

Prospects for Peace in Sudan

Briefing

September-October 2004

Justice Africa
11 October 2004

Overview

1. Peace in Sudan looks precarious. There is still important uncertainty around Naivasha. The Abuja process is all-but-paralyzed (this briefing is written while Ali Osman Taha and John Garang are still locked in talks in Kenya). The Cairo initiative threatens to become a spoiler for the other two. Focused efforts are needed to consummate Naivasha and move Abuja on to political issues, or to find a means for merging the post-agreement phase of Naivasha with the search for a political settlement for Darfur and Eastern Sudan. British Prime Minister Tony Blair stressed this message on his visit to Khartoum.
2. The conflict in Darfur retains an astonishingly high level of public interest, especially in the U.S. The UN Security Council is seized of Darfur and will remain so. The GoS seems unaware of the implications of this important step, which is probably of more import than the strong condemnations emerging from Washington DC. The UNSC has given a powerful mandate for the AU to implement various aspects of its resolution. This is a challenge for the AU.

Naivasha

3. There are signs that the GoS may be recognizing that its failure to conclude the Naivasha talks earlier this year was a major strategic error. Recent statements by Omer al Bashir have indicated a greater readiness to prioritize Naivasha. However, these words may be intended only as public relations. The tactical interest of the GoS remains in stalling Naivasha until it can put its own house in order. This of course runs the risk that the whole peace may unravel, and with it the government, before that occurs.
4. Naivasha has returned to centre stage, and correctly so. After several months in which the international community was unclear as to whether and how to proceed with Naivasha, it has become clear that the preferred sequence is, Naivasha first, Abuja second. Vice President Ali Osman Taha arrived in Nairobi for the talks, which opened on 7 October, scheduled to conclude on 11 October or very shortly thereafter. At the time of writing this briefing, there is no news from the talks. An update will be issued if there are major developments.

5. Ali Osman and the SPLM Chairman are under severe pressure to consummate the Naivasha process as quickly as possible. However, it appears that the two principals have differing interpretations of what this means. According to Ali Osman's opening statement, he is concerned with concluding the technical arrangements for the final Protocol. According to John Garang, the task is not only that, but also to move smartly to the implementation phase, i.e. bringing the SPLM into government.

The War in Darfur

6. The war in Darfur continues. Attacks by GoS forces, including the airforce and PDF, continue. The number of displaced people continues to grow. The rebels have extended their areas of operation further to the south and east, crossing the internal boundary into Kordofan. They have attacked police stations and seized vehicles and weapons. This has the logic that the SLA is not short of recruits, but it needs arms, and that until there is an adequately monitored ceasefire and protection for civilians, the rebels need to continue their military activity. However, this geographical extension of the conflict is puzzling and provocative, as it is a clear violation of the agreements signed earlier this year, and is bringing their forces into areas that are predominantly Arab. Up to now, the largest Arab militias in Darfur (notably the Rizeigat) have remained neutral, and this escalation is threatening that neutrality.

7. GoS efforts to introduce extra police and to meet its other commitments to the international community have continued to be half-hearted. The police who have arrived in Darfur are poorly-equipped and unused to the conditions in Darfur, and are no match for the PDF who are complicit in abuses. In a number of cases, the PDF themselves have been drafted into the police, or into 'guarding' IDP camps. The GoS has made no noticeable effort to control or disarm the PDF, including those units responsible for massacres, rape and forced displacement.

8. The GoS continues to float ideas for the resettlement of IDPs, rather than acknowledging that their return home is the only acceptable solution to the conflict and displacement. Some NGOs are also discussing supporting interim political steps such as meetings of traditional leaders. Their frustration at the slow pace of political negotiations is understandable, as is their eagerness to get to grips with problems beyond the immediate humanitarian demands. However, the pursuit of partial solutions in the absence of an overall political agreement runs the risk that initiatives will be coopted by one side or the other (probably the GoS) to expand their military and political authority. The sad reality is that it will not be possible to move much beyond meeting immediate humanitarian needs without a political settlement.

The Abuja Talks

9. The Intra-Sudanese Dialogue conference in Abuja, Nigeria, broke up without agreement. The parties had painfully concluded an agreement on humanitarian issues, which was left unsigned until an agreement on security issues was signed; this did not

occur, and the mediators left empty-handed. The talks were excruciating slow and detailed, with neither side showing compromise, and each pursuing a negotiating strategy based on line-by-line examination of proposals, mutual recrimination, and posturing. Each appeared more determined to make points to the international community and demonstrate the correctness of its position, than to come to agreement. Morally, there is no doubt that the rebels had the upper hand—their basic claims of GoS bad faith were endorsed by the UN Security Council—but they did not help the AU mediators move towards any workable agreements.

10. The mediators adopted an agenda, to discuss humanitarian, security, social and political issues. Initially envisaged as a means of breaking down the peace talks into manageable chunks, this became a de facto sequencing as neither side was ready to discuss the issues in parallel. The rebels did not want to delegate authority to small negotiating teams for technical committees, and wanted the GoS to fulfill its much-abused commitments from earlier talks, before moving to the political substance. The GoS showed no willingness to move from point-scoring to problem-solving. Hence, all discussions remained in plenary, and no discussion was possible on the latter issues until the earlier ones had been dealt with. Security—always the trickiest issue in such talks—was second, and stalled the entire talks.

11. The specific difficulty with the security discussion was the conflation of the immediate agenda, of protecting civilians, monitoring the cessation of hostilities and implementing the GoS commitment to disarming the Janjawiid, with the longer-term agenda of a full ceasefire. This confusion serves the tactical interest of the GoS. First, the failure to define the Janjawiid allows Khartoum to maintain that the PDF and the Janjawiid are different entities, and to complain about the impossibility of disarming entire tribes. Second, a full ceasefire including cantonment of forces is normally undertaken only at a late stage of a peace process, when the outlines of a political agreement are clear. By pressing for it at the outset, the GoS is seeking both military and political advantage.

12. The Abuja discussions never progressed to the political agenda. In part this was because the GoS delegation was unwilling to offer any political compromises, although it has repeatedly hinted that it would be willing to accept an arrangement for limited political autonomy, as has been agreed for Southern Kordofan and Blue Nile. In part it was because the rebels preferred to remain focused on issues on which they have a short-term tactical advantage, namely the GoS's failure to meet its existing humanitarian and security commitments. It represents a missed opportunity.

13. The GoS strategy is piecemeal, obstructionist and driven by details. Its delegation is composed for political symbolism and divide-and-rule rather than in order to deliver a deal. This is proving counterproductive. For example, the AU offered an African inquiry into the causes of the Darfur crisis. The GoS rejected this, and now faces a UN investigation, which is a much less favourable outcome for it. The continual GoS rejection of an expanded AU force also rebounded to its disadvantage, as it was

ultimately compelled to accept the force with bad grace. These recurrent tactical errors are an obstacle to progress towards a settlement.

14. The rebels' approach has not yet crystallized into a coherent political strategy. They have thus far been content for the negotiations to remain on humanitarian and security issues, taking the agenda items from the international engagement in the crisis, and not moving on to the political agenda. This has several dangers. One is that, encouraged by the level of international interest in Darfur and the outrage leveled at the GoS, the rebels are in danger of exaggerating their own political status internationally. Following from this, it is possible that if the Naivasha talks make progress onto national political issues this month, key aspects of the future political shape of Sudan will be decided without the involvement of the Darfurian parties. The international concern with Darfur has not translated into international support for the SLA and JEM. A second danger is that the humanitarian and security issues fall within the mandate and activities of the UN, AU and humanitarian agencies, not the political organizations. If the international community succeeds in resolving these issues to its satisfaction, the rebel fronts may find themselves left stranded. A related drawback is that by focusing on secondary political issues—i.e. issues that have emerged since the outbreak of the conflict rather than the reasons for the conflict in the first place—the rebels are missing the chance for deepening their political constituency in Darfur and gaining wider support across Sudan.

15. In general, the SLA is ready to focus on the details in Darfur, while JEM wants to move the discussion to the national level. The JEM appears unwilling to extend any legitimacy to the GoS, and seems to think that signing any agreement is tantamount to abandoning its agenda for fundamental political change. The SLA has sent mixed messages as to whether it is ready to negotiate with the GoS in the absence of a JEM delegation.

16. One positive side-effect of Abuja was that it was an opportunity for the sizeable delegations of SLA and JEM senior leadership to discuss among themselves, and with some other Darfurians present, on a range of issues. On the side of the main talks, a running seminar was held on the problems of Darfur and Sudan. However, the rebels have not yet begun to see their peace negotiations as linked to Naivasha, and their deal as part of a larger national settlement. On the contrary, the JEM prefers to see itself as superceding the existing framework agreements signed in Naivasha, and the SLA has not objected.

17. The mediators, thus far focused mechanically on getting to a deal—any deal—that will prove a step forward. This allowed the talks to become bogged down in details. In fact, many of the humanitarian and security issues are primarily bilateral issues between the UN and AU (acting under the UNSC mandate) and each of the parties separately, and do not need a full mediation process including both parties.

18. The mediators, under strong pressure from the international community for progress on humanitarian issues, are keen to restart the talks as soon as possible. There are good reasons for this: the humanitarian and security protocols need to be agreed and signed to

make progress on the ground. A date has been set for 21 October in Abuja. However, a rapid return to the negotiating table before the parties have had the chance to assess their strategic objectives and to consult with their constituents, is unlikely to yield progress. It is preferable for the talks to convene when the parties have adopted positions and entrusted their negotiators with sufficient authority. If this means delay, then delay is necessary.

19. In the meantime, it is possible for the UN and other humanitarians to take the substance of the agreed humanitarian agreement text, and regard it as signed in all but name. There are indications that the UN intends to do precisely this. The humanitarian discussions are driven primarily by facts on the ground, not by what is agreed in the peace talks, and the international community can pressure both principals into agreeing to proposals for humanitarian access and similar.

The Genocide Determination

20. The U.S. government's determination that genocide has occurred in Darfur is, according to the Genocide Convention, the correct decision. The requirements of systematic violence, selectively perpetrated on an ethnic basis, with intent to remove or damage identifiable ethnic groups, are met. The fact that the 'African'-'Arab' dichotomy is historically and ethnographically bogus, does not mean it cannot be subjectively real, and also does not obscure the reality of ethnic difference. The question of intent has also been addressed by international tribunals in the Hague and Arusha, and the massacres in Darfur present no greater obstacles to the prosecutor than those in Bosnia and Rwanda.

21. However, the interpretation put on the finding by U.S. Secretary of State Colin Powell, that it does not entail any additional U.S. action above and beyond what it is already doing, is also correct. Military intervention is one possible means of fulfilling the requirements of the Genocide Convention, but not the only one. Prudential considerations dictate that a combination of diplomatic activities and the scaling up of the AU force are the best response, not the dispatch of U.S. forces with a mission of regime change.

22. The determination of genocide in Darfur obliges the international community to retrospectively examine a series of episodes in the Sudanese civil war that might also count as genocide, including the army/militia raids into Bahr el Ghazal in the late 1980s, the South Kordofan Jihad of 1992, the Juba massacres of the same year, and the clearance of the Western Upper Nile oilfields in the late 1990s. On the criteria used for the recent Darfur determination, all were genocide. It is important to note that in these cases, the solution has been a negotiated peace deal. Critics will assert that this peace deal took an unacceptably long time to hammer out.

23. What the determination does is escalate the war of words. However, the determination sets an unfortunate precedent whereby in future, the U.S. government (or the UN, or any other government) will be able to determine that genocide is occurring in a specific place, and also conclude that there is nothing to be done about it beyond drafting a resolution at the UN Security Council.

The UN Security Council

24. UNSC Resolution 1564 is weaker than most international advocates called for, but still potentially powerful. It opens up various possibilities, including a no-fly zone, sanctions on Sudan's oil industry, and 'smart' sanctions targeted at senior figures in the GoS suspected of involvement in the Darfur atrocities. The investigation into Darfur also opens up a scenario in which the UN itself finds that the GoS is responsible for genocide or other crimes against humanity, with far-reaching consequences.

25. Human rights organizations and columnists have attacked the resolution as an advertisement for the UN's spinelessness and impotence. However, there is no credible plan for resolving the Darfur crisis that does not involve the consent of the GoS. Ensuring the abstention of China and the Arab members of the UNSC is an essential step in this. As these countries are regularly informed about the Darfur crisis, month by month, their current positions may shift. Most importantly, the fact that the UNSC has continuous oversight over Sudan is a trap from which the GoS will find it impossible to escape.

26. The UNSC resolution puts immense responsibility on the AU to implement two main agendas. One is scaling up the size and mandate of the AU force in Darfur. The second is initiating political negotiations. The AU's role in humanitarian and immediate security negotiations is marginal, as these are handled directly by the UN.

Khartoum

27. Throughout, the GoS's prime fear has been the Islamists. The 25 September claim of a coup plot underlines this. There are signs of the GoS taking the threat seriously and looking panicked; but it is also possible that the threat has been hyped in order to justify a crackdown and send a message to the international community. Following this, the GoS has accused the JEM of mobilizing troops in Eritrea and threatening to open a new front in the East, and has said that it will not negotiate with JEM in Abuja.

28. What is certain is that there is dissension, and the Turabi wing of the Islamists sees a government in disarray that is vulnerable. Senior members of the GoS still have ties to Turabi, and some of them would like to see a rapprochement between the estranged wings of the Islamist movement. It is also possible that there have been attempts to spring Hassan al Turabi from detention and either have him lead a popular uprising or spirit him out of the country. On the other hand, the timing of the alleged coup plot is extremely fortuitous for the GoS: it allows Ali Osman to repeat the point that the GoS is vulnerable to more extreme forces if it is pushed too hard, and to claim that the JEM is linked to Turabi's PCP.

29. A signal of Khartoum's internal disarray was the dismissal of the Assistant to the President, Mubarak al Fadl. Mubarak had forwarded his own initiative for the resolution of the Darfur crisis. In doing so, he was undoubtedly attending to his need, as an Umma Party leader, to attend to the Umma constituencies in Darfur, which are on both sides of

the conflict. The GoS position was that no minister can launch an initiative without the full backing of the Palace.

Libya, Egypt and the NDA

30. The Cairo meeting between the NDA and GoS has been postponed until 16 October. Ostensibly this was because of scheduling difficulties for the NDA delegation, but it seems probable that it was done chiefly in order to link the talks to the envisaged five-nation summit on Sudan that is due to open in Libya, the following day. The Cairo talks remain bedeviled by the weakness of the NDA and the fact that its Chairman, Mulana Mohamed Osman al Mirghani, is also pursuing his personal agenda.

31. Libya has announced a summit of five nations—Sudan, Egypt, Libya, Nigeria and Chad—to be held on 19 October in the town of Sirte. This is clearly an attempt to strengthen the ‘Arab’ role in Sudan, both externally and internally, and to serve as a spoiler for the potential progress in Naivasha. Libya has also been contacting many Darfurians on an individual basis, including members of the SLA and JEM. This may create divisions and dissension within Darfurian ranks.

International

32. The surprise visit of British Prime Minister Tony Blair to Khartoum, en route to a meeting of his Africa Commission in Addis Ababa, was an important reminder to the Sudanese parties that despite recent international disarray over policy towards Sudan, the core demand for peace remains in place and as strongly backed as ever. Blair’s five demands, made of the GoS, were a mixture of immediate humanitarian action and movement towards a comprehensive peace. The message was coherent and the messenger highly significant.

33. The donors’ meeting in Oslo was significant in that the international community is coming to recognize the shortcomings and dangers of a piecemeal approach to settling Sudan’s conflicts. The uncertainty over the sequencing of Naivasha and Abuja over recent months definitely contributed to the difficulties with each, and helped revive the Libyan-Egyptian engagement. Many are coming to accept the need for a comprehensive peace deal, with Naivasha as its cornerstone.

34. In contrast to the period in which the Machakos-Naivasha process was set in motion, right after September 11, 2001, when the U.S. had both moral authority and immense political leverage, the American role in the Sudanese peace process today is much more complex. The U.S. invasion of Iraq has massively complicated its involvement in the Darfur peace process, especially given the mis-characterisation of the conflict as ‘Africans’ against ‘Arabs.’

35. Why does the Darfur issue have such staying power in the U.S.? The GoS assumed that, in the absence of oil reserves and Christians, the U.S. would show little interest in Darfur. Up to now, it has been proven wrong. Why is this? Is it because the anti-

Khartoum constituencies in the U.S. have found another cause? Is it the salience of the human rights and humanitarian issue? Is it because the U.S. Administration welcome anything that keeps media attention away from Iraq—especially with a story in which Arabs can be portrayed as villains? Is it in preparation for the Washington neo-conservative’ next big international initiative, namely regime change in Sudan, should the Republicans win the U.S. Presidential election?

36. Both U.S. Presidential candidates have spoken on Darfur. They have not disagreed; in the first Presidential debate, both supported the African Union efforts (introducing 60 million Americans to the organization) and neither advocated unilateral U.S. action.

Next Steps

37. Sudan needs a comprehensive political solution. The foundation for this should be Naivasha, which has the substance and political clout needed. The mechanism for this should be that the talks include moving to implementation without delay. Implementation should include detailed steps for a Constitutional Convention and the formal declaration of regional autonomy and power-sharing for Darfur and Eastern Sudan, using as a model the agreements made for Southern Kordofan and Blue Nile. However, any political framework announced for Darfur should be the starting point for negotiations at Abuja, not regarded as a *fait accompli*.

38. As soon as the final protocol is signed, President Bashir should issue a Republican Decree that affirms the Naivasha agreements as part of Sudanese law, brings the power-sharing, wealth-sharing and security arrangements into immediate effect, and appoints John Garang as First Vice President.

39. Meanwhile, extensive preparation is needed for the next round in Abuja. The mediators need to do their own research and thinking to define what they mean by Janjawiid (or abandon any usage of the term) and what a credible process of providing security and ensuring disarmament would look like. The key issues needing immediate progress need to be fixed in advance by intensive shuttle diplomacy between the parties, leaving the Abuja meeting itself for the formalities of finalizing the humanitarian and security protocols, and beginning work on the social and political issues.

40. International calls for regime change are frankly irresponsible. If the government of Sudan is to change, it should do so through the democratic or peaceful efforts of the people of Sudan, not through external intervention. A foreign-led effort to remove the current GoS is far more likely to lead to chaos and intensified civil war, than to peace and democracy.