



IT'S NOT TOO LATE FOR PEACE

Pact Policy Paper on the Referenda in Southern Sudan and Abyei
October 2010

Introduction

In January 2011, after nearly six decades of armed conflict and tenuous peace, Sudan will hold a referendum to determine whether the south will remain united with Sudan or secede to become an independent nation. At the same time, Abyei is to hold a referendum to decide whether to join the South or remain in the North. Popular consultations will also be held in the contentious former frontline states of Southern Kordofan and Blue Nile. As a peacebuilding organization, Pact Sudan's sole concern is that these political processes are free, fair and above all peaceful; regardless of the outcome of unity or secession.

Pact believes the referenda on self-determination can lead to peace, partnership and development between the North and South; alternatively, it can thrust the parties back into the chaos of war. Either is possible. The historical significance of the referenda, the diametrically opposed positions of the parties, the pressing deadlines, the proliferation of weapons and militias, the deployment of troops to the borders, and the history of armed conflict all increase the likelihood of violence at the local and national level.

While the risk of war is high, efforts to broker a peaceful outcome should not be forgotten or underestimated. High-level talks between the NCP and SPLM continue to make progress on post-referenda issues of security, citizenship, and natural resource sharing. The involvement of AU, IGAD and other international mediators has bolstered peace talks between the parties. At the grassroots level, a history of people-to-people peacebuilding has reinforced customary processes for resolving political, ethnic and community conflicts. These efforts must be given unwavering political, financial and technical support to ensure the referenda lead to peace.

To ensure the referenda, popular consultations and the interim period of the CPA are concluded peacefully, Pact urgently calls on the northern and southern governments, political parties, civil society, the African Union, the Arab League, the United Nations and the rest of the international community to promote a free, fair and above all peaceful referendum in Sudan by taking the following actions:

- Remove obstacles to the Abyei and Southern Sudan referenda;
- Ensure participatory popular consultations in Blue Nile and Southern Kordofan;
- Preserve the integrity, object and purpose of the Comprehensive Peace Agreement;
- Ensure adequate security measures are provided to protect the rights of voters;
- Protect the rights of those with minority opinions, especially secessionists in the North and unionists in the South;
- Ensure all returns are voluntary;
- Clarify registration and voter eligibility processes;
- Positively engage spoilers and provide the right incentives for peace;
- Support referenda observers;
- Include communities in post-referenda and post-CPA negotiations.

While the situation at present is precarious, these measures, discussed in detail below, can serve to tip the balance from war towards peace.

***The referendum
must be free,
fair and
peaceful***

***Peace is
possible***

***Peacebuilding
needs support***

Take action

***Remove
obstacles***

***Ensure
security***

***Protect
minorities***

***Engage
spoilers***

Resolve any Delays in the Referenda

All partners acknowledge the very short time period before the referenda in Abyei and Southern Sudan. Recognizing the time pressure, they have expressed a commitment to hold the referenda on time. Despite this commitment, the fixation on the 9th of January creates a trigger for conflict which must be defused. The parties should recall that the material issue is the *referenda*, not the date. By focusing their efforts on holding free and fair referenda, rather than the deadline, the parties will fulfill the object and purpose of the CPA.

If a delay in either of the referenda is necessary then the parties should resort to the processes of negotiation, mediation and arbitration on which they have relied in the past. The precedent of the elections, which were delayed twice in three years, is instructive: delaying a milestone does not mean the CPA must be wholly discarded. Abyei provides another good example: if the parties disagree, they can negotiate, mediate or arbitrate an amenable solution. The current efforts by the parties and the partners, such as IGAD, the AU and the Troika, underscore the efficacy of these processes. Thus, by working together in good faith, staying focused on the material issue of conducting the referenda, and relying on processes which have worked in the past, the NCP and SPLM should come to an amicable solution to any delay in the referenda.

Preserve the Object and Purpose of the Comprehensive Peace Agreement

The object and purpose of the CPA is to end the longest running conflict in Africa; a conflict which the NCP and SPLM declared “caused tragic loss of life, destroyed the infrastructure of the country, eroded its economic resources and caused suffering to the people of the Sudan.”¹ The Parties signed the CPA “mindful of the urgent need to bring peace and security to the people of the Sudan” and “aware of the fact that peace, stability and development are aspirations shared by all people of the Sudan.”²

At Machakos, the Parties committed themselves to resolve the conflict through a negotiated process.³ They have a duty to one another and their constituents to always act in good faith and refrain from defeating the object and purpose of the peace agreement. Thus, if the CPA is breached, the parties must affirm their commitment to resolve the breach through a negotiated process rather than a return to war.

A breach of the CPA leaves the parties with two options: the non-breaching party can accept the breach and move on; or the two parties can negotiate an amendment to address the breach and continue implementing the CPA. Any amendment to the CPA should follow the historical precedent of direct negotiation between the GoSS and GOS Task Forces or through mediation under the aegis of IGAD, the AUHIP or the Troika.

If a party decides to withdraw from the CPA, international practice encourages the parties to first negotiate or mediate an amicable solution before terminating the agreement. For example, if one party intentionally obstructs the referenda from happening (arguably a material breach of the CPA), then the first recourse should be to negotiation or mediation before withdrawal or termination. Only after all good-faith efforts to resolve the dispute have been exhausted should the non-breaching party withdraw from or terminate the agreement. Upon withdrawal from the CPA, the best option for the parties remains continued negotiation towards a new peace agreement, not a return to war.

Focus on the process, not the deadline

Delay is no excuse for war

Maintain the spirit of peaceful negotiation

Act in good faith

Resolve any breach of the CPA peacefully

Keep talking, even if a party withdraws from the CPA

Ensure Adequate Security Measures are in Place

All levels of government – from Khartoum to GOSS to the State, County and local levels - must create a peaceful and secure environment favorable to the referenda.⁴ The government and the parties must provide adequate security to ensure freedom of expression, freedom of assembly, freedom of movement and freedom to vote in secrecy without intimidation or harassment.⁵ To enhance security, the Referendum Security Committee should engage local communities in identifying threats and designing appropriate responses. Referenda security strategies should reflect the will of the communities as well as the interests of the Commission. At all times, security forces must respect the rights of individuals and communities; the imperative of the referendum does not permit the abuse of human rights or constitutional freedoms.

To enforce the basic guarantees of a free and fair election, the law expressly enumerates criminal and illegal conduct punishable by imprisonment of six months to two years, plus a fine.⁶ Some of these acts include:

- Bribery
- Corruption
- Obstruction of voters, administrators or observers
- Infringement on ballot secrecy
- Lying
- Failure of a Referendum Official to properly submit referendum results
- Destroying a ballot card intentionally.⁷

In enforcing these laws, security forces have a constitutional duty to respect the human rights of all individuals, including victims, witnesses and the accused.

Communities should be made aware of these violations of the law, what they look like in practice and how to report them. To ensure the law and local norms are enforced, police, prosecutors and judges should be provided training, staff, funding, facilities and equipment necessary to receive, investigate, and prosecute complaints of wrongdoing at the local level.

Protect Political Minorities: Unionists in the South and Secessionists in the North

The choice of unity or secession is the right of the individual voter. It is not the right of the parties, political leaders or community leaders to choose on behalf of others. This fundamental right is protected in the law, the CPA and the Interim Constitutions, as well as under the International Covenant on Civil and Political Rights to which Sudan is a signatory.

To ensure that these rights are protected, civil society, GOSS and the Referendum Commissions should continue to disseminate these guarantees to the local level and then work to develop community based strategies. Local norms on non-discrimination, voting, and participatory processes which include minority viewpoints, should also be incorporated into the protection strategy.

Ensure all Returns are Voluntary

It is a basic human right that displaced persons and refugees shall not be forced to return to their place of origin, nor shall they be induced to return under false pretenses. Involuntary return is a violation of the Guiding Principles on Internal Displacement, incorporated into

*Provide
adequate
security*

*Respect human
rights*

Enforce the law

*Engage
communities*

*Protect
minorities*

*Raise
awareness of
human rights*

*No return shall
be made by
threat, duress,
or force*

Sudanese law through the Great Lakes Protocol on the Protection and Assistance to Internally Displaced Persons.

To ensure that IDPs and refugees are not induced to return under false pretenses, they should be made aware of their rights under the law to vote in polling centers outside of Southern Sudan. Furthermore, the Referendum Commissions should establish polling centers in locations where Southern Sudanese are found, according to the law. By availing displaced people of their rights, involuntary return can be prevented.

Clarify Registration & Voter Eligibility Processes

Eligibility criteria to register or vote in the referenda are vague. In Southern Sudan, voters must establish they: (a) belong to one of the indigenous communities of Southern Sudan; or (b) can trace their ancestry to one of the ethnic communities in Southern Sudan; or (c) have themselves or their grandparents been a permanent resident, without interruption, in Southern Sudan since the 1st of January 1956.⁸ In Abyei, voters must prove they are members of Ngoc Dinka Community or are residents of the Abyei Area.⁹ The terms “indigenous community”, “ethnic community”, “permanent resident without interruption” and “Abyei resident” have not been defined in the Act or by the Commissions.

The lack of clarity on the critical issue of voter eligibility increases the risk that individuals seeking to register or vote may be denied that right. Individuals or groups denied participation in the referenda may resort to violence as a means of expressing their dissatisfaction and destabilizing the referenda process. Violence at the local polling center would create insecurity in the community, intimidate voters, deny others the right to vote and create threats to community security.

In determining voter eligibility, the Commissions, courts and traditional leaders must be objective, judicious and act in good faith when making decisions. Providing rejected individuals with access to the right to appeal is one method to reduce the likelihood of violence at the polls. To ensure appeal processes are followed, citizens, traditional leaders, polling center administrators, police, judges and other community members should be trained in how to peacefully handle rejected voters and how to process complaints and appeals. To further deter the possibility of violence by spoilers, communities, together with police and referenda administrators, should develop local strategies to discourage and stop violence. Peer pressure, voluntary disarmament, increased presence and community outreach by police and other options have proven effective in similar contexts elsewhere.

Positively Engage Spoilers and Provide Incentives for Peace.

The binding nature of the referenda creates the potential for insecurity in communities where individuals or groups disagree with the outcome. For example, if the result is secession, individuals who voted for unity may resort to violence to express their dissatisfaction or to try and prevent *de facto* secession from occurring.

Once communities are aware of the threat from spoilers to the outcome of the referenda, they can develop strategies to contain or assuage spoilers. Providing spoilers with access to the courts to file a challenge to the results is one possible strategy. Involving spoilers in post-referenda and post-CPA arrangements may be another way to ease their dissatisfaction.

Support Observers

***Prevent
discrimination
in registering
voters***

***Ensure access
to dispute
resolution
processes***

***Provide
assurances and
incentives to
spoilers***

The law guarantees the presence of observers from IGAD, the UN, EU, civil society groups and signatories to the CPA.¹⁰ Observers are authorized to observe the process of registration, polling, vote sorting, vote counting and announcement of results.¹¹

All observers should be provided unhindered access to all polling, registration and counting sites. Furthermore, while international and national observers are essential and offer one perspective on whether the referenda will be free and fair, local communities have their own interests and norms, which should also be reflected in observations of the referenda. Therefore, communities should have the opportunity to observe the registration, polling and tallying processes at their local polling center to ensure the referenda is free and fair by community standards. Community observers – unlike national and international observers – can more easily uncover, document and address irregularities in the process. For example, local observers would more likely be aware of minorities in the community who have been intimidated from leaving their homes to go and vote. Accordingly, the Referendum Commissions should accredit local organizations and individuals to serve as community observers.

Include Communities in Post-Referenda and Post-CPA Negotiations

Regardless of whether the referenda results in unity or secession of the South or Abyei remaining in the North or joining the South, the parties to the CPA are currently engaged in post-referenda and post-CPA negotiations on wealth-sharing, security, citizenship and borders. The referenda and the end of the interim period offer the NCP and SPLM the opportunity to engage civil society and local communities in these negotiations. Therefore, they should reach out to communities in both the North and South to gain their input into post-CPA arrangements. For its part, civil society must advocate for the rights and needs of its constituents. Civil society delegates should be given seats at the negotiating table. Community forums involving local leaders, civil society groups, political parties, the parties to the CPA and international mediators should be convened to incorporate the concerns of local communities into the negotiation process. The media should be given open access to all negotiations so that the public is informed about both the political process and agreements. Participatory, free and fair post-referenda negotiations are as important as free and fair referenda for self-determination.

Conclusion

The referenda process raises the specter of new and old threats at both the community and national level. While these threats are significant, the potential for peace should not be underestimated. Therefore, the governments of north and south, civil society leaders and the international community should strive to ensure non-violent, free and fair referenda in Southern Sudan and Abyei.

***Grant free
access to
observers***

***Make
negotiations a
participatory
process***

***It's Not Too
Late For Peace***

¹ Chapeau of the Comprehensive Peace Agreement

² Chapeau of the Comprehensive Peace Agreement

³ Chapeau of the Comprehensive Peace Agreement

⁴ Referendum Act, Art 7; Abyei Referendum Act, Art. 7

⁵ Referendum Act, Art 7; Abyei Referendum Act, Art. 7

⁶ Referendum Act, Arts. 53-60; Abyei Referendum Act, Art. 51-58

⁷ Referendum Act, Arts. 53-60; Abyei Referendum Act, Art. 51-58

⁸ Referendum Act, Art.25.

⁹ Abyei Referendum Act, Art. 24

¹⁰ Referendum Act, Art 7; Abyei Referendum Act, Art 7

¹¹ Referendum Act, Art. 62; Abyei Referendum Act, Art. 60