrarily arrested members and election observers of opposition political parties and activists. In one example from South Darfur, national security forces beat and arrested an election observer and detained him without charge for 25 days. In Khartoum, the capital, armed national security forces assaulted and arrested members of an activist group for distributing fliers with slogans opposing President Omar al-Bashir.<sup>73</sup>

These realities—pervasive, if only partially reported by the media—will define the election of the coming days. The international policies of accommodation will

be revealed not as contributing to Sudan’s “democratization” but to enabling further consolidation of power in the hands of the NCP. Unless it confronts a fundamental recalibration in current international policy, the Khartoum regime might use the electoral results to modify the terms of the linchpin CPA. Or it might use them to declare a “state of emergency” (such as presently prevails in Darfur) and indefinitely delay the self-determination referendum. Or it might simply refuse to accept the results of the referendum altogether.

Any of these actions is likely to provoke a unilateral declaration of independence by south Sudan, which will almost certainly spark renewed north/south conflict—conflict that will quickly engulf other parts of Sudan as well. But in spite of this, many international powers continue the policy of appeasing Khartoum’s *génocidaires* based on the belief that this brutal security cabal will do “the right thing” at the critical moment. This decision stands as a testament to either unconscionable naivete or deeply expedient disingenuousness. Either way, it is the people of Sudan who will pay.

## **Sudan’s Elections: Responding to an Electoral Travesty**

First appeared in *Dissent Magazine*, April 22, 2010

The abundant and timely [reporting](#) on the fatally flawed Sudanese elections is, for the regime in Khartoum, an acutely embarrassing development, if *génocidaires* can feel embarrassment. A range of Sudanese human rights groups, [civil society organizations](#), and independent observers have offered an extraordinary chronicling of gross electoral violations, deliberate fraud, intimidation, and illegal use of state resources. And thanks to the Internet, these reports can be tabulated, collated, and compared with the findings of international human rights groups (several of which had long warned of the catastrophe we have just witnessed) as well as the various reports commissioned over the past year to analyze the prospects for Sudanese elections.

The compilation is necessarily anecdotal (no systematic reporting would have been permitted by the regime) and its topics heterogeneous (speaking now of ballot boxes with fake seals and on other occasions, intimidation of poll monitors by the regime’s security forces, and in the case of Darfur, of voting that in some camps for displaced persons [did not reach three percent](#)). The fraudulent methods are, as reported, at times subtle. In other instances, they are simply brazen: in one case the

military was spotted hoisting ballot boxes over a wall in back of a polling center, no doubt to be filled elsewhere (the military was to have no role in the elections).

It will take some time to organize and check all these reports, but the upshot is as clear now as when I wrote for *Dissent* two weeks ago: the National Congress Party (formerly the National Islamic Front) will win overwhelmingly and may yet win a “super majority” in the National Assembly. [One report](#) from Kassala State in the north has al-Bashir running ahead with 97 percent of the vote; even with a boycott by most major parties, this figure is ludicrous but may be a harbinger of results to come.

All of this leaves international actors in the position of having to comment on the integrity of these elections. Unsurprisingly, the African Union and Arab League have declared the elections a victory for democracy, [unconcerned by the most blatant of violations](#). But the more interesting and consequential responses are those that will come from the United States, the European Union, and the UN. [The State Department has tried, awkwardly, to walk back](#) US special envoy Scott Gration’s declaration that the elections would be “as free and fair as possible,” but given the scale and conspicuousness of electoral fraud, it is still figuring out how to speak publicly of this travesty.

The EU sent a team of observers to Sudan, but withdrew them from Darfur because of insecurity. So far the [comments](#) coming from the leader of the EU monitoring team and Catherine Ashton, the EU foreign policy chief, have been critical but not in ways that suggest re-voting would be necessary or that there should be significant qualification to the legitimacy conferred upon the “re-elected” regime. The UN has quietly acquiesced in the proceedings, deciding not to make any public comment of note.

The bind for the U.S. is highlighted by comments made by former president Jimmy Carter, head of the Carter Center, which alone has had a long-term monitoring presence in Sudan. Carter has backed off his [earlier, preposterous claims](#) about electoral integrity (no doubt reined in by staff who knew much more than he about what was coming and [reported daunting challenges last summer](#)). But Carter’s insistence that the elections, however flawed, be accepted as legitimate is the argument that many have taken up, and it is also the direction toward which the U.S. leans. Without these elections, the argument goes, the Comprehensive Peace Agreement (CPA) between north and south will fall apart before the scheduled southern self-determination referendum of January 2011. To preserve the CPA, and to ensure that the referendum takes place without a resumption of war, a completely fraudulent election must therefore be accepted, however unwillingly.

What to make of such an argument? I will return to this question soon but

would offer two answers at present. First, international acquiescence did not have to accommodate such conspicuous electoral machinations as we have seen. Beginning with [the highly compromised census of 2008](#), pressure should have been building on the Khartoum regime to back off its most fraudulent and coercive tactics. When it became evident a year ago that no such pressure was building, Khartoum took this as a signal to do as they wish. And they have.

Secondly, there is a troubling premise in the argument of those who believe that by allowing Khartoum to have its electoral way, the regime is more likely to accept a southern self-determination referendum and its results. Of this there is no evidence. The National Congress Party/National Islamic Front regime has never honored an agreement with another Sudanese party—not one, not ever. Why should we think that by even partially legitimizing the presidency of Omar al-Bashir we are boosting the chances for the referendum?

In less than nine months this key election will be held, even as critical issues are still outstanding: north-south border delineation, oil revenue-sharing in the event of southern secession, transport and commercial relations between what would be two countries, and issues of citizenship. Khartoum continues to stall on these difficult issues, which must be resolved if there is to be a peaceful referendum vote; and for more than five years the international community has mainly watched. Without confronting a very different political and diplomatic calculus, Khartoum will act in ways that will almost certainly lead to precisely the war Carter and others, in defending Sudan's electoral exercise, declare themselves to be so fearful of.

## **The View from Khartoum: How to “Fix” a Referendum**

First appeared in *Dissent Magazine*, September 23, 2010.

With reprehensible belatedness, the Obama administration has finally awakened to the [“ticking time bomb”](#) in Sudan. Unfortunately, detonation may still occur before or after the scheduled January 9, 2011 self-determination referenda for southern Sudan and Abyei. Secretary of State Clinton, President Obama, and even the president's painfully nave special envoy for Sudan, Scott Gration, must now understand that if the referenda are not free, fair, and timely, war looms as the most likely outcome.

With only about 100 days until the referenda, border delineation and demarcation are making little progress; approximately 20 percent of the 2,100-mile border

remains in dispute, with substantial oil reserves and arable land at stake, as well as very significant agrarian populations. There is still no agreement on sharing oil revenues from reserves lying largely in the South; since both the North and South are heavily dependent on oil revenues, failure to agree on the apportioning of oil wealth could easily become a *casus belli*. Nor is there an agreement on apportioning Sudan's massive external debt ([\\$38 billion](#)), debt that reflects both profligate military spending and gross self-enrichment by the Khartoum regime and its cronies over the past twenty-one years. Post-referendum commercial and travel arrangements have not been settled, nor has the key issue of citizenship—of particular concern for southerners who continue to live in the North. No progress has been made in demilitarizing the border regions, and as Sudan expert Roger Winter [compellingly argued last week](#), the Abyei referendum is in extreme danger, even as it is the most likely spark for renewed war.

These issues continue to be expediently played off one another by Khartoum in its effort to extract as much as possible from the South, should the regime choose to accept a secession vote. At the same time, in a reprise of previous diplomatic blundering, the ongoing catastrophe in Darfur has been “[de-emphasized](#)” by the United States in the process of responding to the possibility of imminent civil war in the South. This has opened the door for Khartoum to promulgate an ominous “[New Strategy for Darfur](#)”—one that promises to consolidate the effects of seven years of genocidal counter-insurgency warfare and eliminate an international humanitarian presence.

Largely lost amidst the welter of issues that define this vast and accelerating crisis are the actual mechanics of the referendum voting, and in particular the requirements for the southern referendum to achieve electoral legitimacy. The Abyei Referendum Commission still has not been assembled, ensuring that voter registration will be largely unguided and extremely contentious, especially given Khartoum's “settling” of Misseriya Arabs in the region for the purpose of voting in the referendum. But it is in the details of voting and tabulation in the South that we may see the most potent weapon the Khartoum regime wields in denying legitimacy to the referendum results.

For not only has registration failed to begin (the stipulated date was July of this year), it is still not fully clear who is eligible to vote and what defines eligibility. The logistics of registration are immensely complex and challenging, and while there are optimistic voices in the South, it is very difficult to see how the effects of Khartoum's many months, indeed years, of stalling on the terms of the Comprehensive Peace Agreement (CPA) can be overcome in the time that remains. If Khartoum chooses to abort or refuses to accept the results from the self-determination referendum, there will inevitably be technical shortcomings that may be used as

pretext.

But registration is only one problem, and indeed even its resolution may lead to another, more sinister problem. For after difficult negotiations, Khartoum and the Sudan People's Liberation Movement (SPLM) agreed that while the referendum for the South will pass with 50 percent of the vote plus one, the vote will be binding only if 60 percent of the registered voters do in fact vote (Khartoum had earlier pushed for a 90 percent threshold). This "quorum" requirement could be extremely difficult to achieve, and failure to meet it may provide Khartoum with the best pretext for refusing to accept what will be an overwhelming vote for secession. For it will be far easier to suppress the votes of those who register, especially southerners in the North, than to affect significantly the percentages favoring secession. Here we should bear in mind that even without such suppression, poor communications and transport in the south make 60 percent a highly ambitious goal; widespread illiteracy and lack of familiarity with voting procedures make the casting of valid ballots even more challenging.

Democracy Reporting International (DRI) makes a number of telling observations in a [July 2010 report on the referenda](#), including the fact that quorum requirements have not been part of recent self-determination referenda (e.g., East Timor, Eritrea, Montenegro)—and that when there has been such a quorum it is "commonly set at 50 percent or less." Most tellingly, the DRI report notes, "Turnout requirements may actually depress voter participation because, as the Council of Europe notes, 'it is in the interests of a proposal's opponents to abstain than vote against it.'"

This claim is illustrated by DRI with a scenario in which, out of a total of 10,000,000 registered voters, a total of 5,800,000 votes for a given proposition and only 100,000 vote against—but 4,100,000 don't participate. Although the vote is overwhelmingly "for" (98.3 percent), the turnout is only 59 percent, and thus does not reach a 60 percent threshold. Of course there won't be 10 million registered southern voters; but the logic of this example obtains no matter what the total number of registered voters may be. Even with an overwhelming percentage of actual voters choosing secession, the quorum might not be met, and this gives Khartoum its best opportunity to deny the legitimacy of the referendum. Unsurprisingly, the regime's embassy in Washington, DC [emphasized in August](#) "the impossibility of hitting 60 percent rate of voting necessary for effecting South Sudan secession via the upcoming self-determination referendum."

And of course the means of voter suppression are everywhere. John Ashworth, in a [superb overview](#) of the current standing of CPA implementation, points out not only the difficulties faced by southern Sudanese trying to register in northern Sudan

(as many as 2 million), but how much easier it will be to rig the quorum numbers than the percentage voting for secession:

Rigging the simple majority would be extremely difficult, as all indications are that a huge majority of voters will choose secession. However, the 60 percent quorum would be easier to rig. One tactic would be to make it difficult for registered voters to turn out, due to insecurity, transport and other problems. During the elections in April 2010 many voters found it difficult to cast their vote due to incomplete lists, lists being sent to the wrong polling stations, and other bureaucratic and logistical issues. These could conceivably be deliberately exacerbated in the referendum.

To these difficulties must be added the security threats posed by the Lord's Resistance Army, captured members of which [have recently confessed](#) to receiving logistical and material help from Khartoum. The renegade General George Athor of Jonglei State has clearly been assisted by Khartoum in his efforts to generate insecurity and violence against civilians in the South: a military helicopter from Khartoum, with several of General's Athor's top commanders aboard, was captured on August 26 in Upper Nile State by the Sudan People's Liberation Army (SPLA).

There is every reason to believe that the threats to civilians traveling to vote—often over long distances—will increase in the run-up to the referendum. The clearly intended purpose is to diminish the number of registered voters who actually vote. So clear has this threat become that in late August, Vice-President of the Government of South Sudan, Riek Machar, urged southerners: “Don't register if you cannot vote.” On September 12, Michael Makuei Lueth, Minister of Parliamentary Affairs, made the same plea.

But it should not fall exclusively on the southern leadership to ensure that registered voters be provided the security to vote, and to ensure that those who wish to register are able to do so without fearing that they will be prevented from actually voting. The UN Mission in Sudan (UNMIS), which has proved painfully ineffective in pursuing what is now its most important mandate—[“to assist the parties with the planned national referendum in 2011”](#)—has a chance to redeem its many failings by becoming fully engaged in providing security for voters and polling places. International monitors—and not simply from the UN—should ensure that voter intimidation plays as small a role as possible. The security and integrity of ballots must be ensured, along with the counting of these ballots. And critically, the registration total must be scrupulously tabulated and protected from Khartoum's efforts to inflate the number and thus the number of votes required to reach the 60 percent quorum. This is a very tall order in northern Sudan.

Clinton has declared a southern vote for secession to be “[inevitable](#),” a view held by virtually all outside of Khartoum. But the regime would have it otherwise. As the distinguished Sudanese scholar Suliman Baldo of the International Center on Transitional Justice [recently noted](#), there is a concerted media campaign to “promote the fiction that all Sudanese seek national unity—and thus that a vote for independence is intrinsically illegitimate.” This campaign may be part of Khartoum’s strategy to extract as much as possible from the South in negotiations on referendum issues that must be resolved (though this strategy may well be calculated to exclude a legitimate Abyei referendum). But it may also be a signal that Khartoum has no intention of allowing the results of the referendum to stand. If this is the case—and it seems more than likely—the United States and its partners, especially Norway and Britain, must work to convince Khartoum that there will be unsustainable consequences if the referendum is aborted or not recognized, and civil war reignites. President Obama can begin to convey this message tomorrow, at the UN summit on Sudan.

## **The Referenda for Southern Sudan: The Cost of Belatedness**

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It has been clear for well over a year that the Khartoum regime’s bad faith deeply endangered the southern Sudan referenda (including Abyei). The urgency of the situation was [evident to all who would simply look](#) at the evidence conspicuously at hand. But instead of full-scale engagement to forestall the looming crisis, the United States and other international actors of consequence were content with muddling prevarication and a thoroughly confused sense of the ambitions of the National Islamic Front/National Congress Party regime. [Diplomatic attention has finally begun to focus](#) on the immense challenges to the referenda, the foundation of the 2005 Comprehensive Peace Agreement (CPA). Having waited so long, however, the United States, the UN, the EU, the African Union, and others have allowed Khartoum to “run out the clock” in complying with key terms of the CPA—and in the process allowed the electoral calendar to be compressed [in ways that threaten both the integrity and timeliness of the referenda](#).

For a host of reasons, Khartoum will be able—if it wishes—to point to still unresolved north/south issues as well as problems in the conduct of the referenda (e.g., the Abyei Referendum Commission has yet to be established). On this basis, the

regime may well refuse to accept the results, which will certainly be overwhelmingly for secession. Such refusal may immediately precipitate renewed war. At the very least, Abyei's future will remain unsettled and [continue to serve as a point of leverage for the NIF/NCP](#) as it seeks to extract as much as possible from the Southern leadership under the exigent circumstances that now prevail.

War may also be triggered if Khartoum calculates that it has the military strength to seize Abyei and other southern oil regions by force (approximately 80 percent of the known reserves lie in the South). Here again the problem is U.S. belatedness, along with that of other militarily capable nations, particularly Great Britain. [Although recently these two key guarantors of the CPA have begun to take seriously their responsibilities in helping South Sudan develop an adequate security sector](#), there simply is not enough time in which to make the progress necessary—either for internal security (a fully functional police force) or defense against northern aggression. Here the Bush administration bears heavy responsibility for not accepting the implications of the most basic military fact on the ground: no country was ever going to provide substantial strategic assistance to South Sudan in the event of renewed civil war. Any deterrence would have to be provided by the southern Sudan People's Liberation Movement/Army (SPLM/A).

This was always well understood by the SPLM/A, which consequently pleaded for more training, more equipment, and more guidance in developing its military and security capacities. The United States, as a guarantor of the CPA, should have shouldered the responsibility for providing such help; it did not. But if the Bush administration inaugurated this short-sighted and stinting policy, things have not changed nearly enough in the past two years.

Indeed, it is the Obama administration, and in particular special envoy Scott Gration, that bears greatest responsibility for inexcusable diplomatic lethargy, confusion, and misprision—failings that have allowed the CPA to reach the point of collapse. I presume to re-post [this op-ed from the \*Christian Science Monitor\*](#) (November 2009) on the occasion of its first anniversary, hoping that it might contribute something to an understanding of [how consequential the failures of special envoy Gration have been](#), and how comprehensively the Obama administration has misread and underestimated the threats to peace in Sudan. As great as the achievement of the CPA was, its failure in the coming months would constitute an even greater diplomatic failure.

## Compromising with Khartoum: Abyei and the Perils of Accommodation

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The carefully planned military coup that brought the National Islamic Front to power in Sudan in June 1989 was timed to forestall the most promising chance for a north/south peace agreement since Sudan's independence in 1956. The two major northern sectarian parties—the Umma Party and Democratic Unionist Party—were on the verge of agreeing to terms with the southern Sudan People's Liberation Movement, an agreement that would have ended the terrible bloodshed that had begun with the resumption of civil war in 1983. Then-president Sadiq al-Mahdi was prepared to accept the arduously negotiated terms of a settlement.

It would take a very long time for international actors in the West and elsewhere to recognize that the National Islamic Front (now expediently and innocuously renamed the National Congress Party) was very different from the northern Arab regimes that had preceded it—none of them benign, including Sadiq's, in their treatment of southerners. In particular, the world failed to see just how dangerous the regime's radical agenda for Islamizing and Arabizing all of Sudan was. Even the *ji-had* declared against the African peoples of the Nuba Mountains in Southern Kordofan in 1992, with explicit genocidal ambitions, prompted no broad understanding of what the regime was capable of, or how it regarded the international community. After seeing the world's obtuse response to its barbarous, seven-year embargo on all humanitarian aid to the Nuba, as well as the attendant military destruction and displacement of Nuban civilians, the regime was emboldened. In 1998 it intensified its scorched-earth campaign against civilians in the oil regions that straddle the north/south border. Hundreds of thousands of Nuer, Dinka, Shilluk, and members of other African tribal groups were killed or displaced from their lands over the next five years. Khartoum's ambition was to create a vast military *cordon sanitaire* around the oil fields and infrastructure, and it largely succeeded.

The Comprehensive Peace Agreement (CPA) that finally ended the civil war was signed in January 2005; but it is important to recall that all its substantive protocols had been agreed to by Khartoum and the southern Sudan People's Liberation Movement (SPLM) as of May 2004. Khartoum delayed the formal signing for eight months in a futile but immensely destructive effort to complete its genocidal counterinsurgency in Darfur. The countries involved in negotiating the peace agreement—including the United States, the United Kingdom, Norway, and various nations of an East African consortium known as IGAD, led by Kenya—were

so eager to complete the agreement that Darfur was largely ignored during a period of extreme violence and large-scale, ethnically targeted civilian destruction. The human catastrophe in Darfur was at its worst during these crucial months.

The point of this thumbnail sketch of Sudanese history over the past twenty-one years is to highlight the extraordinary survival skills that the National Islamic Front/National Congress Party regime has honed. Despite a domestic security policy of serial genocide and ongoing crimes against humanity, the regime has never felt seriously threatened by domestic political opposition or international actions. This is because these brutal men are intelligent, canny, and in a number of cases highly educated; they are also utterly ruthless and have effectively secured control of the Sudanese economy—the banking system, the agricultural sector, oil revenues—and of course the army and security services.

Although Field Marshal Omar Hassan al-Bashir rules the Republic of Sudan as president, he is only the most powerful man within a substantial security cabal. Portfolios regularly change hands; there are political ups and downs, and even expulsions; different internal calculations are made about the diplomatic actions necessary to preserve the regime's monopoly on national power and wealth. But the cast has changed little since 1989. Those figures who exert the most power today are all veterans of the coup or early followers of the Islamist regime: Nafi'e Ali Nafi'e, Ali Osman Mohamed Taha, Salah Abdullah Gosh, Mustafa Osman Ismail, Gutbi el-Mahdi, Ghazi Salah el-Din el-Atabani, Abdel Rahim Mohamed Hussein, General Bakri Hassan Saleh—many of these names appear on a confidential 2006 Annex prepared by the UN Panel of Experts on Darfur, implicating them in atrocity crimes during the counterinsurgency effort in the region. Other names should have appeared, if we take the [research of Human Rights Watch](#) seriously.

How, then, to speak to such a regime? What are the terms of appropriate engagement? Humanitarians, diplomats, international political powers—including the UN—have offered different answers. But in the run-up to the deeply imperiled January self-determination referenda for southern Sudan and the border region of Abyei, it is clear that disingenuousness, silence, and equivocation are the preferred terms of the international community. Reaching conclusions that are belied by everything we have seen for the past twenty-one years, various interlocutors engaging with the regime have displayed a willingness to accommodate the most savage tyranny and abuse in an effort to secure “agreement” on what is perceived as the most exigent crisis of the moment.

This engagement is with men who have never abided by any agreement with another Sudanese party—not one, not ever. Far from responding to international accommodation in a positive fashion, the regime sees such accommodation as a

sign of weakness and the occasion for demanding yet more. This response has been replicated over and over again, in all spheres of engagement. But nowhere is such accommodation more dangerous than in the present crisis in Abyei. By failing to hold Khartoum to its clear obligations under the CPA, by allowing the regime to play games with the Abyei ruling of the Permanent Court of Arbitration, and by letting the regime dictate the terms of negotiations, the Obama administration—which in the diplomatic division of labor has taken the lead on Abyei—has allowed the regime to bring Sudan to the brink of unfathomably destructive renewed civil war.

## Abyei

It has become clear to all that the Abyei self-determination referendum is so belated that only a political agreement between Khartoum and the Government of South Sudan can diffuse the growing crisis in the region; such a crisis left unresolved will likely lead to war. Khartoum has refused to allow the Abyei Referendum Commission to be established, which in turn prevents any forward movement on the issues of residency, voter registration, border demarcation (as opposed to delineation), wealth sharing, citizenship, and security.

With less than seven weeks until the January 9, 2011 date for both referenda, the Obama administration has finally begun to register appropriate concern—one might even say alarm—about Abyei. But the form of that alarm is dismayingly counterproductive, particularly in its insistence that the south must pay the price for Khartoum’s intransigence. U.S. special envoy for Sudan Scott Gation [declared in October](#)—just days before an aborted meeting in Addis Ababa scheduled to discuss Abyei—that “There’s no more time to waste. The parties must be prepared to come to Addis with an attitude of compromise. The entire world is watching and will make judgments based on how the parties approach these talks, on how they act in the next couple of months.” And then, very recently, Secretary of State Hillary Clinton [stated](#), “Most urgently, the parties [Khartoum and the southern leadership] must make the tough compromises necessary to settle the status of Abyei.”

“Compromises”? The compromises were already embodied in the Abyei Protocol of the 2005 CPA, which guaranteed both that Abyei would have a self-determination referendum on January 9, 2011, and that the delineation of Abyei itself would be undertaken by an international panel of experts, the Abyei Boundary Commission. [In a scrupulously well-researched report](#), the Commission carefully delineated Abyei on the basis of all extant historical records and maps, forwarding their findings to President al-Bashir in July 2005. But al-Bashir and his regime were un-

happy with the outcome, and so refused to accept these findings—and refused also to allow for the formation of an Abyei administrative body or preparation for the referendum.

The southern leadership protested against this flagrant violation of the CPA, but with little international support and to no avail. Foreseeing the consequences of continued stalemate, the Sudan People's Liberation Movement (SPLM) agreed to allow a final decision on the findings of the Abyei Boundary Commission (ABC) to be made by the Permanent Court of Arbitration (PCA) in the Hague. A decision was rendered by the Court in July 2009, finding that the ABC had exceeded its mandate; the Court then redrew [the boundaries of Abyei](#) in a way highly favorable to Khartoum, including moving to northern Sudan areas in the east and north within Abyei that have very significant oil reserves. The historical reasoning and expertise of the Court were not nearly as compelling as that of the ABC, but despite this the SPLM accepted the decision as the only way to move forward on the Abyei referendum.

A year later, in the July 2010, a senior Khartoum official, former director of national security Salah Abdullah Gosh, [suggested that the Abyei issue had still not been settled](#): “The [PCA ruling] ruling did not resolve the dispute.” Although he would later retract this assertion, he had tipped Khartoum's hand: over the past four months, the regime has reneged on terms of both the Abyei Protocol and the PCA ruling. The regime has obstructed the referendum by asserting that migratory Misseriya Arabs from northern Sudan are “residents” of Abyei who must be allowed to vote in the referendum. It has now moved some 70,000 to 80,000 Misseriya Arabs into the region, people who have traditionally migrated to Abyei for only several months of the year. Without these northern voters—if only the traditional residents of the region, the Ngok Dinka, were to vote—the results would be overwhelmingly for union with the south.

There is, in fact, no mention of Misseriya Arabs as residents of Abyei in the Abyei Protocol of the CPA, nor was this the focus of side discussions during negotiations. [The language of the CPA is spare and clear](#): “The residents of the Abyei Area shall be: The Members of Ngok Dinka community and other Sudanese residing in the area.” Nor was there any discussion of the Misseriya by Khartoum in the months leading up to the PCA decision of July 2009. Only now—having run out of other stratagems—has Khartoum decided to make Misseriya “residency” an issue.

And still the Obama administration—trapped by its own belatedness and incompetence—urges the SPLM to “compromise” yet further. But even in the face of such transparently obstructionist behavior by Khartoum, the southern leadership has in fact continued to “compromise.” I am told by an extremely reliable source in the

region that:

the SPLM has bent over backwards to compromise. They've offered that anybody who can trace residency [in Abyei] to pre-1905 can vote; rejected by the NCP. Then anyone tracing residency to 1956; rejected. Then anyone who was resident in 2005; rejected. Then residency at the time of the PCA ruling; rejected. Finally, anyone resident just one year ago when the Abyei Referendum Act was passed; rejected. The NCP are insisting that the 70-80,000 Missiriya who moved in just recently must vote.

Why does Khartoum feel emboldened to reject all offers of compromise? For the same reason it has prevented formation of the Abyei Referendum Commission; for the same reason that it feels it can block a proposed buffer zone between northern and southern military forces, including those near Abyei; for the same reason that it obstructs movement of the UN peacekeeping mission north of Abyei town; [for the same reason that Khartoum's infamous 31st Brigade was able to burn an Abyei town to the ground in May 2008](#), killing dozens and displacing as many as 90,000 people—all while the UN watched helplessly from a distance; for the same reason that [Khartoum's military forces and proxies are beating, arresting, and "tax-ing" southerners](#) who attempt to return to their home in Abyei; for the same reason that the regime allows a [senior member to declare very recently](#) that Abyei has always been historically part of the north: "Professor Ibrahim Ghandour, secretary for political affairs of the National Congress Party, said his party has documentary evidence that proves that the oil-rich but disputed Abyei region is part of the north."

Why does Khartoum feel that it can continue to negotiate the boundaries of Abyei in such preposterous fashion ("we have heretofore unconsidered documentary evidence!"), despite the findings of both the Abyei Boundary Commission and the Permanent Court of Arbitration? Because the international community has repeatedly proved willing to deal expediently and disingenuously with a regime that has an unbroken diplomatic record of deceit, arrogance, and renegeing. It still enjoys enormous success making the same threat it has long made: *Push us too hard on this or that issue, and we will collapse the entire CPA.*

This was disgracefully true for Darfur in 2004. It remains just as disgracefully true in Darfur six years later, as UN humanitarian leaders remain silent about conditions in Darfur, [acquiesce in the suppression of critical malnutrition data](#), and allow press releases to be vetted by Khartoum. The UN peacekeeping force in Darfur (UNAMID) is continually denied access to sites where Khartoum has bombed civilian targets (even as all military flights are banned by UN Security Council Resolution 1591) and faces relentless harassment and obstruction by various elements

of the regime. Khartoum’s warplanes, including those designed for air-to-ground attacks, sit openly on tarmacs, [even during a recent UN Security Council mission to the region](#). Arms and ammunition, especially from China, continue to pour into Darfur—in violation of UN Security Council Resolution 1591—as [reported yet again by the UN Panel of Experts on Darfur](#). Indeed, Khartoum is not in compliance with a single UN Security Council resolution, and there have been dozens. Nor has it made good on any of its promises in the failed Darfur Peace Agreement of May 2006.

And the Obama administration’s response to all this? It has recently “decoupled” Darfur from the criteria that will be used to determine whether Khartoum will be removed from the U.S. State Department list of terrorism-sponsoring nations. If the United States does remove Sudan from this list, arguably the biggest prize it has to offer the regime, it will no longer have the same leverage to end the holocaust in Darfur. This occurs at a time when the regime has begun a [massive new military campaign in Darfur](#)—Operation “Misk al-Khitam,” or “the perfect ending.” And the implications of a U.S. “decoupling” of Darfur are not lost on a regime that is [always assessing its diplomatic adversaries](#)—their strengths, weaknesses, and degree of commitment.

This “decoupling” decision is the price of belatedness—and it will serve to extend the life of the Khartoum regime. Whether it will produce a successful referendum for southern Sudan is an open question: Khartoum’s survivalists are now busy assessing the consequences of aborting the vote, [refusing to recognize it](#), or militarily preempting the results, all while using Abyei as a means of extracting yet more concessions from the SPLM leadership and Washington. The United States and the rest of the international community—by signaling just how accommodating they can be—have encouraged the most ruthless calculations by Khartoum, and these external actors are now hostage to their own expediency. The clouds darkening over Sudan will not lift soon.

## **Carter Center Fails to Consider Key Issues in the South Kordofan Gubernatorial Election**

First appeared with the South Sudan News Agency, May 20, 2011

The Carter Center has stumbled badly in assessing the enormously consequential South Kordofan gubernatorial election, which produced a “victory” for Khartoum’s candidate, Ahmed Haroun.<sup>74</sup> Haroun—handpicked by the regime—was a central

figure in the worst years of the Darfur genocide, as well as an energetic participant in the genocidal jihad conducted by the National Islamic Front regime in the Nuba Mountains of South Kordofan during the early 1990s. This validation of Haroun's election by the Carter Center appears to reflect, to an inordinate degree, the views of former President Jimmy Carter, whose pronouncements over the years reveal a disturbing myopia when it comes to the nature and behavior of the NIF/NCP regime. Since Carter is notorious for micro-management, there can be little doubt that he influenced the tone and tenor of the report in significant ways.

Carter's pronouncements at the time of Sudan's April 2010 national elections were revealingly preposterous, though even the Carter Center was ultimately obliged to admit that the elections were not credible. For example, shortly before the 2010 elections Carter claimed that, "If no one gets an absolute majority, then there will be a run-off election in May and I think that's a high likelihood," Carter told reporters during a trip to south Sudan" (Reuters [Juba], February 9, 2010). It is difficult to imagine a more foolish prediction: President al-Bashir of the National Islamic Front/National Congress Party (NIF/NCP) regime won easily and predictably with more than two thirds of the vote. The very notion that the regime would allow itself to be put in the position of having to participate in a run-off election betrays profound ignorance of Khartoum's attitudes and ambitions—nothing new for Carter.

Unfortunately, Carter found some significant company in his absurd prediction: U.S. Special Envoy Scott Gration declared that Sudan's national elections would be "as free and fair as possible." Some international observers had also suggested that even if not entirely successful, the elections would be a move toward "democratization" in Sudan. But in fact, the election was massively fraudulent, hopelessly compromised by the manipulation of census results, registration, and voting; by the physical appropriation of ballot boxes; by widespread and paralyzing insecurity in Darfur; and by deeply intimidating actions on the part of the regime's security services, which also guaranteed the NIF/NCP monopoly on broadcast media. In short, all the powers of the state were put in service of al-Bashir's election. The most comprehensive Sudanese human rights assessments of the election and electoral irregularities were produced by the African Centre for Justice and Peace Studies.<sup>75</sup> The Darfur Relief and Documentation Center produced a devastating critique of the census that undergirded the elections (January 2010). International observing teams, including the Carter Center, all found that the elections "did not meet international standards," the euphemism most often deployed to characterize this travesty. Human Rights Watch was blunt in its account of the atmosphere for voting in the North: "Human Rights Watch found that the National Congress Party-dominated government continued to foster a restrictive environment during the voting period

through harassment, intimidation, and arrests of activists, opposition members, and election observers.”<sup>76</sup>

There was no move toward “democratization,” and the suggestion of a “run-off”—implying that al-Bashir would not use the state apparatus to secure at least a 51 percent majority—was the most foolish prediction made by any observer. Instead of “democratization,” what has followed is a more tyrannical political monopoly. The Khartoum regime emerged from the elections retaining full control of national wealth and power—and full control of the security services. The crackdown on human rights that has followed the elections has been severe and suggests just how manipulative Khartoum can be (some very small political space was carefully opened shortly before the elections, but not nearly enough to permit real political opposition to gather forces, as Human Rights Watch has made clear).

All this previous electoral history has bearing on the recent election in South Kordofan (May 2–4), and to suggest otherwise—as the Carter Center does in its report—reflects either a fatuous or tendentious view of Sudanese politics in this extremely volatile and militarily critical state on the North/South border. Indeed, the Carter Center report (hereafter CCR) does a particularly poor job in conveying the military realities defining South Kordofan, the Nuba Mountains in particular, and the implications for Abyei. The CCR authors would do well to read Julie Flint’s compelling and ominous report for Pax Christi and the numerous authoritative reports from the Small Arms Survey.<sup>77</sup> Although the CCR talks about insecurity and alludes to military issues, it does so in ways that convey none of the dangers that presently exist and have been so thoroughly chronicled in these and other reports.

To be sure, as a “technocratic” account of the elections, the CCR is of considerable value—but only as such. It rehearses a good deal of familiar but relevant regional history, legislative and otherwise. It reveals a clear and detailed understanding of the electoral procedures that were to have been followed, the role of the CPA and other agreements, as well as international humanitarian and human rights law. It offers a full narrative of the electoral milestones, though it seems to understate on a consistent basis the significance of electoral problems and controversies; and it nowhere acknowledges how fully the “National Election Commission” is controlled by Khartoum—a fact made abundantly clear during the April 2010 elections.

But the CCR fails fundamentally in appreciating the political context of the South Kordofan election, its importance for Khartoum, and the implications of key actions by senior regime officials (in a PDF document of 18 pages, less than one page is given over to “Political Background to South Kordofan Elections”). And yet this is where any meaningful assessment of the election must begin.

Fortunately, *Africa Confidential* (AC) has provided a highly informed account (May 13, 2011—complete text below) of just what is politically at stake in the election and which political calculations and electoral machinations determined its outcome. In this, the AC researchers are able to do what an entire team of Carter Center officials were unable to do, and their astute observations make clear that Khartoum was never prepared to allow its war criminal candidate to lose—South Kordofan is simply too important strategically:

It was clear that Ahmed Mohamed Haroun had lost his bid to be elected Governor of Southern Kordofan when the National Congress Party sent Presidential Assistant Nafi'e Ali Nafi'e to Kadugli on 8 May, the day the results were supposed to be announced. Nafi'e, a former chief of security for whom Ahmed Haroun once worked, told the State Election Commission to declare him winner, say opposition sources. The Commission's head, Adam Abdin, sought refuge with the United Nations Mission in Sudan (UNMIS). The results were rescheduled for 10 May and again delayed, as NCP operatives scrambled to produce new figures. Their methods included the invention of new polling stations: when challenged, the officials replied that voters had found it difficult to reach the other stations, a tactic used last year in Darfur.

This extraordinary report—"The [State Election] Commission's head, Adam Abdin, sought refuge with the United Nations Mission in Sudan (UNMIS)"—is inexcusably omitted from the CCR. Has this no suggestiveness for the Carter Center people? Abdin complained to the *Sudan Tribune* (May 7, 2011) "that the process of matching votes to registered voters is proceeding slowly and said there are proposals of forming additional committees to speed up the process." These proposals went nowhere, and Khartoum was determined to brook no delay in announcing results it had already determined; this may account for Abdin's reported flight following Nafi'e's inevitably intimidating visit. Nor is there any meaningful discussion in the CCR of the *Africa Confidential* account of Khartoum's behavior:

NCP operatives scrambled to produce new figures. Their methods included the invention of new polling stations: when challenged, the officials replied that voters had found it difficult to reach the other stations, a tactic used last year in Darfur.

The belatedly announced new polling stations are in fact acknowledged in the CRR—more than 25 altogether, some established only on the day of voting—but

in peculiarly unconcerned fashion: “Better planning would help to prevent such issues in the future” (page 12). But if such added polling stations did spontaneously appear, this and other maneuvers could more than account for Haroun’s evident surge from behind (the Carter Center was able to observe, even very briefly, fewer than 25 percent of the polling stations). For as *Africa Confidential* notes:

Initial figures obtained by *Africa Confidential* showed Governor Ahmed’s Deputy, Abdel Aziz Adam el Hilu of the Sudan People’s Liberation Movement, ahead by about 11,000 votes. His final lead was around 4,000, said an SPLM source on 11 May, claiming that the difference was largely due to NCP rigging.<sup>78</sup>

Despite accusations of fraud from many quarters (including northern Sudanese political and academic figures—see appendix to this analysis), the CCR report concludes that the elections were “generally peaceful and credible,” and the Center did “not observe systemic irregularities that would invalidate the results.” But this conclusion ignores one of the CCR’s most troubling findings, one that may explain just how the manipulation of vote totals was achieved (we should recall that even the manipulated final results were very close):

The Carter Center is concerned, however, that election officials appear to have chosen not to use the official database developed to handle the preliminary results. The database is programmed to reject results where the numbers do not reconcile and these results would then be quarantined and investigated before they could be entered. This process was bypassed by the [Kordofan] State High Election Commission, thus removing an important safeguard that can highlight anomalous results. Moreover, this software is used to post results, disaggregated by polling station, on to the NEC website. At the time of this report the results [sic], this has not happened.<sup>79</sup>

Why was this available and task-specific database technology not deployed? The CCR offers no answer, and this highlights the importance of what *Africa Confidential* reports of these “preliminary results”:

The National Election Commission said that the preliminary results could not be changed and the NCP slammed the SPLM “adolescent mentality” for protesting. Northern opposition parties accused the NCP of fraud. [T]he elections, delayed from last year after the SPLM challenged the census figures, benefited from few external monitors, the

only widespread and systematic presence being that of the Carter Center.

Khartoum was no more going to allow Haroun to lose than it was al-Bashir in the presidential election (al-Bashir is also under indictment by the ICC, including for genocide). To ignore this reality, to talk around it as the CCR does, to present so blandly and superficially the current political and military realities in South Kordofan, Abyei, and the North/South border regions, is deeply irresponsible and vitiates whatever usefulness the CCR may have had going forward. *Africa Confidential* again makes the essential point about South Kordofan and the election of its next governor:

South Kordofan is the military backyard for Abyei (which has a special status within the state) and for Upper Nile, Northern Bahr el Ghazal and Unity states in the South, all of which it adjoins. ‘We are especially concerned about the alarming situation in Abyei’, said a 10 May statement by the Troika Britain, Norway, United States. It called on the parties to ‘work together’ to tackle the ‘rising tensions’ in South Kordofan. As ever, it treated both parties even-handedly. The problem with that is obvious in Abyei, where the NCP has persistently reneged on agreements it has signed, exploiting international ‘neutrality’ to shift the situation to its advantage.

This commitment to making all comments and observations as “even-handedly” as possible is indeed at the heart of Western diplomatic strategy. But *Africa Confidential* is right to argue that international “neutrality” is simply being exploited by Khartoum; for this is yet another case of an intolerable “moral equivalence,” in which the culpability for any and all problems lies equally with Khartoum and its adversaries in the marginalized regions. A recent and grimly illustrative example of this tendency comes from Darfur, where Ibrahim Gambari, head of the UN/African Union peacekeeping mission (UNAMID), responded to Khartoum’s most recent aerial attacks on civilians: “‘I call upon all parties to exercise the utmost restraint in the use of lethal force,’ Gambari said.”<sup>80</sup> But the Darfur rebels have no aerial military assets; and so to bring them within the ambit of his “call,” Gambari deliberately blurs the issue by referring not to deliberate aerial attacks on civilian targets (several villages have been targeted since May 15), but the broadest military designation possible: “lethal force.” Here it is important to keep in mind that Gambari, UNAMID, and the UN (as well as its most important member states) have all been largely silent over the more than 80 attacks confirmed so far in 2011.<sup>81</sup>

But the key point for South Kordofan that is lost through moral “neutrality” or “equivalence” is highlighted with unrelenting acuity by *Africa Confidential*:

The NCP cannot afford to lose control in South Kordofan. State governors have great power, which is why they are normally party men. They chair the state’s vital Security Committee. Several of the militias plaguing the South are based in South Kordofan (Meiram area) or in the northern part of Abyei, already ceded to the NCP by the 2009 Permanent Court of Arbitration ruling. They include those of Abdel Bagi Ayii Akol Agany, a tribal chief-turned-warlord from North Bahr el Ghazal; General George Athor Deng, now warlord-in-chief; and Gen. Peter Gadet (Gatdet) Yaka, absorbed into the SPLA in 2006 but now again on the rampage.

The NCP is not about to stop sponsoring militias in the South. If it is to supply its proxies, including the Missiriya militias, it cannot afford to lose either Abyei or South Kordofan (AC Vol 52 No 9). It could live with the SPLM/SPLA controlling large swathes of the Nuba Mountains before the 2005 Comprehensive Peace Agreement, since the rugged hills are discrete and isolated. The Sudan savannah plains of the rest of Southern Kordofan are a different matter: they have long been the home of mechanised ‘strip farming’ by townsmen from further north. These plains are now politically and militarily critical to Khartoum’s attempts to retain Abyei and to its intervention in the South.<sup>82</sup>

Not to understand this critical political context, and to see how that context has defined the South Kordofan election, is deeply irresponsible. For in the absence of other international observers, the Carter Center report is the only assessment being reported by wire services and other news outlets. Despite its acuity, the *Africa Confidential* assessment will be read by far too few to change the story line. The Carter Center has done a significant disservice to the people of Sudan, and South Kordofan in particular, by prematurely validating the results of the recent election without answering the questions raised by their own findings, in particular the failure to use the official spreadsheet designated for elections results, and designed to catch “anomalous results.” The SPLM did in fact complain about “non-reconciled results,” but got nowhere.

Even more importantly, the Carter Center needs to speak explicitly to the question raised by a critical finding of *Africa Confidential*: “The [State Election] Commission’s head, Adam Abdin, sought refuge with the United Nations Mission in Sudan (UNMIS).” If such refuge was sought, we need to know why—and we need

to know how it is related to the ominous presence in Kadugli of Nafi'e Ali Nafi'e, the most powerful of al-Bashir's presidential advisors. That the Carter Center Report does not mention Adam Abdin or this incident is a sign of its fundamental shortsightedness.

## Appendix 1:

“Indicted war criminal fights election”

*Africa Confidential*, May 13, 2011

Khartoum's ruling party tries to hold on to its base in Kordofan, a springboard for operations in Abyei and the South

It was clear that Ahmed Mohamed Haroun had lost his bid to be elected Governor of Southern Kordofan when the National Congress Party sent Presidential Assistant Nafi'e Ali Nafi'e to Kadugli on 8 May, the day the results were supposed to be announced. Nafi'e, a former chief of security for whom Ahmed Haroun once worked, told the State Election Commission to declare him winner, say opposition sources. The Commission's head, Adam Abdin, sought refuge with the United Nations Mission in Sudan (UNMIS). The results were rescheduled for 10 May and again delayed, as NCP operatives scrambled to produce new figures. Their methods included the invention of new polling stations: when challenged, the officials replied that voters had found it difficult to reach the other stations, a tactic used last year in Darfur.

Initial figures obtained by *Africa Confidential* showed Governor Ahmed's Deputy, Abdel Aziz Adam el Hilu of the Sudan People's Liberation Movement, ahead by about 11,000 votes. His final lead was around 4,000, said an SPLM source on 11 May, claiming that the difference was largely due to NCP rigging. In elections for the South Kordofan State Assembly, the NCP had won 22 seats, the SPLM, 10, he said. The 40% of seats reserved for women and political parties were still being counted and some predict a hung parliament. The SPLM says privately that it accepts a degree of NCP malpractice but will not back down on the gubernatorial election. Some in the SPLM believe it can become a major party in Northern Sudan.

The National Election Commission said that the preliminary results could not be changed and the NCP slammed the SPLM 'adolescent mentality' for protesting. Northern opposition parties accused the NCP of fraud. The SPLM had been able to reduce fraud by training thousands of party observers to cover the vast territory which includes the Nuba Mountains (SPLM heartland) and the Missiriya Arab

lands to their west and east. Yet the elections, delayed from last year after the SPLM challenged the census figures, benefited from few external monitors, the only widespread and systematic presence being that of the Carter Center.

This looks like another mistake. The polls are crucial for several reasons. South Kordofan is the military backyard for Abyei (which has a special status within the state) and for Upper Nile, Northern Bahr el Ghazal and Unity states in the South, all of which it adjoins. ‘We are especially concerned about the alarming situation in Abyei’, said a 10 May statement by the Troika Britain, Norway, United States. It called on the parties to ‘work together’ to tackle the ‘rising tensions’ in South Kordofan. As ever, it treated both parties even-handedly. The problem with that is obvious in Abyei, where the NCP has persistently reneged on agreements it has signed, exploiting international ‘neutrality’ to shift the situation to its advantage.

The NCP cannot afford to lose control in South Kordofan. State governors have great power, which is why they are normally party men. They chair the state’s vital Security Committee. Several of the militias plaguing the South are based in South Kordofan (Meiram area) or in the northern part of Abyei, already ceded to the NCP by the 2009 Permanent Court of Arbitration ruling. They include those of Abdel Bagi Ayii Akol Agany, a tribal chief-turned-warlord from North Bahr el Ghazal; General George Athor Deng, now warlord-in-chief; and Gen. Peter Gadet (Gatdet) Yaka, absorbed into the SPLA in 2006 but now again on the rampage.

The NCP is not about to stop sponsoring militias in the South. If it is to supply its proxies, including the Missiriya militias, it cannot afford to lose either Abyei or South Kordofan (*Africa Confidential*, Vol. 52 No. 9). It could live with the SPLM/SPLA controlling large swathes of the Nuba Mountains before the 2005 Comprehensive Peace Agreement, since the rugged hills are discrete and isolated. The Sudan savannah plains of the rest of Southern Kordofan are a different matter: they have long been the home of mechanised ‘strip farming’ by townsmen from further north. These plains are now politically and militarily critical to Khartoum’s attempts to retain Abyei and to its intervention in the South.

By getting Ahmed Mohamed Haroun elected, the NCP also hoped to ‘cleanse its crimes in Darfur’, said an SPLM official: the former junior Interior Minister is wanted by the International Criminal Court on 51 counts of war crimes or crimes against humanity. The crimes have continued in Abyei.

## Appendix 2:

A range of Sudanese political, academic and other voices have made their views of the South Kordofan election known. For its part, the SPLM has been quite specific in its claims about vote rigging, none of which is discussed in the CCR:

[1] Vote-counting was supposed to proceed immediately after the polls closed, but the north Sudan sector of Sudan People's Liberation Movement (SPLM), which controls South Sudan, on Wednesday said it objects to the beginning of counting. The SPLM said in a press release that the ruling National Congress Party (NCP) in north Sudan had a three-phase plan to rig the elections. It claimed that its members had found three rigged ballot boxes in the areas of Kadugli, Buram and Al-Quzair. On Tuesday, the SPLM claimed that three ballot boxes were seized in the area of Um-Battah in the state's capital Kadugli. It also said that one polling station was relocated from the police club to Al-Merikh in Al-Bananusa in the geographical constituency number 7 without prior notice.<sup>83</sup>

[2] the NCP [National Congress Party] rigged the gubernatorial elections in Southern Kurdufan [central Sudan] in favour of its candidate, Ahmad Harun. Dr Haydar Ibrahim Ali said on Monday [16 May] from Cairo that the NCP motive is to shield Harun from being arrested by the International Criminal Court [ICC].

[Ibrahim]: The nomination of Harun specifically, was an attempt by the regime to do an action similar to what we can call money laundering. They wanted in one way or another to acquit Harun from the charges against him by the ICC. Therefore, the NCP has caught two birds without throwing a stone, rigging the elections for the second time, making the rigging exercise as part of Sudanese political life, and the third thing is jumping over the ICC charges.<sup>84</sup>

[3] A coalition of the national opposition parties in Sudan says they have doubts in the credibility of the Southern Kurdufan (central Sudan) elections. The coalition's spokesperson, Faruq Abu-Issa claims that the gubernatorial elections were rigged and warns of potential violence.

[Abu-Issa]: This area has suffered a lot; it is a very sensitive area which includes Abyei, terrible ethnical conflicts and the intermingling areas between south and north. Even the rigged election results itself, have shown that the SPLM [Sudan People's Liberation Movement] has

strong presence in the region. Therefore, if we intend to let only one party to govern this region despite its known circumstances, and exclusion of the other party, that will continuously make the area encounter catastrophic consequences.

[4] [Notably, al-Jazeera reported on results two days after the voting was completed:]

Early results from the gubernatorial race in South Kordofan revealed a comfortable lead for the Sudan People's Liberation Movement (SPLM) candidate Abdel-Aziz Al-Hilu, news channel Al-Jazeera reported. Al-Hilu is running against the incumbent governor Ahmed Haroun who is the National Congress Party (NCP) nominee and also one of the suspects wanted by the International Criminal Court (ICC) for his alleged role in Darfur war crimes when he was Sudan's minister for interior. Al-Jazeera said the figures it obtained showed that the SPLM's candidate is ahead by 14,000 votes after counting all but results from six polling stations. It did not say whether the remaining centers would be a game changer.<sup>85</sup>

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- "Report of the [UN] Panel of Experts, Established Pursuant to Resolution 1591 (2005), Concerning the Sudan," October 29, 2009  
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Voters queue at John Garang's mausoleum.



Voters wait for the polling station to open at sunrise.



Voters names are checked against the registration books.

### SOUTHERN SUDAN REFERENDUM VOTING BEGINS

Voting in the long-awaited Southern Sudan self-determination referendum kicked off at 8am today. Many voters spent the night at their respective polling stations determined to be some of the first to cast their ballot and decide whether to confirm the unity of Sudan or secede and form an independent country. Government of Southern Sudan President Salva Kiir Mayardit cast his ballot at the mausoleum of Dr. John Garang de Mabior. "I believe...Dr. John and all those who died with him are with us today and I must assure them they have not died in vain," President Kiir said to the assembled dignitaries. Long lines and a joyous atmosphere prevailed across Juba throughout the day. Voting is scheduled to last for seven days.

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GoSS President Salva Kiir casts his ballot.



## SUDAN in pictures



Voting at St. Bakhita school in the Kator neighborhood of Juba.

Photography credit: UN



*Photography and copy credit: Laura Heaton/Enough Project*

### THE WOMEN'S QUEUE (JANUARY 8, 2011)

Men and women stood in long, orderly lines awaiting their turns to vote in the southern Sudan referendum



*Photography credit: Enough Project*

APPROXIMATELY 99 PERCENT OF SOUTHERNERS VOTED TO SECEDE FROM SUDAN



INDEPENDENCE DAY, JULY 9, 2011

Photographs from multiple open sources, individuals sharing from the events, and the Government of South Sudan



INDEPENDENCE DAY, JULY 9, 2011

Photographs from multiple open sources, individuals sharing from the events, and the Government of South Sudan



*Photography credit: Enough Project*

### CROWD GATHERS AT SOUTH SUDAN 1-YEAR ANNIVERSARY EVENT IN JUBA (JULY 9, 2012)

The first year of independence has been tremendously difficult for South Sudan, particularly given the relentless military and economic hostility on the part of Khartoum. The current pace of progress will not satisfy Southerners for many anniversaries.



*Photography credit: Enough Project*

Wounded soldiers of the Sudan People's Liberation Army, celebrating the first anniversary of the independence they fought so hard to achieve



*Photography credit: Government of South Sudan*

The flag of the Republic of South Sudan now flies proudly at the United Nations: will the world body guarantee the South's territorial integrity? There are no good signs.