

## Sudan: Fulfilling the Responsibility to Protect

- Less than 100 days before a referendum will be held to determine whether or not South Sudan will secede from the North there are multiple warning signs that without timely action mass atrocities could occur.
- Populations in South Sudan and the three border areas of Abyei, Blue Nile and Southern Kordofan, together with those in Darfur and Central and Western Equatorial States, are most at risk.
- In 2005, UN member states accepted the responsibility to protect populations from mass atrocities – genocide, war crimes, ethnic cleansing and crimes against humanity. Now is the time for coordinated international action to prevent atrocities from occurring once again in Sudan.

### Introduction

Sudan stands today at a precipice. In 100 days the South will hold a referendum on self-determination with a vote for independence expected. Extensive early warnings exist indicating a real threat of the commission of mass atrocities surrounding the referendum, with those populations most at risk already identified. This threat looms while intertribal violence in the South is rising; conflict in Darfur persists; attacks by the Lord's Resistance Army (LRA) in Central and Western Equatorial states continue unabated; and a return to war in the South is a possibility.

A best-case outcome of a peaceful referendum and an end to conflict in Darfur will only be possible if United Nations (UN) member states heed the warnings and exercise their Responsibility to Protect (R2P) – a commitment to protect populations from mass atrocities they unanimously made at the 2005 World Summit. This brief clarifies how R2P applies to Sudan and argues that member states must not wait until mass atrocities are occurring to act. The warning signs are clear. The time for preventive action is now.

Having committed to prevent and halt mass atrocity crimes in part as a response to their past failure to protect the people of Sudan, UN Member States must now ensure that they have a clear and coordinated plan to prevent mass atrocities in Sudan. Should they adopt a wait-and-see approach or limit their response to expressions of concern, they risk once again failing the people of Sudan and standing by in the face of large-scale loss of life.

### Applying the Responsibility to Protect

In committing to uphold R2P – and reaffirming pre-existing obligations under international humanitarian and human rights law – the Government of Sudan (GoS) accepted the primary responsibility to protect the Sudanese population from four crimes: genocide, war crimes, ethnic cleansing and crimes against humanity (“mass atrocities”). R2P obligates the GoS to prevent the Sudanese Armed Forces

(SAF), its proxies and non-state actors from committing mass atrocities and to halt such acts if they occur.

To date, the GoS has not only failed to protect its population from crimes perpetrated by others, it has actively committed atrocities against its own people. This was true over the course of a twenty-year civil war between the GoS and rebel movements in the South during which South Sudanese endured crimes against humanity, ethnic cleansing and war crimes in many cases committed by the SAF. In Darfur, the GoS is alleged to have perpetrated genocide, crimes against humanity and war crimes. Evidence suggests that the government continues to support militias that commit atrocities in Darfur, and is stalling progress on crucial referendum-related issues with the apparent knowledge that failing to resolve them increases the risk of conflict and attendant atrocities.

Since the GoS has manifestly failed to protect its population, UN member states, in keeping with their 2005 commitment, have a responsibility to act at this critical juncture to prevent mass atrocities from occurring in Sudan. This requires governments, individually and through regional and multi-lateral institutions, to anticipate scenarios where mass atrocities might be perpetrated, heed the warning signs about particular potential flash points, develop and implement policies to avert atrocities, and establish contingency plans to halt them should they occur.

### The Risks of Mass Atrocities

Populations in South Sudan and the three border areas of Abyei, Blue Nile and Southern Kordofan, together with those in Darfur and Central and Western Equatorial States are the most at risk of mass atrocities and require immediate preventive and protective efforts.

### South Sudan and the Border Areas

A significant threat of mass atrocities stems from risks associated with the upcoming referendum agreed to in the Comprehensive Peace Agreement (CPA) signed in January

2005 by the GoS and the Sudan People's Liberation Movement/Army (SPLM/A). The agreement ended the decades-long civil war that killed close to two million people in South Sudan. It established a ceasefire, provided for power and wealth-sharing between the North and South, and created the semi-autonomous Government of South Sudan (GoSS). The parties were given a six-year interim period to settle disputes about matters such as border demarcation and resource - notably oil - distribution. It was agreed that at the end of this period, two referenda would be held: one to determine whether the South would form its own separate state, and another to determine whether Abyei area would join the South or remain in the North with "special administrative status." In addition, popular consultations in the border areas of Southern Kordofan and Blue Nile were called for to consider possible governmental decentralization but stopping short of offering independence.

Popular expectations surrounding the referendum on division are high with many in the South hopeful that it will pave the way for an independent, peaceful and prosperous state. Delays in the referenda in the South and Abyei and/or failure to recognize the results, could disappoint those expectations, with a risk that some will incite or resort to violence if they believe this is the only way to express their will. Insufficient preparation for the referendum, including the failure to implement key provisions of the CPA on border demarcation and oil revenue sharing, is fueling concerns about delay and increasing tensions.

The dangerous consequences of unmet expectations also threaten oil-rich Abyei, making it a possible flashpoint for violence that could spread throughout the South. Abyei referendum preparations are substantially behind schedule, with the lack of clarity about who is entitled to participate a particularly dangerous issue. Tensions are high between Ngok Dinka farmers living permanently in the Abyei area and Misseriya nomads seeking to maintain grazing rights in the region. Both groups are militarized, and have a long history of conflict. The Dinka supported the SPLA, and the Misseriya the GoS, during the civil war. Abyei area is hotly contested by the GoS and GoSS, each wanting its land and oil reserves to fall within its territory. In 2008, armies from the North and South clashed over Abyei killing 100 people and destroying Abyei town. A delay in the referendum, disputes over participation, and contestation of the results may lead to more violence, facilitated by the presence of the armies and allied militias from the North and South that are gathering on its borders.

Little progress has also been made preparing for the popular consultations in Blue Nile and Southern Kordofan, where expectations also run high. These states saw heavy fighting during the civil war, and it is not clear if their populations are aware that the popular consultations will not, as many hope, permit independence from the North.

The risk of mass atrocities will remain high, and possibly increase, in the post-referendum period. The GoS, in an effort to retain the symbolically important and resource rich South, may reject the results of one or both referenda, increasing exponentially the risk of renewed civil war. Observers have already noted an increase in acquisition of arms by both the GoS and GoSS, and there is concern that the GoS will actively foment conflict among opposing political factions and inter-tribal conflict in the South.

The proliferation of weapons and limited progress on disarmament have contributed to an escalation in inter-tribal violence. While competition over land and resources, particularly cattle, has a long history in the South, reports suggest that civilians, including women and children, are being deliberately targeted - a departure from past practices. Such conflicts have killed 2,500 South Sudanese and displaced 350,000 people in the past year.

In addition to rising tensions between ethnic groups, fractures within the SPLM and opposing Southern political movements create another risk of violence and mass atrocities. The potential for escalation is heightened because the GoSS' capacity to protect populations, especially the ability of the police to address rising insecurity, is weak. The SPLA is similarly poorly equipped to protect populations. Reports are emerging that the SPLA, in some cases with the knowledge of the GoSS, is committing crimes against civilians in areas where the opposition enjoys political support. A failure by the GoSS to meet popular expectations, that the referendum will deliver a rapid improvement in living conditions in the South, may also provoke violence and mass atrocities.

Finally, the two million South Sudanese living in the North, and smaller numbers of North Sudanese living in the South are especially vulnerable. GoS officials have threatened to expel South Sudanese and/or revoke their citizenship should the South vote for independence, rendering large numbers of people displaced and stateless. These populations may also be the targets of violent attack by the GoS and their supporters. Indeed, incitement to violence against Southerners is already taking place.

#### Darfur

Populations in Darfur continue to suffer mass atrocities carried out in the course of a conflict that has killed an estimated 300,000 Darfuris and displaced close to three million people since it began in 2003. At that time, while CPA negotiations were ongoing, two main rebel groups, the Justice and Equality Movement (JEM) and the Sudanese Liberation Army (SLA), launched an armed insurrection in Darfur. The GoS responded harshly, dispatching armed proxy militias, the Janjaweed, to quell the rebellion. The Janjaweed perpetrated atrocities, which then-American secretary of state Colin Powell called "acts of genocide" in 2004. The SLA subsequently split into two factions, Abdul

Wahid (SLA/AW) and Minni Minnawi (SLA/MM). In May 2006, the GoS signed the Darfur Peace Agreement with SLA/MM, but JEM and SLA/AW refused to sign, demanding further governmental concessions. In 2009, peace talks with the GoS began in Doha, Qatar but none of the major rebel groups are currently participating.

Impunity prevails and mass atrocities are increasing in Darfur. Because the main rebel groups are not negotiating in Doha, there are few signs that an end to violence is imminent. In May 2010, fighting between the SAF and the JEM killed close to 600 people, many of them combatants, more than in any period since 2008. In his 27 July briefing to the Security Council Ibrahim Gambari, the Joint African Union (AU)-UN Special Representative for Darfur, characterized security conditions as “dire” and stated that the AU-UN Hybrid Operation in Darfur (UNAMID) was having little success ameliorating the situation. Direct attacks on humanitarian workers, and UNAMID, continue. The ongoing violence and instability has displaced over two million persons internally and created 270,000 Darfuri refugees in Chad.

Of late, the lack of unity among rebels groups has fuelled armed conflict between them and may lead to future atrocities. In late July, violence broke out in the Kalma IDP camp between rebel movements supporting the Doha peace process and those opposed. In response, the GoS blocked humanitarian agencies’ access to the camp. With international attention shifting to the South, there is the risk that international actors will once again allocate insufficient resources to halting atrocities in Darfur and finding a long-term solution to the conflict.

#### Central and Western Equatorial State

The Ugandan-based LRA is perpetrating crimes against humanity in Central and Western Equatorial, committing massacres, abductions, rapes and mutilations, and displacing 24,000 people in the first six months of 2010 alone. The GoS and the GoSS are ill-equipped to address this regional threat. While the GoSS has, at times, taken steps aimed at protecting civilians from the LRA, the current approach of the GoS and GoSS, as well as other relevant regional governments, has been haphazard, uncoordinated and ineffective.

#### International Response

UN member states have made efforts to exercise their responsibility to protect. These efforts include the imposition of arms embargos, travel bans, asset freezes and economic sanctions. The International Criminal Court has issued arrest warrants for President Bashir and others for genocide, war crimes and crimes against humanity. Numerous special envoys and mediators have been dispatched and multiple peace processes have been initiated. The AU recently created the “Consultative Forum” to coordinate international efforts to support CPA

implementation, peaceful referenda, and an end to conflict in Darfur.

Central to UN and AU efforts are the two peacekeeping missions in Sudan: UNMIS (UN Mission in the Sudan) in the South and UNAMID in Darfur. Both have broad mandates that include the protection of civilians (POC) yet have difficulty fulfilling these mandates. UNAMID lacks necessary support capacities including helicopters and aerial surveillance units, and UNMIS, with close to full troop strength, is still unable to have a presence in all of the areas where populations are at risk in the vast region of South Sudan. In some cases troop contributing countries (TCCs) are reluctant to deploy troops to dangerous areas and/or directly confront perpetrators of atrocities despite rules of engagement that call on them to do so. Attacks on UN personnel and restrictions on movement by the GoS, the GoSS and armed groups similarly hamper the missions’ ability to deploy preventatively. This makes it difficult to gather specific information about locations facing imminent risk and possible perpetrators at the local level. Both missions tend to be reactive, traveling to areas after atrocities have occurred, rather than proactive, anticipating risk and deploying troops to prevent crimes.

#### Upholding the Responsibility to Protect

The measures taken thus far reflect efforts to uphold the responsibility to protect. The recent increase in high level attention to the situation in Sudan is also welcome. However, more needs to be done if mass atrocities are to be averted. Most importantly, it is essential that all international actors send a consistent message to the GoS and the GoSS expressing the expectation that they will take all necessary steps to prevent, and protect their populations from, mass atrocities. Pressure on both parties must be increased, along with action to ensure that the referendum takes place in a timely manner. Additionally, long-term strategies are needed to prevent violence post-referendum. Contingency plans must be developed to rapidly respond to and halt atrocities should prevention efforts fail. Such planning should not be seen as pre-judging the outcome of the referendum – rather, to uphold R2P, UN member states need to be forward thinking, anticipate potential threats, and develop strategies to address them.

Actors with a critical role to play are the guarantors of the CPA, including the UN, the AU, the Inter-Governmental Authority on Development (IGAD), the League of Arab States, Egypt, the ‘Troika’ of the United States (US), United Kingdom (UK), and Norway, as well as the remaining UN Security Council (UNSC) members. To avoid past mistakes, these actors should coordinate their efforts to prevent the GoS, the GoSS and parties to the Darfur conflict from forum shopping and playing one international actor off another.

The UNSC in particular must work to present a united front. The council is currently divided and is sending mixed messages to the parties, something which only serves the interests of those intent on perpetrating crimes. UNSC members must work together to exercise the council's leverage over the parties and ensure that it is prepared to act quickly and robustly to halt atrocities should preventive efforts fail. All council members have a special obligation pursuant to the responsibility to protect and must prioritize the prevention of mass atrocity crimes throughout Sudan. Consistent engagement, unified voices and concerted pressure can prevent a return to civil war, protecting populations, as well as the long-term interests of council members.

A piecemeal approach focusing on one region, at the expense of others, cannot continue. In the past, warning signs of atrocities in Darfur were overlooked in an attempt to secure an end to civil war in the South. Once concerns about genocide in Darfur became paramount, international actors neglected efforts necessary to ensure the successful implementation of the CPA.

The Security Council, Troika and others must make it clear to both the GoS and the GoSS that they have obligations to refrain from committing atrocities. Incentives for exercising such responsible leadership (i.e. the removal of sanctions) and consequences for perpetrating and/or inciting mass atrocities must be made explicit. The lack of such consequences emboldens actors and increases the likelihood of atrocities. The parties must be reminded that the benefits of peace far exceed any gains from war.

Efforts and resources must be directed towards holding timely referenda. Enhanced diplomatic support, including mediation services, needs to be provided to resolve sources of conflict that are delaying the full implementation of the CPA including oil-revenue sharing and border demarcation. The UN, donor states, and civil society should increase efforts to support the registration of voters set to begin in October. To further reduce risks associated with unmet expectations, the UN should assist in educating populations about potential outcomes, as addressing misconceptions is critical throughout the South and a priority in Abyei, Blue Nile and Southern Kordofan.

The Abyei Area Referendum Commission must be immediately established to set residency requirements. Steps should be taken to reduce tensions between the Dinka and Misserya communities, including through inter-communal dialogue. The GoS and the GoSS should be encouraged to create a soft border suitable to nomadic peoples and to explain the implications of possible independence on seasonal migration and cattle grazing.

The GoS and GoSS should also develop now clear policies on citizenship in line with international standards, and publicly affirm that Southern populations will not be expelled from the North, and vice versa, following the referendum.

African heads of state, the EU, US and League of Arab States should be prepared to swiftly accept a vote for independence, should such an outcome occur. This will pressure the GoS to accept the result and reduce the risk of conflict between the North and South.

The UNSC and AU should urge UNMIS and UNAMID to interpret their POC mandates robustly, and commit the necessary resources, including support equipment, for the missions to fulfill these mandates. The missions should increase the presence of their military, police, civil affairs, disarmament and human rights personnel in areas of greatest risk, for example through additional patrols in Abyei and other volatile areas on the border. All actors should ensure that they have clear contingency plans anticipating risks and outlining a strategy for rapid response if mass atrocities occur.

In Darfur, the UN, AU, Arab League, US and UK should continue to support the negotiations in Doha and seek to bring all rebel groups into the process. Pressure should be sustained on the GoS to respect existing agreements on access and to allow UNAMID and humanitarian agencies access to areas with vulnerable populations.

To better address the threat posed by the LRA, the AU, UN and regional states should adopt a joint, regional plan in place of current haphazard efforts.

### Conclusion

Civilians in Darfur, South Sudan and the border areas of Abyei, Southern Kordofan and Blue Nile face a threat of mass atrocities that grows more significant with each passing day. The challenges are immense, but there exists a real opportunity to prevent these crimes if action is taken now. The recent high-level meeting on Sudan convened by UN Secretary-General Ban Ki-moon, and attended by leaders including US President Obama provided an opportunity for member states to demonstrate their intent to prevent mass atrocities in Sudan. At this critical juncture, it is necessary to move from rhetorical expressions of concern to the creation and implementation of a coordinated and comprehensive strategy to address risks in the key areas outlined above. Failure to take preventive and protective action now will likely result in UN member states again failing the people of Sudan and being bystanders to preventable mass atrocities. This is the time to turn the responsibility to protect into action and save lives.