

Memorandum

Prospects for Durable Peace in Sudan

December 2008

Overview

1. This memorandum addresses the challenge of seeking and sustaining peace in Sudan over the next three-to-five years. The major challenge is to ensure that the completion of the CPA, marked by the referendum on self-determination in southern Sudan, passes off without sparking a major new war and an unstable failed state in South Sudan. Such a disaster is the default outcome, which will occur if nothing is done to prevent it. It will take place because of the irreconcilable political positions adopted by the Sudanese political elites, the weakness of the country's political institutions, and the destabilizing impacts of external engagement.

2. Navigating the challenge of self-determination in the South without war and state failure requires a compact among Sudanese elites. This will need to take the form of a political bargain which takes care of their financial interests. There is some movement towards such a compact, based on patrimonial buy-in. But on current experience, these class interests emerge only gradually and the Sudanese political process moves too slowly for such a bargain to be within grasp within two years.

3. Immediate destabilizing challenges to the Sudanese political process include the ICC's arrest warrant against President Bashir and the indication that the incoming U.S. administration intends to take tough enforcement action against the Sudan government over Darfur. Both these developments distract the Sudanese political elites, delay the processes of grappling with the fundamental challenges facing Sudan, and raise vain hopes among the SPLA and Darfurians of a radical change in their favour.

4. The memorandum concludes with some specific observations relevant to Sudanese-Ethiopian relations and recommendations for possible next steps. Ethiopia no longer possesses the leverage over Sudanese outcomes that it did in the mid-1990s. But it is well-placed to take a lead within the AU in emphasizing the need for strong action to stabilize Sudan.

Dynamics of Sudanese Politics

5. Sudanese and foreign commentators tend to assert that Sudanese are divided by divergent identities and ideologies, and that this divergence is the root cause of their country's conflicted history. It is more probable that polarized political identities have arisen because of decades of conflict, and that conflict in turn has persisted because the country's political institutions are too weak to manage political conflicts. Sudan has this

in common with many other African states, in which political conflicts are managed (or not managed) by a combination of social affinity (consensus on the rules of political competition) and patronage (dispensing money or dividing rents so as to buy elites into a common political compact).

6. Politics polarizes Sudanese. On the key national questions, including unity or separation, 'New Sudan' as against the traditional pattern of riverain dominance, and Islamism versus secularism, opinions are sharply divided and unlikely to converge. Agreements such as the CPA identify middle points and compromises on these issues, but these are median positions between extremes rather than genuine compromises around which a political consensus can emerge. There are no obvious scenarios under which Sudanese political elites come to common positions on the major national issues.

7. Finance creates coherence in Sudanese political affairs. The ruling riverain elites control the country because they are able to dispense patronage to provincial elites, who in turn maintain loyal constituencies by passing on a certain amount of the patrimony. Central patronage is provided in the form of straight cash payments and the distribution of access to rents of various kinds including sovereign rents, licenses to use violence and control over natural resources including urban real estate. Sudan can be seen as a political marketplace in which provincial elites seek the best price for their loyalty, which is awarded on a provisional basis only, subject to renegotiation after a year or so.

8. The aspiring state elite in Juba is trying to use a similar patrimonial strategy for securing control over southern Sudan, but is less effective than the Khartoum practitioners of the craft. This may reflect the southern elite's relative inexperience and/or the lower level of social capital or political consensus within the SPLM, compared to the better-established metropolitan elite in Khartoum.

9. Insofar as Sudanese political conflicts are managed through patrimonial buy-in, it follows that a grand political bargain is necessary in order for any significant national decision to be made without disaffected groups resorting to violence. Any such buy-in has a limited lifespan because it lasts only so long as the conditions in the political marketplace remain broadly the same. It is also not conducive to sustainable economic development because it is founded on the distribution of rents. However, in the absence of such political bargains, Sudanese elites use violence as their principal bargaining tool, leading to worse outcomes. The better scenario is for Sudan to resemble Nigeria, with its turbulence managed domestically in such a way that the neighbourhood is not destabilized. The worse scenario is for it to resemble DRC or Somalia, with its violence unmanaged and with neighbours and international stakeholders plunging in.

10. While time horizons remain short, political uncertainties remain high, and state institutions remain weak, it is very unlikely that Sudanese elites will move from political-economic strategies based on rent seeking in a political marketplace towards one based on sustainable development and institution-building. Stability must come first.

11. The conflict in Darfur is a low intensity conflict with high intensity political ramifications. There is almost no organized warfare and armed clashes between the parties are very rare. Instead, Darfur resembles Chad in the 1980s. It is an arena in which numerous fragmented groups vie for local prominence and sell their loyalties to the highest bidder, with occasional large-scale military raids intended to upturn the political status quo. The prospects for a political settlement in Darfur are remote, and made more so by inept international engagement which tends to encourage the rebel groups to hold out for a higher price for their loyalty. Given major political uncertainties in the wake of the ICC and the incoming U.S. administration, it is unlikely that there will be rapid movement towards an inclusive peace settlement in the next 12 months.

12. The CPA was designed as a six-year transition. During this time, the parties had to make a series of major decisions including forming the Government of National Unity, implementing wealth-sharing and security arrangements provisions, holding elections and forming a new government, and preparing for the referendum. The Sudanese political machine moves at a fairly predictable pace, which is not fast. Typically it will take at least a year to reach and begin to implement any one of these decisions. This is because of the pace at which the institutions function (e.g. the ability of the National Assembly to pass legislation) and the rate at which the underlying political bargains are made (based on patrimony). And typically it cannot focus on more than one overarching issue at a time. This meant that the CPA timetable was already tight, compared to the amount of political business to be transacted. When the death of John Garang, the Darfur conflict and peace process, the ICC, and now the repercussions of the financial squeeze for the patronage system are taken into account, it appears that Sudan is still 5-7 years away from being able to reach the necessary agreements to make it possible to decide peaceably on unity or separation.

Unity or Separation?

13. The Comprehensive Peace Agreement signed on 9 January 2005 determines that there shall be a referendum on self-determination in southern Sudan six years after that date, with the choices of unity or secession. A vote for secession is supposed to entail a rapid (six month) transition to independence for South Sudan. The prospect of this looms over Sudanese politics. It is the moment of truth for the country's future. Although it is obscured by the more proximate challenges of the ICC arrest warrant against President Bashir, the general elections scheduled for 2009, and the attempts to resolve the conflict in Darfur, the referendum is by far the most important event in Sudan's immediate future. While all the other events can be managed by the Sudan Government in one way or another, the referendum threatens to be unmanageable.

14. The CPA obliges the two signatories to 'make unity attractive.' In the established practice of the National Congress Party, this is done by patrimonial buy-in. Members of the southern elite are given sufficient access to resources and rents that their personal and emergent class interests converge with those of the northern commercial elite. Over time, the NCP assumes that this financial interest will translate into political loyalty to the extent that existing sentiments for separation, or southern nationalist ideology, will be

overcome. There is evidence that this is happening as planned, although the collapse in the price of oil has led to the national budget being halved and a considerable squeeze on the money available within the patronage system. But the buy-in proceeds nonetheless. Even the most ardent southern separatists are building their personal residences in Khartoum. Many southerners are disillusioned with the corruption and incompetence of the Government of South Sudan and some are concluding that separation is less unattractive than unity.

15. The pro-unity process of patrimonial buy-in runs counter to the separatist politics of nationalism within the poorly-organized political establishment of southern Sudan. The SPLM is internally divided over the question of unity or separation. Although the majority of members are southern nationalists and hence separatists, there is a significant minority bloc which supports unity, including SPLM members from northern Sudan for whom this is a life-and-death issue. This bloc wields a veto over the SPLM's decision-making on this issue. Moreover, although the SPLM is a weakly-organized political institution, it is stronger than the Government of South Sudan, so that the ultimate political decision lies with the SPLM and not the GoSS. The current SPLM approach is to delay any decision on unity or separation until the last minute, because it is obliged to formally support unity (as a signatory of the CPA) and because it wants to avoid an internal split that could be fatal to it as an organization. This has the important side effect of leaving the banner of southern Sudanese nationalism free for other parties, which although small can obtain a high profile on the basis of passionate advocacy. After all, generations of experience of slavery and discrimination leave a deep imprint that could not be overcome by just a few years of better treatment by one's erstwhile masters—even if that had occurred. Once separatist/nationalist campaigning begins it will be difficult for southern politicians to adopt any other stand, which could lead a political stampede towards a hardline separatist position as the date of the referendum approaches.

16. There are numerous outstanding issues that need to be resolved between north and south if there is to be a managed separation including the border, cross-border movements, the division of oil revenues, the Nile waters, the status of southerners in northern Sudan and the status of the SPLM in northern Sudan. Resolving these demands good faith political negotiations and an underlying political bargain between the elites. Many in northern Sudan recognize that their interests in southern Sudan could be catered for even in the event of separation, but they need these issues to be resolved. These negotiations and especially the bargain need to occur before the decision to separate is formally made.

17. If the citizens of southern Sudan vote freely in a referendum then the outcome is almost certain to be separation. The question is not the views of the people but whether and when the people are consulted. If they are consulted before the elites of north and south come to a political bargain, then we face a war. Once a war has begun it is likely to adopt momentum and logic of its own.

18. The logic of this analysis is that a postponement of the referendum on self-determination is the preferred option. Noting that the date of the referendum has become

sanctified, and the internationals are currently not prepared to reconsider the timing, this would be very difficult to achieve. Any GoSS that presides over a postponement or cancellation of the referendum would suffer a deficit of legitimacy.

The ICC

19. The application by the Chief Prosecutor of the ICC for an arrest warrant against President Bashir has many implications. Only those relevant to the internal political dynamics of Sudan will be considered here. This action has the potential to help destabilize the Sudanese political scene to the extent that it will create a disabling political crisis well before the referendum. Recognizing this, the southern Sudanese who are the strongest advocates of separation are among the most ardent critics of the ICC.

20. Since the announcement of the application in July, the Government of Sudan has been cool and constructive. It initially sought to find ways of blocking the indictment through the UN Security Council or the International Court of Justice, but abandoned those approaches as unlikely to succeed. Instead it prioritized an effort to consolidate its domestic position by making concessions to other political parties. However, the most important of these parties (SPLM and Umma Party) have not fully reciprocated. They have not followed the NCP line of completely rejecting the ICC and instead continue to insist on the GoS 'engaging' with the NCP, without defining what that engagement might entail. These parties are waiting to see what the international response to the formal issuing of the arrest warrant will be.

21. Four scenarios present themselves. The first (and likeliest) is that the GoS continues business as usual, and holds elections which Bashir wins. In this scenario, the international community finds a way of managing its engagement with Sudan while minimizing its contacts with a head of state who is an indicted war criminal. This would slow down the Sudanese political process and make it more difficult to reach the required political outcomes in time for the referendum to be held and/or the decision on unity or separation to be made in a consensual manner. The arrest warrant would hang like a shadow over the government and might even bring about complete paralysis. It would certainly increase the incentives for the southerners to support separation.

22. When the arrest warrant is issued, the NCP and security chiefs may continue their current strategy. But if they fear a well-orchestrated international conspiracy for regime change that includes the SPLM as a partner then they may decide instead to declare a state of emergency and revert into purely defensive mode, closing down international cooperation and perhaps even suspending the CPA. Such actions would probably unleash the scenario they are designed to forestall, namely concerted international action against the regime with domestic political elites as partners in the effort.

23. The third scenario is an internal coup. This cannot be ruled out, but is improbable because (a) Bashir is trusted by his close colleagues as a leader who will not throw them to the wolves, a confidence these rivals do not have in one another, and (b) the ICC's strategy of criminalizing the entire government makes it an unattractive proposition for

any internal successor. Given the lack of a clear second-in-command and the near-certainty of a debilitating internal political contest for the leadership among bitter rivals, any internal coup would probably usher in a period of political paralysis at best, and turmoil at worst, in which key decisions could not be made. A change in leadership might however be a suitable pretext for extending the interim period.

24. A final scenario is regime change by a combination of internal and external forces, most probably an alliance of the SPLM with northern parties and dissidents from the NCP, backed by the U.S. This would almost certainly lead to a protracted period of uncertainty. The fragmentation of the NCP would remove from the scene the sole political entity capable of maintaining cohesion at the centre of Sudanese politics, with unknowable consequences. In any such attempt at building a new government, international stewardship (especially from the U.S.) would be vital. But international influence and commitment would probably be insufficient to bring about an effective new government and it would be most unlikely to change the rules of the Sudanese political game (i.e. there would not be a rapid transition to strong political institutions capable of managing a liberal democratic order). However, regime change could also be the prelude to a complete renegotiation of the CPA and the Sudanese national political compact.

The U.S. Administration

25. International involvement in Sudan has had the effect of increasing the price that provincial elites can demand from the centre. This distortion in the political marketplace has deeply annoyed the metropolitan elites, because they resent paying more than what they see as a fair price for marginalized and disorganized groups. In the case of Darfur they see it as a speculative bubble and are dumbfounded at the price demanded by individuals such as Abdel Wahid al Nur and Minni Minawi. The NCP and security are unwilling to pay a very high price for a settlement because they fear that this will have a general inflationary impact on the demands of elites across the country, and because they suspect that the internationals will continue raising the price even after they have paid up.

26. The GoS believes that it struck a succession of deals with the U.S. (CPA, DPA, counter-terrorism), which Washington has not honoured. President Bashir feels a deep sense of personal betrayal. He and his senior security lieutenants are almost paranoid about what they see as international conspiracies to remove them. Assuming the worst, they see no rationale in conceding any demands, on the grounds that the U.S. will simply swallow them up and ask for more. The internationals, for their part, see Sudan through an institutional lens, and see the GoS as a party to a succession of legal-institutional agreements which it is not honouring in full.

27. The outgoing U.S. administration and the GoS shared the view that the solution to the conflict in Darfur would be founded on a deal between Washington and Khartoum, in which the former provided the necessary mix of assurances and pressure to the rebels, and the latter delivered on a range of promises, which would form the basis for proceeding with the CPA. That failed in the Abuja peace talks because (a) the Khartoum interlocutor (Vice President Ali Osman Taha) could not deliver on his promise regarding

permitting UN troops in Darfur and (b) the Darfur rebels (correctly) calculated that the Save Darfur Coalition would succeed in sabotaging Deputy Secretary of State Robert Zoellick and push the U.S. to offer better deals than the one on the table.

28. The incoming U.S. administration seems to share the view that the main deal for Darfur should be between Washington and Khartoum. But it wants to extract a higher price from Khartoum. That price has yet to be declared. It may remain (deliberately) murky with some senior members of the administration privately advocating regime change and others indirectly campaigning for it by, inter alia, insisting that President Bashir should be arrested to face trial. This will contribute to short-term uncertainty at best and dangerous paralysis at worst.

29. During 2009, the U.S. administration's Sudan policy is likely to be preoccupied with the immediate issues of protection in Darfur, the ICC and the elections. But the strategic question facing the administration is its position on southern separatism versus national unity. Already it is adopting a position by default, as its pro-SPLM rhetoric may tie it into following whatever decision the SPLM chooses to take. Currently, the SPLM has the attitude that it has just won the lottery and that the U.S. will deliver on whatever requests it makes. One immediate impact of this is that the SPLM will not take the necessary steps to address its domestic political problems. It may also mis-read signals coming out of Washington DC, ignoring those which are not in its favour and only listening to its friends and their assurances of unconditional solidarity. Under this scenario, the SPLM may instigate a confrontation and then find itself abandoned by the U.S. which is not sufficiently committed to taking sides in a new Sudanese internal war. Under another scenario, the SPLM succeeds in tying the U.S. into a partisan policy in incremental steps, committing the U.S. to taking sides in a new conflict before it has considered the strategic options of this choice.

Ethiopia and Sudan

30. In the mid-1990s, Ethiopia was able to play a determining role with respect to Sudanese politics. The circumstances which made that possible no longer exist. Nonetheless, Ethiopia has been under-playing its hand recently. It is the one neighbouring country which could serve as a guarantor on the status of southern Sudan.

31. Ethio-Sudanese relationships have been marred by a number of secondary problems in the last two years. For example, President Bashir feels personally slighted by the 2006 Ethiopian military operation in Somalia which occurred while he was still trying to mediate among the Somalis. The border problems and the arms sales to the SPLA have also caused friction. An immediate priority is to ensure that these secondary frictions should not be allowed to obscure the fundamental convergence of interests between Ethiopia and the Government of National Unity in Sudan.

32. Sudan is in danger of becoming a casualty of Ethio-Eritrean rivalry in the region. Eritrea has been far more active in all aspects of Sudanese politics, including the east, Darfur and the south, than Ethiopia, and has established closer ties with the NCP as a

result. The NCP leadership is well aware of the dangers of becoming another site for this conflict. It may try to play this to tactical advantage (for example encouraging the Ethiopian units with UNAMID to take enforcement action against JEM on the basis that JEM has close ties with Asmara). But the strategic interests of Eritrea and Ethiopia converge in Sudan. Both need a stable and preferably united Sudan as a neighbour.

33. If Sudan becomes a pariah to western countries and the UN following the ICC indictment, then African institutions (AU, IGAD) and governments can increase their leverage on both sides. If the Sudan government sticks with its cool-headed approach to the ICC, then the ICC will become a problem for the UN and western nations more than for Sudan. In this eventuality, western nations and UN will need to find alternative mechanisms for engaging Sudan, which will strengthen the hand of African governments and organizations.

34. Ethiopia can make one important contribution to Sudanese stability, which is intellectual and diplomatic. Ethiopia can make a realistic assessment of the dangers of a new north-south crisis including a new war and the establishment of a failing state in south Sudan, alongside a sober assessment of the kind of inter-elite political bargain needed to secure unity, or ensure a consensual separation. In turn, diplomatic leadership on this challenge within the AU and UN may provide an opportunity for the consolidation of international political opinion around the necessity of stabilizing Sudan.

Conclusion

35. The options for stabilizing Sudan in such a way as to minimize the potential for disaster over the ICC indictment or the exercise of self-determination, are few and constrained. The international community having vested its efforts in what it described as the last best chance for unity, in adopting the CPA, has been unlucky (in the death of John Garang), inattentive (in failing to properly monitor and account for the difficulties of reaching and implementing the necessary decisions in the Sudanese political system) and irresponsible (in making wild threats against the Government of Sudan and bringing in the ICC).

36. It is not too late to avert disaster. However, there is little sign that the leadership needed will arise within Sudan, as the Sudanese elites are exhausted, confused, or dependent on the very outside forces that are so destabilizing the country. If such leadership is to be found, it needs to be within the wider African continent, and especially neighbouring states.