



PEACE NEGOTIATIONS
POST-CONFLICT CONSTITUTIONS
WAR CRIMES PROSECUTION

SEEKING SOLUTIONS TO THE CRISIS IN ABYEI, SUDAN

Prepared by

Vanessa J. Jiménez
Senior Peace Fellow

Public International Law & Policy Group

May 2008

SEEKING SOLUTIONS TO THE CRISIS IN ABYEI

Executive Summary

The purpose of this report is to identify the key factors contributing to instability in Abyei and to identify actions that can be taken by the key domestic actors and the international community to begin to reduce tension and resolve the conflict.

Abyei is central to Sudan's future. Located on the North-South border of Sudan, Abyei has the capacity to both unite and divide the country. The crisis in Abyei represents a microcosm of the core issues that were addressed by the Comprehensive Peace Agreement (CPA) between the Government of Sudan and the Sudanese People's Liberation Movement/Army (SPLM/A). Abyei also suffers from the same underlying tensions and unresolved issues that have fueled previous conflicts within Sudan. CPA implementation failures with respect to Abyei have made the area highly unstable. They include the failure of the parties to establish an administration in the area, define the borders, and satisfy obligations related to security, the distribution of wealth, delivery of basic services, and the return of internally displaced persons (IDPs) and refugees. Many have forecasted that if these failures are not addressed, violence would result. This is what happened during the week of May 14th. As this report was being finalized clashes in Abyei erupted between the Sudan Armed Forces (SAF) and the SPLA. Since then, the SAF and government sponsored militias have occupied Abyei north of the River Kir. The fighting has displaced nearly 100,000 civilians. This recent violence now threatens not only the long-term stability of Abyei, but also the endurance of the CPA itself.

The implementation of the CPA represents the best chance for the people of Abyei to enjoy competent local governance, the basic services and fundamental rights and freedoms of all Sudanese, and a future with security and prosperity. Implementation of the CPA as it pertains to Abyei will also contribute to resolving other key points of contention between the NCP, SPLM and local groups – each of which have impacts far beyond Abyei. Putting Abyei on a path to long-term stability requires a holistic approach which examines numerous factors and considers a series of multi-stakeholder solutions.

Factors Contributing to Instability in Abyei

2011 Referenda Outcome: The uncertainty about what the 2011 referenda in Abyei and Southern Sudan hold for the future of Sudan including the NCP and the SPLM/A, the residents of Abyei, and other marginalized groups living along the North/South border has been a major obstacle to peace and security in Abyei. While both the SPLM and NCP may increasingly believe the likely result of the 2011 referenda is Abyei joining an independent Southern Sudan, the uncertainty of this result has led to zero sum assumptions that one side will win at the total expense of the other.

Control over Oil Resources: A substantial proportion of Sudan's oil resources are located in Abyei. The determination of Abyei's boundary and the eventual determination of Abyei's status in 2011 will thus have significant revenue implications for both the North and the South.

2009 National Elections: The NCP and Nile River Arabs fear the possibility of retribution from formerly marginalized groups and the large number of African Southerners now living in the North, should the NCP lose national power after the 2009 (mid-term) national elections. Those in leadership positions also continue to fear prosecution for war crimes. These concerns tend to influence NCP actions regarding the 2009 elections and work against efforts for a free and fair election.

The Misseriya: Members of the Misseriya community believe that the CPA has marginalized their interests. The merger of Western Kordofan into Southern Kordofan as part of the CPA disturbed the community. Despite affirmations in the CPA, the Abyei Protocol and the ABC Report, the Misseriya also continue to fear the loss of their grazing and water access rights if the CPA is fully implemented. The Misseriya has become particularly suspicious and susceptible to manipulation as a substantial amount of misinformation has been directed toward them, in particular concerning the basic provisions of the CPA as they affect the Misseriya, the contents of the Abyei Protocol, and the report of the Abyei Boundaries Commission.

Oversimplification of the Ngok Dinka and Misseriya dynamic: The oversimplification of the Ngok Dinka and Misseriya dynamic tends to paint the Misseriya as a homogenous group aligned with the NCP and against Dinka interests. This misrepresentation also tends to depict the situation in Abyei as one involving only two local groups. This ignores the complexity of relationships that

exist in Abyei between those who habitually reside there, those that seasonably migrate within the area, such as the Misseriya, and those that migrate northward from surrounding areas including Bahr el Ghazal and Unity.

Delayed Implementation/Non-Implementation of the Abyei Protocol:

The delay in implementing the ABC Report, defining the boundaries, establishing Abyei's special administrative status, and distributing oil revenues and reconstruction funds to the area have produced an unstable security situation. This situation impedes the realization of peace dividends for returnees to Abyei, existing residents of the area, and all those who seasonally migrate through the area and depend on its resources to sustain their livelihoods. The basic services that a local government is generally competent to secure are lacking.

Unilateral Actions: Both the NCP and SPLM view each other's appointment of its own respective representative to Abyei, allegedly to address Abyei's administrative void, as a unilateral act that is a breach of the CPA. These actions have contributed to already existing disagreements about the design of an administration in Abyei area, including what constitutes an administration that the Abyei Protocol requires to be "representative and inclusive of all the residents of the area."

The perceived disengagement of the international community: There is a serious perception of disengagement by the international community on Abyei. Various factors contribute to this disengagement including the failure of either party of the CPA to put forth a comprehensive solution that the international community can support, and the diplomatic efforts in Darfur. The uncoordinated international pressure and engagement on Abyei (including via the now disappeared IGAD Secretariat and the disappointing effectiveness of the Assessment and Evaluation Commission) has provided space for failures to implement the CPA to go without sanction.

Darfur: The genocide carried out against the people of Darfur, and the recent military activities of the Darfur rebel movements, creates the presumption that the use of force seems to be most effective means for accomplishing political goals.

Uncertain Command and Control: The uncertain level of command and control over Northern and Southern military forces in Abyei raises concerns that miscalculations or independent actions by either party's armed forces or their proxy militias could spark renewed conflict. This is particularly true given the

events that have unfolded in Abyei this month. The instability in Abyei is heightened by: the deployment of SAF and SPLA forces along the borders of Abyei and now within Abyei itself, as well as the operation of militias in the area -- all contrary to the provisions of the Comprehensive Peace Agreement. Increasing violent clashes involving the Ngok Dinka and the Misseriya and the severe restrictions placed on the UN monitoring forces further contribute to the instability.

Toward a Resolution of the Abyei Conflict

In order to avoid further violence in Abyei and to set the foundation for a permanent resolution of the conflict in Abyei and throughout Sudan, it will be necessary to secure the committed involvement and constructive engagement of parties at the local, national, and international levels. This multi-faceted approach must address the obstacles listed above by pressing all parties to implement past commitments, executing confidence-building measures, and establishing better governance practices.

Moving past current impediments to peace in Abyei will likely require actions by the NCP and SPLM, the Ngok Dinka, Misseriya and other migratory populations, the governments of Southern Kordofan and Bahr el Ghazal (Warrap State in particular), and the international community of states, non-profit organizations, donors, and international organizations. Moreover, while the CPA provides a firm basis for creating a more democratic and inclusive Sudan, it is a framework upon which additional negotiations and agreements can complement and enhance its objectives. These additional agreements can operate alongside the CPA and its Abyei Protocol without prejudice to existing provisions. They can also endure past 2011.

Enhanced UNMIS Monitoring in Abyei: The current humanitarian and security crisis in Abyei could be improved if the NCP and SPLM/A agree to allow UNMIS forces to monitor areas of high tension in Abyei and the surrounding states. This would allow the CPA-required demobilization of SAF and SPLA soldiers to take place in and around Abyei. These security measures could include increasing UNMIS troops, redeploying existing UNMIS troops from areas of lesser need, pursuing collaboration between UNMIS troops and Joint-Integrated Units (JIUs), and lifting restrictions on UNMIS movement in Abyei. They can also include an increase of resources to UNMIS or another impartial and capable entity to train and prepare the JIUs to eventually assume security duties in the area as contemplated by the CPA. This could be particularly helpful in light of the

involvement in the recent violence of SAF and SPLA forces attached to Abyei's JIU.

Establish an Abyei Area Administration with an Interim Border: Despite arguments to the contrary, there is nothing in the CPA and Abyei Protocol that legally prevents the Presidency from establishing Abyei's special administration under the Presidency even when the final borders have not yet been agreed upon by the parties. In fact, the Abyei Protocol provides for this contingency and requires that the Presidency accord Abyei its special administrative status and subjects its jurisdiction to future alterations pending the determination of its borders. Any agreement between the parties on this issue could include proper benchmarks and appropriate incentives to ensure that the final border determinations take place within a designated period. The agreement should also guarantee that as contemplated by the Abyei Protocol, the administration has the full resources and support of the relevant parties and the international community to execute its competencies.

International Transitional Administration for Abyei: An international transitional administration could address the current lack of local governance in the area and could be designed to assume duties in coordination with the CPA-required governing body or until that body has the full capacity and financial resources to execute its competencies. The United Nations, African Union, or some other combination of international actors could manage this transitional administration. Such an international administration could have an agreed upon time for withdrawal, a clear mandate to work to enhance local capacity to govern, as well as specific authorities which could be limited to security, delivery of basic services, management of donor funds, etc. Properly established, an international transitional administration can pave the way for the implementation of the Abyei Protocol and support the special administration when established by the Presidency.

Additional SPLM/NCP Understandings and Agreements: To mitigate the potential for continuing conflict in 2011, regardless of the referenda outcomes, the SPLM and NCP may wish to reach additional agreements and understandings in the interim, but also with respect to post-2011. These could include scenarios involving not just oil, governance, and security, but also issues of future grazing and water rights for the residents of Abyei and all those that seasonably migrate through Abyei and neighboring areas as well as across sovereign borders should the 2011 Southern Sudan referendum result in separation.

Adopt and Implement 2009 Elections Law: The national elections in 2009 may significantly impact the situation in Abyei if there is a dramatic change to the current composition of the national government. First, under the Abyei Protocol the residents of the Abyei area shall elect their administration's representatives in the 2009 elections, irrespective of whether the Presidency has appointed the Executive Council and Area Council required by the Abyei Protocol. In addition, changes in the composition of the national Presidency and legislature can further create opportunities for increased CPA implementation. Delays in preparations for these elections require that national and international actors increase efforts to ensure that the elections are free, fair, and transparent. Immediate adoption of the electoral law still pending within the Presidency would be one positive step.

Misseriya and Ngok Dinka Understandings and Agreements: To promote durable peace, national and international stakeholders could encourage and facilitate, where needed, local efforts of the Misseriya and Ngok Dinka to reach agreements among themselves. Based on their traditional mechanisms for dispute resolution and reconciliation, historical understandings about each group's use and occupation, as well as recent efforts to dialogue since conclusion of the CPA, there is evidence that the two can likely reach broad consensus on a number of issues. These include those related to the borders, representation in local governance, economic development and reconstruction as well as exclusive and shared ownership and use of natural resources. Many of these understandings can be guaranteed regardless of the 2011 referenda results. Local agreements must also be coupled with commitments of support and agreements between and among the international community, the CPA parties and local communities regarding development priorities of the Dinka and Misseriya, as well as other tribes that migrate through this critical area from surrounding areas such as Bahr el Ghazal and Unity.

Enhanced IDP and Refugee Return: First and foremost, urgent humanitarian and relief efforts must be carried out and supported to address the needs of those most recently displaced by the violence that began during the week of May 14. Return for these individuals (many displaced for a second time) is not possible until the security situation is addressed and basic services are provided allowing for a return with safety and dignity. If this takes place, international and national actors can double efforts when the dry season resumes ensuring the return of internally displaced persons (IDPs) and refugees to the area to prepare for the 2009 elections and the 2011 referenda.

Utilize Arbitration and Judicial Dispute Resolution: If the Presidency can not resolve the crisis in Abyei, the parties to the CPA could agree to send one or more issues to arbitration (preferably binding arbitration) or to the Constitutional Court to adjudicate the Abyei boundaries or perhaps assess whether the ABC exceeded its mandate. While the Sudanese Constitutional Court is the legal entity with the authority to interpret the CPA, the independence and impartiality of the court must first be assessed. A binding decision by either the court or an arbitration entity would be worth no more than the binding nature of the ABC Report unless the international community is ready to impose consequences on non-implementation that it has been hesitant to do in the face of the failures to implement the ABC Report and Abyei Protocol.

Re-engage the International Community: Efforts could be made to increase the engagement of the Assessment and Evaluation Committee (AEC) by encouraging more AEC visits to the area, hosting informational meetings in Abyei, publishing reports with recommendations and candid assessment of CPA party efforts, and reforming its internal procedures and practices to guarantee against CPA party influence. Additionally, some have called for the re-establishment of the IGAD Sudan Secretariat with an expanded and updated mandate. Given the current situation in Abyei, the international community may also consider hosting a conference in or outside of the Sudan to seek solutions to the crisis that has now seized the area. Immediate attempts to do so could prevent the current conflict in Abyei from consuming the CPA itself.

Prepare for 2011: Both the NCP and SPLM could consider forming a joint council to begin discussing in greater detail their respective interests and concerns as they relate to the possible outcomes of the 2011 referenda. Initiating a resolution of some of these issues now (i.e. resource ownership and use, security, trade relations, governance in the North, citizenship rights and divisions of assets and liabilities in the event of secession, etc.) can inform their current negotiating priorities over Abyei and other flashpoint areas of the CPA. Once the parties have identified their priorities they can better ensure that a peaceful transition occurs regardless of whether unity or secession prevails in 2011.

The substance of this report is based upon numerous consultations conducted with key stakeholders in Khartoum, Juba and Washington D.C. during a number of field visits by the report's primary author over the past two and a half years. The report builds upon an earlier report prepared by PILPG entitled "Prospective Solutions to the Failure to Implement an Administration in the Abyei area of the Sudan." The report also benefited from insights provided by participants in a

scenario planning event on Abyei hosted in March 2008 by PILPG and the law firm of DLA Piper. The event was attended by a select group of experts, policy makers, and government representatives, including representatives from the Government of Southern Sudan Mission to the United States, and the Embassy of the Sudan to the United States.¹ The views expressed in the report are exclusively the views of PILPG and do not necessarily represent the specific views of any individuals or organizations which have been consulted by PILPG or which participated in the scenario planning event.

¹ PILPG takes this opportunity to express its sincere gratitude to its funders, particularly the Open Society Institute which has financially supported its work on Sudan, the law firm of DLA Piper for co-hosting the Abyei Scenario Planning event, and all of the experts whose support, participation, and comments contributed to the quality and success of the event and our continued understanding and analysis of the situation in the Sudan. This report, however, is solely the work product of PILPG and none of the opinions expressed therein should be attributed to any of its funders or any particular participant of the Abyei event.

TABLE OF CONTENTS

Executive Summary	2
Statement of Purpose	10
Introduction	11
Abyei as the Flashpoint of North-South Conflict	11
<i>Abyei in the CPA Era</i>	13
<i>Recent Events in Abyei</i>	14
Factors Contributing to Instability in Abyei	17
<i>Historical Lack of Trust</i>	17
<i>The Security Situation</i>	17
<i>Natural Resource Wealth and Future Access</i>	20
<i>NCP and Nile River Arab Concerns of Retribution</i>	21
<i>Relations between the Dinka and the Misseriya</i>	21
<i>Disengagement of the International Community</i>	24
<i>Uncertainty Over Post-2011 Sudan</i>	25
Towards a Resolution of the Abyei Conflict	26
<i>Improve Security</i>	27
<i>An Abyei Area Administration with an Interim Border</i>	28
<i>An International Transitional Administration</i>	29
<i>Independent Agreements Concerning Natural Resources</i>	30
<i>Prepare for the 2009 Elections</i>	35
<i>Foster Dialogue between the Misseriya and the Dinka</i>	37
<i>Use of Arbitration or the Constitutional Court</i>	39
<i>Ensure the Return of IDPs and Refugees to the Area</i>	40
<i>Increased Role for the International Community</i>	41
<i>Prepare for Potential 2011 Outcomes</i>	43
Conclusion	44
List of Participants from PILPG Scenario Planning Event on Abyei	46
About the Public International Law & Policy Group	48

SEEKING SOLUTIONS TO THE CRISIS IN ABYEI

Statement of Purpose

The purpose of this report is to identify the key factors contributing to instability in Abyei and to identify actions that can be taken by the key domestic actors and the international community to begin to reduce tension and resolve the conflict.

Introduction

While not diminishing the importance of other areas of Sudan, including Southern Kordofan, Blue Nile, the Beja lands in Eastern Sudan, and Darfur, there is a broad consensus that the area of Abyei is a flashpoint for conflict between Northern and Southern Sudan deserving increased attention. Oil rich and spanning the divisions between the North and South geographically, culturally, and politically, Abyei is at the heart of Sudan's future. Overcoming the current obstacles to peace and political participation in Abyei will significantly reduce the potential for renewed conflict between the North and the South. The region has been at the center of two civil wars, and remains a source of conflict. Many believe that today Abyei holds the promise of either durable peace through good-faith implementation of Abyei-related provisions of the Comprehensive Peace Agreement (CPA), or a return to war if the parties cannot resolve this dispute.

Abyei as the Flashpoint of North-South Conflict

Civil war has plagued Sudan since independence in 1956. Prior to independence, the Ngok Dinka living in the Abyei region and the Humr branch of the Misseriya Arabs,² who traveled seasonally with their cattle southward into Abyei from Muglad and Babanusa to the north, enjoyed communal relations.³ However, violence in Abyei focused against the civilian population during the first Sudanese civil war caused divisions and violence between the Ngok Dinka and Misseriya—the most significant attack being a mass killing of Ngok Dinka civilians by Misseriya in the town of Babanusa in 1965. After this attack, many

² The Misseriya are composed of two primary groups, the Humr and the Zurg, though only the Humr seasonally graze their cattle in land on which the Ngok Dinka also live. Douglas Johnson, *Why Abyei Matters: The Breaking Point of Sudan's Comprehensive Peace Agreement?*, 107 AFRICAN AFFAIRS 1, 2 note 3 (2008).

³ See Douglas Johnson, *Why Abyei Matters: The Breaking Point of Sudan's Comprehensive Peace Agreement?*, 107 AFRICAN AFFAIRS 1, 2 (2008).

Ngok Dinka increasingly looked to the Southern cause, while many Misseriya looked to the North for support.

Ending the first civil war, the 1972 Addis Ababa Agreement provided for a referendum in Abyei to determine its status as part of the North or South. The Niemeri government based in Khartoum retreated from this promise. Continued grievances relating to Abyei were a central element leading up to the second Sudanese civil war in 1983. The effects of the second civil war devastated Abyei and displaced the majority of the Ngok Dinka population in the area who largely fled to the North. Prior to the violence which has taken place this month and the SAF occupation of Abyei Town, only a quarter of Abyei's pre-war population remained in the area. Thousands more have returned or have begun formulating plans to make the trek, particularly from the North.⁴ Now, many of those who have returned to Abyei since the signing of the CPA find themselves displaced once again.

During the second civil war, the Government in Khartoum armed elements of the Misseriya. Serious attacks were launched against their Southern neighbors, including the Dinka. The attacks carried out by groups of Misseriya against Ngok Dinka civilians in 1977 and 1980 were especially devastating.⁵ As a result, many Ngok Dinka aligned with the Anyanya (a Southern Sudanese separatist rebel army formed during the First Sudanese Civil War) as elements within the Misseriya groups increased their ties with the Khartoum-based government.

Prior to Sudan's first civil war (1956-72) the Ngok Dinka and the Misseriya had a long history of peacefully co-existing. The Ngok Dinka has consistently allowed the Misseriya to cross their ancestral lands to seasonally graze cattle in a mutually beneficial relationship. Historically, the traditional leaders of both groups navigated this relationship effectively. Even during wartime these migrations did not entirely cease. This fact makes local reconciliation between these two traditional peoples an opportunity that cannot be underestimated or marginalized by national dialogues in Khartoum. The effort to promote this dialogue also cannot be left solely to local relief and humanitarian NGOs. This is particularly true when the international community is searching to support viable conflict resolution initiatives in Sudan.

⁴ See Roger Winter and John Prendergast, *Abyei: Sudan's "Kashmir"*, 4 (Jan., 2008), available at [http://www.enoughproject.org/files/reports/aneyi%2029-1\(2\).pdf](http://www.enoughproject.org/files/reports/aneyi%2029-1(2).pdf) (last visited Mar. 25, 2008).

⁵ Douglas Johnson, *Why Abyei Matters: The Breaking Point of Sudan's Comprehensive Peace Agreement?*, 107 AFRICAN AFFAIRS 1, 7 (2008).

Abyei in the CPA Era

As a distinct part of the CPA, the National Congress Party (NCP)-dominated Government of Sudan and the Sudan People's Liberation Movement/Army (SPLM/A) signed the United States-authored Abyei Protocol to address the conflict in Abyei. The Abyei Protocol addresses the central elements that the CPA sought to resolve throughout Sudan — return of internally displaced persons (IDPs) and refugees; development and the peace dividend; equitable wealth and power sharing; security and Joint Integrated Units (JIUs); local governance, national elections, and referenda.

The Abyei Protocol calls for Abyei to be accorded a special administrative status. Accordingly, the area is to be administered by an Executive Council elected by the residents of Abyei consisting of a Chief Administrator, a Deputy, and not more than five heads of departments. Additionally, the Protocol calls for an elected legislative body, the Abyei Area Council, consisting of twenty members. Prior to elections, the Presidency is to appoint both the Executive Council and the Abyei Area Council. To define Abyei's border, the Abyei Protocol calls for the establishment of an Abyei Boundaries Commission made up of international experts and representatives of the CPA parties. The CPA parties, NCP-dominated Government of Sudan, and the SPLM/A repeatedly mandated the body in the Protocol "to define and demarcate the area of the nine Ngok Dinka Chiefdoms transferred to Kordofan in 1905."⁶ According to the CPA, the report issued by the ABC is final and binding. As discussed below, the trigger for the establishment of the administration in Abyei is described somewhat inconsistently throughout the CPA. However, in one of the most cited provisions of the Abyei Protocol it is provided that "upon presentation" of the ABC Report to the Presidency, the Presidency must take the steps to accord the area its special administrative status.⁷

Under the Abyei Protocol, Abyei also has its own oil distribution formula for oil revenues from the area: 50% to the NCP-dominated Government of National Unity (GNU); 42% to GoSS; 2% to "Ngok Dinka"; 2% to Misseriya people; 2% to Western Kordofan (now part of the Northern state of Southern Kordofan); and 2% to Bahr el Ghazal region. Finally, the Protocol calls for a referendum in Abyei, held concurrently with the Southern Sudan Referendum in 2011, in which the

⁶ CPA, ch. IV (Abyei Protocol) art. 5 (2005), available at http://www.usip.org/library/pa/sudan/abyei_05262004.pdf (last visited Mar. 25, 2008); CPA, annex I (Abyei Annex) art. 1 (2005), available at <http://www.iss.co.za/Af/profiles/Sudan/darfur/implementation31dec04.pdf> (last visited Mar. 25, 2008).

⁷ *Abyei Protocol* art. 5.3 (GoS, SPLM/A, 2004), available at http://www.usip.org/library/pa/sudan/abyei_05262004.pdf (last visited Apr. 20, 2008).

citizens of Abyei will vote on whether Abyei shall remain in the North, or join the Bahr el Ghazal region in Southern Sudan.

Since the signing of the CPA in 2005, the NCP-dominated Government of National Unity (GNU) has implemented some important components of the CPA. However, in a pattern reflective of the 1972 Addis Ababa Agreement, full implementation of the core provisions of the Abyei Protocol has not occurred. These provisions include, among others, the requirement to: implement the findings of the Abyei Boundaries Commission Report, define the borders of Abyei, establish the special Abyei administration under the Presidency, provide distributions of revenue from oil produced in the area, establish Joint Integrated Units within the area, and facilitate the return of IDPs and refugees and the reconstruction of the area.

Due to border ambiguity, oil sharing according to CPA-mandated ratios has not occurred. Violence and insecurity in and around Abyei are clearly alarming. Abyei's Joint Integrated Unit is not functioning and SAF and the SPLA forces that were slated for integration have recently engaged each other resulting in numerous casualties. Contrary to the requirements of the CPA, both the SAF and SPLA have deployed troops to this fragile North-South border and most recently have increased these forces with the SAF actually occupying Abyei Town. Many of these forces have simply been redeployed from other areas, also in contravention of the CPA. The UNMIS forces, contrary to the CPA, have also been restricted by the SPLM/A and the NCP from monitoring in critical areas North and South of Abyei Town.

Failure to implement the Abyei Protocol also threatens the likelihood of carrying out the required referendum in 2011 to determine Abyei's final status. CPA implementation delays in Abyei also decrease the possibility of Abyei serving as an example of conflict resolution along the North/South border. Peace in Darfur is unlikely if the CPA collapses and is seen as implemented poorly. If the North/South border remains unstable and there is an absence of a resolution over this area, uncertainty also exists as to whether a peaceful transition can occur in 2011—regardless of the referenda outcomes.

Recent Events in Abyei

Recent security developments in Abyei are cause for great concern. While reports have varied, during the week of May 12 clashes erupted between the Sudan Armed Forces and the SPLA in and around Abyei Town. SAF and its sponsored

militias occupied Abyei Town, displaced its civilian population, and took positions North of the River Kir. Due to several days of fighting the town was burned, homes and shops destroyed, structures shelled, and there have been numerous casualties. Reports are inconsistent as to who fired the first shot. It is estimated, however, that at least 120,000 people were displaced from areas North of the River Kir as a result of the clashes, many residents making their way through the forests toward Agok where the SudanARC has a compound.⁸ Those displaced include 35,000 from Abyei Town and the rest from villages North and Northwest of Abyei (Dokora, Nong, Todac). Residents of the villages to the northeast (Mijok and Dunup) are not displaced, but their situation is tenuous. These figures were apparently given to the UN by the Southern Sudan Relief and Rehabilitation Commission and are apparently being used to plan and carry out humanitarian and relief efforts.⁹

The CPA provides a timetable by which SAF and SPLA troops are to withdraw from their respective sides of the 1956 border, which the U.N. mission should monitor. The SAF and SPLA were supposed to pull out of Abyei under a December agreement that brought the SPLM back into the GNU after the SPLM's October, 2007 suspension of participation. Withdrawal of troops by both sides, however, has occurred slowly and the recent crisis has now resulted in an increase of troops. Additionally, the United Nations Mission in Sudan (UNMIS) remains unable to fulfill its mandate in Abyei due to continuing restrictions imposed by the NCP and the SPLM/A. In what seemed like a sign of progress at the time, starting April 7 both parties granted UNMIS fourteen days of unhindered access.¹⁰ A permanent authorization, however, is needed especially in light of recent events. On April 30, UN Security Council Resolution 1811 renewed UNMIS's mandate for another year and specifically called "for all parties to immediately accept full unrestricted UNMIS monitoring and verification in the Abyei region, without prejudice to the final agreement on the actual borders between the two sides..."¹¹

There are also other armed groups operating in and around Abyei including the Abyei Liberation Front and Popular Defense Forces (PDF). It is reported that a

⁸ The SudanARC is a program of Kush, see [www. http://www.sudanarc.com/about/index.html](http://www.sudanarc.com/about/index.html).

⁹ The facts regarding the recent clashes were taken from news articles and updates from Kush and the War Affected Rehabilitation and Development in Sudan (WARDS) operating in Abyei. See "Heavy fighting erupts in Sudan's Abyei", Sudan Tribune, May 20, 2008, available at: <http://www.sudantribune.com/spip.php?article27218> (last visited on May 20, 2008); "Update on the Humanitarian Situation in the Abyei Area", Kush and WARDS (May 18, 2008) (available with author).

¹⁰ "U.N. has 14 days to verify troops build-up in Sudan's disputed Abyei", *Sudan Tribune*, available at <http://www.sudantribune.com/spip.php?article26670> (last visited on 2 April 2008).

¹¹ UN Security Council Resolution 1812 (30 April 2008), para. 6.

Twic militia operating with SAF support played a significant role in initiating the violence this month. Prior to these events, other clashes have occurred in Abyei and in the surrounding states of Kordofan and Unity between SAF and SAF-linked Misseriya armed groups, and SPLA forces. In December 2007, violent clashes between the SPLA and the Misseriya resulted in the deaths of at least 75 people. The Misseriya's recent closure of a key highway leading to Abyei also increased tensions. Arab nomads recently carried out an attack on Southern Sudanese troops at the SPLA garrison in Abiemnhom, Unity State. On March 1 in south Al-Mayram, an attack allegedly carried out by the PDF killed 70 people and displaced more than 100.¹²

On the political front, the SPLM suspended participation in the GNU in October 2007, due to slow and sporadic implementation of the CPA, with the Abyei Protocol as the main point of contention. While the SPLM returned to the GNU in December 2007, after negotiations with the NCP, no agreement on Abyei was reached and a critical issue of non-compliance was sent to the Presidency where it remains without resolution. In response to the delays, the SPLM appointed Edward Lino in January not as the "Chief Administrator" contemplated by the Abyei Protocol, but as the party's chairman in Abyei with a mandate to "organize the people of Abyei area politically and administratively within the general SPLM policies and the provisions of CPA" and "prior to establishment of Abyei Area administration...be responsible for the overall administration of the area, oversee the implementation of Abyei Protocol and coordination of the UN and NGOs programmes and activities in the area."¹³ The NCP then responded by appointing its own party representatives for the area and the Misseriya appointed their own governor.¹⁴

In the midst of these new and very worrisome developments, some reason for hope exists. Local NGOs and civil society have taken a lead role in addressing the humanitarian crisis that has arisen and stepped in to assume some of the roles that would be expected of a local government. Durable reconciliation efforts also

¹² *War of Words After Scores Killed in Abyei*, SUDAN TRIBUNE, Mar. 4, 2008, available at <http://www.sudantribune.com/spip.php?article26219> (last visited Mar. 19, 2008).

¹³ SPLM Chairman's Decree No. 23/2007, "Appointment of Comrade Edward Lino Abyei as SPLM Chairman in Abyei Area", SPLM/CD/23/2007 (31 December 2007), articles 2-4.

¹⁴ The NCP appointed Zachariah Atem as supervisor of the NCP party in Abyei, Rahma Abdel Rahman Al-Nur as head of the NCP in Abyei, and Matit Ayom as the party's deputy. The Misseriya appointed their own "governor" for Abyei, Mohammed Omer Al-Ansari, a Misseriya militia leader who has formed the Abyei Liberation Front as a purported administrative body for Abyei. See "Edward Lino Denies SPLA Attacking Misseriya in Abyei", MIRAYA 101 FM, Feb. 28, 2008, available at http://www.mirayafm.org/news/news/_200802282883/ (last visited Mar. 19, 2008); "Sudan SPLM Vows Swift Response to Military Attacks in Abyei", SUDAN TRIBUNE, Feb. 19, 2008, available at <http://www.sudantribune.com/spip.php?article26035> (last visited Mar. 19, 2008).

exist at local levels. The traditional nine Ngok Dinka Chiefs formed the Abyei Common Trust which seeks to build unity, promote peaceful co-existence, uphold customary community law, and address the management of natural resources. Moreover, since the signing of the CPA Misseriya and Ngok Dinka traditional leaders have met and identified common positions, though these meetings are not well publicized. However, many obstacles to reconciliation remain. These include the lack of adequate resources and political will to encourage local peace-building efforts. The area suffers from limited access to information that diminishes the capacity of these groups to resist undue pressures from political actors in both the North and South, and navigate their interests in a free and informed manner within a national dialogue.

Factors Contributing to Instability in Abyei

Implementation of the Abyei Protocol has been slow due to historic mistrust between the NCP and SPLM/A, NCP and Nile River Arab fear of retribution, an unstable security situation, uncertainty regarding control of Abyei's oil wealth and other natural resources post 2011, legitimate fears and concerns of the local Misseriya and Ngok Dinka communities, and a failure of sufficient engagement by the international community.

Historic Lack of Trust

A historic lack of trust between the SPLM and the NCP, stemming from years of warfare, marginalization, and repeated breach of agreements by the governments in Khartoum dating back to the 1972 Addis Ababa Agreement, underlies the tension surrounding CPA implementation. At present, the binding report of the Abyei Boundaries Commission has not been implemented, the special administration under the Presidency as mandated by the Abyei Protocol has not been established, and adequate and transparent distribution of profits from oil wealth originating from the area has not occurred. The Presidency's lack of action and the international community's disengagement make reaching a durable resolution to the conflict in Abyei difficult. Abyei exposes the fragility of the so-called "partnership" between the SPLM and NCP as well as problems relating to the involvement and perceived influence of the international community.

The Security Situation

Mistrust and insecurity are interrelated factors. The atmosphere of mistrust has heightened tensions between the North and South, and extended to the habitual

residents of Abyei and many who migrate through its lands. Recent events in Abyei only serve to consolidate this distrust. In the past, both Northern and Southern leaders have made statements and taken actions that have increased military tensions over Abyei, with both saying they would not be the first to resume warfare. In November, 2007, President Bashir said “Now we order the (Popular Defense Forces), the legitimate son of the people, to open their camps and gather the Mujahideen not to wage war but it is obvious that we should be ready.”¹⁵ In February 2008, Luka Biong Deng, Minister for Presidential Affairs in the GoSS, accused members of the NCP of being “war mongers,” and warned that attacks “targeting any natives of Abyei, regardless of their ethnicity,” would result in a quick armed response from the SPLA.¹⁶ The clashes that just took place in Abyei this month are testing the veracity of these statements. Inevitably, this dynamic perpetuates hostility and increases the likelihood of a return to full-scale armed conflict.

Questions regarding the strength of political command and control over military units and armed groups in Abyei add a further element of concern. One view is that political command and control over military units in the area is strong on both sides. This view sees both the SAF and SPLA further evolving since the beginning of the second civil war and the conclusion of the CPA — each solidifying a strong chain of command over a professionalized army including in the Three Areas (Southern Kordofan, Blue Nile and Abyei) along the North-South border. This viewpoint also sees other armed groups in Abyei as under tight control of civilian and military leaders in the North. Under this view, it is believed that the SAF likely directed reported attacks by militia in Abyei and surrounding states.

An opposing viewpoint holds that political command and control over military forces is weak. This view compares the current situation to that of 1983, when John Garang, without approval from the Southern political leadership, began a second Southern revolt leading to another civil war. Weak command and control, frustration over Abyei, and deep mistrust between the South and North are factors that contributed to resumption of war in 1983, and may do so again today.

¹⁵ *Sudan President Orders Paramilitary Forces Mobilization, Rejects Abyei Report*, SUDAN TRIBUNE, Nov. 17, 2007, available at http://www.sudantribune.com/spip.php?article24793&var_recherche=Abyei%20Bashir%20war (last visited Mar. 25, 2008).

¹⁶ *Sudan SPLM Vows Swift Response to Military Attacks in Abyei*, SUDAN TRIBUNE, Feb. 18, 2008, available at http://www.sudantribune.com/spip.php?article26035&var_recherche=Abyei%20war (last visited Mar. 25, 2008).

Under either view, questions remain as to the relative operational capacities of the SPLA and SAF. While some observers contend that the SAF is the strongest it has ever been, other observers believe that in spite of modern arms and financial resources, the SAF faces a troop shortage if not a morale problem. In November 2007, President Bashir said no one should believe that “we are weakened because we signed the peace [CPA] and there is a war in Darfur.”¹⁷ The recent push by the JEM Darfuri rebel group to the outskirts of Khartoum may tend to support the view of a less formidable SAF.¹⁸ Similar uncertainty exists regarding the SPLA’s military capacity with those indicating that it is “ten times stronger” than prior to the CPA and others questioning the same.¹⁹

Against this backdrop, the security situation on the ground in Abyei is particularly worrying. While Section 7 of the Abyei Protocol requires “international monitors”, the deployment of a joint battalion as well as the establishment of an Abyei Area Security Committee, the Abyei Joint Integrated Unit is not functioning while the SPLM/A and the NCP have continually restricted UNMIS from carrying out their monitoring duties as required by the CPA. Instead of a functioning JIU, independent SAF and SPLA units remain stationed in Abyei and SAF and SPLA soldiers meant to form the JIU engaged each other during recent clashes in Abyei. Several armed Misseriya militia groups also operate in Abyei and surrounding states. Some commentators assert that their funding sources come directly from Khartoum.

Concern also exists that JIUs will never function properly because of the underlying mistrust between Northern and Southern military units and their inability to pledge loyalty to one national unit as opposed to their particular army, party or ethnicity. Concern has also been expressed that the forces lack capacity and training to work as a professionalized joint unit, and that overcoming this problem is simply a matter of increased dedication of resources and training. Particularly in light of SAF and SPLA engagements in the area, it is clear that resources need to be dedicated to UNMIS or another impartial entity (e.g. EU

¹⁷ *Sudan President Orders Paramilitary Forces Mobilization, Rejects Abyei Report*, SUDAN TRIBUNE, Nov. 17, 2007, available at http://www.sudantribune.com/spip.php?article24793&var_recherche=Abyei%20Bashir%20war (last visited Mar. 25, 2008).

¹⁸ Stephanie McCrummen, *Incursion Crushed, Sudan Reports: Darfur Rebels Fail In Coup Attempt Against President*, WASHINGTON POST, May 11, 2008, available at <http://www.washingtonpost.com/wp-dyn/content/article/2008/05/10/AR2008051001618.html?hpid=moreheadlines> (last visited May 11, 2008) (noting further that “Bashir contends with the questionable loyalties of a Sudanese army dominated by soldiers from Darfur”).

¹⁹ “Sudan: Why Peace Is Likely To Prevail, Between North and South Sudan”, Gurtong Trust, available at <http://www.gurtong.com/forums/index.php?showtopic=2912&pid=27197&mode=threaded&start=> (last visited 3 April 2008).

forces, NATO, or the African Union), capable of providing the necessary instruction and training to the Abyei JIU so that it can carry out serious monitoring and security exercises.

Thus, the unstable security situation in Abyei is a cause of great concern, as is the very real fear that independent actions of just a few individuals positioned along the border can set off a series of events that can not be undone by those in Juba or Khartoum or the international community, despite their best intentions.

Natural Resource Wealth and Future Access

Abyei's oil wealth is a major factor inhibiting the resolution of the conflict. The borders of Abyei defined by the ABC Report placed significant oil fields within the Abyei area. NCP fears over losing these oil fields in the North as a result of the Abyei and Southern Sudan referenda in 2011 is a significant factor in the NCP's considerations over Abyei. Oil wealth is critical to the North's economy and the NCP's retention of power. Consequently, regardless of any legal or political arguments to the contrary, the NCP is not likely to make concessions or implement components of the CPA, such as accepting the final and binding determination of the ABC, if to do so would endanger its future access to oil.

According to analysis carried out by the International Crisis Group (ICG), in 2003 Abyei was producing more than 25% of Sudan's oil.²⁰ In 2005, Abyei continued to produce more than 25% of Sudan's oil, and more than 72% of Southern Sudan's production.²¹ However, many believe that Abyei's oil reserves are quickly being depleted by current production, and that oil production in Abyei will steadily decline into the future. In addition, with oil production increasing in other areas of Sudan, Abyei's share of Sudan's total oil production is also falling, with 2007 estimates showing Abyei likely constituted less than 8% of Sudan's total production.²² In terms of oil wealth, ICG estimates show that for the years 2005 to 2009, the net revenues for Abyei's oil wealth are as follows—\$599 million (2005); \$670.85 million (2006); \$529.39 million (2007); \$440.6 million (2008); and \$388.87 million (2009).²³

²⁰ International Crisis Group, *Sudan: Breaking the Abyei Deadlock*, 8 (Oct., 2007), available at http://www.crisisgroup.org/library/documents/b47_sudan_abyei_web.pdf (last visited Mar. 25, 2008).

²¹ International Crisis Group, *Sudan: Breaking the Abyei Deadlock*, 14 (Oct., 2007), available at http://www.crisisgroup.org/library/documents/b47_sudan_abyei_web.pdf (last visited Mar. 25, 2008).

²² International Crisis Group, *Sudan: Breaking the Abyei Deadlock*, 9 (Oct., 2007), available at http://www.crisisgroup.org/library/documents/b47_sudan_abyei_web.pdf (last visited Mar. 25, 2008).

²³ International Crisis Group, *Sudan: Breaking the Abyei Deadlock*, 8 (Oct., 2007), available at http://www.crisisgroup.org/library/documents/b47_sudan_abyei_web.pdf (last visited Mar. 25, 2008).

The lack of transparency in the NCP-controlled oil production process, and the lack of transfer of Abyei's oil wealth to the GoSS, Southern Kordofan, the Bahr el Ghazal region, the Ngok Dinka, and the Misseriya people in contravention of the ratios stipulated by the CPA create further resentment and mistrust. Thus, addressing both current disputes and future fears over Abyei's oil wealth is central to resolving the Abyei conflict and proceeding with the implementation of the CPA. Specifically, if Abyei's oil resources are being depleted in the rapid fashion that some experts believe, how would this reality affect the NCP's views as to the importance of Abyei as a source of oil wealth post-2011? Also, what mechanisms can the parties implement to ensure that once Abyei's border are settled, the GoSS, the Ngok Dinka, the Misseriya people and the others receive their share of Abyei's oil wealth produced after the signing of the CPA to the present? In the event of likely depletions of oil reserves in Abyei in the near future, solutions as well as stakeholder responses to the crisis in the Abyei area need to be measured proportionately. Moreover, while challenges remain regarding oil revenue payments past due as per the Abyei Protocol, any comprehensive solution to Abyei must address how these arrears will eventually be paid once the borders are fixed and the ownership and management of the oil now and post 2011 are agreed upon.

NCP and Nile River Arab Concerns of Retribution

An additional barrier to political and administrative progress within Abyei, as well as a threat to the CPA as whole, may be the perceived consequences of the 2009 national elections and 2011 referenda outcomes. Unease exists among some members of the NCP and Nile River Arabs that they will face retribution if the NCP loses significant power as a result of the 2009 elections. It is common knowledge that those in the political and military leadership of the NCP and SAF also fear international prosecution for war crimes perpetuated in the prosecution of the conflict in Darfur. Consequently, Northern incentives to manipulate or obstruct the 2009 elections must be addressed by those seeking the good faith implementation of the CPA and a guarantee against the potential return to war.

Relations between the Dinka and the Misseriya

Unfortunately, conflict at the local level in Abyei has been reduced and simplified to a description of tensions between the Misseriya and Ngok Dinka that ignores a more complex social fabric that connects various peoples and resources in the area – those that reside there, those that seasonally migrate there (including those from Bahr el Ghazal and Unity), as well as those that seek safe passage

through Abyei en route to their homeland from which they were displaced years ago. The Misseriya and Ngok Dinka dynamic, however, is the relationship most highlighted and most exploited by those with power. The Misseriya and Ngok Dinka traditionally lived without conflict. Since the commencement of the first civil war this co-existence has never been quite the same. Political developments and violent conflicts since the signing of the CPA now hinder a return to stability in relations. The lack of correct information on CPA provisions—which has created Misseriya perceptions that the CPA marginalized their interests—as well as alliances between different elements of these populations with either the SPLM/A or NCP, have contributed to tension in the Abyei area and the surrounding states. Observers can see these shifting alliances in the reportedly significant numbers of Misseriya who have joined the SPLM. Thus, while some of the Misseriya have aligned with the NCP, others have grown displeased with the NCP and now believe the SPLM would better protect their interests.

Abyei's lack of administration, absence of oil revenue, the merger of Western Kordofan into Southern Kordofan, and the resulting lack of government services exacerbate the perception that these political parties have disenfranchised local groups. Neglecting or ignoring the interests of the Dinka and Misseriya could provoke further hostilities. It would also be a mistake to fashion solutions that ignore the interests and concerns of others who seasonably migrate through Abyei from areas such as Bahr el Ghazal and Unity.

Disagreements on the shape of a future administration in Abyei have also contributed to tensions. The Abyei Protocol notes that an administration shall be “representative and inclusive of all the residents of the area.” The SPLM has interpreted this language to mean that any administration would be Dinka controlled. There is some talk about putting certain guarantees in place to protect Misseriya interests. In contrast, though the Ngok Dinka have no reciprocal representation in the governance and decision-making of the Misseriya people, the NCP interprets this provision as requiring that the Dinka and Misseriya jointly govern in the administration. Under the Abyei Protocol it is the “residents” of Abyei that will elect its administration and participate in the 2011 referendum. Who is a “resident” is to be decided by the Abyei Referendum Commission.²⁴ Notably, the Venice Commission Guidelines on the Holding of Referendums

²⁴ Abyei Protocol art. 6.1 (GoS, SPLM/A, 2004), available at http://www.usip.org/library/pa/sudan/abyei_05262004.pdf (last visited Apr. 20, 2008).

defines resident requirements to mean those with “habitual residence.”²⁵ This would tend to exclude migratory populations whose permanent residence tends to be elsewhere.

Concerns and Needs of the Dinka: While the peace dividends have been slow in delivery throughout Southern Sudan, the absence of a functioning administration and an unstable security situation has made Dinka IDP and refugee returns to their homeland and resumption of stability and normalcy in the Abyei area exceedingly difficult. The absence of governance and security and the uncertainty of the borders has further stymied economic development and reconstruction of the area – long considered one of the worst affected by the war along with areas such as Southern Kordofan and Blue Nile. Moreover, insufficient returns and the recent displacements of at least 100,000 people impact voting in the 2009 elections and the 2011 referenda.

Concerns and Needs of the Misseriya: The tendencies of sectors of the Misseriya living in Abyei can not be said to represent all Misseriya in the area let alone in Sudan. It is clear, however, that significant elements of the Misseriya that seasonably migrate through Abyei believe that the SPLM and NCP marginalized core Misseriya interests during CPA negotiations by accepting the Abyei Protocol and, among other things, allowing the merger of Western Kordofan into Southern Kordofan. It should be noted that no prior agreement provided them with comparable benefits, particularly in terms of a share of oil revenues. Moreover, a lack of knowledge and confusion on the terms and meaning of the Abyei Protocol and ABC Report, some of which disinformation campaigns may have caused, has fostered Misseriya fears that they will lose their grazing and water access rights if the parties implement the Protocol and ABC Report. Loss of these rights threatens the Misseriya’s way of life. At the same time, many Misseriya have begun to support the SPLM, as distrust of the NCP has grown. While stakeholders may be hesitant to reward Misseriya who have participated in the continued violence in the area and should be cautious about treating them as victims, a comprehensive resolution must address their legitimate needs.

Disengagement of the International Community

Another factor contributing to the failure to adequately resolve the conflict in Abyei is the apparent disengagement of the international community. Many

²⁵ Guidelines on the Holding of Referendums, Venice Commission, European Commission for Democracy, sec. I.1.1.c.i, 8 November 2006, available at [http://www.venice.coe.int/docs/2006/CDL-AD\(2006\)027rev-e.pdf](http://www.venice.coe.int/docs/2006/CDL-AD(2006)027rev-e.pdf) (last visited 3 April 2008).

fault CPA implementation failures not just on the acts and omissions of the SPLM/A and NCP, but also in the lack of attention and commitment of the international community. It was expected that this commitment would be sustained and commensurate with that which was present and instrumental in bringing the NCP-dominated Government of Sudan and the SPLM/A to the negotiation table years before. With certain legitimacy, many argue that unilateral abrogation of the Abyei Protocol and other CPA implementation failures have gone without consequence or sanction from the international community. This has threatened the negotiated peace. While acknowledging the generous contributions of financial resources dedicated to CPA implementation, the absence of the international community's resolve to impose consequences on CPA breaches is palpable.

The CPA calls for an Assessment and Evaluation Commission (AEC) to monitor the implementation of the CPA. While the new AEC Chairman, Britain's Sir Derek Plumbly, has renewed efforts to engage the international community in promoting compliance with the CPA, many feel that the effectiveness of the AEC has not lived up to even the most minimal expectations of the international community. There have been credible reports that political maneuverings of its Sudanese members have hampered their work. These maneuverings include NCP efforts to keep the AEC from making its concerns and recommendations public, stall AEC travels to Abyei, and publicly release an earlier independent legal opinion commissioned by the AEC to examine the legality of the NCP's actions with respect to the ABC Report. Also problematic is the NCP's and SPLM's irregular attendance at AEC meetings and the member and observer states' apparent lack of political will to insist on a proactive participation by their representatives sitting on the Commission and chairing its working groups. Thus, it has been seen as largely ineffectual to date and unable to completely fulfill its CPA-mandated role. If it is to fulfill its intended role under its new chair, the AEC will need to amend its working procedures, its perception of its mandate and authority, resist pressure from the political party members, and call upon the increased moral and economic support from the international community.

The situation in Darfur has also commanded the increased attention and resources of the international community. While deservedly so, such attention cannot detract from the world's commitment to the good faith implementation of the CPA. The two are inextricably connected. The North-South peace process directly affects the prospects for peace in Darfur. NCP compliance with the CPA, for instance, certainly informs Darfur rebel calculations as to whether they believe the NCP will comply with any new agreement or merely use the opportunity to

further their policy of containment and consolidate its own power. A return to conflict in Sudan will have devastating effects on the region as a whole. Thus, peace in Abyei is central to peace in Sudan and stability throughout the region.

This absence of sufficient international pressure harnessed to address CPA implementation deficiencies can be the result of a lack of political will and exhaustion, can be a product of scarce resources and political capital redirected largely to Darfur, and can also be the result of the international community simply lacking the leverage it once had over critical actors. Whatever the reason, without the international community's full attention to the Abyei Protocol and CPA as a whole, a peaceful solution along the North-South border and the maintenance of a durable and lasting peace throughout Sudan will become more and more elusive.

Uncertainty Over Post-2011 Sudan

The CPA calls for the parties to make "unity attractive" though few believe that is possible in such a short period. The probability, however, of South Sudan's secession and Abyei's potential decision to join South Sudan creates an environment in which the SPLM/A and the NCP gauge their acts and omissions based on this possibility as well as the uncertainty over what a divided Sudan means for both post 2011. The SPLM/A is often painted as looking merely South with preservation of the CPA and the 2011 right to a referendum its highest priority. The NCP is often depicted as resistant to making any meaningful, permanent, sweeping changes to its governing framework if "Africans" calling for those changes are only to abandon the nation in 2011. To varying extents each is calculating their strategies and policies based on the likelihood of a separation in 2011, while at the same time the CPA, the international community, and many from within their own parties are also telling them to make unity attractive. The result is a lack of flexibility, at times paralysis, and often a tendency to overlook that which needs the most attention.

While the referendum concerning the independence of South Sudan in 2011 could serve to immediately clarify many issues, it could also result in a resumption of violence and a new civil war if concerns of the parties to the CPA as well as the other stakeholders in Abyei remain unaddressed. Of particular concern is the location of much of Sudan's oil wealth in Abyei area, post-conflict reconstruction and development, the citizenship rights of those that habitually reside there, and the interests of all those that must seasonally migrate through the area and depend on the region's natural resources for their livelihoods. Great attention has been placed on disputing or defending the ABC-defined boundaries for Abyei area, with

considerably less effort (at least publicly) on negotiating a possible agreement to establish an administration in the area and resolve issues related to the use of land and the natural resources of the Abyei area post-2011. These agreements could be forged in such a way to respect and strengthen the current arrangements under the Abyei Protocol. They can also supplement them and provide additional frameworks for the short and long term which might also address the reconstruction, security, and traditional subsistence needs of all stakeholders after 2011.

Toward a Resolution of the Abyei Conflict

A comprehensive approach designed to overcome the factors inhibiting a resolution of the Abyei situation will need to call upon the resources, contributions and support of all interested parties – residents of Abyei, those who migrate through its lands sharing the use of its resources, those who seek safe passage through the area on their way home from displacement, the SPLM/A, NCP, possibly other Southern and Northern political parties, the governments of the Bahr el Ghazal (Warrap State in particular) and Southern Kordofan which currently count the Abyei residents as their citizens, and of course, the international community. To ensure that all of these interested parties contribute, rather than detract from the peace process, proposed actions will need to consider their varied interests and as a result the approach must be multi-faceted. At a minimum, it must address issues of security, economic development, natural resource ownership and use, the interests of transboundary populations, local governance, and overall equitable wealth and power sharing – all pre and post-2011.

To avoid previous implementation pitfalls and ensure a lasting peace, it will be necessary to work on several levels of government. It will be necessary to actually address the root causes of the conflict in Abyei such that it can serve as a model for other areas of Sudan, and where possible, avoid complete victory or defeat for any one party or group.

Moreover, proposed actions must be consistent with the CPA. However, a re-conception of “consistency” could be required to allow for additional agreements to exist alongside the CPA or to operate after 2011. Although an idea may not be specifically articulated in the CPA or Abyei Protocol, it may nonetheless still be consistent with the objectives of the CPA. To the contrary, properly elaborated additional agreements can fortify the existing CPA framework, serve as mechanisms to better implement existing provisions and provide a means for mitigating the consequences of the 2011 referenda. Consequently, further

negotiations between the NCP-dominated Government of Sudan and the SPLM/A, future political parties making up the Government of Sudan after the 2009 election, as well as agreements between the Dinka and Misseriya are not necessarily a breach of the CPA or an abandonment of the Abyei Protocol.

Ultimately, consistent with the points mentioned above, a comprehensive plan to resolve the disagreements and tensions in the Abyei area will need to address many or all of the themes described below.

Improve Security

Solutions that address the persistence of violence will not only facilitate security, but also stabilize governance and permit increased delivery of the basic services that all residents of Abyei and citizens of Sudan are entitled to – Northern and Southern alike. In addition to permanently lifting the restrictions on UNMIS forces in terms of their movement north and south of Abyei Town, an additional option is to increase the mandate of UNMIS troops in Abyei and the surrounding areas to create a demilitarized buffer zone. As some have pointed out, the area that these troops would need to cover is large and potentially unmanageable. Therefore, an increase in the number of UNMIS and African Union (AU) troops to provide at least a presence at likely “flashpoint” areas may also be a viable option. If issues of unit loyalty can be addressed in light of recent clashes between SAF and SPLA forces meant to constitute the JIU in Abyei, UN troops could also include forces from the Joint-Integrated Unit or work with them side by side allowing for the Abyei JIU to increase their role over time as their leaders, capacity, unit allegiance, and numbers permit.

This would also require an increase in funds dedicated to the training of Abyei’s JIU. SAF and SPLA soldiers are in Abyei, have violently engaged each other, and have yet to be joined into a trained and united force. UNMIS lacks the resources to provide that capacity. If UNMIS is overstretched in terms of tasks, financial resources should be directed to another impartial body that can assume this training as agreed upon by both armies and the CPA parties, such as NATO, the African Union, or the Organization for Security and Co-operation in Europe (OSCE).

To avoid political resistance to any increase in UNMIS troops on the ground in Abyei, certain concessions or restrictions can be proposed, including affirmation of a limited duration tied with the training and increased role of the JIUs.

Alternatively, current levels of UNMIS troops could be maintained but redeployed from less critical areas to the Abyei area.

An Abyei Area Administration with an Interim Border

At different times during negotiations since the signing of the CPA, both the NCP and SPLM/A have called for an agreement on the borders as a precondition to the establishment of the Abyei area's special administration. For the NCP, this has meant that since it does not accept the ABC findings, it cannot move forward with the establishment of the Abyei administration. The CPA does not support this underlying proposition. Nowhere in the CPA (including its Abyei Protocol, Abyei Annex, Implementation Modalities, the ABC Terms of Reference or the ABC Rules of Procedure) does the Government of Sudan and the SPLM/A agree that the Presidency will *only* establish an administration *after* both parties accept the findings of the ABC or otherwise settle the final boundaries of the Abyei area.

While it might be politically preferential to define the borders before establishing the administration, the CPA framework does not require defined borders to form an administration. The Abyei Protocol, in fact, recognized the urgency of the situation in Abyei and accordingly calls on the parties to establish an administration even if the ABC Report is delayed in delivery. Paragraph 7 of the Abyei Protocol Annex provides that if an administration was established *without* the benefit of the border determination from the ABC, the Presidency could still establish an administration “*subject to any readjustment or confirmation by the ABC final report.*”²⁶

Moreover, the CPA does not link the Presidency's establishment of the Abyei special administration to one party's *acceptance* of the findings of the ABC Report. In several different provisions, the CPA identifies various events that should trigger steps by the Presidency to accord Abyei its special administrative status. One provision says the Presidency should act “upon the signing of the agreement.”²⁷ Another says action should be taken “upon signature of the comprehensive agreement,”²⁸ while another requires that steps should be taken “simultaneous with the [establishment of the] Government of South Sudan and the Governments of Southern Kordofan and Blue Nile States by the beginning of the

²⁶ *Agreement on Implementation and Modalities of Agreements, Abyei Annex*, para. 7 (Dec. 17, 2004). Available at http://www.usip.org/library/pa/sudan/cpa01092005/implementation_agreement.pdf (last visited Apr. 20, 2008).

²⁷ *Abyei Protocol* arts. 1.1 and 1.2 (GoS, SPLM/A, 2004), available at http://www.usip.org/library/pa/sudan/abyei_05262004.pdf (last visited Apr. 20, 2008).

²⁸ *Implementation Modalities of the Abyei Protocol, A.1* available at <http://www.un.org/chinese/ha/issue/sudan/docs/cpa-2.pdf> (last visited Apr. 20, 2008).

Interim Periods.”²⁹ Perhaps the most cited of all provisions states that the administrative status shall be accorded “upon presentation of the final report of the ABC.”³⁰ Note, in this last reference, the trigger is the *presentation* of the ABC Report and not one party’s *acceptance* of the ABC’s findings. If the latter was true, there would be no point in the parties’ agreement that the findings were binding.

For these reasons the NCP-dominated Government of Sudan and SPLM/A are required by the CPA to establish the administration regardless of disputes over the ABC Report, the ABC’s mandate, and the overall area borders. This administration would simply have an temporary border. All provisions of the Abyei Protocol, including elections, reconstruction, even wealth sharing, could then be carried out with an interim border. Certain matters would simply be subject to adjustments in the future (i.e. future electoral redistricting, alteration in revenue payments and payment of arrears). Any agreement to establish this administration could simply provide language such as “the administration will perform its responsibilities and functions within the limits of the administrative unit of Abyei which *shall be adjusted accordingly when the final border determinations are agreed upon consistent with the Abyei Protocol.*”

To ensure that these temporary borders did not persist, the agreement could also include critical benchmarks and appropriate incentives to guarantee that a final border determination was made within a reasonable period. The international community may be able to assist in providing these incentives. The agreement should also provide guarantees that the administration will have all of the CPA-required resources and support to carry out its competencies without undue influence by the parties – this includes resources from the Government of Sudan as well as resources it can raise independently of the CPA parties.

An International Transitional Administration

The presence of an internationally directed transitional administration would address many of the disagreements and resulting delays regarding the composition, mandate and establishment of a local government in Abyei. This includes NCP and SPLM/A fears that a particular administration can favor Northern or Southern interests respectively. International administrations can overcome the limited

²⁹ *Agreement on Implementation and Modalities of Agreements, Abyei Annex*, para. 6 (Dec. 17, 2004). Available at http://www.usip.org/library/pa/sudan/cpa01092005/implementation_agreement.pdf (last visited Apr. 20, 2008).

³⁰ *Abyei Protocol* art. 5.3 (GoS, SPLM/A, 2004), available at http://www.usip.org/library/pa/sudan/abyei_05262004.pdf (last visited Apr. 20, 2008).

resources and limited governing capacities of post-conflict states and thus implement many aspects that support reconstruction efforts. To allay fears about a permanent international presence, any agreement regarding international governance of the Abyei area would need to include clear sunset clauses. In addition, an international administration could be truly international, and not limited to UN governance.

An international administration could also be designed to encourage and foster local governance capacity and promote the increased role of civil society actors to provide basic services and participate in government. Such an administration could create an independent administration to serve as a foundation for the special administration to arrive later as called for in the Abyei Protocol. Alternatively, it could serve as an administration that runs parallel to the special administration with clear divisions of authority and mechanisms for cooperation and a defined plan with timelines and conditions for ceding full power. Ideally, when established and if correctly done, the special administration under the Presidency (as required by the Abyei Protocol) would then have not only the support of the international community and its transitional administration, but also count with additional financial resources, capacity, security, and the consensus of parties on critical issues.

While third-party transitional administrations can differ greatly whether in Kosovo, Bosnia Herzegovina, East Timor or Afghanistan, the most successful contain certain key elements that should be visible in any effort in Sudan. These include: (i) a defined and limited mandate and period of administration; (ii) a goal of strengthening democratic structures; (iii) preferably the ability to provide security and assistance to returnees; (iv) a mechanism for cooperating with other members of the international community, particularly for provisions of basic services; and (v) perhaps most critical in order to honor Sudan's move toward decentralization -- participation of local populations in governing and decision-making. This last element guarantees that a clear transition to full local governance occurs quickly and effectively so that the residents and those dependent on Abyei for their livelihoods can benefit from the peace dividends contemplated by the CPA.

Independent Agreements Concerning Natural Resources

A comprehensive solution to Abyei must address the ownership and use of oil resources as well as other natural resources within Abyei including its grazing lands and water. To begin, control over the area's oil wealth is of critical

importance to the North and the South supplemented by the historic, cultural, and political attachments of the people to the land in question. Regardless of the legitimacy of its objections regarding the ABC Report, few deny that one reason for the NCP's rejection of the ABC-defined boundaries stems from its desire to maintain Northern control of at least part of the oil wealth in Abyei area.

An agreement allowing for the partial sharing of oil wealth for a limited duration regardless of the 2011 referenda in exchange for the acceptance of the ABC-determined boundaries, the establishment of an Abyei administration, and further guarantees that the 2011 referenda will take place, may address both SPLM and NCP interests. Such an agreement may also give each party something to provide to their constituencies. Understandably an independent South is not interested in ceding ownership let alone revenues from oil that they might consider theirs under the CPA and based on the referenda outcomes. Nevertheless, the price of peace now, independence in 2011, and secured non-violence with its sovereign neighbor to the North might make this trade more appealing.

If ownership rights over certain lands and resources cannot be reached over all areas, other courses of action are still available. Another possible oil sharing agreement could involve the establishment of a joint development zone (JDZ). JDZ's allow parties to cooperate to develop and share resources within a defined zone, within which both parties claim rights. JDZ's can exist in which both parties manage the zone together, or where one party exercises managerial control but splits the profits from the resources in the JDZ with the other based on an agreed upon formula. Implementing a JDZ involves geographically defining the zone, dividing profits and costs, and determining the duration of the agreement. Based on state practice, there are generally three categories for management structures: a single state structure; a two state or joint state structure; and a joint authority structure.³¹ Depending on the 2011 outcome, the parties would have to determine the model that best suits Sudan.

³¹ See generally David M. Ong, Joint Development of Common Offshore Oil and Gas Deposits: "Mere" State Practice of Customary International Law?, 93 Am. J. Int'l L. 771 (1999); David Lerer, KENDALL FREEMAN, JOINT DEVELOPMENT ZONES: HOW TO NEGOTIATE AND STRUCTURE A JOINT DEVELOPMENT AGREEMENT, available at <http://www.kendallfreeman.com/kf-pdf/how%20to%20negotiate%20and%20structure%20a%20joint%20development%20agreement%20-%20Sept%202003%20-%20Kendall%20Freeman%20article.pdf>; Treaty between the Federal Republic of Nigeria and the Democratic Republic of Sao Tome and Principe on the Joint Development of Petroleum and other Resources, in respect of Areas of the Exclusive Economic Zone of the Two States, Feb. 21, 2001, available at <http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/STP-NGA2001.PDF>

If there are oil wells which would cross a North-South border, the parties can agree to establish cross-border unitization. Unitization involves the pooling of multiple wells to produce from a single reservoir. Typically, the two state parties collaborate on issues relating to the development and exploitation of the zone, but each maintains certain sovereign rights over their territory. The licensees granted by the state or states develop a single development plan and a unit operating agreement. Each licensee has a share of production, or a proportionate share, of the oil field. The amount of production and the costs each licensee incurs is based on their proportionate share.³² Unitization and JDZ agreements, particularly those that would be triggered post-2011 do not violate the CPA and can have pre-arranged end dates based on the exhaustion of a resource, the settlement of boundaries and ownership rights, or other conditions.

Disputes about the Abyei area's borders have resulted in Khartoum not distributing the oil revenue wealth originating from that area. There is also a likelihood that reserves in the area will be significantly exhausted by 2011. Given this, the parties may wish to jointly ask the international community to provide financial and technical assistance to further evaluate the area's remaining oil wealth as well as the viability of oil reserves in other places around Sudan, thus releasing some pockets of tension in the interim. This may even be a role that certain international state actors, not otherwise effectively engaged in fostering CPA compliance, can assist with if only out of self-interest.

Most importantly, given the non-renewable resource that oil in Abyei represents, a comprehensive solution to Abyei must include an agreement as to how to address revenue any arrears due once the borders are defined. A comprehensive agreement could require dedication of contested payments into a separate fund to be distributed subject to a final resolution. With consent of the parties, some of the contested arrears, particularly those that might otherwise be distributed to the Ngok Dinka and Misseriya or even Bahr el Ghazal and Western Kordofan (now Southern Kordofan) can be directed now to the "Resettlement, Construction and Development Fund" that is currently inoperative (see Art. 3.3 of the Abyei Protocol). Through the fund the CPA parties as well as different levels of governments with constitutional responsibilities over the area and citizens in question can fulfill their duties by reconstructing the area, providing basic services,

³² Australia and the Democratic Republic of Timor-Leste entered into a unitization agreement regarding the Sunrise and Troubadour Fields. Agreement between the Government of the Democratic Republic of Timor-Leste and the Government of Australia relating to the Unitisation of the Sunrise and Troubadour Fields, March 6, 2003, available at <http://www.timorseaoffice.gov.tp/iua.htm>. See also See TIMOR SEA OFFICE FACT SHEET: THE GREATER SUNRISE FIELDS, available at <http://www.timorseaoffice.gov.tp/iuafacts.htm>.

and funding development priorities as determined by the people themselves. These could include financing projects in line with the land and water priorities identified by the Abyei Area Strategic Action Plan (AASAP) undertaken by the people of Abyei area under the guidance and auspices of the Abyei County Development Committee (ACDC). This could even include improving water access by boring more water holes and constructing sophisticated irrigation systems even in areas where those that seasonally migrate, permanently reside. This could diminish the need for migration.

In addition to oil wealth, the parties to the CPA could reach separate agreements that address water and grazing rights. For instance, such an agreement could reaffirm not just Misseriya grazing and shared use rights, but where applicable, similar rights of other migratory populations that depend on the resources of the Abyei area and its neighboring lands to maintain their livelihoods. Such provisions would acknowledge the needs and concerns of transboundary populations which have historically made their livelihood from the land and resources that exist across Northern and Southern states and potentially across sovereign borders should the South decide to secede in 2011.

Distrust and misinformation mandates that further assurances are provided to assure individuals and groups that they will be continually welcomed in the host states without discrimination despite the guarantees that already exist in the CPA, the ABC Report, and the Interim Constitution of Southern Sudan. Additional agreements to this effect could clarify that their interests and rights would continue past 2011 regardless the result of the Abyei and Southern Sudan referenda. Agreements of this sort are not that uncommon in international practice. For instance, Russia, Norway, Finland and Sweden have made agreements related to the indigenous Saami people that graze their reindeer across sovereign borders and have political, cultural and economic relationships that cross all four nations. In fact, the rights of transboundary populations are embodied in the UN Declaration on the Rights of Indigenous Peoples.³³

As suggested above, members of the international community (including international organizations and concerned nations) could also technically and

³³ United Nations Declaration on the Rights of Indigenous Peoples, adopted by GA Res. 61/295 (13 September 2007) art. 36, available at <http://daccessdds.un.org/doc/UNDOC/GEN/N06/512/07/PDF/N0651207.pdf?OpenElement> (last visited Jan. 20, 2008) providing: "1. Indigenous peoples, in particular those divided by international borders, have the right to maintain and develop contacts, relations and cooperation, including activities for spiritual, cultural, political, economic and social purposes, with their own members as well as other peoples across borders. 2. States, in consultation and cooperation with indigenous peoples, shall take effective measures to facilitate the exercise and ensure the implementation of this right."

financially support programs whereby increased water access can be made available to the Misseriya and other populations forced to migrate during the dry season. This includes the Dinka who migrate northward during the dry season. With the consent of the peoples in question so that socio-political and cultural organizations and traditions are not negatively impacted, alternative lifestyles and economic initiatives can also be introduced where requested and defined by the people in question. These kinds of commitments could complement any legal and political agreements made between the stakeholders. They can be a necessary component to a comprehensive solution that is seen to have continued international support.

Most importantly, any arrangements or agreements made locally and nationally to address the concerns of all the habitual residents of Abyei and those that seasonally migrate through the area must respect the human rights of the Ngok Dinka to own, control and manage their ancestral lands, resources and territories, irrespective of their forced displacement and the effects that war has had on their traditional institutions. International law and jurisprudence is clear on this matter. Indigenous peoples such as the Dinka have the right to preserve and maintain their governing institutions and customary laws, and to own, control and manage the lands and resources they have traditionally used and occupied.³⁴ Traditional access rights to Dinka homelands provided historically to other groups should be honored in this context. Doing otherwise to address short term needs is only likely to breed more conflict in the future, particularly if the Dinka (like other indigenous peoples in Africa) begin to litigate nationally and internationally against the Government of Sudan and the Government of Southern Sudan for marginalizing their interests.³⁵

³⁴ See for example, United Nations Declaration on the Rights of Indigenous Peoples, adopted by GA Res. 61/295 (13 September 2007) (2007) available at <http://daccessdds.un.org/doc/UNDOC/GEN/N06/512/07/PDF/N0651207.pdf?OpenElement> (last visited Jan. 20, 2008). See also International Labour Organization, Convention Concerning Indigenous and Tribal Peoples in Independent Countries, 169, available at <http://www.ilo.org/ilolex/english/convdisp1.htm> (On left menu, scroll to and select C169); Forest Peoples Programme "Indigenous Peoples and United Nations Human Rights Treaty Bodies: A Compilation of Treaty Body Jurisprudence 1993-2004," (September 2005), available at http://www.forestpeoples.org/documents/law_hr/un_jurisprudence_comp_sept05_eng.pdf.

³⁵ See other cases brought by indigenous peoples in Africa to vindicate their rights to lands and resources, for example: African Commission on Human Rights, Communication No. 155/96 (May 2002), in the case of the Ogoni People versus the Government of Nigeria (finding that the government violated the collective human rights of the Ogoni people by granting concessions and authorizing military activities associated with the development of oil resources found under Ogoni traditional lands). See also *Alexkor Limited and the Government of South Africa v. The Richtersveld Community and Others*, (488/2001) [2003] ZASCA 14 (24 March 2003) South Africa Supreme Court of Appeal (calling for the restitution of customary law interests in land and declaring that the ownership of the diamond deposits within the their lands vested in the indigenous community not only because such ownership was established by the community's own customary laws, but also because this subsurface resource simply could not have belonged to anyone else, if it did not belong to the indigenous community).

Prepare for the 2009 Elections

The 2009 (interim) democratic elections (assuming they are held and relatively free and fair) provide an opportunity to transform the country and current political failures. First, in accordance with the Abyei Protocol, these elections can provide a chance for residents in Abyei to elect their own government regardless of whether the Presidency has appointed the required administration. The elections are also an opportunity for the people of Sudan to seek a transformation of their national governing framework through a permanent government elected by the people rather than being appointed mainly by the NCP and the SPLM. If the composition of the government radically changes, such an outcome could lessen the impact and significance of many of the current disagreements between the SPLM and NCP, if only by changing the power and influence of the decision makers. Notably, a significant loss by the NCP in the 2009 elections might also remain inconsequential if the party still controls the security and economic machinery of Sudan.

Many have opined that in preparing for 2009 the key political parties involved in implementing the CPA may wish to consider post-election scenarios. One possibility is to create a system in which elections do not become a winner-take-all contest but are still an opportunity for meaningful democratic reform. If the NCP and certain Northern political parties believe that they will lose all power in the Abyei area and elsewhere throughout Sudan if they do poorly in the elections, the incentives to delay and undermine the process are obvious. Additionally, this result may lead to elections that cause violence and further destabilization in the country. Some have argued that the SPLM and NCP should reach an agreement that contained guarantees that the NCP would retain some power at the executive and legislative level at least to represent a significant opposition. To some extent, this can be further facilitated by the final design of the draft electoral law.

Nevertheless, while cautioning against winner takes all strategies and recognizing the entrenchment of NCP power in the political, economic and security apparatus of Sudan, proposed courses of action should be examined closely if they are purely motivated by a need to preserve the NCP because it is the so-called “partner” in the CPA and alleged guarantor of its endurance. A fact seemingly forgotten by many is that legally the NCP is *not* a “party” to the CPA. In every agreement, protocol, implementation modality and annex of the CPA, it is clearly stated that the “parties” to the CPA are the *Government of Sudan* and the *SPLM/A*. In fact, where the NCP is expressly mentioned in the CPA it is generally just to

describe pre-election governing arrangements which become moot after the elections. That is to say, through the elections any Northern or Southern political party that wins a seat in the national Government of Sudan (the continuing “party” to the CPA) automatically becomes legally bound to comply and implement the CPA, regardless of whether it negotiated or agreed to its terms in Naivasha or elsewhere. Consequently, fears that the CPA will be in peril if there are significant shifts in power are not wholly founded, particularly if the international community exercises efforts to hold all new political parties to the duties and obligations of the CPA. The Comprehensive Peace Agreement was cleverly designed to survive the 2009 elections, regardless the results.

Consequently, the 2009 elections also provides an opportunity for the international community to play a constructive role in the future of Sudan. The international community can help ensure that the elections take place, and that they are conducted in a free and fair manner so that political losers cannot allege illegitimate results. The first step in preparing for the elections will be to ensure that the results of the recent census is given the support and credibility it deserves and that additional census activities that may be required to address any deficiencies have international support. Ensuring that IDPs and refugee return in a timely and secure manner will also help to make certain that census activities, election and referenda registrations and processes are inclusive and representative of the will of the people. The international community can also use its expertise and resources to monitor the manner in which elections are held and ballots are counted.

Some have intimated that perhaps the CPA and Sudan can maintain a certain status quo until 2011 without ever having the 2009 elections and that this course of action is preferable to the uncertainty that can arise depending on election outcomes. Aside from the requirement of the elections in the CPA and the breach that this omission would represent, it is hard to imagine how the denial of the rights of Sudanese to have a representative elected government can be achieved while the world (and the CPA itself) demand continued democratic reform in Sudan. The two cannot be divorced one from the other. A study should also be done with respect to those items in the CPA which would be hindered because they are dependent on holding elections. For instance, technically the popular consultations in Southern Kordofan and Blue Nile depend on the work of two assessment and evaluation commissions that are to be established by the legislatures of each state, *after* a permanent legislature is elected.³⁶ Absent the

³⁶ Protocol Between the Government of Sudan and the Sudan Liberation Movement on the Resolution of Conflict in

elections, the people of these two fragile states along the North-South border are denied one of their exercises of the right to self-determination.

Foster Dialogue between the Misseriya and the Dinka

Given that the Dinka and Misseriya peacefully established patterns of exclusive and shared use of land and resources in the past, one potential means for reducing tension is to promote dialogue between these two groups and particularly among its traditional leaders. Much of the recent discord between the Dinka and Misseriya has been the result of disinformation campaigns concerning the CPA, manipulation by other stakeholders, and a general lack of knowledge on how the CPA provisions operate. Helping the Dinka and Misseriya come to their own agreements might include a serious and well-funded effort to provide both groups with impartial education on the terms of the CPA, current negotiations, and mechanisms by which they can have their voices heard. If those mechanisms and spaces do not exist, they need to be created if the international community is to provide more than lip service to the repeated calls for local reconciliation and peace-building. Successful dialogue should also bring in contributions from other groups and individuals who might reside in Abyei or in neighboring areas who depend on the resources in question, at least during seasonal migrations.

Discussions that have taken place in prior local dialogues (including those supported by the UN and initiated by the traditional leaders themselves) have shown more agreement among the Misseriya and Ngok Dinka of Abyei than the media and national discourse demonstrates. For instance, in a meeting that took place at the Nile Hilton in Khartoum on November 27, 2006, both groups acknowledged their peaceful coexistence in the past, the need for the safe return of Dinkas to the area, and the likelihood that if left alone, their two peoples could resolve the issue of the borders, resource use, and governance. During this meeting, Mukhtar Babo Nimir, the current Amir of the Misseriya, reiterated a statement which has brought him criticism in the past. As reported by Giir Tong of *Sudani*, Babo Nimir asserted that while their peoples have always “coexisted and interacted, there was Dar El Denka (the land of the Dinka) and Dar El Missiriya (the land of the Missiriya), and found it unconscionable for the Arabs to lay claim to the land of the Dinka.”³⁷ Elevating these points of consensus to the national

Southern Kordofan/Nuba Mountains and Blue Nile States art. 3.3 (GoS, SPLM, 2004), available at http://www.usip.org/library/pa/sudan/nuba_bnile_05262004.pdf (last visited Nov. 18, 2007).

³⁷ The day after the meeting, author Giir Tong summarized the meeting in an article for the Arabic Daily, *Sudani*, entitled “The Dinka and the Missiriya, hold the two partners (in the Government of National Unity) responsible for the explosive situation in Abyei.” In his recent article on Abyei, the ABC member Douglas Johnson also reported on the discord between the NCP and Misseriya delegations when presenting their opinions to the ABC. Douglas

level can help to identify the root causes of the conflict in Abyei, isolate manipulators of the facts, and craft appropriate solutions.

Successful mechanisms for negotiation indicate that local approaches often succeed where national initiatives have failed. The Dinka and Misseriya could create separate agreements addressing many of the current sticking points in negotiation such as citizenship rights, Abyei governance, transboundary population rights, and continual grazing rights. To address concerns about a lack of representation in a future Abyei area government, the Dinka and Misseriya could also develop fair mechanisms to ensure that the interests of the Misseriya and other people migrating through their lands are appropriately addressed within the Abyei Administration. There are many ways to accomplish this. For instance, a consulting body can be created to provide advice to the administration, raise awareness of the migratory peoples' concerns, and engage in consultations with the Abyei government. This body could be constituted of representatives from the Misseriya and other tribes that migrate through Abyei. A separate independent commission on the rights and interests of migratory peoples can also be established within the administration. This commission can even have some independence from the administration. Certain non-residents of Abyei can also be given a form of observer, non-voting status within the administration itself. Nevertheless, at the same time that these new agreements and mechanisms are developed in the interest of peace and democracy, the parties must respect the rights of the indigenous peoples of the Ngok Dinka to own, control, and manage their lands and resources, preserve and maintain their own political and social institutions, and consequently the right to govern over the lands they have traditionally used and occupied. As indicated above, each of these rights is well-affirmed in international law and jurisprudence related to the rights of indigenous peoples.³⁸ Solutions must be crafted within this rights framework.

Another area of particular contention is the distribution of natural resources. Perhaps the Dinka and Misseriya could construct agreements that foster the development and reconstruction in the area in a manner that benefits all groups. They could reach understandings on how revenues from the oil produced in the region thus far will continue to benefit the area and both groups, as well as others that seasonably migrate through the area after 2011. As suggested above, alternatively, oil revenue could go to a fund that is administered by all concerned

Johnson, *Why Abyei Matters: The Breaking Point of Sudan's Comprehensive Peace Agreement?*, 107 AFRICAN AFFAIRS 1, 10-11 & note 26 (2008) (describing how Babu Nimr, was apparently threatened with dismissal if he did not support the NCP's claims before the ABC which involved laying claim to the lands of the Dinka).

³⁸ *Supra* note 43 (above).

with the representation and decision making power of each commensurate with their rights and interests in the area. Such a fund could possibly address the push and pull factors for migration (i.e. water) and finance other development projects as determined by the affected peoples.

Any agreement reached could be permanent, regardless of the potential secession of Abyei area following the 2011 referendum, or contain contingencies for the various 2011 outcomes. Agreements made between the Dinka and Misseriya, independent of but subsequently endorsed by the SPLM/A and NCP, may lead to a more sustainable peace. This is also possible given that there are a number of emerging elements within the Misseriya that do not see the NCP as necessarily representing their interests, perceive their community as disenfranchised by the CPA, and recognize a primary Ngok Dinka ownership of the Abyei area which includes the secondary traditional use rights of the Misseriya.

The international community can help to ensure that negotiations between the Dinka and Misseriya are successful and that these communities are less vulnerable to manipulation and exploitation. Enhancing Dinka and Misseriya capacity to negotiate may include financial support from the international community. The international community can also help by giving “higher visibility” to the desires, discussions, consensus, agreements, dialogues, and interactions between the Misseriya and Dinka. This will ensure that local initiatives inform national strategies and agreements.

While much attention is paid to the Misseriya and Dinka, there are other populations in and around the Abyei area and the crisis of this region can not be reduced to a dispute between two local groups. Oversimplifying the dynamics in Abyei in this way only encourages polarizing politics and disregards the more complex social relationships of the many individuals and groups that reside and migrate in and around that area (including tribes from Bahr el Ghazal and Unity). It also provides incentives to continue manipulations of these local communities at the national level and misrepresentations of their needs and concerns.

Use of Arbitration or the Constitutional Court

If the parties to the CPA can not reach a resolution to the crisis in Abyei, it is clear that the people of the area can not continue to suffer the repercussions of the same. Some have suggested the possible use of arbitration or Sudan’s Constitutional Court as a forum for resolving the legality of the ABC defined boundaries. Arbitration is not provided for in the CPA, but this does not preclude

its use. It would of course require consent of the parties and additional agreements in terms of designating the impartial entity that would take on this role and its methods of work. Given the history of the crisis and the experiences of the ABC itself, such an initiative would be worthless if the entity's ruling was not binding. Also, without international community attention to ensure that the parties comply with its findings, any resolution reached by such a body would likely meet a similar fate as the findings of the ABC Report. If such attention, however, can be mustered around arbitration, it does beg the question as to why that same cannot be harnessed now to guarantee implementation of the Abyei Protocol negotiated and agreed upon by the parties.

Additionally, the CPA is technically a part of the Interim National Constitution of Sudan, and the Constitutional Court is the only body with the legal authority to interpret the Interim National Constitution. While referring the issue to the Constitutional Court may undermine the Abyei Protocol, since it states that the report is final and binding on the Government of Sudan and the SPLM/A, a properly phrased question, such as whether the ABC exceeded its mandate may preserve the integrity of the protocol. However, any use of the Constitutional Court would have to include safeguards to ensure the impartiality of the Court given that the Court has not yet made any decisions regarding actions in violation of the CPA. In addition, as with the arbitration proposed above, the international community would have to make a strong showing of collective resolve that it would not tolerate or permit the parties to discard the binding decision of the Constitutional Court without serious repercussions.

Ensure the Return of IDPs and Refugees to the Area

It has been stated over and over again that the return of IDPs and refugees to Abyei area could destabilize or stabilize the area depending on when and how it occurs. If properly carried out, the safe and dignified return to areas where basic services are provided can facilitate the 2009 elections and the 2011 referendum by ensuring results that are truly representative of the people who reside in Abyei. Given that any political considerations or decisions will affect people living in the area, the SPLM/A, NCP and other concerned parties could take steps to facilitate IDP and refugee returns while continuing to pursue settlement on contentious issues like border demarcation. The two are mutually exclusive.

Since the signing of the CPA many IDPs and refugees have returned to Abyei. Many even participated in the census conducted in April of this year. Sadly, many of these same individuals now find themselves displaced once again

due to recent SAF and SPLA clashes and the SAF occupation of areas North of the River Kir. Immediate humanitarian and relief efforts must be carried out to address the urgent needs of these individuals. Until the volatile situation in Abyei is neutralized there is little chance that returns can take place with safety and dignity. If security is established and basic services can be available upon the returnees' arrival, then international and national actors could double efforts when the dry season resumes ensuring the voluntary return of all IDPs and refugees to prepare for the 2009 elections as well as the 2011 referenda. These efforts must include increased attention not just to the logistics of return such as transportation, but the adequate resourcing of way stations and the provision of sufficient security and basic services.

Understandably, the absence of an administration in Abyei makes this difficult, but not impossible if the international community and local indigenous and civil society organizations can work together to take on some of the necessary activities. The critical role that organizations such as Kush, WARDS, the Abyei Common Trust, IOM, Mercy Corp, the United Nations and others are playing in the delivery of humanitarian services to the recently displaced in Agok demonstrate that the human capital and capacity exists to assist in these efforts. This is true even if an Abyei administration is absent. These organizations need to be supported. Under the CPA, the governments of Southern Sudan, as well as the governments of Warrap State and Southern Kordofan also have responsibilities to the citizens of this area and their contributions can be called in to fill in administration gaps in a manner that is consistent with the CPA. The international community can use its expertise and financial resources to help facilitate these process and provide the presence of an impartial entity to ensure that the politics of return are kept to a reasonable level.

Increased Role for the International Community

While the NCP has resisted involvement of the international community in what it perceives as the internal affairs of its state, some have argued (admittedly with little traction) that perhaps the increased participation by international actors who have not previously played a constructive role before could help to foster negotiation and cooperation. Along these lines, the NCP might accept a larger role for the international community if these new actors were ones with whom the NCP has a closer relationship, such as China, Russia, and Malaysia. Understandably, such interventions are likely to meet resistance by the SPLM/A and other interested parties rendering this option impractical. The question is whether the risk of an increased role for these parties can be outweighed by the contributions they can

make to the peace process. This could be more likely than not if their presence can be offset by the increased resolve of other actors deemed favorable to the SPLM/A as well as a truly multi-faceted comprehensive solution that appeals to many.

International participation can be strengthened in other more palatable ways as well. In particular, making the Assessment and Evaluation Committee (AEC) more viable and effective than it has been in the past could foster greater international involvement. The AEC has not fulfilled its role as a supervisory actor concerning the implementation of the CPA. A re-examination of the AEC's working procedures may serve to strengthen the independence, authority and activity of this institution. This can only be done if the member countries of this body – particularly Italy, Norway, the United States and the United Kingdom who chair the four working groups of the AEC on Power Sharing, Wealth Sharing, Security, and the Three Areas (including Abyei), become more active and demanding of themselves and the NCP and SPLM members. The AEC can be specifically more proactive on Abyei – issuing more frequent reports, opinions and recommendations, visiting the area with more frequency, and reporting on the consequence of implementation failures on the people.

Additionally, the IGAD Secretariat, which was shut down upon the signing of the CPA, could be reopened and made more active. Donors had previously expressed that they were willing to financially support the body to monitor CPA implementation, however the Government of Kenya closed the office as there were no CPA provisions concerning the existence of the IGAD Secretariat after the signing of the CPA. Thus, if the parties revived the IGAD Secretariat, they would have to establish a new mandate.

The IGAD states and others can also be more persuasive in their unilateral discussions with the NCP-dominated Government of Sudan as well as the SPLM/A. For instance, to the extent that “normalization” talks are undertaken by the United States with the Government of Sudan, conditions related to Abyei and perhaps the North-South border in general can be placed on the negotiating table in addition to issues of humanitarian assistance in Darfur and others.

Given the current situation in Abyei, the international community may also consider hosting a conference in or outside of Sudan to seek solutions to the crisis that has been emerging and has now seized the Abyei area. Immediate attempts to do so might preclude the current conflict in Abyei from consuming the CPA itself. The location, participants and stated goal of the conference will be critical to its success. If held outside of the Sudan, a host deemed impartial and acceptable to

the NCP and SPLM will be necessary. The invite list should include not just the parties to the CPA, but all of the additional stakeholders which have been addressed by this report, including representatives of the Ngok Dinka, the Misseriya, and other groups that seasonably migrate (as chosen through their *own* traditional mechanisms), as well as representatives from Southern Kordofan and Bahr el Ghazal, as well as international donors and key members of the international community (i.e. IGAD countries plus). It should be made clear that the purpose of the conference is to seek peaceful solutions to the crisis in Abyei and *not* to renegotiate the CPA.

Prepare for Potential 2011 Outcomes

Focusing on potential future political realities and then working backward to solve current negotiation failures could be another method to overcome existing impediments to CPA implementation. International stakeholders could encourage the NCP-dominated Government of Sudan and the SPLM to create separate internal mechanisms designed to explore what would lead to a normalization of relations if South Sudan chooses to secede in the 2011 referendum. Both sides could begin to consider what their interests will be in either scenario—unity or secession—to adequately mitigate the potential for violence. Planning of this nature could eliminate some of the current stalling on the part of the NCP and SPLM as they wait for the 2011 referendum. Potential mechanisms could address the ownership and distribution of resources, the succession of debts and assets, continued economic and cultural exchanges, future trade relations, rights and interests of residents and those migrating through Abyei, the distribution of natural resources, migratory and grazing patterns and much more.

It can be argued that it is difficult to envision the CPA parties tasked with making unity attractive while simultaneously expected to negotiate post-2011 scenarios that include independence of the South. However, ignoring the insecurity, distrust, and hesitations of the parties to fully implement key provisions of the CPA out of fears and unknowns related to post-2011 outcomes would be a tragic mistake. At a minimum, the NCP, the SPLM/A and perhaps other stakeholders can agree to form a joint council (with international community observers or members). This council can begin to examine the potential outcomes of 2011 – secession or unity, and undertake to identify issues that, if resolved now, can release pockets of tension in the interim and create space for greater advances on the good faith implementation of the CPA, including the Abyei Protocol. If this means discussing natural resource ownership and use, additional governance frameworks, citizenship rights of those living along the North-South border,

possible trade agreements particularly in the event of separation, joint development zones, as well as security arrangements (i.e. even a demilitarized zone), then these should be explored and seen wholly consistent with the objectives of guaranteeing a permanent peace in Sudan and the region as a whole.

Conclusion

Abyei is central to Sudan's troubled post-independence past and pivotal to determining its uncertain future. As a geographic bridge along the North-South border of Sudan, Abyei embodies many of the core issues and requirements embodied by the CPA including — the return of refugees and IDPs, equal economic development, equitable wealth and power sharing, security and joint integrated units, decentralization and local governance, national elections, and referenda. The unresolved impasse between the NCP and SPLM over a failure to implement the CPA's Abyei Protocol negatively affects the durability of the peace in Sudan and threatens to spark renewed conflict between the North and South. The CPA failure will also have devastating affects on the situation in Darfur and elsewhere in Sudan where marginalized populations are looking to the CPA to pave the way to a transformed national government that reflects democratic principles, diversity, inclusiveness, and fair distributions of wealth and power.

The core factors inhibiting a durable resolution of the Abyei conflict include historic mistrust between the North and South; NCP and Nile River Arab fears of retribution, an unstable security situation; current and future control of Abyei's oil wealth; the legitimate fears and unfulfilled needs of the local Misseriya and Ngok Dinka communities and other migratory peoples over security, governance, and use and control of natural resources; and a failure of engagement by the international community. Multifaceted efforts by relevant stakeholders at the local, national, regional, and international level may help to overcome these obstacles. However, they must approach these efforts creatively. While the CPA provides a fixed framework whose implementation is key for the future of Sudan, relevant parties could draft additional agreements to exist both alongside the CPA, complement and not prejudice its provisions, and continue after 2011.

A comprehensive and successful solution to the crisis in Abyei will need short term and longer arrangements that are multi-faceted addressing everything from economic development and reconstruction in the area, issues of security, natural resource use and ownership, the ongoing needs and rights of migratory and potentially transboundary populations, and local governance within a decentralized framework. The crisis in Abyei will be lessened, but not end with the

establishment of a special administration under the Presidency nor will it be over with the final settlement of the border. A resolution addressing all of the root causes of the conflict – similar to those that underlie other conflicts in Sudan – will require a number of additional understandings and initiatives that will also apply post-2011. The concerted engagement by the international community to support such efforts and ensure their enforcement will be indispensable to the goal of achieving peace in Abyei, in a united or divided Sudan, and in the region.

Annex: List of Participants from PILPG Scenario Planning Event on Abyei

The report benefited from insights provided by participants in a scenario planning event hosted in March 2008 by PILPG and the law firm of DLA Piper. The event was attended by a select group of experts, policy makers, and government representatives, including representatives from the Government of Southern Sudan Mission to the United States, and the Embassy of the Sudan to the United States. The views expressed in the report are exclusively the views of PILPG and do not necessarily represent the specific views of any individuals or organizations which have been consulted by PILPG or which participated in the scenario planning event.

- *Dr. Akek Khoc*, Ambassador Deputy Permanent Representative, Permanent Mission of the Republic of Sudan to the United Nations
- *Seifeldin Omer Yasin*, Counselor, Embassy of the Republic of Sudan
- *Khalid Musa*, Embassy of the Republic of Sudan
- *Hatim Mukhtan*, Embassy of the Republic of Sudan
- *Ruben Marial Benjamin*, Deputy Head of GoSS Mission & Political Affairs Officer
- *Deng Deng Nhial*, Trade & Investment Officer, GoSS Mission
- *Sunday Taabu Wani*, Social, Cultural and Consular Affairs Officer
- *Apuk Ayuel*, Special Assistant to Head of Mission
- *Ghirmai Ghebremariam*, Ambassador, Embassy of Eritrea
- *Tsehai Habtemariam*, Political Officer, Embassy of Eritrea
- *Charles Ssentongo*, Ambassador Deputy Head of Mission, Republic of Uganda
- *Andrew Natsios*, Distinguished Professor in Practice of Diplomacy, Georgetown University, former USAID Director
- *Brett Edwards*, Senior Research Associate, Public International Law & Policy Group (PILPG)
- *Claire Thomas*, Foreign & Security Policy Group, British Embassy
- *David Smock*, Vice President, Center for Mediation & Conflict Resolution, Assoc. Vice President, Religion & Peacemaking Program, United States Institute of Peace (USIP)
- *Ted Dagne*, Middle East/Africa Section, Specialist, U.S. Congressional Research Services
- *David Mozersky*, Horn of Africa Project Director, International Crisis Group
- *Jemera Rone*, Counselor/Researcher, East Africa/Sudan, Human Rights Watch
- *Daniel Deng*, Executive Director, Kush Inc.
- *Konrad Huber*, Africa Team Leader, Office of Transition Initiatives, United States Agency for International Development (USAID)
- *Bradley Wallach*, Director, Office of Sudan Programs, USAID
- *Paul R. Williams*, Executive Director, Public International Law & Policy Group (PILPG)
- *Vanessa J. Jiménez*, Senior Peace Fellow, PILPG
- *Julie Hayes*, Africa Regional Director, Open Society Institute (OSI)
- *Pamela Fierst*, Sudan Desk Officer, United States Department of State
- *Susan Page*, Southern & Eastern Africa Regional Director, National Democratic Institute
- *Dave Peterson*, Director of Africa Programme, National Endowment for Democracy

- *Semhar Araia*, Program Officer, The Elders
- *Roberta Ritvo*, Pro Bono Manager, DLA Piper
- *Joseph Scrofano*, Senior Research Associate, Public International Law & Policy Group (PILPG)
- *Jennifer Harris*, Global Finance Associate, Milbank, Tweed, Hadley, & McCloy
- *Maggie Ray*, Program Officer, Africa Regional Office, Open Society Institute
- *Brian D'Silva*, Senior Policy Advisor, USAID/Office of Sustainable Development

About the Public International Law & Policy Group

The Public International Law & Policy Group, a 2005 Nobel Peace Prize nominee, is a non-profit organization, which operates as a global pro bono law firm providing free legal assistance to states and governments involved in peace negotiations, drafting post-conflict constitutions, and prosecuting war criminals. To facilitate the utilization of this legal assistance, PILPG also provides policy formulation advice and training on matters related to conflict resolution.

PILPG's four primary practice areas are:

- **Peacebuilding**
- **War Crimes**
- **Post-Conflict Political Development**
- **Public International Law**

To provide pro bono legal advice and policy formulation expertise, PILPG draws on the volunteer services of over sixty former legal advisors and former Foreign Service officers from the US Department of State and other foreign ministries. PILPG also draws on pro bono assistance from major international law firms including Baker & McKenzie; Covington & Burling; Curtis, Mallet-Prevost, Colt and Mosle; DLA Piper; Sullivan & Cromwell; Steptoe & Johnson; Milbank, Tweed, Hadley & McCloy; WilmerHale; Vinson & Elkins; and graduate international affairs and law students at American University and Case Western Reserve Schools of Law. Annually, PILPG is able to provide over \$2 million worth of pro bono international legal services.

Frequently, PILPG sends members in-country to facilitate the provision of legal assistance and its members often serve on the delegations of its clients during peace negotiations. To facilitate this assistance, PILPG is based in Washington, D.C. and has points of contact in New York City, Boston, Seattle, Cleveland, London, Paris, Rome, The Hague, Stockholm, Belfast, Krakow, Budapest, Zurich, Tbilisi, Kabul, and Nairobi.

PILPG was founded in London in 1995 and moved to Washington, D.C. in 1996, where it operated under the auspices of the Carnegie Endowment for International Peace for two years. PILPG currently maintains an association with American University in Washington, D.C., and Case Western Reserve University in Cleveland, Ohio. In July 1999, the United Nations granted official Non-Governmental Organizations status to PILPG.

In January 2005, a half dozen of PILPG's pro bono clients nominated PILPG for the Nobel Peace Prize for "significantly contributing to the promotion of peace throughout the globe by providing crucial pro bono legal assistance to states and non-state entities involved in peace negotiations and in bringing war criminals to justice."

About the Author

Vanessa J. Jiménez is a Senior Peace Fellow with the Public International Law & Policy Group and currently leads PILPG's work with the Government of Southern Sudan on issues related to the implementation of the 2005 Comprehensive Peace Agreement. In the past six months she

has made two trips to Sudan. From 2006-07, Mrs. Jiménez also served as the Project Coordinator for the Washington-based Sudan Peace Support Project and traveled to the Sudan several times to meet with officials within the Government of Sudan and Government of Southern Sudan and contribute to reports to USAID on the status of the CPA implementation. As a PILPG fellow, during 2005 and 2007 Ms. Jiménez also traveled to Baghdad to advise the Iraqi government on the drafting, amending and implementing of its constitution. Ms. Jiménez has also contributed to other PILPG work involving Burma, Montenegro, the Philippines, and Botswana. Ms. Jiménez specializes in the drafting and implementing of peace agreements and post-conflict constitutions, indigenous and minority rights, the operations of international organizations, international complaint mechanisms, the negotiations of international human rights instruments, and issues related to self-determination and the devolution of power. Ms. Jiménez received her J.D. from American University's Washington College of Law in 1998.

This report would not have been possible without the valuable contributions by additional PILPG staff including its Director, Paul R. Williams, Senior Peace Fellow, Jamal Jafari, and Senior Research Associates Brett Ashley Edwards, Joe Scrofano, Anand Shah, and Courtney Nicolaisen.