

PROSPECTS FOR PEACE IN SUDAN

BRIEFING

MAY 2005

Justice Africa
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Overview

1. Naivasha implementation going slowly. The Constitutional Review Commission has belatedly been formed. But the State of Emergency remains.
2. Oslo conference pledges substantial. The World Bank-led Joint Assessment Mission has published its report, which includes ambitious plans for the rehabilitation of Sudan's infrastructure.
3. Still no resumption of peace talks at Abuja. There are good reasons for delay, notably the need to move towards agreement on the substantive issues beforehand. However, increasingly serious questions are asked of the capacity of the African Union to conduct effective negotiations, without an adequately staffed secretariat dedicated to the peace talks. The AU monitoring force is to be expanded.
4. The ICC referral has been absorbed into the general calculus of the GoS. As soon as it became clear that criminal indictments were many months if not years away, the GoS began to see the possibility of stalling the ICC investigations or diverting the prosecution with its own processes of both peacemaking and accountability.
5. U.S. policy on Sudan is still schizophrenic. The Darfur Accountability Act passed U.S. Congress, but U.S.-Sudanese counter-terrorist cooperation remains intimate.

Implementing Naivasha

6. The CPA implementation scorecard is already problematic and delayed.
7. Reconstruction and Rehabilitation

War in Darfur

8. Violence continues in Darfur, with ongoing attacks. However, the overall level of violence is at least an order of magnitude lower than it was a year ago. The nature of the violence has also changed. In many areas, it is a mixture of criminality and the disintegration of command and control on all sides, so that for example there is violence between different security units.

Peace in Darfur

9. The next round of peace talks at Abuja has still not occurred and the deadline keeps slipping. The good reason for this is that there is little point in convening the talks until there is substantial progress towards an agreement. The less good reason is that the African Union still does not have a single full-time professional staff member assigned exclusively to the peace process, and is therefore unable to put in the diplomatic effort necessary to bring the parties together on the substantive issues. Moreover, liaison between the AU and other international stakeholders is poor. In contrast to Naivasha, where IGAD and its chief negotiator welcomed the active supporting role played by the U.S., Britain, Norway and others, who had a very substantive input into the process but allowed IGAD and General Sumbeiywo to retain overall leadership, the AU has not supported any associated initiatives that it does not directly administer.

10.

The ICC Referral

11. The U.S. decided to drop its objection to referring the Darfur case to the International Criminal Court. The sealed list of 51 suspected war criminals has been handed to the ICC prosecutor who has begun investigation. This will take time and it is unlikely that more than half a dozen individuals will be indicted.

12. Most people in Sudan believe that the ICID and ICC are both swayed by political considerations including the interests of the U.S. While both are cognizant of the political context and consequences of their actions, they are in fact truly independent. And the U.S. is in principle strongly opposed to the ICC. Only a resolution of the UN Security Council can suspend ICC indictments or prosecutions, for a period of twelve months.

13. The GoS can take solace from the difficulty that the ICC investigators will face in obtaining sufficient evidence to issue an indictment, let alone mount a successful prosecution. These difficulties are compounded by the fact that if just a handful of individuals are to be prosecuted, it only makes sense to prosecute the most senior. However, senior officials are necessarily distant from the actual crimes, and proving their guilt demands either documentary evidence or the confessions of their subordinates. Unless more junior individuals are prepared to confess, or are apprehended and prosecuted, this will be difficult, given that the GoS is still in possession of the terrain, the individuals and the documents.

14. The GoS can also take reassurance from the debates over the role of the ICC in Uganda, where it is investigating the crimes committed in the north, principally by the LRA. The chief negotiator in the peace process between the Ugandan government and the LRA, Betty Bigombe, has said she will resign if indictments are issued. The ICC is carefully weighing the ‘best interests of the victims’ and ‘best interests of justice’ clauses in their constitution, and withholding indictments that are already fully prepared, so as not to endanger this peace process. It is unclear how long they will remain in this state of suspense.

15. In the case of Darfur, the GoS would need to mount truly credible criminal investigations and prosecutions and also be part of an effective peace agreement if the argument that ICC indictments should be suspended is to hold water. It is likely that the GoS will do its utmost to give the appearance of doing both. However, there has not been a single prosecution of a security officer for human rights violations for the last sixteen years, so a sudden adoption of legal propriety is improbable. Most likely, the GoS addiction to tactical maneuvering will again prove its undoing: it will fail to do enough to convince the ICC or UN Security Council that it is credible on either.

The Region

16. The situation in Chad continues to cause serious concern. Idris Deby is in the impossible position of having lost his key coalition partners—his own Zaghawa and Chadian Arabs—over the Darfur conflict. He was very probably behind the defection of a senior JEM commander and parallel attempts to divide the SLA. The position of France in Deby’s maneuvering is uncertain.

17. The war in northern Uganda remains on a knife-edge. The chief negotiator, Betty Bigombe, reports that she is on the point of a breakthrough. But violence continues.

18. Ethiopia is in the midst of an election campaign with a foregone conclusion. The country’s introversion continues.

International

19. Targeted sanctions against those obstructing the Darfur peace process were adopted by the UN Security Council.

20. The Darfur Accountability Act passed the U.S. Congress.

21. GoS security chief Salah Abdalla Gosh made a discreet trip to the U.S. to meet with his CIA counterparts. Reportedly, Sudan’s cooperation with the U.S. agenda is far-reaching. Given that Salah Gosh is widely credited with being one of the men most culpable for the Darfur atrocities, this displays the deep schizophrenia of U.S. policy on Sudan.