



ISS Seminar Report

International Crime in Africa Programme (ICAP)

Title: Options For Peace And Justice in Darfur: Implications of the Recent Report by the African Union High –Level Panel on Darfur

Place: ISS Conference Room Pretoria

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Speakers:

1. Dr Godfrey Musila, Senior Researcher, International Crime in Africa Programme, ISS
2. Ms Paula Roque, Researcher, African Security Analysis Programme, ISS

Respondent:

Dr John Yoh, Lecturer of Political Science, University of South Africa

Facilitator: Mr Richard Cornwell

Rapporteur: Peter Gitonga, Intern, International Crime in Africa Programme

The Seminar was facilitated by Richard Cornwell who, in his introductory remarks, provided a background to the purpose of the Seminar through a brief historical overview. Mr Cornwell stated that it was not until 2003 that Darfur was first given much mention. In 2003 the Sudan Liberation Army (SLA), together with the rebel Justice and Equality Movement, launched a series of attacks on Government. These attacks were reportedly motivated by the fact that the Sudan Peoples Liberation Army (SPLA) was in the process of signing a Comprehensive Peace Agreement (CPA) with Khartoum, and Darfurians felt they would be left out in the process. Since then rebellion has alternated with the CPA in dominating talks about Sudan. Khartoum launched its counter-insurgency by arming the Janjaweed, and with this Darfur became the world's greatest humanitarian crisis. Questions as to whether genocide was committed have been raised even though no one has been charged with genocide. However crimes against humanity and war crimes, for which several have been charged, are no less serious than genocide according to Mr Cornwell.

In March 2005 the United Nations Security Council (UNSC) referred the situation in Darfur to the International Criminal Court (ICC). The African Union formed the African Union High Level Panel on Darfur (AUPD) just weeks before the ICC issued its arrest warrant against Sudanese President Omar Hassan al-Bashir, after consultations in 2008. The AU has been critical of the arrest warrant asserting it will impede peace efforts in Sudan and in July 2009 at an AU Summit in Sirte, Libya, African leaders endorsed a resolution halting any cooperation with the ICC on apprehending al-Bashir specifically for states that have ratified the Rome Statute. The final report of the AUPD

("Darfur Report") was presented to the African Union on 8 October 2009 and endorsed by the African Union Peace and Security Council (PSC) on 29 October 2009.

Summary of Presentations

Legal implications of the Darfur Report

- Justice and reconciliation for Darfur are inseparable. Though the events that necessitate justice and reconciliation have arisen with respect to Darfur, they are also of national significance. Therefore, all Sudanese people will need to contribute to the debate about the measures that should be adopted with regard to Darfur.
- The ICC is a court of last resort, which complements the national judicial systems. It is also a court of limited capacity. It follows that where widespread crimes have been committed, the overwhelming majority of potential criminal cases must be dealt with by the national system.
- It was pointed out that there are silences in the Report on certain issues. These include: No mention of the cases before the ICC, for example the cases of Ahmad Muhammad Harun, Ali Kushayb and the al-Bashir indictment; No discussion or reference to the AU Sirte decision not to surrender al-Bashir and the attendant Article 98 debate; and finally No mention/lack of prescription of a precise role for the ICC in Sudan.
- On national domestic mechanisms, the AUPD indicts Sudan harshly in relation to its criminal justice system. The AUPD proposes the creation of a Hybrid court; Special Tribunals (including that on Special Events in Darfur); a Truth Commission and traditional justice mechanisms.

For the effective delivery of justice for crimes in Darfur, the Sudanese government should take steps to provide:

- An adequate body of substantive law, consistent with the Constitution;
- The removal of legal and de facto immunities and other legal impediments to prosecutions;
- An independent and credible investigations component;
- Guarantees of all fair trial rights;
- Enhanced procedural and evidential provisions to enable the effective and timely delivery of justice;
- Special measures, including legislation, for dealing with rape and other sexual crimes at all stages of the criminal justice process;
- Measures to protect witnesses and victims participating in proceedings;
- The appointment of a sufficient number of qualified and experienced personnel to undertake judicial and investigative functions, and the provision of training and capacity building for justice personnel;
- Developing procedures and rules for co-ordination between the different courts and functions within the criminal justice system, as well as between institutions of the criminal justice system and the other institutions and mechanisms envisaged by the Justice and Reconciliation Response to Darfur (JRRD); and
- Adequate resources for delivering timely and meaningful justice.

Political Implications of the Darfur Report

- The issues that may hamper the implementation of the Darfur Report, notwithstanding concerns of political will, is the highly tense environment and the end of the CPA transition that will be seen in April 2010 national elections, and in January 2011 a self-determination referendum in Southern Sudan.
- Reforms and changes should occur at the national level instead of tackling one peripheral crisis at a time.
- The commitment of the Sudanese so far – as seen from the manner in which justice and reconciliation was not adequately prioritized in the CPA, the Darfur Peace Agreement (DPA), and the Eastern Sudan Peace Agreement (ESPA) peace agreements – leads one to believe that commitment to these processes now and their implementation will be difficult.
- Peace agreements must be seen as a start of the peace process, not the end. It was emphasized that the lesson that can be learnt from past peace agreements is that badly negotiated peace agreements will haunt future efforts. It was noted that the Report proposes a GPA that could lead to cessation of hostilities. Within the GPA there will be mechanisms to deal with justice.
- For the purpose of internal stability, cohesion and security, land and citizenship need to be prioritized.
- The Report is remarkably comprehensive and the proposed road map, if fully implemented, would have important consequences for Sudan.
- There will be many difficulties faced in attempting to implement several of the Panel's recommendations, in particular the legal reform process, the Hybrid Court proposal, the Truth, Justice and Reconciliation Commission, the process of socio-economic justice and the traditional justice mechanisms.

Discussions

- Part of the problem was the failure by the international community to define what 'the Sudan Government' means, as this is often used to refer to the ruling National Congress Party (NCP) of North Sudan.
- The issue of Darfur cannot be dealt with without understanding what is happening in the rest of Sudan. In addition, there is a shying away practice from dealing with what is happening in Sudan as a whole.
- The AUPD may become irrelevant with issues such as the elections and referendum at the top of the agenda list. The Darfur crisis must be seen in light of the upcoming elections and referendum.
- The realities on the ground need to inform such recommendations, for instance 2010 is a year for Southern Sudan to focus on elections and the 2011 referendum thus the road map for Darfur can only really begin after the 2011 referendum.