

TOM LANTOS HUMAN RIGHTS COMMISSION

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Testimony of Ezekiel Lol Gatkuoth, Head of the Government of Southern Sudan Mission to the United States

Honorable Co-Chairman Frank R. Wolf, Honorable Co-Chairman James P. McGovern, and Members of Tom Lantos Human Rights Commission, thank you for organizing this Hearing at this important juncture in Sudan's history and in the quest for peace and stability through the full implementation of the Comprehensive Peace Agreement (CPA), and thank you for inviting my testimony.

Since its inception in 1983, the SPLM Vision was and continues to be that of a new Sudan built on a new basis. A Sudan unlike the old Sudan, that is based on equal citizenship regardless of race, religion, ethnicity or gender, where all citizens share rights to equitable political, social, economic and cultural development. A Sudan built on the historical diversity of its peoples and experiences, and one that accords its citizens the right to self-determination.

This vision was and is still a vision of transformation, for after 42 years of war in a span of 54 years, the fact remains that the only way for Sudan to be at peace with itself, the region and the world, is by the democratic transformation of its systems of governance, and the steering of its political and cultural dispensation towards acceptance of its realities and the diversity of its people.

This vision of transformation is in large part embodied in the 2005 accord, the CPA. The gap that exists between what was envisaged by the SPLM and what was ultimately agreed upon is mainly because of concessions made in the spirit of compromise that governs mediated negotiations of peace settlements. However, the main drive towards the democratic transformation of Sudan remains intact. Its elements are enshrined in the conditions of the implementation of the CPA and consequently in the Interim National Constitution of the Sudan and the provisions of the CPA implemented thus far.

The National Congress Party / National Islamic Front (NCP/NIF) by signing the CPA, had committed itself to: the principle of peace through the democratic transformation of the Sudanese Government and State apparatus at all levels, even through a general elections; the right of self-determination for the people of Southern Sudan and Abyei; and the right to popular consultation for the people of Nuba Mountains and Blue Nile.

However, four years into the interim period, the deliberate non-compliant and obstructionist posture of the NCP with regards to some of the CPA's most transformative and significant provisions represent a great obstacle to the achievement of peace, and is a dangerous abandonment of the partnership with the SPLM that requires a shared commitment to the spirit and letter of the CPA. This is a perilous trend that makes the threat of war – an all encompassing war is likely to ignite throughout the marginalized areas of Sudan, a much more realistic possibility than that of the promise of peace through transformation.

I will not attempt to list out all the unimplemented provisions of the CPA, but rather refer you to the Mid-Term Evaluation Report of the Assessment and Evaluation Commission (AEC) which chronicles about 35 recommendations for the parties (the NCP and the SPLM) to be in compliance with the CPA. It is worthy to mention here, however, the AEC highlighted the following as “critical for the sustainability of the CPA and unity arrangements” – the resolution of Abyei; the North-South Border demarcation; preparations for the 2010 elections and democratic transition; preparation for the 2011 Referendum, and Post Referendum; and Security Sector Reform, mainly Joint Integrated Units (JIUs) and Disarmament, Demobilization and Reintegration (DDR).

Human rights abuses during the Sudanese Civil war are documented and can be summed up in mentioning the 2.5 million dead and 5 million displaced through direct bombardment and military action, and mainly through the proxy militias used by the government to kill, rape and displace civilians, and who also employed tactics such as the deliberate poisoning of water sources and burning of crops. In addition to that, there were the countless inhumane methods used by the State and its proxies to discriminate against and exploit those who are forced into displacement residing in other parts of the country, and strip them from the citizenship rights, basic human rights and dignity.

It was the belief of the SPLM that human rights abuses would subside after the signing of the CPA, because of the countless measures it provides for the safeguarding of the rights of all the citizens of Sudan. However, because of the control the NCP continues to refuse to relinquish over the state apparatus, especially the national security organs, and its refusal to allow the liberalization of the National Security Act and the removal of Media Censorship, many citizens have been subjected to unlawful harassment, arrest, and or detention for long periods of time without due process and for reasons of political suppression and disregard to freedoms of speech and assembly. Moreover, the rights of Non-Muslims in the capital city, especially Non-Muslim women who don't comply with the Muslim dress code, is continuously curtailed and abused with impunity.

In Southern Sudan, there have been three incidents (of many others) I will mention here, that were in stark violation of the CPA that led to massive loss of life and countless human rights abuses; these are mainly the Malakal Incidents of 2007 and 2009 and the Abyei Incident of May 2008. Firstly, these were as a result of the failure of the DDR, although completed in the South, to hold, mainly because of the continuous rearming of civilians and proxy militias by the NCP, to be deployed within the borders of Southern Sudan to create instability and conflict. Secondly, it is a result of the lack of the integration and joint training of the JIU components of the Sudanese Armed Forces (SAF) and the (Sudanese People's Liberation Army (SPLA), to become the nucleus of the future Army of a united Sudan, as envisaged by the CPA.

The JIUs were to be funded by the Government of National Unity (GONU), but to date, no funding has been disbursed for that purpose. Furthermore, the SAF component of the JIUs is problematic because it is mainly made up of militias used by the NCP during the civil war, now usurped into SAF.

In keeping with the dangerous trend of the destabilization of the South, and in an attempt to rally support against the conduct of the referendum, the NCP has intensified its arming of civilians and groups hostile to the Government of Southern Sudan, and especially those hostile to the SPLM to instigate conflict and create instability. There have been prevalent incidents in Southern Sudan, the Nuba Mountains, Blue Nile, and surprisingly in even in Southern Kordofan, leading to confrontation with local law and order agencies, and or armed civilians, and that leads to loss of life.

In regards to Darfur, it is essential that we acknowledge the fact that since peace is indivisible, the conflict in Darfur is in contradiction to the principles of the CPA which is embedded in the Interim National Constitution of Sudan.

There have been considerable human rights abuses, human loss and displacement since the recent Darfur conflict begun in 2003. The people of the United States have to be commended for raising the voices in solidarity with the people of Sudan in Darfur. However, there is a need for all to realize that the conflict in Darfur is a political problem that could only be solved with a political resolution, and the CPA provides the model that would address the root causes of the conflict in Darfur. Additionally, the CPA also provides the instruments of democratic transformation that if there is a cessation of hostilities in Darfur could begin to address the base of the problems of marginalization, i.e. the upcoming elections of 2010.

There is an important link between the CPA and Darfur, the developments in and around the issues of Darfur have political implications for the CPA and the obstruction of the implementation of the CPA leaves no hope for a peaceful resolution to Darfur.

The SPLM and the people of Southern Sudan are in solidarity with the cause and suffering of the Darfuri people. That is why the SPLM is committed to playing the role afforded to it by history and experience to unite the movements of Darfur to a small number that would have a consolidated position for peace in Darfur. We have made considerable progress in this endeavor and are seeking the support of the international community members who are committed to peace in Darfur.

The United States of America, the Trokia (United States, United Kingdom and Norway), the Inter-governmental Agency for Development (IGAD) and other Countries witnessed, engaged in the process negotiations of, and signed as guarantors, the CPA. The United States played a pivotal role especially in the deadlocked issue of Abyei, making it possible for the CPA to be signed. It is important that the international community and the US especially understand that peace in Sudan is of strategic interest to them, because of its regional, continental, and global importance, and because of the implications that resumed conflict would bring to the fore. Peace is indivisible, and war knows no boundaries, and so, the only way for peace to be achieved in Sudan is through the democratic transformation of the country's system of governance, which is possible only through the full implementation of the CPA.

There is a need for the recommitment of the parties to the spirit and letter of the CPA, first by restoring some confidence and trust between themselves as partners by taking good faith measures to address some issue of great concern to the other party; and second by working

towards fulfilling the 'making unity attractive' objective of the CPA through fostering North-South links and projects of development along the North-South Border. As it stands today, unity has not been made 'attractive' for the people of Southern Sudan, and the people of Abyei. According to the National Democratic Institute's (NDI) reports on its focus group research in Southern Sudan and the three areas, it is forecasted that 90% of Southern Sudan would opt for secession, and the people of Nuba Mountains and Blue Nile in overwhelming numbers confuse the right to popular consultation with the right to self-determination.

The upcoming 2010 elections will be a major indicator of the future of Sudan. It is also an opportunity for 'making unity attractive'. Therefore, it is crucial that the two parties commit themselves to the conduct of a free and fair general election on the dates set by the National Elections Commission; and for the National Elections Commission and all of its instruments to be supported and funded to conduct all necessary preparations on a timely fashion, the GONU should fulfill its Elections financial responsibilities per the CPA, and the international community should avail the resources it had pledged for elections support.

The resolution of the census dispute is of paramount importance to the conduct of elections, for which the parties with the help of the international community must work earnestly and expeditiously to reach.

In conclusion, the malady of Sudan since independence is not only that it is a nation state because of a border imposed on its peoples and nations, but also because of an installed government that doesn't reflect its peoples' diversity, represent their aspirations, or serve their interests, nor did it ever attempt to do so. Alternatively, the state discriminated against its newly found citizens in policy and action and chose to suppress their valid claims to equity of political and cultural representation, and socio-economic development, by extreme force and genocidal tactics and wars. Therefore, the process of 'making unity attractive' is important to the spirit of the right to Self-determination reflected in the CPA, because only then will the people of Southern Sudan have two viable choices one of a united Sudan under new basis, and the other of a separate nation-state. It is imperative that the unity that has not been made attractive in the last 4 years of the interim period of the CPA, be made attractive, otherwise, the people of Southern Sudan will have only one option, to opt for secession, choosing to build a new state that would fulfill their quest for a transformed governance system; equity of citizenship, political representation, and socio-economic development; and respect for their basic human rights.

It is imperative that while a serious attempt to 'make unity attractive' is undertaken, the parties to the CPA and the international community led by the United States, IGAD and the Troika commit themselves to the timely conduct of the referendum and to respecting its outcome, whatever it is. It is also important that the parties and the international community envisage the post-referendum challenges and opportunities – especially across the oil and security sectors; political issues like border access right for nomads and seasonal migrants; economic issues like national assets and debts; and international issues like treaties around the Nile water - and begin to set plans to address them.

Sudan is at cross-roads; one road would lead to either a united New Sudan on a new basis, or two democratic nation-states, and another would lead to war and devastation with major regional and international implications.

It is up to the two parties and the Sudanese people to decide what is to become of Sudan and the help and engagement of the international community is crucial during the next few months to come.

Testimony of John Norris, Executive Director of The Enough Project

Thank you, Co-Chairmen McGovern and Wolf and members of this esteemed commission, for the opportunity to testify today. I would like to congratulate both you and your fellow members for focusing a great deal of attention this week on Sudan. I think it is of great importance that the administration hears Congressional concerns on this topic, and that a diversity of views are heard.

The stakes involved right now in Sudan are enormous. President Bashir is a wanted war criminal. A 2011 referendum will determine whether Sudan splits into two countries. Millions of people in Darfur still cannot return to their homes because of fear and violence. The Obama administration's Sudan policy review is still pending, and, if anything, tensions will only continue to rise across all of Sudan with a national election slated for 2010 and the referendum scheduled for 2011. U.S. leadership will be instrumental if the international community hopes to successfully navigate the treacherous days ahead without mounting bloodshed.

The 2005 Comprehensive Peace Agreement was envisioned as a transformational peace deal. At the time, it was hoped that the hard fought agreement would pave the way for genuine power-sharing that would not only allow for rapprochement between North and South Sudan, but also for the development of genuinely inclusive institutions that would make Sudan's population as a whole feel less alienated from Khartoum's exploitative governance. The agreement allowed for the independence referendum in the South, but those who brokered the peace deal hoped that eventuality would not need to come to pass as southerners began to feel that they were part of a more unified whole.

At this juncture, it is clear that the CPA has been far less transformative in practice than on paper and may, in the long view of history, be seen simply as an awkward calm in the storm or an important way station on the path to eventual southern independence and the creation of a new African state. The actions of this Congress and the Obama Administration may well determine how violent and wrenching this historical arc is to become.

Where did the CPA go wrong, and what lessons should we learn from that process? In many ways, it is amazing that so much hope was placed in the CPA to genuinely transform the institutions of the Sudanese state given the concurrent events in Darfur. It is hard to imagine that any government that would so wantonly kill, maim, terrorize and displace its own people in Darfur would willingly act in good faith to share power, resources, and the ballot box with average citizens.

Equally clear, many in the international community failed to see that the CPA was a beginning rather than an end. All peace agreements are hard to reach and even harder to implement. In 2005, concerted international diplomacy and leverage drove both parties over 30 months of tough negotiations to an acceptable deal. International negotiators were not shy about using both incentives and pressures to get across the finish line. Yet this concerted, tough and coordinated international approach largely disappeared when it came to actually implementing the agreement. There were virtually no penalties for non-compliance with the agreement, for missed deadlines, for acting in bad faith, or for undermining the spirit of reconciliation.

The results have been predictable. While some of the key structures detailed in the agreement have been achieved, such as the creation of the Government of Southern Sudan, many of the tough decisions have been put off until the eleventh hour. The people of southern Sudan widely believe that they do not have a place in Sudan and would be better off independent. The ruling National Congress Party, realizing it would not face penalties for undermining the CPA, pushed aside any steps that would have actually allowed for the right of self-expression or organization. Instead of a last ditch option, the independence referendum became the over-arching end game, with both North and South arming themselves for a possible return to direct conflict.

It goes without saying that a return to hot war between North and South would have devastating human costs and implications for regional security and would severely undermine faith in international diplomacy to defuse situations such as these.

The Special Envoy for Sudan, Major General Scott Gration, appeared on the Senate side of this august body earlier today. We certainly welcome the energy with which the special envoy has undertaken his work, and the administration's emphasis on finding a comprehensive solution for Sudan – understanding that the situation in Darfur can not be divorced from considerations of the CPA or powersharing across the country even more broadly. That said, this week's hearings have also made clear that there is considerable disquiet about the administration's approach to Sudan thus far.

These concerns spring from a number of sources. The administration's policy review on Sudan has been slow to see the light of day, leading to suggestions that there are some important differences within the administration on the proper course for Sudan policy. It is my great hope that the end product of the review produces a policy that is consistent with President Obama's own very strong words on the importance of addressing genocide and war crimes, most recently in his speech in Ghana, and which builds on his consistent position on this issue as a senator and presidential candidate.

As my colleague John Prendergast noted yesterday in testimony, the administration has been working assiduously to build international coalitions to isolate North Korea and Iran for their actions, yet this same approach has largely been missing from discussions on Sudan. Sudan has one of the worst human rights records in the world. As we have learned from years of hard, hard experience, if we simply offer incentives to Khartoum, the National Congress Party will carry on with business as usual and the people will suffer dramatically as a result. Do we need to engage with Khartoum? Absolutely. But this engagement must be tough-minded, and must be built around consistent, moral, and international pressure as much as any incentive.

In looking at U.S. diplomacy toward Sudan, I think it is most helpful if we ask ourselves what success would look like, both for the CPA, and for the country as a whole.

'Day After' Understandings. The independence referendum for southern Sudan is a historical event of enormous importance. If handled poorly, tensions surrounding the referendum or its results could plunge Sudan back into a full blown civil war with fatalities even more numerous than we have seen in Darfur. With a large number of southerners supporting independence, it is

likely that any fair ballot would see Sudan split in two, with considerable implications for regional relations and security. Given the already tense relations between North and South, international diplomats will have their hands full keeping the existing peace agreement between the two on track and in responding to the daily fires that will surely mark the period running up to the referendum. However, it is important not simply to make it to the referendum with the existing peace agreement intact and without the resumption of war, but also to have a series of agreements in place for the day after the referendum – on borders, on revenue sharing, on how to treat assets and debts which both North and South might claim, water rights and the many other factors that could precipitate a return to conflict. This will also require keeping the parties on track in the dual processes of implementing the legal ruling on the boundaries of the Abyei region and demarcating the North-South border. Discussions of access to land for populations with diverse needs and livelihoods and planning for mutually beneficial development of oilfields in the contested border region could ease current tensions over border demarcation and generate momentum for further cooperation.

Returns. In Darfur, there is probably no better barometer for the relative success or failure of the international community than the millions of displaced persons and refugees who have been forced to flee from their homes by the government-backed janjaweed militias. Refugees and the displaced vote with their feet: they are almost universally desperate to return to their former homes, *but will only do so if security is sufficient*. To date, the U.N. force on the ground in Darfur has been largely ineffective, there has been no credible effort to disarm the janjaweed, and peace talks for Darfur have moved forward only fitfully. In many cases, the refugees and displaced know full well their lands and villages are still occupied by armed opponents widely responsible for a host of war crimes. Under such conditions it would be madness for these families who have already suffered so much to try to go home, and refugees and the displaced cannot be forced or coerced to return home to fit the hopes of any diplomat. The answer: a far more effective and robust peacekeeping force on the ground (with Khartoum's de facto veto power over UN operations taken away); practical steps to disarm the janjaweed; and a solid peace agreement between the government and rebel forces brokered with international oversight and guarantees.

Power-sharing. Conflict recurs in Sudan because power remains held tightly by a narrow elite in Khartoum at the expense of the country's broader population. The international community will find that until they deal with this essential fact there will always be another Darfur to deal with. Any solution needs to address the problems of Sudan as a whole. National elections are scheduled for 2010, before the 2011 referendum, but expectations for elections to produce more democratic governance are slim. In Darfur, it is virtually impossible to imagine how a free and fair ballot would take place with so many people still driven from their homes and living in acute insecurity. Any lasting peace plan for Sudan, regardless of the future of southern Sudan, needs to incorporate practical steps forward that create a more inclusive Sudan – not in rhetoric, but in practice. The United States and other key actors, operating on a tight timeline, need to lower their expectations for the election and develop a multilateral strategy to press the Government of National Unity—both the North's National Congress Party and the South's Sudan People's Liberation Movement—to enact meaningful reforms regardless of who wins in 2010, revitalize CPA implementation, and establish a framework for talks in Darfur that are consistent with the power-sharing provisions of the CPA.

Accountability. As much as some would like to push accountability for war crimes and crimes against humanity in Sudan aside, to do so would neither be productive nor right. The International Criminal Court has found sufficient evidence against President Bashir of Sudan to accuse him of multiple counts of war crimes and crimes against humanity. He should have the soonest possible opportunity to face those charges in court. With hundreds of thousands dead and millions driven from their homes in Darfur, it is essential that the people of Sudan see justice done. If justice is not part of the solution in Sudan, it probably is not much of a solution at all.

There is ample evidence that international pressure and attention can and does play a key role in keeping the Sudanese parties to their promises. This was affirmed in the aftermath of last week's decision by an independent tribunal in The Hague to re-draw the borders of the oil-rich and contested Abyei region, which also sits astride the equally disputed North-South border within Sudan. In the spring of 2008, 60,000 people fled Abyei as the Khartoum government's forces burned the town to the ground. Many feared violence this year as well. Last week, however, the international community kept close watch on how the decision was received and reactions from both sides was promising. There was a strong United Nations presence on the ground and observers from the European and African Unions, as well as Special Envoy Gration were present. Both the National Congress Party and the Southern People's Liberation Movement promised to abide by the ruling – but it is important for the international community to keep up its focus and not simply think the crisis is resolved because the situation did not blow up on the day of the decision. Indeed, there are already signs that tensions over the decision are lingering.

On balance, the four-and-a-half years-and counting of CPA implementation has been marked by a combination of deliberate intransigence and unintended mistakes and delays from both Sudanese parties, and, until very recently, half-hearted international support. In the few instances that a provision of the agreement has been fully implemented, this progress has come months, even years, after the deadlines set in the CPA. The poor precedents set by piecemeal and stalled implementation of the agreement will be hard to overcome in the last stages of the implementation period. However, the ability of the parties to address the remaining challenges and accomplish the benchmarks outlined by the CPA will ultimately determine whether or not Sudan stays on the path—no matter how rocky—toward democratic transformation. Lastly, I would call on both Congress and the administration to ensure that the protection of civilians is a top priority. It will be a disaster for the people of Sudan and for the international community if peacekeepers on the ground, in both UNMIS and UNAMID, are unable or unwilling to respond to provocations and threats toward civilians in the precarious months ahead.

NOTE: MISSING TESTIMONY OF AMIR OSMAN