



SPECIAL REPORT

1200 17th Street NW • Washington, DC 20036 • 202.457.1700 • fax 202.429.6063

ABOUT THE REPORT

This report examines Sudan's popular consultation, an ongoing process whereby the people of the Sudanese states of Southern Kordofan and Blue Nile will democratically and popularly assess the 2005 Comprehensive Peace Agreement and determine whether it satisfactorily reflects the aspirations of the people.

If not, the two states will negotiate with the government of Sudan to remedy any defects in the agreement in order to reach a final settlement of the decades-long Sudanese civil war. This report seeks to explain what popular consultation is, how it is likely to unfold, what the metrics are for measuring success, and what roles the international community might play. In addition, the report describes how a successful process could transform Sudanese politics and governance, and how a neglected or mismanaged process could destabilize not just Southern Kordofan and Blue Nile, but all Sudan. In other words, it explains why popular consultation matters.

Jason Gluck is a senior rule of law adviser in USIP's Rule of Law Center of Innovation. He leads USIP's rule of law projects in Iraq and Sudan and heads the Institute's constitution-making, peacebuilding, and national reconciliation program. The author is grateful to research assistant Warren Wilson for his contributions to this report.

© 2010 by the United States Institute of Peace.
All rights reserved.

SPECIAL REPORT 260

NOVEMBER 2010

CONTENTS

Background	2
The Popular Consultation Process	2
What Is a Successful Popular Consultation?	3
How Popular Consultation Could Affect the Rest of Sudan	4
How the International Community Can Help	7
Conclusion	9

Jason Gluck

Why Sudan's Popular Consultation Matters

Summary

- Largely unnoticed outside the region, the Sudanese states of Southern Kordofan and Blue Nile have begun the Comprehensive Peace Agreement (CPA)-mandated process of popular consultation, which permits Southern Kordofan and Blue Nile to either adopt the CPA as the final settlement between the two states and the Government of Sudan (GoS) or renegotiate the CPA to remedy any shortcomings and reach a final settlement.
- The first phase of the popular consultation process involves civic education campaigns to inform the two states' populations of the contents of the CPA and the issues at stake. The second phase is the consultations themselves, which are to be conducted by a commission in each state. The results of the consultations will be reported to the state assemblies and inform the positions taken by the states during negotiations with the central government.
- A successful popular consultation could begin to transform Sudanese politics by realigning political interests from political parties to the states and could provide a test case for new governance structures between the center and the states. A neglected or mismanaged process could destabilize not just Southern Kordofan and Blue Nile, but all of Sudan.
- The international community can contribute to a successful process through financial assistance, monitoring and reporting, promoting reconciliation within the population, and engaging directly with Khartoum and Juba to smooth negotiations. It might also anticipate possible procedural challenges and prepare to engage in creative and quiet diplomacy should the need arise.

Introduction

With international attention focused on the 2011 referendum and the possible secession of southern Sudan, with little fanfare and largely unnoticed outside the region, officials and civil society leaders in Southern Kordofan and Blue Nile states have begun the popular consultation mandated under the CPA. During this process, the two states will decide whether the CPA is a satisfactory "final settlement" of the twenty-one-year civil war, and, if not,

ABOUT THE INSTITUTE

The United States Institute of Peace is an independent, nonpartisan institution established and funded by Congress.

Its goals are to help prevent and resolve violent conflicts, promote post-conflict peacebuilding, and increase conflict management tools, capacity, and intellectual capital worldwide. The Institute does this by empowering others with knowledge, skills, and resources, as well as by its direct involvement in conflict zones around the globe.

BOARD OF DIRECTORS

J. Robinson West (Chair), Chairman, PFC Energy, Washington, D.C. • **George E. Moose** (Vice Chairman), Adjunct Professor of Practice, The George Washington University, Washington, D.C. • **Anne H. Cahn**, Former Scholar in Residence, American University, Washington, D.C. • **Chester A. Crocker**, James R. Schlesinger Professor of Strategic Studies, School of Foreign Service, Georgetown University, Washington, D.C. • **Ikram U. Khan**, President, Quality Care Consultants, LLC., Las Vegas, Nev. • **Kerry Kennedy**, Human Rights Activist • **Stephen D. Krasner**, Graham H. Stuart Professor of International Relations at Stanford University • **Jeremy A. Rabkin**, Professor of Law, George Mason University, Arlington, Va. • **Judy Van Rest**, Executive Vice President, International Republican Institute, Washington, D.C. • **Nancy Zirkin**, Executive Vice President, Leadership Conference on Civil Rights

MEMBERS EX OFFICIO

Michael H. Posner, Assistant Secretary of State for Democracy, Human Rights, and Labor • **James N. Miller**, Principal Deputy Under Secretary of Defense for Policy • **Ann E. Rondeau**, Vice Admiral, U.S. Navy; President, National Defense University • **Richard H. Solomon**, President, United States Institute of Peace (nonvoting)

The views expressed in this report do not necessarily reflect the views of the United States Institute of Peace, which does not advocate specific policy positions.

To request permission to photocopy or reprint materials, e-mail: permissions@usip.org

negotiate with the government of Sudan to remedy “any shortcomings in the constitutional, political, and administrative arrangements of the Agreement.”¹

Background

Southern Kordofan and Blue Nile lie between north and south Sudan. In the 1980s, many people from these two states, feeling they had been victims of oppression, discrimination, and human rights violations at the hands of the Khartoum government, joined southern Sudan in the civil war against the north.² Rich in oil and minerals, the site of a dam that generates electricity for much of the north, and home to both Arab and black African peoples, these two states were the front lines during the civil war and bore much of the brunt of its death and devastation. Hundreds of thousands of people were killed or displaced³ and societies were torn apart, as the Nuba, Funj, and Uduk peoples largely sided with the south and the Misseriya and other Arabs (Hawazma and Awlad Himaid) fought with the north.⁴

When the GoS and the Sudan People’s Liberation Movement (SPLM)/Sudan People’s Liberation Army (SPLA) began negotiating the terms of peace in 2002—what would eventually become the CPA—Southern Kordofan and Blue Nile were again caught between the north and south. Many people in the two states supported the SPLM and fought with the SPLA, in many cases with the express goal of achieving independence from Sudan. At the same time, the loyalties of the populations were mixed, a majority of them were Muslim (unlike the overwhelmingly Christian and animist south), they were not ethnically linked with southerners, and the two states were geographically situated north of the acknowledged 1956 north-south border, making it difficult to grant Southern Kordofan and Blue Nile the self-determination given to the south and Abyei.⁵

The compromise was the CPA Protocol on the Resolution of the Conflict in the Two States of Southern Kordofan and Blue Nile in 2004, which granted the states a democratic form of government, significant devolution of authority and wealth, and cultural and religious rights. Instead of a referendum for self-determination, the protocol presumed the two states would remain part of north Sudan (in the event of secession) but permitted them to either adopt the CPA as the final settlement between the two states and the GoS or renegotiate the CPA to remedy any shortcomings and reach a final settlement. That negotiation is the current popular consultation process.

The Popular Consultation Process

The CPA declares that popular consultation is a “democratic right” subject to the “will of the people of the two states through their respective democratically elected legislatures.”⁶ It calls for the state legislatures to either endorse the CPA or negotiate new peace terms with the GoS.⁷ In response, Sudan’s National Assembly passed the Popular Consultation Organization Law in December 2009, charging the newly elected state assemblies with establishing commissions to assess and evaluate the CPA, with due consideration for the “views of the people of the state.” Through broad consultations, the people are given an opportunity to either endorse and ratify the CPA or deem it as having failed to meet their needs and aspirations, requiring the states and central government to negotiate a new agreement. Should negotiations fail to result in a new agreement, the law calls for mediation conducted by the Council of States⁸—and, should the mediation fail, arbitration conducted by an “agreed upon body.”⁹ This entire process is statutorily meant to conclude by July 9, 2011—the end date of the interim period of the CPA.¹⁰

Popular consultation is not a referendum for independence or an opportunity to secede and join the south. Stripped of its populist and democratic rhetoric, it is a negotiation over

the distribution of power and wealth between the two states and the GoS, as well as the resolution of other matters, such as land, religious and cultural freedom, educational reform, and local security. What makes the consultation “popular” is the role of the people in determining whether the CPA as written and implemented adequately expresses the aspirations of the people of the two states, and if not, what shortcomings need to be rectified.

Civic Education

To ascertain the will of the people, both Southern Kordofan and Blue Nile have already begun civic education and awareness campaigns to inform their populations of what popular consultation is (and is not), its purpose and goals, its core principles, how it will be conducted, and other background information people need to make an informed decision. Most residents of the two states have never read the CPA, making a decision over whether the agreement meets their “needs and aspirations” particularly challenging.

Conducting the civic education and awareness campaign is a two-step process, both of which are already under way. The states agreed on the core content of the civic education, largely through a series of workshops comprising political and civil society leaders, native administration, religious leaders, and non-governmental organizations (NGOs) from the two states. Through these meetings, the two states also have agreed on the definition, code of conduct, and core principles of popular consultation, such as inclusiveness, transparency, and consensus building. The second step is to disseminate relevant information about popular consultation to the public. International donors are working with Sudanese NGOs to educate the public through workshops and local meetings, mobile theatre and music, a film, distribution of materials such as T-shirts, posters, and flyers, and train-the-trainer workshops for specific groups. Workshops have already taken place that target specific groups (such as women) and geographic localities.

Most residents of the two states have never read the CPA, making a decision over whether the agreement meets their “needs and aspirations” particularly challenging.

Consultations

To convey residents’ opinions of the CPA, the state assemblies will form commissions to conduct consultations throughout each state, targeting different localities and interest groups, such as women, youth, unions, farmers, native administrations, and NGOs. Issue forums, where people discuss specific matters of interest such as security, land, and development, are also likely to take place. The Blue Nile established its commission on September 18, and will need to conclude the work of the commission by December 18, 2010. Southern Kordofan, because of a delay in state elections, will likely form its commission in early 2011.¹¹ The commissions will receive public input from meetings; citizens also can submit written comments. Within three months of its establishment the commission should conduct its consultations; sort, analyze, and assemble public submissions; and present its findings to the State Assembly in a final report, which will then determine the “will of the people,” presumably through a vote in each legislature.

What Is a Successful Popular Consultation?

With civic education just under way and the consultations not yet begun, it is impossible to know the positions each party will take during the consultation or what type of agreement is likely. That said, a successful popular consultation should result in two outcomes. First, it should contribute to peace and stability between the states and the central government by concluding in a “final settlement of the political conflict in [the States].”¹² It is unknown whether that means affirming the CPA, amending or augmenting the existing provisions, or enhancing its enforcement and implementation. Whatever the outcome, it will need to

reflect the aspirations of the people of Southern Kordofan and Blue Nile while also being acceptable to the GoS.

Second, it should contribute to intrastate reconciliation—particularly in Southern Kordofan where tensions are high among different ethnic groups, including the Misseriya and Nuba peoples, and violence over land and other issues persists. Popular consultation should promote intercommunal dialogue, assuage tensions, and identify solutions to the states' most volatile challenges.

How Popular Consultation Could Affect the Rest of Sudan

Properly handled, popular consultation could transform Sudanese politics and governance. Neglected or mismanaged, the process could destabilize not just Southern Kordofan and Blue Nile, but all of Sudan.

Redefining the Two-Party Political Paradigm

Whereas the Government of The Republic of the Sudan and the Sudan People's Liberation Movement/Sudan People's Liberation Army (hereinafter referred to as the "Parties")...¹³

So begins the CPA and, thus, a new era of Sudanese politics—a bipolar political landscape dominated by the National Congress Party (NCP) and SPLM. This bipolarity should not be surprising. The CPA is first and foremost a peace agreement, which needed to be negotiated and signed by the parties to the civil war. But it also lays out a system of governance, both in its own right and through its explicit incorporation into Sudan's Interim National Constitution (INC).¹⁴ As such, though the system applies to the entire nation, it heavily privileges the NCP and SPLM. It allocates the overwhelming majority of seats in parliament and senior government posts to the two parties and divides the vast majority of the nation's wealth between the NCP-dominated government of national unity (GoNU) and the SPLM-dominated government of South Sudan (GoSS).¹⁵ In the five years since the commencement of the CPA, its parties have held a virtual monopoly of power in Sudan. Every major law has been a negotiation between leaders in Khartoum and Juba, sometimes to the detriment and marginalization of other political interests.¹⁶ Each of the salient agreements since the signing of the CPA—the referendum legislation, media and security legislation, the formation of the Referendum Commission, Abyei border dispute and arbitration, election law, election registration, the census—has been the product of this dichotomous political landscape, negotiated and drafted by NCP and SPLM leaders to reflect the two parties' priorities and needs.

Popular consultation changes the political dynamic by aligning political interests within states. NCP and SPLM leaders from both states have identified increased (and enforceable) authority, revenue, and state development as the chief objectives of consultation,¹⁷ and with massive public interest in and high expectations for the process, NCP and SPLM state-level officials feel they owe the people responsible stewardship of it, recognizing they will be held accountable if party politics undermines it.¹⁸ In these ways popular consultation has forged common interests and forced the parties at the state level to cooperate for their mutual benefit and the benefit of the states.

In Southern Kordofan, where state-level elections have yet to occur, the incumbent governor (NCP) and deputy governor (SPLM) have cooperated and partnered, not only when speaking about popular consultation, but also in implementing a new census and voter registration in the run-up to the state elections, most likely in November or December 2010, which are inextricably linked to the consultation.¹⁹ According to NCP and SPLM state officials, the consultation is "the key to peace and stability" and the "last chance for the

state.”²⁰ For these reasons, “NCP and SPLM are working together with one vision on Popular Consultation”—a vision that both parties agree includes greater devolution of authority and wealth to the states.²¹

In Blue Nile, a three-day workshop held in May demonstrated the solidarity in the state. More than a thousand people came to listen to political leaders and express their own views on the popular consultation process. Both parties (and all attendees) were resolute in their support for and common vision of the process. Both SPLM and NCP officials called for changes in the amount of wealth and authority devolved to the state, and slogans such as “popular consultation is for the people” and “one state, one process” were common refrains. As the event ended, in a clear showing of common purpose, the entire audience chanted “Blue Nile” over and over as NCP and SPLM leaders signed an agreement on a code of conduct and core principles for popular consultation. Since then Blue Nile Governor Malik Agar (SPLM) and his former electoral opponent Farah Agar (NCP) have traveled around the state jointly conducting civic education workshops.²²

The implications of the realignment of political interests are considerable. First, in Sudan, political files—ministerial portfolios, for example—have been allocated to entrench each party’s sphere of influence without much interaction or coordination between them. Popular consultation forces the NCP and SPLM, at least at the state level, to agree on one process and one result. This is especially true in Blue Nile, where the SPLM controls the governorship and the NCP controls the state assembly. Neither will be able to accomplish anything, or take credit for it, without cooperation with the other. Because state leaders from both parties must implement popular consultation jointly, ideally popular consultation will increase understanding and congeniality between the parties.

Second, the political realignment pulls power away from Khartoum and Juba and toward Damazin and Kadugli, the state capitals of Blue Nile and Southern Kordofan, respectively. This increases the likelihood of greater development in the states and improvement in the lives of ordinary Sudanese.

Third, politics based on state interests has, so far, proved more inclusive than politics based on party. Under Sudan’s bipolar system, political interests outside the two parties were sometimes marginalized or ignored; under popular consultation, the needs, voices, and aspirations of the entire state already have begun to be heard; both states have included political and local leaders from outside the two main parties in the consultation process—in Southern Kordofan by consulting the Council of Wisemen, an informal group of civil society and political leaders, and in Blue Nile, as one example illustrates, by inviting every party’s candidate for governor to speak during a preelection popular consultation workshop.

That said, popular consultation has not eliminated party politics and rivalries altogether. SPLM leaders are quick to express real concern over NCP state officials’ abilities to remain supportive of popular consultation, should Khartoum pressure them to pull back. NCP officials retort that a unified state strengthens their position with NCP party leaders in Khartoum. In Southern Kordofan, they note, cooperation between NCP and SPLM state officials led to Khartoum’s acquiescence in postponing state elections to redo the census and registration, a move that went against the interests of the national NCP. Even without outside pressure it is reasonable to expect differences between the two parties to surface and increase as the process unfolds. Still, the convergence of NCP and SPLM views at the state level of popular consultation is real and significant. As one NCP state official noted, their families live in these states, underdevelopment affects their quality of life, and the consultation is for their benefit.²³

Politics based on state interests has . . . proved more inclusive than politics based on party.

Popular Consultation as a Test Case and Model for Post-2011 Sudan

Popular consultation provides a test case for the likelihood of meaningful political, administrative, and constitutional reform in post-2011 Sudan. As the interim period of the CPA ends, Sudan, regardless of the outcome of the southern referendum, will likely experience calls for a dialogue on devolution. Sudan's highly centralized governmental system is clearly undesirable to much of the north, with leaders from Southern Kordofan, Blue Nile, Darfur, and the eastern states being the loudest voices calling for reform.²⁴ Early indications are that, through popular consultation, Blue Nile and Southern Kordofan will seek greater shares of national revenue and revenue generated in their borders; more authority over local security; land reform, including recognition of local and customary ownership, access, and use; and greater cultural and religious equality.²⁵ GoS willingness to discuss these issues and entertain genuine devolution might indicate the government's likely response to similar demands from other conflict areas in Sudan; most notably in Darfur where the ongoing turmoil and violence has already led to calls for greater self-rule. Will Khartoum view reform as a means of resolving conflicts between the central government and the states? Or, having possibly endured southern secession, will it view devolution as a prelude to even more disintegration?

If popular consultation tests Khartoum's willingness to share greater wealth and power with the two states, Sudan's INC is the vehicle for a similar national discussion. The INC, the supreme law in Sudan, remains in effect until "a permanent constitution is adopted" after the interim period of the CPA.²⁶ There is already pressure inside and outside Khartoum for a postreferendum constitutional review.²⁷ There is also an existing institution mandated to review the constitution—the National Constitutional Review Commission.²⁸ Popular consultation is, therefore, much more than an exercise between two states and the central government. It is the first opportunity to identify, examine, and negotiate post-2011 governance structures for Sudan, which, in the event of southern secession, might then be expanded to apply to the entire north through a constitutional review—or, if the south chooses unity, to all Sudan. As special representative of the secretary-general in Sudan and head of the United Nations mission in Sudan, Haile Menkerios recently remarked: "If there is proper understanding reached . . . where the two communities could live not in one state and two systems, which is not going to be possible, but one state and one system, then that could be an example that could point to the future of Sudan."²⁹

Popular consultation is also a model for how Sudan might conduct any future constitutional review. Direct public participation is increasingly becoming a bedrock principle in constitution making, as it increases the likelihood that the resulting document more closely reflects popular will and increases the constitution's legitimacy, credibility, and public support. Additionally, participatory processes can create a sense of shared national identity, build consensus, reconcile existing communal tensions, and produce a more informed and civic-minded public.³⁰ The process state officials currently envision includes robust civic education and public awareness campaigns, followed by direct public consultations. This type of participation has been completely unknown in Sudan, as political elites negotiated, drafted, and ratified the CPA, INC, and all of Sudan's state constitutions. Popular consultation could raise the bar for future reform in Sudan and set a new standard of democratic participation and governance.

Direct public participation is increasingly becoming a bedrock principle in constitution making, as it increases the likelihood that the resulting document more closely reflects popular will and increases the constitution's legitimacy, credibility, and public support.

Renewed Instability and Violence

Even as popular consultation could transform Sudanese politics and lead to a more stable and nationally accepted system of governance, a flawed or failed process could reignite violence in the two states and possibly spread to other parts of Sudan. As the geographic

divide between northern and southern Sudan and the front line during the civil war, Southern Kordofan and Blue Nile were themselves divided, with Southern Kordofan in particular witnessing significant intrastate tension and violence. Bad faith or mismanagement of the consultation process carries the risk of renewed violence and instability. Worse still, a process that state leaders or groups perceive as illegitimate or unjust is likely to destabilize the entire border area of north and south Sudan, jeopardizing a peaceful southern secession and transition.³¹

In 2006, a series of focus groups conducted by the National Democratic Institute found massive dissatisfaction with the CPA among black African populations in Southern Kordofan and Blue Nile:

Frustration is high among Funj, Uduk, and Nuba populations of Blue Nile and Southern Kordofan states that one of the primary causes of the conflict—disparity in development—has not been addressed by the implementation of the CPA. . . . A peace without the realization of the dividends people believe are owed to them in the CPA is simply not an acceptable one for most. . . . [P]articipants have lost faith in the agreement as a solution for lasting peace. In assessing their current situation, therefore, most Funj, Uduk, and Nuba participants indicate their states are close to a return to conflict.³²

Four years later, “implementation [of the CPA] is slow and no significant tangible realities recognize[d].”³³ Civil society as well as SPLM and NCP senior officials in both states agree that a popular consultation process that does not result in meaningful return (devolution of power and wealth to the states) could lead to renewed violence, either from the discontented population at large or the substantial number of mobilized SPLA forces composed of residents of the two states.³⁴ Exact figures are unknown, but it is generally believed that there are about 10,000 SPLA forces in Blue Nile and 18,000 to 30,000 Nuba SPLA soldiers in Southern Kordofan and the south.³⁵ Many are already aggrieved over what they view as an SPLM betrayal in signing an agreement in 2005 that did not include self-determination for the two states. With secession and independence off the table, popular consultation needs to result in meaningful improvements if it is to appease these groups.³⁶ Southern Sudan President Salva Kiir recently remarked that Southern Kordofan and Blue Nile “can become an area of instability . . . if their grievances are not addressed.”³⁷ SRSG Menkerios recently echoed this fear when he stated, “if [popular consultation is] not properly addressed then one could expect the same conditions as led to north-south conflict could be recreated in those states as well.”³⁸

SPLA forces are not the only armed groups that popular consultation must manage and mollify. By redrawing state boundaries and subsuming the former Western Kordofan, where the Misseriya were the majority, into Southern Kordofan, the CPA inflamed tensions between the Misseriya and the Nuba, who now compete for power, status, and land. Armed groups from both sides have engaged in acts of violence and tensions are high in Lagawa and other parts of the state (and in Abyei, where there is tension between the Misseriya and the Ngok Dinka).³⁹ Misseriya in Abyei recently threatened violence and war if they are excluded from voting in the Abyei referendum to join the south or remain with the north.⁴⁰ Popular consultation, if poorly managed, could escalate conflict and violence in Southern Kordofan as well.

How the International Community Can Help

The international community can affect whether popular consultation is remembered as contributing to violence and instability or helping redefine governance structures and political interests in post-2011 Sudan.

Civil society . . . in both states agree that a popular consultation process that does not result in meaningful return could lead to renewed violence, either from the discontented population at large or the substantial number of mobilized SPLA forces composed of residents of the two states.

Coordinated Financial Assistance

The Popular Consultation Law charges the state governments with funding the consultations, but permits assistance from other sources, including international donors. The cost of raising a secretariat, educating the public, conducting the consultations, and analyzing and reporting the data collected will be far beyond the financial capacity of the states, which rely on disbursements from the central government. For example, local NGOs, through grants by international donors, have been conducting civic education and awareness. International donors will need to continue to financially support the process during the consultation phase and beyond. During this time, coordination and communication between the donors will be critical to ensuring all locales and interests in the states are heard and that the process unfolds in a transparent and inclusive manner.

Monitoring and Reporting

Given the importance of popular consultation the international community might consider monitoring the process to help ensure that it occurs transparently, inclusively, and democratically, and that all people have a genuine opportunity to express their will. As an international presence at all times in both states is impractical, random monitoring might be sufficient. International monitors could also document and report any misconduct or impropriety so that all sides are confident that the process occurred consistent with the CPA and legislative mandate. The United Nations Missions in Sudan (UNMIS) played a similar role before and during the 2010 national elections, and could be well suited to do the same for popular consultation. The Assessment and Evaluation Commission, a CPA-created entity comprised of international advisers who assess the CPA's implementation, could also fill this role. Any international mandate, however, should come from Sudanese officials.

Promote a Peaceful and Stabilizing Process

Expectations are high in both states that popular consultation will result in meaningful change. However, there are vastly different views as to what that change might entail. Many people in Southern Kordofan and southern Blue Nile still believe (and advocate) that popular consultation includes an option for secession with the south or outright independence.⁴¹ While certain peoples, particularly the Misseriya in Southern Kordofan, feel threatened by even a more modest consultation, they are concerned that the process might result in discrimination or marginalization of their community. Popular consultation can help bring together and promote reconciliation among the disparate communities or further inflame tensions. The international community can help in this regard by, first, encouraging the states to remain committed to their pledge to conduct an inclusive and transparent process and, second, helping manage the expectations of the leaders and people of the two states by remaining at all times on message as to what popular consultation is—and is not. Finally, the international community should work to raise support for and confidence in the popular consultation process among key constituencies within the states, and employ every means at its disposal to increase the likelihood that popular consultation results in meaningful improvement in the governance and development of the two states.

Engage with Khartoum and Juba

Popular consultation does not have to contravene Khartoum's interests. To the extent that long-term stability in Sudan requires a more balanced center-periphery relationship, negotiating a fair and mutually beneficial arrangement may serve GoS interests. And yet the recent move to call former Blue Nile governor candidate Farah Agar (NCP), who was at the time

working with Governor Malik Agar to raise public awareness for popular consultation, back to Khartoum might be construed as an indication that GoS is weary of the direction popular consultation is headed. The international community would be well-served by a better sense of Khartoum's willingness to engage with the states and accept alternative structures, or any red lines that may exist. Greater engagement with the senior leadership in Khartoum and Juba could help the international community better understand how the two parties view the process and how much political space and capital they are prepared to devote to it. Engagement would also help reveal common ground and possible areas of compromise in advance of the negotiations, making the negotiations more likely to succeed. At the very least, the international community should liaise with Khartoum and Juba about popular consultation so senior officials are not caught off guard by developments in the states.

Be Prepared for Procedural Challenges

The popular consultation law has noticeable gaps and ambiguities that could create legal and political challenges as the process unfolds. The international community should be prepared to support the parties to identify creative work-arounds should any of the following issues unfold:

- *How the Popular Consultation Commission or state assembly receive, interpret, and act on input from the people.* Neither the CPA nor the popular consultation law provides any guidance as to how the assemblies should act on information received through the consultations. This could be a trigger point between various state interests, as different political, ethnic, and religious constituencies will likely have competing views as to the final position the state should take—that is, what shortcomings, if any, exist in the CPA and what remedies the state should seek to negotiate with the central government. The international community should encourage and promote a transparent process that reflects the will of the people by insisting that inputs from the consultations be made publicly available; that, to the extent practicable, the state assemblies engage in open deliberations; and that the state assemblies make every effort to reach decisions through consensus.
- *How the states choose their negotiators.* This is another ambiguity in the law and an area where certain groups could be left out or marginalized, contributing to instability and tension. The international community should promote as inclusive a process as possible.
- *How to increase the likelihood of an agreement that satisfies all parties.* There are conflict resolution mechanisms—mediation and arbitration—built into the law for Sudan to reap the maximum benefit from popular consultation; these should be used to create a final agreement that all sides accept. Such an agreement is also more likely to be implemented. The international community should encourage all sides to negotiate reasonably and in good faith and use whatever soft power is at its disposal to help the parties reach a durable and mutually satisfactory agreement.
- *How to help broker an agreement on an arbiter, if needed.* Which entity would arbitrate disagreements between the states and the GoS was the most contested issue during the negotiations over the popular consultation law. SPLM officials demanded an international arbiter in the vein of the Abyei border dispute while NCP officials demanded a Sudanese arbitrator. The parties punted the issue down the road by agreeing to an arbitration conducted by an “agreed upon body.” The international community, particularly regional actors, should be prepared to engage in creative and quiet diplomacy should the need for an arbiter arise.

Greater engagement with the senior leadership in Khartoum and Juba could help the international community better understand how the two parties view the process and how much political space and capital they are prepared to devote to it.

The international community should encourage all sides to negotiate reasonably and in good faith and use whatever soft power is at its disposal to help the parties reach a durable and mutually satisfactory agreement.

Conclusion

Popular consultation is a unique opportunity not just for Southern Kordofan and Blue Nile, but for all of Sudan. It is a significant step toward Sudan's democratization, the first time its people will have a forum not just to elect representatives but actually articulate their own needs, aspirations, and priorities for the state. If successful, popular consultation could not only repair relations among communities within the states themselves, but also realign political interests and foster meaningful constitutional change. If mismanaged or frustrated, the border region could be plunged back into war. The process—still an afterthought to most Sudanese and internationals preoccupied with the southern referendum—thus could hold the key to sustainable peace and security in post-CPA Sudan.

Notes

1. "Protocol between the Government of Sudan and the Sudan People's Liberation Movement on the Resolution of Conflict in Southern Kordofan/Nuba Mountains and the Blue Nile States," May 26, 2004, Comprehensive Peace Agreement between the GoS and SPLM/SPLA, 74, pt. 3.6.
2. Prepared statement by the Sudanese Advocacy Network to 111th U.S. Congress, 2nd session, March 12–14, 2010, 3.
3. International Organization for Migration, *State Report Southern Kordofan: Village Assessments and Returnee Monitoring* (Geneva: International Organization for Migration, 2009), http://www.iom.int/jahia/webdav/shared/mainsite/activities/countries/docs/village_assessment_southernkordofan.pdf (accessed July 18, 2010); UN High Commissioner for Refugees, "Sudan: Return of IDPs in Blue Nile State Gathers Pace," Briefing Notes, February 13, 2007, <http://www.unhcr.org/cgi-bin/texis/vtx/newsitem?id=45d198d832> (accessed July 18, 2010). Millard Burr, *Quantifying Genocide in Southern Sudan and the Nuba Mountains*, U.S. Committee for Refugees Issue Paper (Washington, D.C.: U.S. Committee for Refugees, 1999).
4. International Crisis Group, *Sudan's Southern Kordofan: The Next Darfur?* Africa Report no. 145 (Khartoum, Nairobi, and Brussels: International Crisis Group, 2008).
5. Abyei is more ethnically linked with southerners and is at least partially south of the 1956 border. See Tracy D. Cook, *Lost in the Middle of Peace: An Exploration of Citizen Opinion on the Implementation of the CPA in the Three Areas of Abyei, Southern Kordofan, and Blue Nile* (Washington, D.C.: National Democratic Institute, 2007), 10 and 14.
6. Comprehensive Peace Agreement (CPA) between the GoS and SPLM/SPLA, 74, pts. 3.1 and 3.2.
7. "Protocol on the Resolution of the Conflict in the Two States of Southern Kordofan and Blue Nile," 74, pt. 3.1–3.3.
8. The Council of States is the second chamber of Sudan's legislature. It is comprised of two representatives from each state and heavily dominated by the NCP.
9. The vagueness of the arbitration clause underscores the difficulty the SPLM and NCP had in reaching agreement on this provision, with the SPLM calling for an international arbiter in the vein of the Abyei border dispute and the NCP demanding a domestic arbiter.
10. The Southern Kordofan and Blue Nile Popular Consultation Organisation Act, Sudanese National Assembly, December 30, 2009, pt. 15.2.k.
11. State officials and the GoS agreed to delay elections in Southern Kordofan so that alleged defects in the state census and voter registration could be remedied. The elections are likely to take place in November or December 2010.
12. "Protocol on the Resolution of the Conflict," 74, pt. 3.5.
13. Comprehensive Peace Agreement, xi.
14. Sudan Interim National Constitution of the Republic of Sudan, art. 225.
15. See, e.g., CPA chapter 2, arts. 2.3.5 (the national executive) and 11.1.1 (the national assembly); and chapter 3, arts. 5.6 (revenue from southern producing wells) and 8.3 (seats on the Fiscal and Financial Allocation and Monitoring Commission); and chapter 4, art. 3.1 (revenue from Abyei producing wells).
16. Other political parties in Sudan include the Popular Congress Party, Democratic Unionist Party, Umma Party, Umma Reform and Renewal Party, Sudanese National Alliance, Sudanese Socialist Democratic Union, the Communist Party, and the Sudan People's Liberation Movement for Democratic Change.
17. See speech by Governor Malik Agar, March 13, 2010: "Popular consultation is to solve social and economic problems. . . . It represents self-rule versus federal rule. It calls for decentralization for Blue Nile State;" see also speech by NCP Chairman for Blue Nile State Farah Agar, March 13, 2010: "We must discuss the relations between the center and state in terms of wealth sharing and how to achieve a fair distribution of powers and wealth."
18. See speech by Malik Agar: "Popular consultation is between Blue Nile and Khartoum. All people here are meant to participate. Keep this in mind. Popular consultation is not for the NCP or the SPLM, but for Blue Nile State.... The people are to decide the issues to solve through popular consultation. The parties are to make people aware of popular consultation.;" see also speech by Farah Agar: "Popular consultation is not for any one party. It is owned by all of the people of Blue Nile, for them to state their aspirations. Popular consultation is not against anyone. The decisions are the people's, whether positive or negative."
19. Prepared statement by the Sudanese Advocacy Network to 111th U.S. Congress: "Elections in Southern Kordofan state have special importance; they are associated with popular consultation, and thus the demand for development, services, power and wealth sharing and distribution." See also Sudanese Church Position Paper "Choose Life: A Vision for a Peaceful Sudan," May 5, 2010, cpn.nd.edu/assets/25352/choose_life_scc_position_paper.pdf (accessed July 27, 2010): "The contested results of the census led to the postponement of the most important election in Southern Kordofan which is the key in the process of popular consultation."

20. Author's interview with senior NCP official from Southern Kordofan, May 24, 2010.
21. Interview with NCP official from Southern Kordofan, May 24, 2010.
22. Unfortunately, Farah Agar has since been called to Khartoum and given the position of director general in the Ministry of Parliamentary Affairs—perhaps underscoring the tension between NCP officials in the state and the leaders in Khartoum.
23. Author's interview with senior NCP official from Blue Nile, May 25, 2010.
24. "Self-determination Emerging as an Option for Darfur: JEM," *Sudan Tribune*, August 4, 2010, <http://www.sudantribune.com/spip.php?article35853>. "The People of Nuba and Darfur Demand Self-determination," *Sudan Tribune*, August 15, 2010 <http://sudantribune.com/spip.php?article35952>
25. Power and wealth sharing, land, security, and cultural and religious freedom were the five issues examined at the popular consultation workshop held in Damazin, Blue Nile, May 23–25, 2010.
26. Interim National Constitution, art. 226.9.
27. Sudanese officials within the GoS acknowledge the need for constitutional revisions should the south vote for secession, at the very least to clean up ambiguities that result from the secession and to reflect the new nature of the state.
28. "Without prejudice to the provisions of the Peace Agreement, as a subsequent task and during the course of the six year Interim Period, the National Constitutional Review Commission shall be responsible for organizing an inclusive Constitutional Review Process. The process must provide for political inclusiveness and public participation." CPA 12.10.
29. Speech by SRSNG Menkerios at Woodrow Wilson Center, June 16, 2010, Washington, D.C.
30. Laurel E. Miller, "Designing Constitution-Making Processes: Lessons from the Past, Questions for the Future," in *Framing the State in Times of Transition: Case Studies in Constitution Making*, ed. Laurel E. Miller (Washington, D.C.: U.S. Institute of Peace Press, 2010), 627–38.
31. "[F]ailure to address the aspirations of the people of Abyei, the Nuba Mountains, or Blue Nile could lead to unrest and eventually armed insurgency in those areas. This would almost certainly spread to other areas—Darfur, the south and even the eastern front. . . . One could envisage a scenario where the south secedes peacefully, but is drawn back into full scale civil war by an outbreak of conflict in the transitional areas." CPA Alert: The State of Sudan's Comprehensive Peace Agreement, *IKV Pax Christie*, 11, September 2010.
32. Cook, *Lost in the Middle*, 10 and 14.
33. Prepared statement by the Sudanese Advocacy Network to 111th Congress, 7.
34. See, e.g., Sudanese Church, "Choose Life," 3: "The Church fears that failure to address the aspirations of the people of these two states could derail any peaceful post-2011 transition."
35. See, e.g., International Crisis Group, "The Drift Back to War: Insecurity and Militarization in the Nuba Mountains," Small Arms Survey no. 12 (August 2008), and author's interviews with SPLM officials and international observers.
36. "Nuba Warns Kiir over Possible SPLM Disintegration," *Sudan Tribune*, March 28, 2010, <http://www.thefreelibrary.com/Nuba+warns+Kiir+over+possible+SPLM+disintegration.-a0222379515> (accessed July 18, 2010). "The People of Nuba and Darfur Demand Self-determination," *Sudan Tribune*, August 15, 2010, <http://sudantribune.com/spip.php?article35952>
37. Speech by South Sudan President Salva Kiir at the United States Institute of Peace, September 20, 2010.
38. Speech by SRSNG Menkerios. Bracketed material due to the quality of the recording.
39. See U.N. Security Council, *Report of the Secretary General on the Sudan (S/2009/61)*, January 30, 2009, para. 21: "The abundance of arms, local dissatisfaction with the lack of a peace dividend, and fluid tribal and political affiliations make [Southern Kordofan] prone to conflict." See also Nanne op 't Ende, "Fighting in Lagawa Country Yet to Be Contained," October 5, 2007, <http://www.occasionalwitness.com/Articles/20071005.html> (accessed July 18, 2010).
40. "Central Sudan Tribe Warns of War if No Referendum Vote," *Reuters Africa*, September 30, 2010, <http://af.reuters.com/article/topNews/idAFJ0E68T01Y20100930?sp=true>.
41. "The People of Nuba and Darfur Demand Self-determination," *Sudan Tribune*, August 15, 2010, <http://sudantribune.com/spip.php?article35952>

An online edition of this and related reports can be found on our Web site (www.usip.org), together with additional information on the subject.

Of Related Interest

- *Civic Education and Peacebuilding: Examples from Iraq and Sudan* by Daniel H. Levine and Linda S. Bishai (Special Report, October 2010)
- *Local Justice in Southern Sudan* by Cherry Leonardi, Leben Moro, Martina Santschi, and Deborah Isser (Peaceworks, October 2010)
- *Scenarios for Sudan's Future, Revisited* by Jon Temin and Jaïr van der Lijn (Peace Brief, August 2010)
- *Improving Natural Resource Management in Sudan* by Paul Sullivan and Natalie Nasrallah (Special Report, June 2010)
- *Negotiating Sudan's Post-Referendum Arrangements* by Jon Temin (Peace Brief, January 2010)
- *Scenarios for Sudan: Avoiding Political Violence through 2011* by Alan Schwartz (Special Report, August 2009)



**United States
Institute of Peace**

1200 17th Street NW
Washington, DC 20036

www.usip.org

Not for circulation