



APG SUDAN HEARING: SUDAN'S COMPREHENSIVE PEACE AGREEMENT

AEGIS TRUST WRITTEN SUBMISSION

ORGANISATION DETAILS

About

Aegis Trust is a registered charity (1082856). Aegis undertakes policy-based research on the prevention of genocide and crimes against humanity and campaigns for the protection of groups under threat. Aegis runs the Kigali Memorial Centre in Rwanda (with Kigali City Council) and the Holocaust Memorial and Educational Centre in the UK. It provides research and advocacy support to the All Party Parliamentary Groups on the Prevention of Genocide and Crimes Against Humanity in the UK and Canada. Aegis also runs the EU funded 'Wanted for War Crimes' a new project designed to bring suspected war criminals to justice, and campaigns for a sustainable peace in the Sudan. www.aegistrust.org

Contact details

Aegis Trust
Policy, Campaigns and Research Team
4 Pinchin Street
London E1 1SA

I. SUMMARY

Political solutions to Sudan's conflicts are encapsulated in the 2005 Comprehensive Peace Agreement (CPA) which ended the civil war between the North and the South. It lasted more than two decades and killed nearly 2 million people. The CPA is imperfect and groups such as the Darfuris in the West of Sudan felt left out. But it is a framework - the only framework with signatories - upon which the future of Sudan can be structured.

The CPA provides that, in 2010 there should be elections in Sudan and in 2011 a referendum in which Southern Sudanese may determine whether Sudan will remain unified or whether the South may break away. It is these elections, and the referendum in particular, that could spark conflict. Violence on multiple fronts could cause a humanitarian disaster that will inevitably affect other countries, not only those neighboring Sudan.

The key to the future of Sudan of course lies with the Sudanese: with the National Congress Party, who hold power in Khartoum, and with Southern People's Liberation Movement (SPLM) who have a fragile coalition with the NCP, and with the rebels in Darfur. However responsibility also lies with those with influence in the region: the United States, China which imports the majority of Sudan's oil, the African

Union as the regional political body, the Arab League, and the European Union and its member states including the UK.

If diplomatic efforts are not redoubled many innocent people may perish in Sudan, raising questions about the commitment of world leaders to prevent mass atrocities. The implications go beyond Sudan. Responsibility to Protect (R2P) was born the same year as the CPA, in 2005, when world leaders agreed at the UN World Summit there is a collective responsibility to protect people from genocide, crimes against humanity and war crimes. Should those same world leaders allow the CPA to sink they should be mindful that R2P may be sucked down with it.

This submission is comprised of a series of reflections from a fact-finding mission to Juba, Southern Sudan in May 2009. During the trip, Aegis staff met with a wide variety of people, from GOSS ministers to local civil society. The submission necessarily focuses on politics and prospects for the South and the role of the international community.

II. INTERNATIONAL ENGAGEMENT AND COMMITMENT, INCLUDING FULFILMENT OF PLEDGES

It is clearly very likely that Sudan will return to war before 2011 – whether it is localised war in the South, fighting on the border between north and south, or a Somalia style conflict across the entire country. Various scenarios by academics and international NGOsⁱ and our own trip to the region highlight the very real risk of at least ‘some war’.

There is an urgent need for first, the level of international engagement to return to that witnessed before the signing of the CPA in 2005 and second, a greater level of coherence in the international community’s approach. There is recognition, in the UK and other countries, that international efforts need to be stepped up but not many ideas about how to achieve consistency and clarity of purpose in efforts to save the CPA.

What is needed is:

a) *a clear forum for high-level international dialogue among the most important international partners*

During our visit to Sudan, many people talked about the need for greater international engagement on Sudan at the very highest levels eg. Foreign Minister / Prime Minister level. Existing mechanisms for international dialogue, for example the UNSC and the AEC, are not the most effective fora for reaching common agendas among the most important and interested international partners. Those who we met suggested the need to reconvene something like the IGAD group. A similar option would be the creation of a well-resourced International Contact Group. This group would include those countries that are interested and influential in Sudan eg. the United States, China, Russia, the UK, Norway, and ‘heavy-weight’ representatives from key regional bodies: the EU, the AU, the Arab League.

b) *an effective collaborative environment between the international community and the Sudanese*

Over the next year we should be seeing ministerial delegations travelling to Sudan more frequently. This may be difficult for the United Kingdom given the stage we are at in our own electoral cycle. However, at the very least, we should be seeing an increased diplomatic presence in Khartoum and Juba in the run up to 2011 and the following period. This way we can ensure the necessary expertise and clout to help influence a peaceful transition. It has been suggested that the international community, the UK included, has not yet developed an adequate 'collaborative strategy' in Sudan. Decisions need to be made about who in the GOS and GOSS we should be talking to and time and effort is needed to invest in these relationships. This 'collaborative environment' can be developed by taking more advantage of our personal and historical connections to Sudan. The UK has a good network of academics and aid workers who have strong personal links to key players in Sudan. A mapping exercise of these people, and how they can help build trust and relationships across Sudan could be a worthwhile exercise.

c) a CPA agenda – a clear, coherent and pragmatic roadmap to ensuring a peaceful Sudan in the CPA and post-CPA periods

The purpose of setting up an International Contact Group, and establishing an effective collaborative environment in Sudan would be to develop a set of common positions on core issues of CPA implementation and any post-2011 transition. At present, the parties to the CPA are able to exploit and manipulate divisions in the international community. A joint position – on at least some core elements - that demonstrates dedicated international engagement to the CPA is therefore crucial.

UNMIS

Feelings towards UNMIS are very mixed in the South. Some call for a stronger mandate for the UN in the South and criticise the current deployment as ineffective and a waste of resources. Others are concerned that UN troops are allied with Khartoum.

There is a need for a reality check in the international community about what UNMIS is capable of doing. UNMIS should not be solely blamed for international failures to provide a better and more robust UN force in Southern Sudan. Only 3000 of the 10,000 troops currently deployed are combat troops. Since their clear failure in Abyei in May 2008, UNMIS has developed state stabilisation plans for Jonglei and is in the process of doing the same for Lakes and Warrap State. However, UNMIS's record in responding to violence in the South remains mixed.

Greater international support should be given to UNMIS ahead of the elections and the 2011 referendum. A strengthened mandate should also clarify UNMIS's duty to deal with 'tribal' violence and the Lord's Resistance Army in addition to CPA related threats. Despite rising insecurity in the South (2000 people reportedly have been killed this year alone), UNMIS and the international community still do not view civilian protection as a priority for the mission. UNMIS officials are concerned that the mission does not have the military capacity or resources necessary to ensure civilian protection. **The UNSC has the opportunity to prioritise civilian protection by strengthening UNMIS's Chapter VII Protection of Civilians mandate at the April 2010 mandate renewal. Discussions should also be**

underway now about how the UN peacekeeping mission will operate to protect civilians in Southern Sudan in the post-2011 period.

III. PREPARATIONS FOR THE ELECTIONS, THE REFERENDUM AND IN PARTICULAR POST 2011

Election Strategy

A rigorously fought election based on coalitions in the North/Darfur was largely John Garang's vision. It has been variously described as 'nice but not practical' and dismissed as 'people aren't thinking like that anymore'. An SPLM/NCP joint ticket is the most likely scenario. It has been argued that the international community faces the bleak prospect of the entrenchment of NCP/SPLM elites versus a return to war in Sudan. **In light of this, international partners should be emphasising the importance of the provisions of the CPA that have clear human rights and security implications.** These include a genuine reform of the national security apparatus, which, acting under the broad powers of the National Security Forces Act (NSFA), has reportedly been arresting and detaining civil society activists, opposition leaders, and suspected rebels in Khartoum.ⁱⁱ Preparations are beginning for the April 2010 elections and yet Sudanese human rights organisations remain shut following the International Criminal Court indictment and the policy of pre-print censorship remains in tact. **The UK and its international partners should be calling for respect and guarantees of fundamental political freedoms in the run up to the 2010 elections.**

Persistent rumours that the elections will not take place at all should be taken seriously by the international community. On October 19 2009, the SPLM bloc walked out of the Government of National Unity demanding a parliamentary schedule for the remaining laws on the referendum and national security. The SPLM has said it will not return until the NCP comes up with a timetable for reforms ahead of the elections next year. If the NCP remains recalcitrant there is every chance that the SPLM will refuse to enter into elections. The impact this would have on the referendum is unclear but there is little chance that the South would be willing to delay it. A unilateral referendum on Southern independence could spark major conflict between North and South.

Election awareness

Many in civil society groups in South Sudan are worried about the lack of awareness of the forthcoming election. There is a general feeling that people are not prepared. At the same time, South Sudan feels politically open in the sense that people speak their minds and engage in long political discussions at village level. People feel empowered to some degree but there is no legitimate political system to channel their activity.

The SPLM is not a united or structured. There is deep confusion between the political party and the government, and anxiety about electoral prospects in the South. So far, the SPLM has not been successful at accessing its membership. Across the South there is a lot of loyalty to the SPLM but it is based on personalities– if tribal leaders decide to split with the SPLM, it is likely that their people will go with them. This creates a very fragile situation in the South.

Focus group findings from a recent report by the National Democratic Institute match our own findings in Southern Sudan – **that people are nearly unanimous in their desire to have the international community involved in the election and that the presence of international observers and absence of conflict are key criteria by which they will judge whether the elections are fair.**ⁱⁱⁱ

Potential for election violence

The political process in South Sudan has the potential to inflame local political issues. The inter-ethnic fighting in the South is not just about cattle raiding. People are dying in large numbers. There is a concern that politicians are inflaming tensions in order to consolidate their own territorial areas. According to Human Rights Watch, in 2009 alone, attacks and counter-attacks between armed members of the Murle and Lou Nuer ethnic communities in Jonglei state killed well over 1200 civilians.^{iv} The fighting is not confined to Jonglei state. There have been clashes between Dinka groups over grazing rights in Warrap state and tension between Shilluk and Dinka communities in Upper Nile state.

A major concern in relation to the elections is the serious potential for electoral violence where the situation is already 'escalatory' and of course in 'the three areas' – Abyei, Blue Nile and in particular Southern Kordofan. **The elections will need to be managed carefully to prevent existing tensions from turning into full-blown conflict. Election violence is particularly worrying against the backdrop of widespread access to small arms and the lack of law and order across the South.**

Referendum

The referendum continues to be the major priority for the South – variously described as 'sacrosanct' or the 'promised land'. Some argue that secession will be abrupt and violent while others recognise the complications linked to secession and claim that it is unlikely to happen the way people think – instead it will happen slowly and, perhaps, in a more cosmetic fashion than currently imagined. Either way, there is very little chance of a vote for unity in 2011. Similarly, it seems unlikely that the NCP would simply let the South go. There is a general feeling among people that we met that full-scale war could erupt at any time.

An array of complex legal, political, economic and security issues will be thrown up if the South chooses to secede. **These are dilemmas that should be confronted now, in advance of the referendum and as a crucial part of post-2011 planning. International partners should be focusing on assisting the NCP and SPLM in mediating these issues now, before it is too late.**

South Sudan post 2011

There is a genuine fear that South Sudan could be born a failed state and that civil war within the South is more likely than a full blown war between North and South. The NCP has always had a divide and rule policy in the South. Moreover various people we met explained that the only thing the South Sudanese have ever had in common has been external threats and pressure. There is a serious problem of identity in the South. People identify themselves with their localities not the anomalous concept of South Sudan. **There is a need to think about power-sharing between the North and the South but also**

between Southern leaders. Whatever happens in 2011, southern Sudan will need sustained international support to ensure that it can function as a viable state (whether autonomous or semi-autonomous).

IV. INTERNATIONAL ENGAGEMENT WITH DARFUR

IDPs, refugees and returns

In August 2009, General Agwai, head of UNAMID said that the Darfur war was 'over'. He is correct in so far as the key security issue in Darfur is no longer large scale attacks on villages but is now low-level banditry and occasional rebel and counter-insurgency operations. The key reason for the change in the level of violence is that after 2.5 million people have been displaced into camps, both inside and outside Sudan's borders, the status quo suits the NCP. Ethnic cleansing has already taken place in Darfur.

The fact that 2.5 million people are still in the camps begs serious questions. The refugees and IDPs are clear that the causes of violence have not been addressed and the Government of Sudan and its allies who committed the crimes against humanity have not been brought to account. **The UN Pinheiro Principles relating to internal displacement should be adhered to when assessing the appropriateness of returns at this stage. Signs that the Sudanese authorities are coercing IDPs to return involuntarily should be taken very seriously by the international community – especially in light of the NCP's apparent recognition the Pinheiro principles.^v**

Rebel groups and the peace process

The Darfur Peace Process has been moving very slowly. Ending the conflict in Darfur will require greater commitment and efforts by the parties involved. The efforts of mediators have been hampered by the fragmentation of the rebel movements into many different, smaller groups, making it harder for them to adopt a unified position during any negotiations. Despite this, we should be careful not to characterize the Darfur rebels as though they are the underlying cause of violence in Darfur. **The crisis will never be solved if the structural issues beyond the rebels are not addressed – principally wealth and power sharing arrangements.**

Thabo Mbeki and the AU-High Level Panel on Darfur have now prepared their report and the proposals should give a boost to the efforts of the Joint Mediator and his team. It is hoped that the AU will support the Panel's call for prosecutions to provide justice for victims in Darfur. The Panel's recommendation to create a 'hybrid court' along with establishing a truth and reconciliation commission and strengthening the domestic criminal justice system should help to improve justice efforts in Darfur. However, the degree to which President al-Bashir supports the Panel's recommendations to end immunities for state security personnel, amend substantive law on crimes against humanity, and the role Khartoum may be given in selecting judges will be critical to the success of any hybrid court.

If the conditions are right and these reforms are put in place, the CPA mandated elections may provide a chance for the displaced and disenfranchised people of Darfur to articulate their needs and concerns.

ⁱ See, for example, USIP, 'Scenarios for Sudan: avoiding political violence through 2011' (August 2009) and Jair Van Der Ljin 'Sudan 2012: Scenarios's for the Future' (October 2009)

ⁱⁱ <http://www.hrw.org/en/news/2009/10/06/sudan-end-rights-abuses-repression>

ⁱⁱⁱ National Democratic Institute 'Imagining the election: Attitudes about 2010 Sudan vote' (September 2010)

^{iv} Human Rights Watch, 'The way forward: Ending Human Rights Abuses and Repression in Sudan' (October 2009)

^v National policy on Internally Displaced People, Ministry of Humanitarian Affairs, Government of Sudan, September 2009, [http://www.internal-displacement.org/8025708F004CE90B/\(httpDocuments\)/1D313FB8223D139DC12575C500349C8C/\\$file/GoS+National+Policy+on+IDPs.pdf](http://www.internal-displacement.org/8025708F004CE90B/(httpDocuments)/1D313FB8223D139DC12575C500349C8C/$file/GoS+National+Policy+on+IDPs.pdf)