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SUDAN: PREVENTING VIOLENCE AND STATELESSNESS AS REFERENDUM APPROACHES

Sudan is preparing to hold a referendum on southern independence in January 2011 as mandated by the Comprehensive Peace Agreement (CPA). Indications suggest that the vote will be overwhelmingly in favor of separation. Although an explosion of full scale north-south war is not inevitable, the risk of new outbreaks of conflict in hotspot areas is all too real. If the south separates, southerners in the north and northerners in the south will be especially vulnerable to violence and loss of citizenship resulting in statelessness. The parties to the CPA, international donor governments and the United Nations must place urgent priority on preventing and responding to possible abuses.

VULNERABILITY OF MINORITY COMMUNITIES

Refugees International (RI) traveled to Sudan in June to meet with displaced southerners in Khartoum state and to assess the level of threat they face in the run up to the referendum on southern independence. The exact number of southerners in Khartoum, and the north in general, is extremely difficult to confirm. The UN estimates that about four million people were displaced from the south and the Three Areas during the twenty-two year north-south war. Since the signing of the Comprehensive Peace Agreement between the parties in 2005, approximately two million people have returned. Most estimates therefore count two million internally displaced people (IDPs) remaining in the north. According to the Southern Sudan Relief and Rehabilitation Commission (SSRRC) in Juba, 1.3 million of these people are southerners in Khartoum. At this point, not all southerners should be considered forcibly displaced; many have built new lives in the north --- working, raising children, attending school --- or may simply prefer an urban lifestyle compared to their rural homeland. The consensus is that there are 1.5 – 2 million southerners in the north altogether, including internally displaced people, migrants and other residents.

POLICY RECOMMENDATIONS

- ❑ UN agencies and UNMIS, in collaboration with NGOs and civil society organizations, must urgently include the issue of southerners in the north and northerners in the south as part of their ongoing contingency planning for the referendum on southern independence in January 2011.
- ❑ International donors should fund and support a new intentions survey among southerners in the north and, depending on the results, prepare to support another voluntary, organized return.
- ❑ The U.S. and other political actors must assist and pressure the NCP and SPLM to reach an agreement on citizenship and other legal protections as a top priority, drawing on international human rights law, the statelessness conventions, and the Four Freedoms agreement between Sudan and Egypt. International actors should push for the parties to make clear guarantees in this regard in advance of the referendum.

The Office of the UN High Commissioner for Refugees (UNHCR) estimates that 400,000 IDPs, including people from the south, the Three Areas and Darfur, live in four formal sites in Khartoum that are recognized by the national authorities. The rest of the displaced population is spread out in informal squatter settlements in Khartoum or other parts of north Sudan. Access to the formal areas is highly restricted. Even agencies with assistance programs have difficulty getting permission for their international staff to conduct routine monitoring visits.

Despite the restrictions on access to the formal camps, the RI team was able to speak to a wide range of internally displaced people in informal areas, mainly community leaders as well as civil society members, human rights activists and southern government officials. The consensus was that violence was likely in the event the south opted for independence, though how widespread it would be depends on whether the authorities in Khartoum are proactive in suppressing spontaneous outbursts.

People cited a number of warning signs of potential threats, including statements made by National Congress Party (NCP) politicians questioning why southerners should remain in the north after independence and similar articles published in a pro-separation newspaper *Al-Intibaha*, reportedly owned by President Omar al-Bashir's uncle. This feeling will be aggravated if the referendum is not held, and the south declares independence unilaterally instead.

While such threats might represent political posturing, they match the political reality of the life of southerners in Khartoum, despite the express provisions of the CPA against discrimination. Sharia law has been applied relentlessly to southerners living in the north in contravention of CPA protections for non-Muslims. The government has never worked to integrate the internally displaced people into northern society, instead denying them government services and periodically forcing them to move to ever more distant sites on Khartoum's periphery. Even individuals who have lived in Khartoum for years outside the camps have been unable to obtain formal permission to own land. As one displaced individual told RI, "Unity has not produced a good situation for us. Why would it be better after separation?"

Many people pointed to the riots around the death of John Garang in 2005, with clashes in Khartoum between southerners and northerners leaving more than 80 people dead, as a possible indicator of how the security situation might rapidly deteriorate around the referendum. One local source told RI that the government had provided weapons

to northerners through the mosques at the time, although this was impossible to independently verify. One senior southern official who has lived in the north for three decades and serves in the Khartoum government feared large-scale revenge killing of southerners in the north if even a single northerner were harmed in the south: "One death in the south would lead to vengeance 50 times."

In contrast to the view of Sudanese sources, officials of the UN peacekeeping mission in Sudan (UNMIS) were sanguine about the potential threats, arguing that neither the ruling National Congress Party nor the Sudan People's Liberation Movement (SPLM) would benefit from post-referendum violence. The RI team was struck by the disconnect between UNMIS mission personnel and ordinary Sudanese, outside high-level political circles. One Sudanese source said an attempt to attend an UNMIS Human Rights section meeting revealed national security officers present representing a government controlled civil society organization. People will not be willing to share sensitive information with mission personnel under such circumstances.

The northern population in the south is believed to be far smaller and mostly commercial traders, living there by choice. Nobody could provide a numerical estimate, but RI was told anecdotally that many northerners returned home after the CPA was signed. Although northerners in the south face the same risks of potential harassment or expulsion as southerners in the north, they were generally thought to be the less vulnerable of the two communities, with more resources and connections.

While nobody knows with certainty what will happen, there are sufficient warning signs to suggest that the UN and its partners must include these communities in contingency planning in case of possible large, sudden population movements. Contingency planning also needs to urgently move from scenario development to action, and needs to be closely coordinated with the contingency planning process in the south in case cross-border population movements occur. UNHCR has also been asked by the UN Country Team to increase its country-wide protection coordination role and this should be actively supported by donor countries.

SOUTHERNERS' INTENTIONS IN THE RUN-UP TO THE REFERENDUM

There is much speculation over the intentions of the southerners remaining in the north, but the situation is fundamentally unclear. Based on conversations with IDP community leaders, displaced women and those who work

with them, some of the displaced clearly want to return home. It is undeniable that many of the displaced, who had registered for return, were left in limbo when international funding for organized returns ran out at the end of 2008.

Without an up-to-date intentions survey, being more precise about potential returns is impossible. In one meeting of community leaders, the overwhelming majority expressed an emotional longing to return as soon as possible. Even when challenged over the lack of basic services in the south, they insisted that lack of transport was the only obstacle preventing them from leaving within 24 hours. One community leader said that if transport assistance did not come, he would take his community and walk to UNHCR's office. The referendum and likely secession of the south seem to be major push factors for some, which did not seem as urgent one or two years ago. In contrast, another group readily admitted that 60 percent of their 35,000-strong community had "settled" and wanted to stay, with the extent of economic integration in the north being the decisive factor.

Living conditions in the north are difficult for many southerners. As noted above, they face discrimination and challenges getting access to housing and jobs. While RI was unable to get permission to visit the formal camps, at least one, Mayo, appeared to be a slum, with residents living in ancient, tattered canvas tents on land that floods when it rains. Donor funding for support in the camps has mostly dried up, with uncertainty over whether these communities should still be considered "displaced." There are some NGO projects in the settlement areas that provide desperately needed basic services like healthcare, but the NGOs constantly struggle to raise adequate funding. Non-IDP workers in one health clinic said that there was a "huge difference" between services in the IDP communities and their own communities outside.

In addition, there are southerners who have professional careers in Khartoum, or children in school. University students from the south access education that is still virtually unknown in their home areas. An SPLM official told RI that she had just met a group of southern university students who were fearful that they would be forced south prior to completing their studies, potentially wasting years of hard work as well as financial investment.

These examples underscore the complexity of the situation, and the fact that an unknown number of southerners will want to remain in the north in the event that the south separates. To protect these people, citizenship negotiations

between the north and south, as well as ensuring full implementation of any agreement, must be the absolute priority.

A REVITALIZED ASSISTED RETURN PROGRAM

The people who are of most concern from an immediate humanitarian perspective are those displaced persons who fear for their security in their current location and want to go home, but lack the means to do so in safety and dignity. This is especially true for people from hard to reach areas in the south, many of whom were overlooked when the organized return program prioritized the easiest cases first before winding down. If people have to move themselves quickly, they will be forced to abandon their family possessions, making it more difficult to start over from scratch in the south. For this group, a revitalized assisted return program is the most reasonable option. Further, it has a preventive aspect: if violence does erupt after the referendum, fewer people will be vulnerable and the resulting forced movement of people will be reduced.

UNHCR, because of its protection and statelessness mandates, and the International Organization for Migration (IOM), due to its potential role in providing transportation should work together to assess what demand exists for returns. A voluntary returns program should then be reinstated to accommodate those who were unfairly excluded when the last program ended or whose wishes have changed in the meantime. U.S. and other donor support will be essential and it will have to be coordinated with the governments of both north and south. The return program should start as soon as feasible to accommodate those wanting to leave before the referendum but agencies should also be prepared to assist in post-referendum movements.

Donor governments and international agencies have valid concerns about not wanting to be politically manipulated into supporting returns. To enhance the credibility of the information gathering process, and to ensure that returns reflect genuine demand, staff of trusted local organizations that work in the IDP areas can be recruited to help organize and carry out the survey.

The RI team heard concerns from the staff of some international organizations that carrying out another intentions survey, such as the one done by IOM in partnership with the northern and southern authorities in 2006, might raise expectations or "create a demand" for returns. However, it is evident from talking to internally displaced people that they are already considering their options. They expect international agencies to assist if the situation deteriorates

and many people have already expressed their intentions by registering for returns only to have their hopes dashed.

Managing expectations of likely reintegration support will be critical. Some internally displaced people believed that if they move south, international assistance and reintegration support will automatically follow. However, reintegration assistance has been chronically underfunded over the years and has been completely insufficient for the two million people who have already returned. Therefore, any voluntary return program must include frank descriptions of existing conditions in the south and should give a clear picture of the support returnees will receive back home.

Donor governments and international agencies must also work with the Government of Southern Sudan (GoSS) to receive people in the south and increase its commitment to reintegration support. The lack of reintegration and basic services in the south should not become an excuse to keep people indefinitely displaced if they genuinely prefer to return. Information gained through the intentions survey will also be useful in pre-planning the assistance needed, as knowing the socio-economic profile of the returnees will be important for planning reintegration support.

THE IMPORTANCE OF LEGAL PROTECTIONS

For those who will remain where they are after separation, citizenship issues need to be resolved before the referendum is held. Meaningful dialogue on this has not yet begun, although the parties have agreed to establish a working group on citizenship in the context of overall negotiations on post-referendum arrangements that are being facilitated by the African Union with support from the Intergovernmental Authority on Development (IGAD) and the UN. The danger however is that citizenship will not rise to the same level of importance as oil revenue and border demarcation on the long list of priority issues. Some analysts see citizenship as a last-minute bargaining chip to be exchanged as negotiations reach the final stages.

The parties themselves must decide the ultimate criteria for citizenship of their respective countries. But the international actors involved in stewarding the peace process --- the African Union; troika members Norway, the U.K. and the United States; IGAD and UNMIS --- cannot watch passively from the sidelines waiting to provide “technical support.” An international framework of principles and good practices, including the 1954 Convention Relating to the Status of Stateless Persons, the 1961 Convention on the Reduction of Statelessness and the UN International Law Commis-

sion draft articles on nationality in relation to the succession of states, exists for such situations. Key principles that must be pushed by the U.S. and others are:

- **Choice.** To the extent possible people should be able to choose their nationality and not have their current nationality stripped from them against their will.
- **Sufficient time to make a free and informed decision.** Neither side should engage in or permit forced expulsion. This will be especially important if no citizenship arrangements have been agreed by the time of the referendum.
- **Non-discrimination.** If people have significant ties to either the north or south, they should not be excluded from accessing citizenship on ethnic, religious or political grounds.
- **Commitment to protecting people from statelessness.** While the citizenship negotiations are ongoing, both parties should offer reassurance by expressing their commitment to avoiding statelessness. The Government of Sudan should become a party to the international conventions against statelessness and the GoSS should indicate its commitment in principle to the conventions’ objectives.

The 2004 Four Freedoms agreement between Egypt and Sudan may provide a useful model. This agreement guarantees citizens of both countries the right to movement, residence, employment and property ownership. If Sudan can work out such an accommodation with a foreign state, it should be possible to reach a similar agreement with the south. The U.S. government should prioritize facilitating such an agreement.

Ultimately, whatever is formally agreed on, citizenship issues must also be implemented in good faith. Harassment of people deemed to be “foreigners” in either the north or south as a result of the referendum may not necessarily be the result of official state policy, but government officials on both sides must clamp down on violent behavior by individuals, cultural leaders on either side, or overzealous police or security forces. The U.S. and others need to promote deliberate action to engage and reassure people of their status and security, post-January 2011.

Advocate Jennifer Smith and Vice President for Policy Joel R. Charny assessed the situation for southern Sudanese in Khartoum State in June 2010.