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SUDAN: OPPORTUNITY IN THE MIDST OF CRISIS

By John Prendergast and Colin Thomas-Jensen

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As the United Nations General Assembly meets this week in New York, the crisis in Sudan is front and center on the agenda. Following the International Criminal Court, or ICC, chief prosecutor's request for an arrest warrant against Sudanese President Omar al-Bashir, the Sudanese government launched a diplomatic offensive to pressure the United Nations Security Council to suspend the ICC investigation. The African Union and Arab League have lined up in support of Khartoum's position, and even ICC supporters such as France and the United Kingdom have suggested that holding war criminals to account in Darfur might derail efforts to end the crisis. They couldn't be more wrong.¹

The fact is, the ICC's request for an indictment creates a new opening for peace, the first of three significant opportunities that the international community must urgently seize. With the ICC's move, President Bashir and his government are finally confronting real consequences for their actions, consequences that go well beyond the harsh rhetoric and empty threats that have characterized the world's response since 2003. This time it is different because the threat of an arrest warrant is potent enough to inform the calculations of a government that is as pragmatic as it is reprehensible. The second opportunity is the renewed prospect of an inclusive peace process for Darfur. The third is a drive toward national elections in 2009 and a self-determination referendum for southern Sudan in 2011, which will concentrate Sudanese and international actors on implementation of the Comprehensive Peace Agreement, or CPA.

Meanwhile, the status quo in Sudan remains disastrous. It is beyond the pale that governments around the world are pressing to suspend the ICC

case while Bashir's government attacks international peacekeepers and, in yet another perverse twist, mounts a new offensive strategy centered on direct military attacks against the desolate camps that are home to Darfur's displaced civilians.² Citing increased insecurity, the U.N. World Food Program recently announced that it could halt food shipments to some areas of Darfur just when displaced persons are most in need.³ U.N. member states continue to sell sophisticated weaponry to the Sudanese government, whose forces have recently launched a new offensive against Darfur's rebels.⁴ And the CPA remains under serious duress, with profound implications for the future of Sudan's very existence as a state.

Circumstances are dire, but deep crises can present distinct opportunities. With both Senator Barack Obama (D-IL) and Senator John McCain (R-AZ) likely to pursue a more aggressive policy toward Khartoum than President George W. Bush, the Sudanese government has a new incentive to resolve the crisis.⁵ In the waning days of the Bush administration and during the transition to a new government, the United States must demonstrate leadership and clarity of purpose to leverage these opportunities into genuine progress toward democratic transformation and sustainable peace. The grim alternative is a destructive new phase in Sudan's civil wars.

Opportunity One— An injection of real leverage

The request for a criminal indictment of President Bashir gives the United States unprecedented leverage over the Sudanese government and, potentially, Darfur's rebel groups.

1 See the ENOUGH Strategy Paper by John Norris, David Sullivan, and John Prendergast, "[The Merits of Justice](#)," July 14, 2008.

2 Lydia Polgreen, "[Dozens are Killed in Raid on Darfur Camp](#)," *The New York Times*, August 25, 2008.

3 Andrew Heavens, "[U.N. threatens to halt Darfur food aid over attacks](#)," Reuters, September 7, 2008.

4 See "[UN relief chief speaks out against renewed violence in Darfur](#)," UN News Center, September 10, 2008.

5 See Senators John McCain (R-AZ) and Barack Obama (D-IL) answer questions about Sudan in this joint ENOUGH, Save Darfur Coalition, and Genocide Intervention Network [questionnaire](#).

Article 16 of the Rome Statute, the charter that established and governs the ICC, enables the Security Council to suspend an ICC investigation on a one-year renewable basis—*if such a move is deemed in the interest of peace*. The Sudanese government's preoccupation with the ICC charges indicates that Bashir and his inner circle view international justice as a serious threat, and the actions of Chief Prosecutor Luis Moreno Ocampo have given Bashir a vested interest in reaching a peace deal in Darfur, possibly for the first time since the crisis began. Recent history makes clear that Khartoum changes its behavior only when faced with tangible penalties. In three instances—Khartoum's cooperation in the "war on terror," its suspension of support for slave-raiding, and its willingness to negotiate an end to the war in southern Sudan—the regime shifted policy because its diplomatic adversaries drew a line in the sand.⁶

The full-court press by Sudan and its allies in the African Union and Arab League to suspend the investigation has been accompanied by weak knees in Paris and London, placing the United States firmly in the driver's seat at the United Nations Security Council. In late August, U.S. diplomats met in London with their British and French counterparts and sent an unambiguous message that, absent significant behavior change in Khartoum, the United States would block an Article 16 resolution in the Security Council.⁷

France and the United Kingdom are not opposed to international justice per se. Rather, their willingness to consider Article 16 is borne out of a fear that Sudan's diplomatic strategy could strike a blow against international justice *if* (and it remains a big *if*) Arab and African nations react to an indictment by withdrawing from the ICC Charter. Khartoum dispatched envoys around the globe to lobby leaders in a variety of fora—from regional

bodies like the African Union and Arab League to this week's General Assembly—in favor of Article 16 suspension. And it is working to a degree: AU Chief and Tanzanian President Jakaya Kikwete recently traveled to Khartoum to express the AU's support for Article 16. As disillusioning as it is to see the president of Tanzania—which invaded Uganda in 1979 to halt Idi Amin's reign of terror—lobbying for an accused war criminal, the deafening silence from the ICC's main backers in Europe has amplified boisterous opposition by some Arab and African leaders. As a permanent member of the Security Council, it is up to the United States to set clear and non-negotiable benchmarks that the government of Sudan must meet prior to any consideration of Article 16. These should include a peace agreement for Darfur, dismantling government-backed militias, unrestricted deployment of a more effective peacekeeping force to Darfur, and full implementation of the CPA. To date, the Sudanese government has made no credible progress on these major benchmarks.

Khartoum also appeared to have rallied internal support against the ICC following the chief prosecutor's move and formed a "crisis committee" to deal with the ICC. However, cracks are beginning to show. One member of the crisis committee, Sudanese Foreign Minister Deng Alor, argues that the ICC's move is a good thing for Sudan: "[The ICC] is a healthy thing, because for the first time it is generating a serious, real national debate. Until now, it has been difficult to say things against the ruling [party]."⁸ Alor is a member of the Southern People's Liberation Movement, or SPLM, the ruling National Congress Party's, or NCP's, partner in the Government of National Unity. Senior NCP officials have reacted angrily to Alor's outspokenness, but Alor insists that he is merely saying what many non-NCP ministers are afraid to say.

6 See ENOUGH Strategy Paper by John Prendergast, "[The Answer to Darfur](#)," March 2007.

7 ENOUGH discussions with U.S. officials, August 2008.

8 Katie Glassborow, "[Khartoum Must Engage with ICC—Foreign Minister](#)," Institute for War and Peace Reporting, September 8, 2008.

While Chief Prosecutor Ocampo presented a public case against Bashir, he also may have presented additional confidential cases against some of Bashir's henchmen, such as his top adviser Nafie Ali Nafie, his security chief Salah Gosh, his defense minister Abdel-Rahim Hussein, and Sudan's Second Vice President, Ali Osman Taha. The precedent exists: The Court issued sealed arrest warrants against Lord's Resistance Army leader Joseph Kony in Uganda and Congolese rebel and former Vice President Jean-Pierre Bemba, among others. The possibility that other warrants could be (or perhaps have already been) issued will only further focus individuals within the ruling party on steps it must take to have the investigation suspended or calculate how best to save their own skins. NCP ministers have begun to express their anger: Several ministers resigned following the recent attack on the Kalma refugee camp by government forces.⁹

Leaders of the Justice and Equality Movement, or JEM, and factions of the Sudan Liberation Movement, or SLM, have applauded the move to bring charges against Bashir, but the ICC is rightly not taking sides. Chief Prosecutor Ocampo has stated that he will prosecute rebel commanders for attacks against AU peacekeepers at Haskanita in 2007. By putting the rebels on notice, Ocampo has created an additional point of influence. There is a precedent in this respect as well. In Uganda, the ICC's arrest warrants against rebel leader Joseph Kony and his lieutenants were a decisive factor in pushing Kony into direct negotiations with the Ugandan government. Although Darfur rebel leaders will likely scoff at the notion of negotiating with an accused war criminal such as Bashir, they might reconsider if the alternative is sharing a cell with him in The Hague.

Opportunity Two— A new Darfur peace process

The final demise of the Darfur Peace Agreement, a new joint mediator for Darfur, and the coalescence of Darfur Diaspora and civil society around a clear set of demands pave the way for an inclusive peace process.

The Security Council is consumed with the possibility of an ICC arrest warrant for President Bashir and the lagging pace of UNAMID deployment, but the key to lasting peace in Darfur is an inclusive peace agreement that ends the conflict and allows displaced persons to return safely to their villages and rebuild their lives. Yet at a meeting of former U.S. Secretaries of State last week in Washington, D.C., our most senior diplomats sparred over the U.S. obligation to intervene militarily in Darfur and, given deployments to Iraq and Afghanistan, our ability to do so. Scant mention of the need for political talks. Largely neglected by the council, the Darfur peace process is in shambles.

Negotiations have been stalled for months for a number of reasons, not the least of which is the United States' stubborn insistence that the Darfur Peace Agreement, or DPA, is the road map for peace in Darfur.¹⁰ As ENOUGH has consistently argued, the DPA is inadequate, incomplete, and cannot bring lasting peace to Darfur.¹¹ Only one rebel faction—the SLA group led by Minni Arko Minnawi—signed the deal. This accelerated the splintering of the non-signatory rebel factions along ethnic lines and pushed the conflict in a dangerous new direction. While the armed groups multiplied and reconfigured themselves, Khartoum's allied militias felt betrayed and began fighting each other over the spoils of war. The intercommunal violence and anarchic conditions

⁹ See "Darfur officials resign in protest over refugee camp massacre," *Sudan Tribune*, August 27, 2008

¹⁰ For example, when the Sudanese government attacked civilians in Kalma IDP camp, the U.S. State Department issued a statement expressing its "concern" and reminding Khartoum of "its commitment to peace under the Darfur Peace Agreement." See the full text of the August 25, 2008 statement at <http://www.state.gov/r/pa/prs/ps/2008/aug/108887.htm>.

¹¹ See the joint ENOUGH-Save Darfur Coalition Strategy Paper, "Creating a Peace to Keep in Darfur," re-released on May 14, 2008.

that followed played directly into Khartoum's hands, affording the regime plausible deniability while Darfur "destroyed itself."¹² According to the United Nations, 830,000 civilians have been displaced since the DPA was signed on May 5, 2006.

Even if all parties had signed, the DPA never had a chance because the pressing concerns of the people of Darfur—notably dismantling the Janjaweed militias—were not adequately addressed. However, the DPA's international backers kept it on life support. The United States, United Kingdom, and African Union all sent high-level envoys to hammer home a deal between the government and Minnawi, who later visited with President George W. Bush at the White House while the State Department trumpeted the DPA as an end to the war. As post-DPA violence escalated, the United States, the African Union, and the Security Council continued to call for implementation of an agreement that was plainly not implementable. Worse, the DPA severely hamstrung peacemaking efforts, which were largely aimed at cajoling the rebels to sign a flawed deal they had already rejected.

Now it appears that Minnawi is preparing to vacate his position as an advisor to President Bashir and formally withdraw from the DPA. In a phone interview with ENOUGH on September 10, Minnawi complained bitterly about the targeting of his forces during the government offensive in Darfur and expressed anger and frustration over the lack of implementation of the DPA. He has spent several weeks in Darfur consulting with other rebel factions, and appears ready to make a formal political alliance with other SLA factions and, perhaps, military cooperation with JEM. As the sole rebel signatory, Minnawi's departure would be the final nail in the DPA's coffin and force the international community to get fully behind a more inclusive new process.

With the inadequacies of peace efforts so completely exposed, the United Nations and African Union had no choice but to take action. In July, Burkina Faso Foreign Minister Djibril Bassolé took over as the single mediator for the Darfur peace talks. Bassolé is an experienced negotiator—most recently helping to broker a 2007 peace agreement in Cote d'Ivoire—and early signs suggest that he is taking a deliberate and realistic approach. At the same time, Bassolé speaks neither English nor Arabic, and the African Union and United Nations have inexplicably put their own mediator at an immediate disadvantage. Undaunted, Bassolé has taken English classes, and with proper support from the international community—a full-time team with expertise in all of the relevant issues under negotiation, backing from a group of countries with leverage on the government and the rebels, and strong support from the Security Council—he could construct a new negotiations process that has a real chance of success.¹³

The conventional wisdom about Darfur is that the splintering of rebel factions has resulted in a vacuum of political authority and the absence of a viable Darfuri interlocutor for peace negotiations. However, this analysis wrongly assumes the rebels to be Darfur's only representatives. Indeed, the many failed attempts to negotiate a settlement to the crisis all lacked inputs from one of the most important stakeholder groups: the people of Darfur. Darfurians have responded, and in recent months the efforts of civil society groups inside Sudan and in the Diaspora have begun to bear fruit. In the United States, a wider umbrella of Darfuri organizations that calls itself the Darfur Leadership Network, or DLN, has worked with several organizations (under the auspices of the Save Darfur Coalition) to establish a platform that, if adopted by a broad group of stakeholders, will consolidate these efforts around a single road map for peace.¹⁴

12 See the ENOUGH Strategy Paper by John Prendergast and Colin Thomas-Jensen, "Echoes of Genocide in Darfur and Eastern Chad," September 5, 2007.

13 See the joint ENOUGH and Save Darfur Coalition memo to Ambassador Djibril Bassolé, available at http://www.enoughproject.org/reports/memo_DBassole.

14 In late July, a group of Darfurians from Sudan, the United States, Europe, and the Middle East convened a meeting in the Tanzanian capital Dar-es-Salaam. These groups are working to articulate the demands of the people of Darfur and liaise directly with rebel groups to establish a common negotiating platform, leverage their collective strength, and to push for a peace process that will end the misery of the beleaguered region. See the group's statement at <http://www.darfurcentre.ch/Dar%20es%20Salaam%20Declaration%20on%20Reenergizing%20Peace%20in%20Darfur.pdf>.

Bassolé and his team can succeed where the CPA process failed by working closely with the DLN and other groups to lay the ground work for inclusive talks. While the new leverage provided by the ICC could compel the government to negotiate, and potential indictments against rebel leaders (along with efforts to reduce Chadian support) could push the rebels to the table, all sides need to see a much more focused process than previous efforts or they will not take it seriously. It is up to the Security Council and the countries with the most influence on the parties—the United States, United Kingdom, France, and China—to provide strong support for new negotiations, possibly through a contact group.

Opportunity Three—National elections and southern self-determination

Two landmark events—national elections in 2009 and a southern referendum on independence in 2011—focus Sudanese and international actors on implementation of the CPA and achieving lasting peace.

In the immediate aftermath of the ICC warrant request, President Bashir rallied to his defense many disparate elements from inside and outside Sudan. From some Sudanese opposition parties, to reliable protectors like China and the Arab League, to unfortunate backers Rwandan President Paul Kagame and outgoing South African President Thabo Mbeki—all express support for a suspension of the ICC investigation through Article 16. But this wagon-circling will not last long. By establishing a timetable for elections, the CPA seeks to give Sudanese citizens more control in how their country is governed. National elections are scheduled for 2009, when Sudanese will vote for the Presidency of the Government of National Unity, the Presidency of the Government of Southern Sudan, the National Assembly in Khartoum, the Southern Sudan Legislative Assembly in Juba, 25 state legislatures, and 25

state governors. In 2011, the CPA allows southern Sudanese to vote on whether to remain part of a united Sudan, or pursue self-determination. The question for southern Sudan is a simple one: *Why would we want to remain as part of Sudan?* Khartoum has yet to provide a compelling answer. However, there is the real possibility that Khartoum would launch another war to avoid letting southern Sudan exercise its peace agreement rights to vote for secession. With the clock ticking, all actors—Sudanese and international—have strong motivations to prevent this nightmare scenario.

Sudan's most powerful backer, China, has perhaps the greatest incentive to avoid a wider war. A sober analysis of China's economic interests in Sudan leads to an inevitable conclusion: The cost of a full-scale war in Sudan cannot justify China's unwavering support for the National Congress Party. The bulk of China's \$8 billion investment in Sudan's oil industry is concentrated in southern Sudan, and rebels there will almost certainly target Chinese oil installations should there be a return to war. Additionally, the Chinese-built oil pipeline runs through the Nuba Mountains, Kordofan, and eastern Sudan—all potential flashpoints. Seen in this light, China can only protect its investments by working to avoid a return to war and to encourage full implementation of the CPA. If pragmatic heads prevail in Beijing, an unlikely partnership between China and the United States could be in the offing.¹⁵

The parties and the guarantors to the CPA promised to "make unity attractive" for all Sudanese, but the deeply engrained mistrust, the death of SPLM leader John Garang, the NCP's response to Darfur, and slow implementation of the CPA have done just the opposite. Opinion polling indicates that southern Sudanese will vote overwhelmingly for independence if given the chance in 2011.¹⁶ Nothing concentrates the minds of diplomats like the possibility of a new state, and it is clear that

15 See the ENOUGH Strategy Paper "Blowback: How China Torpedoes its Investments," August 2008.

16 Read the results of focus groups by the [National Democratic Institute](#) and the ENOUGH Strategy Paper by John Prendergast and Roger Winter, "Democracy: A Key to Peace in Sudan," January 9, 2008.

the international community is now on track for a crisis in Sudan even larger than that of Darfur. A comprehensive approach to power-sharing remains the only way the international community is likely to avoid a prolonged and bloody war that will engulf most of Sudan over time. The CPA guarantees southerners the right to independence from the North, and the international community has an obligation to support the will of the southern Sudanese. At the same time, new states seldom emerge without a period of turbulence, or, in the nearby case of Eritrea, conflict with its neighbors. Southern Sudan would likely be no exception, and international obligations extend well after the referendum to assist southern Sudan in addressing multiple challenges. The South is desperately poor, landlocked, and underdeveloped, with considerable governance issues. Adding to its development deficit, southern Sudan abuts three of the most volatile conflict systems in Africa—the Great Lakes, the Horn of Africa, and the Chad basin—and its ability to manage relations with neighbors (least of all the North) will be tested.

Within Sudan, Salva Kiir, the President of South Sudan and First Vice President in the Government of National Unity, is reserving the right to challenge Bashir for the presidency in 2009. This could further destabilize the already fragile partnership that the CPA established between Kiir's SPLM and Bashir's NCP.¹⁷ As the election nears, the SPLM's strategists will almost certainly seek alliances with northern opposition parties.¹⁸ In response to Kiir's candidacy, the NCP has begun to co-opt and intimidate northern opposition leaders. Using its monopoly over commercial interests, the NCP has already pressured 70 leaders of the middle-class Democratic

Unionist Party to rally behind Bashir. It appears also that the NCP has co-opted Sadig Al-Mahdi, Sudan's former prime minister and head of the Umma Party, by framing the election as a battle between the traditional Arab-Islamic base and the Afro-secular majority of the country. Presidential advisor Nafie Ali Nafie is unambiguous about NCP strategy: "It is legitimate to pillage from other parties. It is an old practice of all political parties around the world."¹⁹

Yet while the NCP may succeed in capturing endorsements from the opposition political class, it will have a much more difficult time convincing opposition rank-and-file to re-elect Bashir. And the possibility that Bashir might be an indicted war criminal on election day could further isolate him, as Sudanese politicians attempt to disassociate themselves. Other cracks in the regime are beginning to show. While JEM's lightning attack in May on the Khartoum suburb Omdurman may have been of limited military significance, it was a severe blow to the NCP's authority and credibility. The regime's bedrock has traditionally been a labyrinthine network of security services; Sudanese live in fear of the domestic spy agencies, secret police, and ghost houses. In taking the fight directly to the capital, JEM exposed holes in the regime's defenses and alarmed many Sudanese, particularly major players within the ruling party.²⁰

The Sudanese government is strong enough militarily to retain power in the short term, but this reputational damage cannot be undone. It is unlikely that JEM could have made it undetected from Darfur to Khartoum without inside help, and the regime was so paranoid about mutiny that it held the army in its barracks and used its secret

17 The SPLM political bureau chose to nominate Kiir shortly after the conclusion of the party's conference in May. However, Kiir announced his candidacy just two days after the ICC filed their request to indict Bashir. Dr. Ghazi Salahadeen, an NCP hardliner, stated that the SPLM's decision to nominate Kiir was driven by the chief prosecutor's move against the president: "We can not read the announcement by the SPLM to nominate Kiir for presidential elections separate from these developments." See "Sudanese official hints Kiir run for presidency a result of ICC Move," *Sudan Tribune*, August 17, 2008.

18 Mubarak Al Mahdi, leader of the Umma Reform and Renewal Party, has already welcomed Kiir's candidacy.

19 Quoted on www.sudanile.com.

20 JEM's attack raised the stakes in the proxy war between Sudan and Chad. JEM maintains close ties to the Chadian government, which has provided material support and safe haven for the rebels in exchange for JEM's help in defending Chad from rebels backed by Khartoum. Recent moves by the Chadian and Sudanese governments to normalize their relations must be taken with a grain of salt; previous such announcements have not forestalled new cross-border attacks. However, JEM's escalation could be a catalyst for a genuine peace process to end a proxy war that has had devastating consequences for civilians on both sides of the border. For more on the Sudan-Chad proxy war, see the ENOUGH Strategy Paper by Colin Thomas-Jensen, "Nasty Neighbors," April 22, 2008.

police to fend off the attack. With JEM and other Darfur rebel factions reportedly gearing up for another run at the capital in the coming months, Bashir and his lieutenants will come under increasing pressure from within Khartoum and from its international supporters to negotiate a solution.

CONCLUSION

The Bush administration is entering lame duck territory, but the Sudanese government is acutely aware that neither Senator Barack Obama (D-IL) nor Senator John McCain (R-AZ) will take a softer line on Darfur or the issue of southern Sudan.

Quite the opposite, both McCain and Obama have advocated NATO-enforcement of a no-fly zone in Darfur, and Senator McCain has discussed the right of both southern Sudan and Darfur to self-determination. In addition, McCain has raised the possibility of providing southern Sudan with air defense systems if it splits from northern Sudan.²¹ In short, Sudan's government has more incentive now to make a peace deal than probably ever before. If events continue on the current track, both the Sudanese government and the international community are headed for an escalating military confrontation. The huge opportunities for peace outlined above must be acted upon before it is too late for millions of Sudanese people.

²¹ Read the two candidates answer questions about Sudan on the ENOUGH Action Fund website: http://www.enoughactionfund.org/files/Obama_McCain_questionsnaire.pdf.



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1225 Eye Street, NW, Suite 307
Washington, DC 20005
Phone: 202-682-1611 Fax: 202-682-6140
www.enoughproject.org