

# PROSPECTS FOR PEACE IN SUDAN

## BRIEFING

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### **Overview**

1. The last Framework Agreement for peace in Sudan was signed at Naivasha, Kenya, between the Sudan Government and the SPLA on 26 May, followed by a comprehensive framework agreement, the Nairobi Declaration, on 5 June. Twenty-one years after the outbreak of a nasty, brutish and extremely long war, this should have been the cause for immense rejoicing. There was celebration. However, the event was anti-climactic. All Sudanese citizens are well aware that immense hard work remains to be done to make peace a reality, and the advent of a formal peace is overshadowed by the ongoing war and atrocity in Darfur. There is no immediate prospect of an international peace dividend. For these reasons, Justice Africa will continue to use the title 'Prospects for Peace in Sudan' for this briefing, for the time being.

2. The parties to the conflict and the mediators deserve warm congratulations for this great achievement. The determination of the international community represented by the presence of all of the peace envoys and ministers in Naivasha was critical to enabling the parties reach an agreement. The Kenyan mediator, General Sumbeiywo, deserves especial praise. Their continuing dedication and pressure is needed in the last phase of the peace process, including the security arrangements and the implementation mechanism.

3. Darfur is in confusion. An immense human tragedy continues to unfold, and many people, mainly children, are likely to die in the coming months. Part of the scaffolding for an agreement is in place, but the process has thus far been haphazard and inconclusive. Challenges to the peace process include the lack of political consensus in both the government and rebel camps, lack of coordination between political and humanitarian negotiations, and the likelihood that as hundreds of thousands of Darfurians stay in refugee camps, the rebel position will become radicalised and intransigent. The main obstacle however is a dilatory approach by the GoS, which is showing a distinct lack of urgency about dealing with the political issues in Darfur.

4. International pressure, notably through the visits of AU Chairperson Alpha Konare, U.S. Secretary of State Colin Powell and UN Secretary General Kofi Annan, have resulted in GoS commitments to disarm the Janjawiid militia and facilitate humanitarian operations. These commitments will need to be monitored very carefully, given signs that there are few signs of GoS good faith thus far.

## **IGAD Concludes Successfully**

5. Three agreements were signed in Naivasha on 26 May, and a comprehensive framework agreement signed on 5 June. This success is a testament to the realism of the parties and the perseverance of the mediators. However, the greater part of the enforcement of the deal will fall on the parties themselves.

6. During the interim period, the people of Abyei will have dual citizenship of western Kordofan (now South Kordofan) and Bahr el Ghazal. A local administrative council appointed by the Presidency will administer the area. At the end of the interim period, the residents of Abyei will cast a ballot, separate from but simultaneously with the Southern referendum. The following two choices will be the subject for voting: (a) That Abyei remains its special administrative status in the North and (b) that Abyei be part of Bahr el Ghazal and thus the South.

7. Concerning the agreement on the Nuba Mountains and Southern Blue Nile, one surprise is contained in the agreement. This is that Southern Kordofan returns to wider boundaries before the division of Kordofan into three, thereby reincorporating the southern part of the current western Kordofan state, i.e. Muglad, Babanusa and El Fula (but not of course Abyei). This meets the SPLA demand that Lagowa be included within Southern Kordofan, and makes the Kordofan option more attractive for the residents of Abyei, but also increases the proportion of Baggara Arabs in the region so there is close to a demographic equivalence between Nuba and Arabs. The expansion of Southern Kordofan is unpopular both with the Nuba and the Missiriya, the latter discontented with the dissolution of the former Western Kordofan state. The first governor of Southern Kordofan after the agreement is signed will be nominated by the SPLA and will presumably be the current SPLA governor, Cdr. Abdel Aziz al Hilu.

8. Concerning power sharing, one notable component of the agreement is the position of Vice President Ali Osman Mohamed Taha as commander of the armed forces in the North, and also the automatic successor to the Presidency should it become vacant.

9. Another important provision is the two-thirds majority in the Southern Assembly necessary to change the constitution of the Southern State. Under the Naivasha agreement, the SPLM is awarded 70% of the posts in the Southern government including the interim assembly.

10. The talks on the conclusion of the permanent ceasefire agreement began on 28 June. These are conducted within the framework of the Agreement on Security Arrangements (signed on 25 September 2003) as well as the modalities for implementing the Comprehensive Peace Agreement, including regional and international guarantees.

11. The security arrangements session will be a difficult process despite the time frame of two weeks marked for its conclusion. The GoS relocation of about 90,000 officers and soldiers to Northern Sudan and the associated logistics will be a particular concern. Many Southern Sudanese refugees and IDPs will be reluctant to return home while the GoS army remains in place. While the GoS rejects any international force mandated under Chapter VII of the UN Charter, the SPLA is insisting that a peace support operation will need precisely such a mandate. The size and armament levels of the Sudan armed forces and the SPLA are another contentious issue. Again, many Southern Sudanese and residents of marginalized

areas under SPLA leadership view the military strength of the SPLA during the interim period as one of the key guarantees for the peace agreement. A weak SPLA will not be acceptable to these people.

12. The round of talks on the implementation mechanism must address, among other things, crucial issues of concern, and provide clarifications of any ambiguities contained in the protocols signed thus far by the parties, including conflicts of interpretation of such clauses. Many Sudanese expect clear commitments on the levels of elections, specifically whether the President and First Vice President are going to be elected by popular vote after three years. Southern Sudanese on the other hand are expecting referendum protocol guidelines that include the definition of who are the 'South Sudanese' for voting purposes, and a binding timetable and dates for the referendum on self-determination in the South and Abyei. The Nuba and southern Blue Nile people are also concerned with a binding timetable for the political consultations in those areas during the interim period.

### **Will Peace Hold?**

13. Dr John Garang, speaking to the Voice of America on 30 May, gave a remarkably frank assessment of the motives of the parties and the role of the international mediators. 'This peace agreement was reached, not necessarily because the parties wanted to, but because both parties were forced to,' he said. 'We negotiated an agreement, because we were forced to by a set of pressures. The cost of continuing the war was felt by both sides to be much higher than the cost of stopping the war. So, we stopped the war.' His statement underlines the need to keep the structure of incentives in place during the implementation phase of the agreement.

14. Some elements are keen to spoil the peace agreement. Among them is the Southern Coordinating Council, which is reduced from 100% control of the South to just 15%. A series of provocative militia attacks in Akobo and Bor at the end of May and early June indicated the readiness of this group, supported by some individuals in military intelligence, to try and forestall the signing of the final agreement.

15. The SPLA leadership is still intent on negotiating one-on-one deals with the members of the SSDF. This approach provides scope for spoiling alliances among anti-SPLA factions.

### **Darfur: The War**

16. The level of violence in Darfur fell after the ceasefire agreement of April. But this decline was only relative to the exceptional intensity of the violence during February-April, and the fact that the militias have already destroyed most of the accessible targets. More than 300 villages have been destroyed. There are disturbing indications of a continuing level of atrocity and indeed a more recent re-escalation in violence. Among the many incidents, an attack by the janjawiid on villages south of Nyala on 25 May, in which 46 people were reported killed, needs special mention. This attack took place in an area well to the south of the main area of militia activities to date.

17. African Union ceasefire monitors arrived in Khartoum at the beginning of June. They face many obstacles. One of them is the absence of provisions for encampment of the parties' armed forces during the ceasefire. In the vast territory of Darfur, monitoring a ceasefire will be impossible unless the team can monitor the movements of the parties. The AU-led mission

includes representatives from the parties, Chad, the UN, the US and the EU. It is important that the monitors make their presence felt in the field without delay.

18. President Bashir has announced on several occasions that the Janjawiid would be disarmed, in response to pressure from AU, U.S. and UN leaders. This statement has to be treated with some scepticism, given the poor record of adherence to commitments by the GoS. If carried out, however, it would be the single most important step towards a real ceasefire and the establishment of security for the civilian population. To date, there are no indications of GoS action on this commitment, and indeed to the contrary, there are signs of continuing army-Janjawiid cooperation, and there is a real possibility that Janjawiid members will simply be given police uniforms and presented to the world as a civilian police force. A number of Janjawiid leaders have been moved from Darfur to Khartoum and other cities, a move intended to demonstrate the GoS's readiness to distance itself from them, but in reality an indication of close government control over their movements.

19. The SLA and JEM suffered military setbacks in February and the succeeding months, but they are regrouping, and expanding both their forces and their area of operations. For example there are reports of SLA operations near Kebkabiya and south of Nyala. The SLA retains political contacts with the SPLA, which provide the SPLA with cards to play with both parties during any future negotiations.

20. The war is spilling into Chad, with several major cross-border incursions by the Janjawiid. These have included encounters with the Chadian army and also the burning of villages inside Chad. There are also reports that the Janjawiid are reviving defunct Chadian Arab opposition groups, much to the consternation of the Chadian Government. Given that elements in the Janjawiid have a background in Libya's former Islamic Legion, which fought in Chad and mobilised Chadian Arabs, this linkage is unsurprising.

### **Darfur: Humanitarian**

21. The opportunity for a large-scale humanitarian operation before the rains make many roads impassable has now been lost. International agencies are painfully re-learning the lessons of how to operate in western Sudan. Important opportunities have been missed, for example for comprehensive immunisation programmes. Elevated mortality across Darfur cannot now be prevented. Published estimates by NGO workers and USAID indicate that excess mortality is likely to be in the region of 100,000-350,000 over the next 12 months. These figures are credible, though we need to be vigilant over the inflationary tendency in some aid agencies' public predictions. Other visitors to the region have been more cautious in their projections for malnutrition and mortality.

22. After considerable international pressure, the GoS lifted some of the restrictions on humanitarian access to Darfur at the end of May. This came after the absurdity of a three-day travel permit being combined with a three-day delay in the ability to travel—a ruse illustrative of the GoS's long experience in manipulating humanitarian access in conflict zones. Further promises have been made during the visits of Colin Powell and Kofi Annan. Will we see a protracted cat-and-mouse game between the GoS and humanitarian organisations over the latter's operations? This is a dispiriting prospect. It also suggests that there will be major hindrances in addressing the longer-term humanitarian imperative of returning the displaced Darfurians to their homes.

23. The kidnapping of humanitarian workers by the SLA on 4 June reflected the rebels' suspicion that the GoS was using relief convoys as a cover for military intelligence activities, a practice that was common in Southern Sudan. Thus far, neither rebel movement has a relief capacity of its own.

24. The focus on international relief efforts obscures the fact that the Sudanese government and citizens can do far more than foreign aid agencies. Sudan has a surplus of one million tons of grain, almost all of it in storage in eastern Sudan. Thus far the GoS has made no efforts to mobilise this immense resource. People in Darfur rely far more on their own efforts, including gathering wild foods, than on food assistance. The single most effective measure to support survival would be to permit freedom of movement. That in turn would require security. We should also note that AU Chairperson Alpha Konare included a prominent African relief specialist, the head of Africa Humanitarian Action, in his delegation to Darfur. He is seeking to emphasise that addressing Africa's humanitarian needs is first of all the responsibility of Africans.

### **Darfur: Political**

25. Confusion still reigns among the parties about the status of political negotiations. The AU has been active in leading the mediation efforts, with AU Chairperson Pres. Alpha Oumar Konare visiting Darfur and Chad on separate occasions, and meeting with the parties.

26. The GoS is thus far refusing to treat Darfur with the urgency and seriousness it deserves. One element in this internal GoS disunity, with serious differences at the heart of government and the Congress Party. A majority of government members are undoubtedly against the war strategy, including senior ministers, members of the Congress Party and regional figures. However, a powerful cabal of senior advisors and security officers retains control of the Darfur policy. The prominence of Gen. Abdel Rahim Mohamed Hussein, shadow head of the army at the time of the 1989 coup, is symbolic of this. This means that the GoS leadership still prefers to characterise proposals for peacekeepers as an international conspiracy, and is showing no enthusiasm for engaging in peace initiatives. The entry of the SPLA into government has the potential to radically change the political environment in Khartoum, opening new possibilities for negotiation. However, if a joint SPLA-GoS approach is to have any chance of success, it cannot wait for the final signature on the IGAD peace agreement. A means of jump-starting the process must be found. The logical option of bringing Dr John Garang into the mediation process has not been welcomed by the GoS.

27. The AU proposal for a meeting involving all the parties at the time of the 15 July Peace and Security Council have been thrown into disarray by the announcement by the SLA and JEM that they would not accept Chadian mediation (on the grounds of bias), that they would not attend the Addis Ababa meeting (on the grounds of not having been consulted over the date). While the rejection of Chadian mediation is not unexpected, failing to cooperate with the AU has no obvious rationale. There are suspicions of divisions within the rebels, sown by a combination of political inexperience, the efforts of the GoS at divide-and-rule (including straightforward bribery), and the failure of the Chadian mediation in April to be completely honest about its proposals. There are also suspicions that some rebel leaders and their advisors believe in a military solution. The fact that the rejection statement was made in Asmara may be no coincidence. The NDA meeting, scheduled for 10 July in Asmara, will be an opportunity for the SLA and JEM to clarify their position. Most probably, this will be the

last NDA meeting outside Sudan, and it would therefore be advisable for the two groups to ensure they have a credible negotiating process underway as soon as possible.

28. The African Union is handicapped by its low level of human and financial resources, and the fact that statements from the U.S. and others indicating support to the AU role have so far seemed rather pro forma. The AU Peace and Security Council was inaugurated at Heads of State level on 25 May (Africa Day). Sudan, as a member of the PSC, was represented by President Omer al Bashir, who followed PSC procedure and withdrew for the closed-door discussion of Sudan. Before this, Pres. Bashir succeeded in deflecting criticism of the GoS by proposing a High Level Independent Committee to investigate reports of human rights abuses. The AU PSC responded by directing the African Commission on Human and People's Rights to investigate.

29. On 20-21 June, the AU Chairperson Alpha Omar Konare visited Sudan, including a trip to Darfur, to press the GoS to take more decisive action. This visit appears to have been the prompt for Pres. Bashir's 19 June announcement that he would disarm the militia. The GoS tried its best to stage manage this visit, as it later did with the visits of Colin Powell and Kofi Annan (to the visible anger of the latter).

30. The GoS strongly prefers for political dialogue over Darfur to be held strictly inside Sudan. It is still insisting on its own round-table conference, so that the rebel groups will be unable to attend, and it will be able to control proceedings. The Umma Party is supporting this approach. Sadiq el Mahdi, who knows that a very large proportion of his likely electoral support comes from Darfur, is very anxious to retain his party's base in the region. This cause is best advanced by a tacit partnership with the government to control the parameters of the dialogue. It is worth emphasising that no internal process stands any chance of success.

31. A second precondition is a firm consensus among the international actors, including AU, U.S. and Europe. One of the dangers is that the humanitarian emergency will lead the Americans and Europeans to prioritise humanitarian access negotiations at the expense of a political settlement. It is important that the political and humanitarian negotiations are coordinated and do not undermine each other. In order for this to work, the U.S., EU and UN humanitarian activities need a liaison officer with the AU Commission.

32. Speed is important. With up to 200,000 refugees in Chad, most of them angry and bitter, the rebels have a perfect recruiting ground for enlarging their forces. There is already a marked absence of young men from the camps. Experience with such refugee populations is that they tend to spend their time in exile nurturing their bitterness, and becoming more radical and intransigent. Only a rapid resolution of the conflict can prevent this hardening of positions.

## **The Genocide Question**

33. There is much anguish in Washington, New York, Addis Ababa and elsewhere over whether the massacres, forced displacement, mass rape and deliberate starvation count as 'genocide.' This briefing will argue, first, that the prima facie evidence is that genocide as defined by the Genocide Convention is being committed, second, that this does not imply a legal obligation to intervene militarily, and third, that simplistic racial analyses of the conflict are unhelpful and can be positively dangerous.

34. The UN Security Council adopted a Presidential Statement on 26 May that expressed ‘grave concern’ over the events in Darfur. The statement stopped short of using the word ‘genocide’ but hinted that it might reconsider, by mentioning ‘acts of violence, especially those with an ethnic dimension’. It also called for accountability for human rights violations. Other international figures have also stopped just short of using the word ‘genocide’. Characterising the war in Darfur as ‘genocide’ has important consequences, but is compatible with supporting Naivasha and other GoS peace efforts.

35. If the international community decides that the events in Darfur constitute genocide, they will do so in accordance with the definition of the crime in the Genocide Convention, and the interpretations of that in the International Criminal Tribunal for Rwanda. (Of particular interest in this regard is the ruling of the ICTR in the case of Jean-Paul Akayesu, which determined that an ethnic group can be identified as ‘a stable and permanent group whose membership is determined largely by birth’. This will get round the problem that there are no national or religious differences between groups in Darfur, no discernible racial differences and ethnicities are historically fluid—despite the language of the current generation of political leaders on both sides, who have adopted the ‘African versus Arab’ dichotomy.) The Genocide Convention has a much broader definition of genocide than the common lay definitions, which focus on the Holocaust and more recently on Rwanda as well. The worry among major international powers is that once they have diagnosed genocide, they will be obliged to intervene militarily. However, this does not follow. The Genocide Convention is silent on the means that should be used to prevent and punish genocide. Military intervention is one option but not the only option. In the case of Darfur, prudential considerations may militate against military intervention, while other options for political action are also open.

36. If the UNSC or other international bodies are to describe the events in Darfur as ‘genocide’, a key consideration will be the intent of the perpetrators. An important feature of the Darfur campaign has been that while it is as yet impossible to ascertain genocidal intent at the highest level of government, it is clear that such intent has existed at important levels of the command structure of the militia and the security organs of the state. While genocide has typically been a state crime in modern history, the responsibility of the highest leadership of the state is not a necessary condition in fact or in law for the crime to be committed. In the case of Darfur, it is clear that most members of the Government and Armed Forces have not supported the genocide, and in many cases have opposed it and worked to prevent it. However, there is a clique within the security establishment that has the capacity, will and opportunity to perpetrate genocidal crimes. It is notable that the same individuals’ names recur whenever responsibility for serious human rights violations is mooted, ever since the NIF took power in 1989 and in some cases from earlier. The U.S. government has also named seven militia leaders as the targets for punitive sanctions, and is considering naming some of their backers in Khartoum as well.

37. If the highest leadership of the GoS is indeed not guilty of conspiracy to commit genocide in Darfur, the way for it to prove this fact is to institute legal proceedings against those that are indeed guilty of war crimes, crimes against humanity, and genocide. This would be an international ‘first’: the first occasion on which a government has prosecuted its own servants for these crimes. If the GoS were to pursue this course of action, it would be a powerful indication that it has indeed made a genuine commitment to peace and human rights.

## **The Region**

38. The crisis in Gambella region of Ethiopia appears to be moving towards a settlement. It has been a priority for the Ethiopian Government's Ministry of Federal Affairs, and during June the Ethiopians invited the SPLA to visit the region to contribute to a peaceful settlement. Hopefully, this degree of concerted attention will settle the immediate problems and enable the government to address the underlying issues, such as residence and citizenship rights.

## **International**

39. The Darfur issue has achieved a high profile in US domestic politics. There is an ad hoc coalition of interests at work here. There are strong lobbies in Washington that have always believed in regime change in Khartoum, who see the Darfur conflict as a vindication of their stand. Their position is strengthened by the fact that two critical positions in government—head of Africa at the NSC and Assistant Secretary of State for Africa—are in handover phases. The Administration is happy for media attention to be diverted from Iraq during the handover period. Several leading foreign policy advocates in the Democratic Party, still haunted by their failures over Rwanda ten years ago, are anxious to 'do it right' this time, while also stealing a march on the Republicans in the run-up to the party conventions. Both the black Congressional caucus and Senator John Kerry have made statements calling for a tougher line, including military intervention. Thus far the Pentagon and State Department have resisted calls for intervention.

40. The visit of Colin Powell to Sudan, coinciding with the visit of Kofi Annan, was an unprecedented opportunity for pressure on the GoS. Publicly, the concessions obtained from the GoS were confined to disarming the Janjawid and facilitating humanitarian operations. But the visits also send a powerful signal that the international community is profoundly concerned about Darfur. Following a visit by the Secretary of State for International Development, Hilary Benn, the British government has come out in favour of stronger action on Darfur. This is leaning towards strengthening the AU military observer mission by giving it extra teeth, such as well-armed international troops. Unless the GoS takes rapid action to implement its commitments, these pressures will rapidly translate into an unstoppable momentum

41. The U.S. government has removed Sudan from the list of countries deemed to be 'non-cooperative' in counter-terrorist activities, but has yet to remove it from the (more significant) list of 'state sponsors of terrorism'. This first step is an indication that the second may be imminent. However, while the Darfur conflict and atrocities continue, there will be no move towards normalising diplomatic relations and increasing official assistance through GoS channels.

42. The appointment of Jan Pronk, former Minister of Development Cooperation for the Netherlands, as Special Representative of the SG is a sign of UN seriousness. Minister Pronk has a long familiarity with Sudan and is well-known for seeing through diplomatic smokescreens, identifying the tough issues, and speaking bluntly. He will be an asset for Sudan.

43. The League of Arab States issued a statement following the visit of a delegation in mid-May. It noted the extent of human suffering but stopped short of resolute condemnation.

44. There is a tendency for international analysis of Darfur to be refracted through the lenses of previous crises, including Southern Sudan (from whence the simplified ‘Arabs versus Africans’ dichotomy is borrowed) and Rwanda. There is a danger that these lenses will complicate or delay addressing the real issues in Darfur.

## **Conclusion**

45. Steps towards a political solution for the conflict in Darfur should be simultaneous with humanitarian intervention or access. Both Vice President Ali Osman and Dr John Garang should be central to any mechanism for a political resolution. The African Union provides a credible and impartial mechanism for mediation. It would be foolish for the Darfur rebels to spurn it.

46. Darfur needs a credible and large-scale international military observer force. The current AU force is too small and too poorly resourced to undertake the necessary tasks. It needs to be several hundred individuals strong, and have rapid and credible reporting mechanisms, backed by diplomatic and political sanctions exercised by the major powers. Should such a mechanism fail, Darfur will need a Chapter VII intervention.

47. With respect to the needs of Southern Sudan, the mediators should draw upon a number of studies, among them the CSIS report of January 2004. Among the recommendations are that the key mediators should immediately discuss with the UN Security Council, mechanisms for quickly bringing into place a peace support force with a Chapter VII mandate that will include an international quick response force, international peacekeepers/monitors and policing by an international civilian police force. In addition, donors should immediately identify the human and financial resources required to field a robust Chapter VII peacekeeping operation, including resources and troops necessary for a Quick Reaction Force.

48. Establishment of monitorable benchmarks for human rights, democracy and liberalization at both the national and Southern level will be essential. Priority should be given for internal security reform, both North and South, and subjecting the security services to judicial supervision. Another priority is a binding commitment that elections should be held for all levels including the Presidency at the end of three years of the interim period. Indicators for good governance should be adopted and monitored.