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The project to end genocide and crimes against humanity

Deal Making in Sudan

Maggie Fick March 2010

Executive summary

A series of deals in February 2010 over elements of Sudan's Comprehensive Peace Agreement, or CPA, largely went under the radar of international media attention, but offer important insights into the current dynamics of deal making between the National Congress Party, or NCP, and the Sudan Peoples' Liberation Movement/Army, or SPLM/A, as Sudan approaches the vital question of southern independence.

Both the NCP and the SPLM continue to approach deal making as a largely elite process. While the parties have found some areas of consensus, and are making progress in resolving some key issues, there is a worrying thread of self-interestedness in these decisions that could have unfortunate long-term consequences for both North and South. Given the range and complexity of issues still on the table, a far better coordinated and organized international approach to facilitating these discussions is needed. The strategy (or lack thereof) behind the international community's involvement in the North-South negotiations will have an enduring impact on security throughout the region. A better coordinated international effort is needed to ensure that North-South discussions over the most contentious issues related to the likely "divorce" of North and South Sudan next year occur sooner rather than later in order to reduce the chances that these talks will degenerate into a dangerous zero-sum game.

National elections scheduled for April 2010 (they may be rescheduled) are currently distracting both parties to the CPA—who are both negotiating very high stakes issues surrounding the referendum, but doing so at a time when they hope to use the polls as a means to consolidate their power. February's negotiations demonstrated that the NCP and SPLM are willing to make accommodations, but the most difficult issues still lie ahead with time before next year's referendum rapidly running out.

Introduction

The agreements concluded in February 2010 between the NCP and the SPLM garnered far less international diplomatic and media attention than the ongoing Darfur discussions in Doha, yet from the long view of history, they may have far more lasting implications. By examining how these were reached, we can also understand the myriad challenges still ahead and the motivations driving the key players.

The ways in which the political leadership in Khartoum and Juba opt to engage in further negotiations in the coming months over unresolved CPA issues and postreferendum arrangements—and their respective motivations for doing so—will ultimately determine whether the South’s self-determination referendum and its aftermath are peaceful or not. The strategy (or lack thereof) behind the international community’s involvement in the North-South negotiations will also have an enduring impact on the futures of what are likely to be two separate states and on broader security in the Horn of Africa.

What was decided

In a relatively rare meeting in mid-February of the Sudanese presidency—President of the Republic of Sudan Omar al-Bashir, First Vice President of Sudan and President of the Government of Southern Sudan Salva Kiir, and Second Vice President Ali Osman Taha—the contentious issue of the 2008 census and its impact on the April elections was resolved, and forward progress was made toward preparing for the southern self-determination referendum in January 2011.

Here’s the breakdown of the recent agreements:

- Forty additional seats will be provided in the National Assembly for the South following the election, along with four more seats for South Kordofan and two more for Abyei. Consensus between the parties regarding the mechanisms for appointing these seats has not yet been reached, but the processes for determining the additional seats for the South and for South Kordofan, for example, will mostly likely differ, given that state legislative elections in South Kordofan have been postponed (see below).
- Elections will occur in South Kordofan state at the executive levels (presidential and national assembly), but the gubernatorial and state legislative elections will be delayed until another census is conducted in the state with the participation of the SPLM, who boycotted the 2008 census in South Kordofan.
- The South Sudan Referendum Commission will be constituted and its members announced in a decree issued by the presidency “soon.” At the IGAD summit in Nairobi on March 8 and 9, the parties agreed to establish the referendum commission by May.
- The discussion of “post-referendum arrangements” will be agreed to as soon as possible, and the NCP will present the members of their negotiation team soon. The SPLM has already created a “referendum taskforce” to address these issues.
- On North-South border demarcation, the two parties will begin demarcating the agreed-upon sections of the 2,100 kilometer border. Five areas spanning substantial swathes of border territory across four southern states remain disputed, and these areas will be referred to the High Executive Political Committee lead by Vice President Riek Machar (of the South) and Vice President Ali Osman Taha (of the North.) The presidency ordered the North-South Technical Ad Hoc Committee to present its report on the disputed areas to the presidency in two months.

Last month's agreements follow on the heels of a key agreement reached in December 2009 over a set of laws related to the two referenda: one for the South and one for the still-contested border region of Abyei. Protracted, and at times halting, negotiations between the Sudanese parties, facilitated by U.S. Special Envoy Major General Scott Gration over the course of several months, did not yield outcomes acceptable to both parties. When the NCP and SPLM met in bilateral discussions in Khartoum in early December, the parties managed to resolve their differences over several key pieces of legislation, but not without firmly establishing that a small cadre of high-level elites in both parties would be decisive in the ongoing discussions. While it is often commonplace for high-level negotiations to be handled by such small groups, the lack of broader social buy-in for these deals from the populations of both North and South Sudan may prove problematic if citizens feel these closed door deals do not reflect the popular will.



Bashir and Kiir together in an elections poster emblazoned with the ruling National Congress Party's logo and the phrase "sawa sawa," which means "together" in colloquial Arabic and "okay" in Swahili.

Both sides made compromises in order to end the deadlock, but—in particular for the SPLM—this came at the cost of upholding its purported commitment to the CPA's cornerstone: democratic transformation. An insider at the December bilateral meetings indicated that the SPLM viewed itself as being caught between a rock and a hard place on the issue of the reform of the notorious National Security law, which will have a direct impact on the security climate in which the elections and referenda will occur. The SPLM wanted the security law changed, but wanted to pass the southern and Abyei referenda laws even more. The NCP, viewing the repressive security organs as a cornerstone of its hold on power, was unwilling to budge and calculated that the SPLM would place its desire for independence above reform. The failure of the SPLM to secure concessions on the security law also underscores its continuing struggle to make common cause with northern opposition groups in areas where their interests align.

What it means

Diplomatically speaking, the recent flurry of deals is a positive step; the parties are making progress toward resolving issues that cannot be ignored if the peace agreement is to remain intact in the run-up to the national elections and the South's referendum in 2011. But as a keen Sudan observer recently noted, "It's late in the CPA, but early in the game." In other words, the current environment remains incredibly fluid, and anything could happen before the expiration date on the CPA's official "interim period" at the end of July 2011.

The central aim of the negotiations driven by Vice Presidents Riek Machar and Ali Osman Taha that occurred in the run-up to the presidential meeting in Khartoum was to resolve the heated dispute between the NCP and the SPLM over the 2008 census. The SPLM rejected the census results that put their share of Sudan's population (39 million) at just 21 percent, maintaining that southerners make up one-third of Sudan's overall population. Per the CPA, the census was

intended to determine the percentages of representation in the National Assembly for each region, thus apportioning the number of legislative seats the North and the South would receive during elections. The SPLM publicly stated their concern that the census results would give the North an effective supermajority, allowing the NCP to push through constitutional changes while effectively removing the SPLM's veto power. Such a supermajority could alter legislation related to the southern referendum relatively easily.

While the SPLM was driven by a desire to maintain a significant bloc in the parliament, the NCP for its part has been eager to see the national elections move forward and avoid a census dispute derailing that ballot. This stems from the fact that the NCP sees the national election as an important moment to try and make President Bashir appear more legitimate and help fend of pressure from the war crimes and crimes against humanity charges pending against him with the International Criminal Court.

Ultimately, it made sense for the NCP to cede to the South's concerns by awarding the additional parliamentary seats, in no small part because the National Assembly is unlikely to exist in its current construction following the southern referendum next year. This gave the NCP the opportunity to appear conciliatory without actually having to reduce their hold on power while in turn granting them a guarantee from the SPLM that they would not boycott the polls.

The decision to postpone all but the executive-level polls in South Kordofan was a boon for the SPLM, which could not accept the results of the census in that state given the allegations of rigging and procedural errors that delivered the population of a state in the heart of the Nuba mountains to the North (and, according to the SPLM, drastically undercut the population in SPLM-controlled areas of South Kordofan, such as the town of Kauda). At the same time, the NCP gained by appearing conciliatory on this issue—while simultaneously reducing the likelihood of a messy political contest that would likely have required some equally messy tactics during the polls by Khartoum. The NCP has spent significant state resources on its campaign efforts amid a clear realization that the regime faces a series of restless existential threats to its hold on power: tensions in Darfur, an array of northern opposition groups, international opprobrium for war crimes, and southern secession. Not one of those forces in isolation would seem sufficient to dislodge the NCP from power, but taken collectively it is easy to understand why the NCP is investing heavily in elections even as it ensures they are not free and fair.

Given the calculations of the parties in these negotiations, it is clear that agreements were reached on the basis of pragmatism, demonstrating that on certain issues the NCP and SPLM can and are willing to accommodate each other in order to preserve their overall objectives.

However, despite the recent progress, optimism should remain quite measured. These agreements did not resolve numerous other big-ticket items that remain on the CPA agenda, notably the final decision on and demarcation of the North-South border and revenue sharing. Although the parties recommitted themselves to “immediately commence the negotiations on postreferendum arrangements” at the IGAD summit in Kenya, the reality in Sudan is that the



SPLM Presidential candidate Yasir Arman, a northern Muslim standing with the party started as a movement of southern rebels fighting the Khartoum regime, appeals to Southerners with a photo of himself with their former leader and revered hero, the late Dr. John Garang.

lion's share of these discussions will not occur until the eleventh hour, when both the NCP and the SPLM are under pressure to make a deal. Perhaps most importantly, it is still unclear whether the NCP as a party is fundamentally willing to accept southern independence, or if the party will again resort to strong-armed tactics to avoid that reality.

It is urgently in the interest of the international community to ensure that discussions on the issues most likely to trigger a return to North-South war are addressed sooner rather than later. Without a coordinated international effort aimed at ensuring the timeliness of negotiations, one or both of the parties could use a delay in discussions to their advantage in the next year. For example, Khartoum could illicitly stoke unrest in the South during and after the elections to make the case that the southern

Sudan is fundamentally ungovernable; some parties, the GoSS in Juba in particular, claim that Khartoum's tried-and-true tactic of "war by proxy" was behind the continuing sharp uptick in violence in the South. Alternately, the SPLM could drag its heels on discussion of citizenship arrangements following the referendum for fear of causing the residency requirements for the southern referendum to be unfavorably constricted. In any case, both parties face profound concerns related to the outcome of the referendum and final resolution of any issues surrounding it will not come easily, especially prior to the southern vote next year. The fact that the positions of the international community toward Sudan remain poorly coordinated and designed at this late hour could well spell trouble ahead.

An important takeaway from the recent presidential-level negotiations is that the precedent of narrowly conceived deals between the NCP and the SPLM will likely continue. The tragedy is that future agreements are unlikely to change the status quo for everyday Sudanese, whether he or she lives in northern Sudan or in a new state in the South. Democratic transformation of Sudan—the hope of the 2005 agreement that ended decades of war between the North and South—has indeed been lost, or rather stolen, from the people of Sudan, by their leaders. The various trials and tribulations of Sudan will generate considerable heat, and hopefully some light, in the days and months ahead. But the risk of widespread violence remains acute, and the international community oddly divided and distracted at a time when genuine crisis prevention is needed more than ever.



In a banner hung on the fence of a hospital in Juba, the National Congress Party's campaign message to southerners is clear: "we signed the CPA, and without your northern 'peace partner' in power, the CPA—and your referendum—cannot hold."