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Research Report

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Sudan: Negotiating Southern Independence

High Stakes in the Talks on Post-referendum Arrangements

Wolfram Lacher

In Sudan, all eyes are currently on the preparations for the referendum on southern independence, scheduled for 9 January 2011. The southern government and international actors are expecting a clear vote for independence. Most attention is currently focussed on disputes between the central and southern governments over the referendum itself. Meanwhile, negotiations are taking place behind the scenes on arrangements for the post-referendum era. These negotiations will have a decisive impact on the risk of violent conflict associated with southern secession. Deals could be based on existing interdependencies between the two sides, with external actors backing up such arrangements. Where there are no such interdependencies, external assistance can support compromises between the two sides. Possible instruments include conditional debt relief and a UN mission to monitor security arrangements. Regardless of the referendum's outcome, economic interdependencies provide opportunities for stable north-south relations.

The ruling parties in northern and southern Sudan – Omar al-Bashir's National Congress Party (NCP) and the Sudan People's Liberation Movement (SPLM) – as well as international actors in Sudan currently are almost exclusively focussed on the referendum on southern independence, which is due to conclude the transitional period set out by the 2005 Comprehensive Peace Agreement (CPA). The situation is dire; over the past months, SPLM and NCP leaders have waged a war of words and exchanged accusations, while time is running out for the logistical and administrative prepara-

tions for the referendum. Concerns are growing over whether (and under which conditions) the referendum will take place in January, and whether the NCP-controlled central government will accept its result. The risk of a war of secession would grow significantly if Khartoum attempted seriously to delay or block the vote, or reject its result. The NCP leadership is aware of this, despite the fact that it is undeniably resorting to delaying tactics. Despite all delays to the referendum timetable, the SPLM and external actors remain committed to the January date. The United

States, in particular, has in recent weeks vehemently insisted that the referendum be held as planned and in a transparent manner, and warned of the risk of renewed north-south conflict.

Behind the scenes

It is not surprising that the national and international actors are focussing on the difficult preparations for the referendum. Nevertheless, the almost exclusive focus on the January vote threatens to divert attention away from the negotiations underway between the NCP and SPLM on post-referendum arrangements. Whether the parties are able to progress and strike viable deals in these negotiations is of crucial importance for the referendum and the associated potential for conflict. While doubts had long persisted concerning the NCP's willingness to accept southern secession at all, this is not the case anymore: in the five years during which the south has been controlled by a government that has gradually curbed the influence of the central government, and in many respects has already been acting as a sovereign actor, the NCP has gradually resigned itself to the idea of southern secession. Among other things, this assessment is supported by the fact that Khartoum, though begrudgingly and slowly, eventually implemented the key aspects of the CPA and allowed the agreement to reach its decisive phase, the referendum. For the central government, the costs of preventing secession by force would be prohibitive, such as in the form of deepening international isolation and the emergence of a second front, in addition to Darfur (where the situation would likely deteriorate as a corollary of renewed conflict in the south). Rather, the question now is under which conditions Khartoum is ready to accept southern secession. This is why north-south negotiations are of crucial importance, both for the referendum itself and for the stability (or instability) of relations between the two states in its aftermath. This is the case

regardless of the referendum's outcome – i.e. regardless of whether (as is likely) it leads to southern secession or (in a much less likely scenario) to unity under a federal or confederate structure. Arrangements acceptable to both sides would be even more important in the event of a vote for unity.

North-south negotiations began in July – after the two parties had defined their framework and structure in an agreement signed in June – and have since been taking place behind closed doors, excluding external observers or mediators. The parties may resort to the mediation of the African Union High Level Implementation Panel for Sudan (AUHIP), led by former South African President Thabo Mbeki, or employ the expertise of external consultants, but to date have hardly used these options. The US envoys to Sudan (retired ambassador Princeton Lyman and President Obama's Special Envoy Scott Gration) have no formal role in the negotiations. Little is known about their progress to date – partly because the talks are in their infancy on many points, partly because both parties have largely kept quiet thus far. As both sides and external actors are all occupied with the referendum itself, the talks are unlikely to be well-advanced by the date of the vote (i.e. 9 January 2011, according to the current schedule); moreover, it is questionable whether the two parties will have reached compromises on all key issues by the end of the CPA interim period on 15 July 2011 (when southern independence would become effective). The more protracted the talks are, the more likely is the emergence of conflicts between the two sides or their proxies in the run-up and aftermath of the referendum. Destabilising tactics and proxy warfare (such as through tribal militias and other armed groups) have long been part of both sides' repertoire in negotiations, meaning that the risk of increasing instability is associated not only with the possibility of southern secession as such, but also part of the negotiations themselves.

Contentious points and possible solutions

The negotiations are structured into four areas, each of which is covered by a working group comprising representatives of both parties: Citizenship; Security; Economic, Financial and Natural Resources; as well as International Treaties and Legal Issues. In addition, two issues that are not part of the negotiations in this context are nevertheless of major importance for future north-south relations: the delineation of the common border, and the status of Abyei – a region situated at the border and claimed by both sides.

More specifically, the following issues are on the agenda in the talks:

Oil. During the interim period established by the CPA, revenues from oil produced in the south (which by now represents more than three quarters of total Sudanese production) were shared equally between the central and southern governments. This arrangement was perhaps the single most important factor behind the CPA's success to date, as both sides had a vested financial interest in continuing the agreement. With the conclusion of the interim period, the CPA Wealth Sharing Agreement also ends, but in view of the geopolitical situation, the two sides will need to strike a new arrangement. While the bulk of reserves are in the south, the entire export infrastructure runs through the north to Red Sea ports. Although the central government is in a strong negotiating position in this regard, the situation cannot be described as one-sided southern dependence: oil revenues in the past years represented around 50 per cent of the central government's revenue, and more than 90 per cent of the southern government's income. Therefore, there is an opportunity to establish a mutually beneficial arrangement that could play a similarly stabilising role as its equivalent in the CPA. Such a deal could be based on transit fees or increased stakes for state-owned company Sudapet in the consortia producing oil in the south. Another pos-

sibility would be the continuation of the current wealth-sharing model, with revenue distribution based on the value of oil produced in the south (and the proportion of southern and northern shares likely altered). However, in the absence of total transparency on the amount being produced, such an arrangement could lead to renewed disputes such as those already encountered during the interim period. Agreements on existing contracts and northern capital invested in the southern oilfields will be of lesser importance, but technically and legally more complicated.

The necessity of such an arrangement is clear to both sides, not least because the southern government currently has no other option. The prospects for an alternative export pipeline via Kenya remain uncertain; if at all, construction would be unlikely to begin in less than three years' time. Among other factors, the viability of such a pipeline depends on the reserves found in Block B – whose consortium (led by French oil major Total) has yet to commence exploration – and on the construction of a pipeline from Uganda to the Kenyan coast, which would greatly reduce the costs of a southern Sudanese pipeline. Such a southern export pipeline would fundamentally alter the balance of power between north and south: while bringing the southern government its longed-for financial independence, it could destabilise relations between the two future states. Until then, however, an arrangement between the two sides will be primarily a question of how significant the northern share of southern oil revenue will be, and the method by which it will be calculated. This is not to say that there is no potential for conflict in this regard, given that there is significant divergence regarding the question of how high the northern share should be. Moreover, should either side use the instruments of pressure available in this area – such as a temporary export blockage by the north – this could potentially trigger war.

Citizenship; cross-border migration, land use and trade. The definition of citizenship and the rights of entry and residence of the two future states will have wide-ranging consequences for southern Sudanese living in the north (whose number is hotly contested, but probably ranges between 1.5m and 2m) as well as nomadic and semi-nomadic groups on both sides of the border. At stake are not only the ability to cross the border or residence and work permits, but also the regulation of cross-border trade and access to pastures and water. In the negotiations, the central government could exert pressure by threatening to expel southern Sudanese living in the north following southern independence, which would represent an additional burden for the southern state. While NCP leaders are likely (and in fact, have already begun) to resort to such threats in order to influence the voting behaviour of southern Sudanese in the north, it is much less clear whether the central government would follow through with such threats. On the other hand, southward migration by northern groups is more developed than vice versa, including for cattle-herding Arab nomads (*Baggara*), who are an important constituency for the NCP. This strengthens the southern government's negotiating position. Moreover, the regulation of southerners' residence rights in the north will be linked to those of northern traders in the south.

To increase the chances of a relatively stable transition to southern independence, the central and southern governments would have to build on these existing interdependencies to strengthen their bilateral relations, rather than trying to outdo each other in restricting access for the other state's citizens. Unfortunately, the latter represents an obvious strategy; both sides will see such restrictions as a way of exerting pressure and mobilising support among populations on their own side of the common border. The more complicated – but ultimately more stable – solution would be a 'soft' border. Under this option, there

would be a need for the detailed regulation of northern and southern citizens' rights and duties on the other side of the border, given that unregulated migration and land use would be a recipe for conflict between local groups. Such conflicts would have the potential to widen to wider confrontations with implications for north-south relations. The SPLA continues to harbour suspicions against *Baggara* groups, in particular, due to their role during the civil war.

North-south border. Border delineation is not part of the negotiations on post-referendum as such, given that it should have been completed a long time before the vote. Leading NCP figures have in the past months triggered angry reactions in the SPLM by suggesting that the referendum can not be held before border delineation is completed. At least six sections of the border remain contested, including the oil-producing Heglig area between South Kordofan and Unity states, as well as areas between Western Bahr el-Ghazal and South Darfur states, which are reported to have significant copper and uranium deposits. The two parties' negotiating positions are diametrically opposed on border delineation, and there is a clear risk of violent confrontations, particularly given that the conflicting claims in several cases are based on those of local tribal groups, and associated with land rights. There is a possibility of reducing this risk by dissociating those rights from border delineation. For this to happen, deals on border delineation and land use would have to be struck not only at the national level, but at the local level too. Another important issue (already mentioned above) is the 'softness' of the border. An agreement on an open border with clear rules for cross-border movements would help stabilise north-south relations. An expansion of infrastructure linking the two future states could further bolster such a border regime. Currently, the north-south border region is economically tied to the north, while the federal states further south rely on imports via Kenya

and Uganda. Infrastructure development could help reduce these disparities and increase trade flows in both directions. Such a strategy would certainly be in the interest of the central government – which has recently initiated cautious efforts to boost road and rail infrastructure in the border regions – given that trade infrastructure is better developed in the south.

Abyei. As with border delineation, the Abyei dispute is not part of the negotiations on post-referendum arrangements as such, and the United States has recently sought to mediate between the two parties to break the deadlock over the region. According to the CPA, Abyei's status as part of the north or south is due to be determined in a local referendum, to be held in parallel with the vote on southern independence. However, the preparations for the Abyei referendum have experienced even more delays and the criteria for voter eligibility are fiercely contested. As a result, doubts are growing whether the vote will be held on time, and the Abyei dispute is increasingly becoming a negotiating point. In September, the NCP suggested that the Abyei referendum should be cancelled and the area should be turned into a demilitarised zone whose residents would have dual nationality. The SPLM has rejected the proposal, not least because it would represent a departure from one of the key components of the CPA, and therefore could ultimately raise questions about the independence referendum itself. Nevertheless, a negotiated solution would offer an opportunity to defuse the Abyei dispute. The Abyei referendum would be very likely to lead to violence in the region. The conflict not only has a national dimension (related to the oilfields located in Abyei) but is particularly explosive at the local level, where the rights to residency and land use of two groups are at stake – the *Ngok Dinka* (an ethnic group that represents a key constituency for the SPLM) and the *Misseriya* (a *Baggara* tribe). The only stable solution would be one where the rights of both groups are guaranteed,

regardless of whether Abyei becomes part of the north or the south.

Currency. Given that oil revenues are a fundamental factor for both states' budgets, the Sudanese Pound could conceivably be used as a common currency even after southern secession. This could form another stabilising link between the two states, although the question then becomes how the influence of each side on the institution responsible for monetary policy (the Central Bank of Sudan) would be regulated. From the central government's perspective, a common currency would have to be backed up by mechanisms controlling fiscal policy in both states, as a fiscal or current account crisis in the south could destabilise the currency. To establish such a monetary system would require a major effort on the part of the southern government. The alternative solution – less attractive from the viewpoint of north-south relations, but currently favoured by the SPLM leadership – would be a temporary dollarisation of the southern economy.

External debt. As of end-2009, Sudan's foreign debt amounted to \$35.7 billion, equivalent to around 65 per cent of GDP. Debt contracted during the 1970s (as well as associated arrears, interest and penalties) constitutes the bulk of the burden; on the whole, Sudan stopped servicing this debt in the mid-1980s and in recent years has obtained new loans from China, India and the Gulf states. Despite fiscal and macro-economic policies judged to be by and large satisfactory by the International Monetary Fund (IMF), Sudan has not been able to benefit from multilateral debt relief through the Highly Indebted Poor Countries (HIPC) initiative, due to opposition from the United States (which has imposed sanctions on Sudan since 1997) and other Western donor states. In the negotiations, the central government will seek to hand part of its external debt over to the south in the event of secession. The SPLM strongly rejects this. The dubiety of such a plan not-

withstanding, donor states have two basic options in this regard: either to initiate a multilateral debt relief addressing the entirety of old Sudanese debt (regardless of its repartition between north and south) or to apply such relief only to that part of the debt passed on to the southern government in the negotiations. The first option, planned as a process lasting several years, could have a major stabilising impact on north-south relations, by significantly increasing Western donors' leverage over the central government. In the second option, donors would miss out on this opportunity.

Security. The most important negotiating point with regard to security is the future of the Joint Integrated Units (JIUs). These units, which are made up of equal components from the northern and southern armies – the Sudanese Armed Forces (SAF) and the SPLA – would form the core of a new national army in the unlikely scenario of unity following the referendum. The SAF have deployed around 10,000 troops in JIUs across the south; in the event of secession, the troops would have to be either redeployed or demobilised in a sustainable manner. The majority of SAF components in JIUs are southern Sudanese, of which a smaller proportion are former members of militia groups. A significant number of these troops are likely to refuse to be redeployed from the south, or are likely to return to their place of origin following redeployment; the JIUs therefore represent a security threat. Related with this issue is the possibility that both sides could try to use these or other armed groups to destabilise the situation across the border, following secession. The SPLA is already accusing Khartoum of supporting several small rebellions and manipulating local conflicts in the south, and there is evidence to suggest that some of these allegations are justified. Another potential source of instability is the concentration of troops on both sides of the common border. In view of these issues, there will be a need for an international monitoring mission

beyond the end of the interim period. The current mandate of the UN Mission in Sudan (UNMIS) ends on 30 April 2011, although UN Security Council resolution 1919 (2010) explicitly mentions the likely extension of this mandate. However, the main objective of UNMIS is to accompany the implementation of the CPA, meaning that the mandate of the mission would have to be adapted to the altered situation after southern secession. Such a mission could also support and oversee confidence-building measures between the two sides.

Water. Both the central government and Egypt will seek to obtain guarantees from the southern government for the maintenance of the 1959 Nile Waters Agreement signed between Egypt and Sudan. The agreement divides up Nile water usage between the two states and has been vehemently contested by upstream states. The main question in the negotiations will be how the 18.5 billion cubic metres accorded to Sudan by the 1959 treaty will be divided up between north and south. The north is likely to claim the lion's share for itself, given its larger population and huge irrigated agriculture schemes. Major conflicts are unlikely on this point, given that the water needs are likely to remain relatively limited in the south, at least during the coming decade. Linked to the question of water quotas is the Jonglei Canal project, which has been stalled since 1983 and aimed at reducing water evaporation along the White Nile by partially draining the vast wetlands (*Sudd*) of the south. Egypt could try to revive this project in the context of north-south negotiations on water, although this would likely trigger opposition from the local population and international non-governmental organisations. Nevertheless, such a project could serve to involve Egypt as a guarantor of stable north-south relations into the secession process.

Options for external actors

There are therefore a number of opportunities to stabilise the difficult relations between the two future states in the critical first few years after the referendum. These opportunities are linked to existing interdependencies that would need to be strengthened further: in relation to oil revenues, cross-border trade, labour migration and land use, as well as a common currency. Closer north-south relations in these domains would be a key mitigation measure against the risk of conflicts, even (or particularly) in the event of southern secession. Admittedly, the expansion of bilateral relations in parallel to the secession process will require significant effort – particularly for the south, which has already begun to strengthen its ties with its southern and eastern neighbours, as well as Western donors (particularly the United States). The SPLM, as a former rebel group that continues to be deeply suspicious of Khartoum, will likely seek to contain northern influence in order to assert the sovereignty of the emerging southern state. Conversely, the NCP is likely to see existing ties between the two states primarily as an opportunity to maintain and exploit its dominant position vis-à-vis the south. Both tactics run counter to the stabilising impact that close interdependence could have. Finally, there is a danger that too close relations between the two states could have a destabilising impact if the south is too exposed to Khartoum's influence through its dependence on the northern oil export infrastructure, trade and currency.

Ultimately, the compromises necessary for close and stable relations will have to be reached by the two parties themselves. International observers and mediators have a very limited presence in the negotiations, and the influence of Germany and the EU (or, for that matter, most other international actors) is rather limited with regard to the key negotiating points. Nevertheless, the two sides should be encouraged to resist their likely reflex of erecting barriers and curbing ties between themselves. This

is particularly relevant with regard to the southern government, which seeks the backing of Western donors as a counterweight to Khartoum's influence. However, unless it is coupled with closer relations with the north, the expansion of southern ties with its southern and eastern neighbours (Uganda, Kenya, Ethiopia) and the West could deepen the polarisation between the two states. Instead of hastening the south's uncoupling from the north and raise the risk of conflict between the two sides, external actors should seek to promote their integration, and prevent imbalances in north-south relations.

In areas where there are no interdependencies to build on, there are other options for external actors to help bring about or back up compromises, or – where appropriate – exert pressure. This is particularly the case with regard to Sudan's external debt, whose relief – as part of a north-south deal – would open up an opportunity for donor states to significantly increase their leverage over the central government. Debt relief was also among the incentives proposed recently by US Special Envoy Gration to encourage Khartoum to cooperate. However, according to Gration's proposal, debt relief (along with a gradual removal of sanctions) would only come once the CPA has been completed and the Darfur conflict has been resolved. A more effective solution, which Germany could promote at the IMF and the World Bank, would be a gradual debt relief scheme that is agreed on, and initiated, as part of a north-south agreement. Another possibility for Germany and the EU to exert a stabilising influence on the secession process would be the extension of the UN Mission in Sudan under an altered mandate. This mission should monitor security arrangements and could support confidence-building measures between the two sides. Finally, there is an opportunity for German and EU development cooperation to back the integration of north-south relations by supporting the expansion of infrastructure linking the two states.

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