



FOR IMMEDIATE RELEASE

March 17, 2011

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Carter Center Urges Inclusive Transition Process in Southern Sudan

Distrust between the Sudan People's Liberation Movement (SPLM) and opposition parties is a critical challenge that undermines the unity of Southern Sudan on the eve of its independence. To ensure a successful transition, The Carter Center urges all Southern Sudanese political leaders to agree on genuinely inclusive processes for reviewing and adopting the transitional constitution and planning for the transition.

Initial efforts by the SPLM leadership to include opposition party members in the constitution drafting and transition processes were positive steps, and demonstrated the Government of Southern Sudan's commitment to national unity and inclusion. However, recent decisions to expand the number of SPLM members on the Technical Committee to ensure SPLM dominance over all decisions and to inhibit meaningful participation from opposition members run counter to that spirit.

Background: Following the successful Southern Sudan referendum in January, the leaders of Southern Sudanese political parties met in Juba Feb. 16-17 under the auspices of the Political Parties Leadership Forum to follow-up commitments made at an October 2010 meeting of Southern Sudanese political parties. The parties at the February meeting re-affirmed their commitment to an inclusive transition process and agreed to increase opposition participation in the Technical Committee charged with drafting the transitional constitution. They also agreed that the committee's draft would be presented to the Political Parties Leadership Forum for their consideration before going to the Southern Sudan Legislative Assembly. On March 7, however, five opposition parties announced their withdrawal from the Technical Committee primarily citing the use of decision-making procedures that preclude genuine discussion of key principles of the transitional constitution draft as the reason for the withdrawal.¹ In addition, they noted concerns about statements by some SPLM members that suggest a planned expansion of the duration of the transitional period and the mandate of the current government.

¹ Nine parties signed the press release announcing the withdrawal from the committee. However, only five of the nine parties actually had representatives on the committee.

The following report gives further background and analysis on the transition process in Southern Sudan and is available along with previous Carter Center reports at www.cartercenter.org

The Carter Center has maintained a field presence in Sudan throughout the entire referendum process. After the referendum polling was concluded, President Kiir welcomed The Carter Center to extend its presence in Southern Sudan to monitor the transition. The Carter Center recognizes that the political reform and transition process presently underway in Southern Sudan is of great importance and intends to issue statements periodically to assess progress.

Currently, the Center has 12 long-term observers in Sudan monitoring and reporting on post-referendum processes, and on the postponed elections in South Kordofan and the Popular Consultations in Blue Nile.

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Background

The Comprehensive Peace Agreement (CPA) of 2005 granted the Sudan People's Liberation Movement (SPLM) 70 percent of the seats in the Southern Sudan Legislative Assembly (SSLA) while 30 percent were set aside for other parties, including 15 percent for the National Congress Party (NCP) and 15 percent for all of the other Southern parties. Although the framers of the CPA assumed that the elections scheduled for midway through the six-year period of the agreement presented an opportunity to expand the representation in the SSLA, the elections that were finally held in April 2010 resulted in a narrowing of representation. There are multiple factors that explain the opposition's failure to win more than a few seats in the SSLA during the 2010 elections, including their structural weakness and the lack of access to campaign resources, together with SPLA abuses directed at opposition parties.² As a result, the elections served to increase antagonism and distrust between the opposition parties and the SPLM.

Despite this antagonism, virtually all of the parties and leading figures in Southern Sudan remained committed to the CPA-stipulated self-determination referendum. Even the few who preferred unity with the North nonetheless supported a referendum to determine democratically whether the people of Southern Sudan wanted to stay in Sudan or secede. That shared commitment provided a basis on which to bring the otherwise disparate parties together. The first attempt at finding common ground was a meeting initiated by President Salva Kiir in October 2008 held in Juba. The parties committed to unity and agreed on the organization of a secretariat, but there was no follow up.

October 2010 Southern Sudan Political Parties' Conference

The current process began with the convening of over 20 Southern Sudanese political parties and civil society organizations, at the invitation of President Salva Kiir, to a meeting in Juba on Oct. 13-17, 2010, to discuss preparations for the referendum and the future governance of southern Sudan. At the end of the meeting, the parties agreed to activate a leadership forum of all the political parties that would meet regularly to consult and ensure implementation of the resolutions of the conference.

The final communiqué of the conference committed the parties to holding a free, fair, and transparent referendum that would gain international recognition. The parties also agreed to form a National Constitutional Review Commission in the event that southerners opted

² The Carter Center Final Report: Observing Sudan's 2010 National Elections April 11–18, 2010; Carter Center Reports Widespread Irregularities in Sudan's Vote Tabulation and Strongly Urges Steps to Increase Transparency, May 10, 2010; The Carter Center Election Observation Mission in Sudan Presidential, Gubernatorial, and Legislative Elections Preliminary Statement, April 17, 2010.

for secession. This commission would review the current Interim Constitution for Southern Sudan (ICSS) for adoption as a transitional constitution. This was to be followed by both an all-party constitutional conference that would deliberate on a new permanent constitution for Southern Sudan, as well as the formation of a broad-based transitional government that would be led by President Salva Kiir after the end of the interim period. The transitional government would oversee a census and elections for a constituent assembly that would promulgate a permanent constitution. It was also agreed that all the southern political parties would convene again one week after the official announcement of the referendum results to discuss planning for the transition.

The October 2010 meeting was an important step toward overcoming a legacy of distrust between the SPLM and the other Southern parties and reaching agreement on the way forward in Southern Sudan, assuming secession was chosen. President Salva Kiir also used the October 2010 meeting to announce an amnesty for Southern rebel groups, a step that was widely welcomed.

Technical Committee to Review the Interim Constitution

Although the October 2010 Juba meeting resulted in an agreement to call for the convening of a National Constitution Commission to review the ICSS, President Kiir decided instead to issue a Presidential Decree on Jan. 21, 2011, establishing a Technical Committee to Review the ICSS. The Technical Committee draws most of its mandate from Article 208 (7) of the ICSS that stipulates that if Southerners choose secession, all components of the ICSS that provide for national institutions, rights, duties, and obligations must be repealed. In the terms of reference annexed to the Presidential Decree, the Technical Committee is specifically charged with the following:

- Deleting all parts of the ICSS that provide for national institutions and powers;
- Replacing all references to national institutions and powers with comparable Southern institutions and powers;
- Evaluating and identifying provisions of the ICSS that need modification in order to ensure “effective governance;”
- Developing and presenting to the president recommendations for the creation of the Permanent Constitution; and
- Presenting the final draft of the Transitional Constitution to the president by April 25, 2011, for submission to the South Sudan Legislative Assembly.

The decree appointed 20 members to the Technical Committee and four legal advisors led by Minister of Legal and Constitutional Development John Luk Jok. Approximately half of the members appointed by the initial decree are Presidential Advisors or Ministers in the Government of Southern Sudan (GoSS) and the rest are members of the SSLA, lawyers, and judges. In initial discussions about the establishment of the committee, SPLM officials stated that all members of the committee were chosen because they were either involved in the initial drafting of the ICSS or had particular expertise deemed critical to a constitutional process, but not because of their political affiliations. They also contended that the committee would only be proposing amendments to the ICSS

according to Article 208 (7) and was therefore the sole responsibility of the GoSS, since the process of amending the constitution should be a governmental process. SPLM representatives also initially indicated that the committee had the purely technical responsibility of removing all duties, obligations, and references to the national government and replacing them with appropriate GoSS powers and structures and would not consider political matters.

The decision to create the Technical Committee was strongly criticized by opposition leaders and some members of civil society who said it was an abrogation of the October 2010 agreement. They claimed that the process represented an attempt by the SPLM to create the governing transitional document without any consultation with non-SPLM actors. GoSS Minister Gabriel Changson, who was the only opposition party leader initially appointed to the committee, refused to accept the appointment on the grounds that he did not want to participate in a process that contravened the October agreement. The GoSS initially dismissed these objections as misunderstandings of the process and the committee began its work in order to complete its tasks by the April 25 deadline.

February 2011 Meeting of the Political Parties Leadership Forum

The appointment of the Technical Committee caused considerable anger in Southern opposition circles and fears that the inclusive process created in October was now dead. However, the political parties anxiously awaited the convening of the Political Parties Leadership Forum immediately after the announcement of the referendum results. The meeting was convened on Feb. 16-17 in Juba. In preparation for the meeting, the opposition parties developed a common platform based on the following key points:³

- The importance of the roadmap agreed to in October 2010 and SPLM commitment to this roadmap;
- The formation of a constitutional review commission; and
- The date of the transition to be July 9, meaning that there would be no extension to the interim period.

The two other key concerns of the opposition parties were the length of the mandate of a transitional government and the power sharing arrangement for the broad based transitional government.

During the meeting, President Kiir, along with a number of members of the SPLM, convinced opposition party leaders of the need to quickly agree to an interim constitution and to set aside their demand for a full-fledged constitutional review commission at this time. In return for the opposition accepting the establishment of the Technical Committee, President Kiir agreed to appoint 11 members to the committee from the opposition parties, one representative of civil society, and representatives of faith-based

³ With the exception of Joseph Okello, leader of the Union of Sudan African Parties (USAP) and a minister in the GoSS, the other opposition leaders agreed to SPLM-DC (Democratic Change) leader, Dr. Lam Akol, speaking on their behalf.

groups. The names of these 11 opposition representatives and one civil society representative also were agreed to at the meeting.

The party leaders also agreed on the official name of the new state, the flag, and the currency. Particularly important was their agreement that the draft transitional constitution would be presented to the Political Parties Leadership Forum before it is submitted to the SSLA for adoption.

Importantly, however, there was no decision on two critical issues - the length of the mandate of the transitional government and arrangements for power sharing in the transitional government. There are varying interpretations of when and how these issues might be resolved. Some actors say that they are to be resolved in the Technical Committee, with the committee making recommendations to the president as to how to resolve these issues. Others say that President Kiir will address these issues on his own, while still others say that the Leadership Forum will deliberate on these issues and take decisions.

Functioning of the Expanded Technical Committee

In follow-up to the meeting on Feb.16-17, the Office of the President issued Presidential Decree No. 08/2011, appointing a further 12 names to the Technical Committee – 11 representative of the opposition parties and one person appointed to represent civil society.⁴

However, on Feb. 21, President Kiir issued a new decree that expanded the Technical Committee still further to include 17 additional members to the committee, many of whom are members of the SPLM. Opposition party members reacted angrily, viewing the appointments as a clear attempt to drown out their voices in the committee. The internal rules and procedures of the committee state that decisions are made on the basis of majority. However, given the numerical dominance of the SPLM in the committee, the opposition representatives called for guarantees that decision-making would be based on consensus rather than a simple majority. After discussions on this topic in the committee, opposition members came away with the understanding that the SPLM had committed to consensus-based decision-making on the proposals put forward in the draft transitional constitution. They also understood that in the absence of consensus, two positions would be put forward in parallel to be decided upon at a later date by the Political Parties Leadership Forum. The SPLM denies that it made this commitment.

In subsequent meetings of the Technical Committee, opposition members expressed

⁴ While opposition party leaders welcomed the expansion of the Technical Committee, representatives of civil society were unhappy with the appointment of Angelo Beda as the civil society member arguing that he has never been active in civil society and is in fact a politician. Civil society groups have submitted a petition to the president protesting the appointment and await a response from him on this matter. Although the forum agreed to the appointment of faith-based representatives to the committee, the decree did not include any such representatives. They were added to the committee at a later date.

anger that the SPLM refused to make all decisions on the basis of consensus, effectively eliminating the opposition's ability to influence certain decisions taken on proposals to be put in the draft constitution. The Carter Center understands that some decisions of the committee are taken by consensus but decisions on more controversial proposals such as the length of the transition and the expansion of the SSLA were decided on the basis of majority. Any objections by members to decisions made by the committee are recorded and put into the explanatory report that will be sent along with the draft constitution to President Kiir.

Opposition representatives on the committee also strongly disagreed with SPLM positions on the expansion of the SSLA to include Southern elected representatives returning from Khartoum. Other significant points of disagreement were the length of the transition period and the approach to determining power-sharing arrangements for the broad based transitional government. Regarding the length of the transition, some SPLM representatives claim that the mandate of those elected in April 2010 should be for five years starting from July 9, 2011, as opposed to the date of their election in 2010. The opposition's position is that the transition should last no longer than two years. On power sharing, the opposition members support a 50-50 split between SPLM and opposition, to be implemented at all levels of government, though they recognize that it is unlikely that the SPLM would agree to such a high percentage and have expressed desire to negotiate a more acceptable formula. Some SPLM members of the committee argue that only President Kiir can determine how and on what basis he would like to include members of the opposition into the executive branch of the government.

These disagreements and the inability of the opposition members to influence key decisions of the Technical Committee led five members to withdraw on March 7, leaving six opposition members in the Technical Committee. Those that withdrew have urged President Kiir to call a meeting with opposition leaders to resolve these problems and agree on plan for the adoption of the transitional constitution and the transitional arrangements.

Separate but related, key members of the SPLM and opposition party officials still have different views on the role that the Leadership Forum will play when the draft of the transitional constitution is presented to it, and on the role of the Leadership Forum more generally in the preparation for the transition. Some SPLM members argue that the forum is merely consultative and cannot request or demand changes to the draft constitution, nor does it have a key role in planning for the transition. In contrast, opposition party leaders believe that the spirit of the October conference and the February meeting was that they should be given meaningful opportunities to review and request amendments to the draft constitution and that they should be consulted in all aspects of preparations for the transition. These gaps in perceptions may cause additional trouble in the weeks and months ahead, and should be addressed quickly.

The draft transitional constitution must be submitted to the SSLA by early-May to provide the necessary two-month period for consideration and adoption ahead of independence on July 9. Given that the Technical Committee is not required to complete

the draft until April 25, there may be very little time for substantive consideration by the president and the Leadership Forum.

Conclusion and Recommendations

The October 2010 meeting represented a major step toward a national consensus on the political and constitutional basis for the new independent nation of South Sudan. President Salva Kiir's leadership of this process has been critical at key moments in sustaining unity and reconciliation among his fellow citizens. In turn, the opposition party leaders have shown a willingness to place shared national interests and principals above partisan interests.

However, the maintenance of a genuinely inclusive transition process is now in jeopardy due to two primary issues: first, the lack of space for meaningful participation by the opposition parties in the decision-making process of the Technical Committee on critical issues and second, disagreements among the parties regarding the length of the transition period and power sharing arrangements.

To address these challenges and to avoid sowing seeds of future conflicts, The Carter Center calls on the SPLM and all opposition groups to work together to overcome the current divisions, and to demonstrate a commitment to democratic values during deliberations about the transition process. This will require genuinely inclusive agreements on a clear process and timeline for the review and adoption of the transitional constitution and for the mandate of the Political Parties Leadership Forum in the planning for the transition.

Background on the Carter Center Mission

The Carter Center has maintained a field presence in Sudan throughout the entire referendum process. After the referendum polling was concluded, President Kiir welcomed The Carter Center to extend its presence in Southern Sudan to monitor the transition. The Carter Center recognizes that the political reform and transition process presently underway in Southern Sudan is of great importance and intends to issue statements periodically to assess progress.

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