



CONCORDIS PAPERS II

Devolved Government within the Post-Naivasha Sudanese Constitution: A Key to Sustainable Peace in Darfur

May 2007

Introduction

Rt Hon Viscount Brentford

Since we started our Sudan peace-building programme in 1999, a host of consultations have been held on a wide range of themes, each with its own unique set of presentations, discussions, conclusions and recommendations. In keeping with Concordis International's overriding objective to build sustainable and just peace in areas suffering from war, these meetings have sought to address the root causes of Sudan's conflicts. They have built upon the peace-building work conducted by Concordis and its predecessors over the past eight years, which has focused on the facilitation of low-profile, inclusive and research-based dialogue in support of formal peace processes.

Participants have attended the consultations in a personal capacity and have included a wide range of key individuals linked with opposition groups and the government, civil society and women's groups, as well as academics and international consultants. The views expressed therefore represent a broad consensus of Sudanese viewpoints and are not necessarily the opinions of Concordis International.

This paper is the second in a series which seeks to build on the strengths of the Concordis approach through spreading the benefits of the multilateral consensus we have developed via our consultations. We proactively shared the conclusions of the three consultations on Darfur (summarised in Concordis Papers I, II and III) with negotiators, mediators and other interested parties at the AU-led talks in Abuja. Our aim here is both to summarise the presentations made and to draw together participants' discussions and recommendations into a succinct and readable form.

The Concordis Papers are available to be downloaded from our website and will be disseminated to Sudanese and international policy makers, practitioners and centres of learning. I hope you will find them to be a useful resource.



Executive Summary

The content of this Concordis paper derives from a consultation which took place in December 2004, in which Sudanese participants examined the potential role played by devolved government in promoting peace in Darfur. Like other Concordis consultations with a focus on Darfur, it was widely recognised that the region has immediate needs which should be fulfilled before more longstanding, root causes of the conflict can be addressed. Particularly important in this regard is the restitution of land to refugees and internally displaced persons (IDPs) and the promotion of human security to enable the displaced to return home and resume safe and productive lives.

Today, the failure of the Darfur Peace Agreement (DPA) to resolve the crisis in Darfur makes the deliberations and recommendations contained within this paper as relevant as ever. Some of the central themes of the discussions and conclusions on the theme of devolved government in Darfur included the following:

- The issue of marginalisation of the Sudanese regions is not unique to Darfur and is not a new phenomenon, having existed since the colonial period and persisting after independence. The marginalisation of Darfur has been experienced particularly in terms of lack access to resources, underinvestment in infrastructural projects and limited educational opportunities.
- Structural marginalisation has acted as a catalyst for internal conflict in Sudan. The adverse affects of marginalisation are not only felt in the regions; internal migration and the escalation of conflicts in Darfur have brought negative consequences to the capital and urban areas.
- Sudan has a historical legacy of decentralised government at regional levels; lack of commitment from central government, underinvestment and a commitment to political ascendancy has rendered past efforts ineffective.
- A persistent lack of respect and understanding of Sudan's cultural, religious and tribal diversity has also undermined efforts in the past to establish an effective system of decentralisation in Sudan.
- Though not fully comprehensive themselves, the principles embodied in the Naivasha Protocols regarding more devolved forms of regional governments should be learnt from and built upon in order to create an appropriate form of decentralised administration in Darfur.

A series of recommendations on the theme of devolved government in Darfur deriving from the consultation can be found on pages 4-5.

Proposals for Possible Solutions

Opportunities presented by the Naivasha Protocols

The issues that have led to decades of civil war in the Sudan are partially resolved by the Machakos and Naivasha protocols, but it is the principles - democracy, human rights and equitable sharing of resources - rather than the details of bilateral division of wealth and power that are transferable to Darfur and other regions. The Naivasha Protocols have both strengths and weaknesses, leaving some issues either unclear or not addressed at all; they are therefore a necessary but not sufficient basis for long-term peace. While it is impractical to renegotiate them, there is a need for an inclusive national dialogue process on the Government-SPLM agreement, not just to 'sell' the agreement to the people but to develop constitutional, democratic and other solutions for the long term that have genuine support.

Balancing Responsibilities of Central, Regional and Local Government

The recent Sudanese experience of decentralisation has been based on a federalism that has retained top-down devolution of responsibility, but without sufficiently devolving powers and resources. There is a need for good governance, transparency, participation, accountability and genuine decentralisation of power, not only in Darfur but also in other regions of the Sudan. These aspirations cannot in practice be achieved if a pervasive, centralised security system is kept in place.

We have considered how to apply international experience of constitutional arrangements to Sudan. The Machakos and Naivasha protocols need to be supplemented by a comprehensive agreement that recognises the grievances of other regions, if further conflict is to be headed off. If properly implemented, the decentralisation foreseen in the power-sharing protocol can meet much of this need. However, there are still many areas of competence where it is still unclear at what level the power lies. The principle of subsidiarity is crucial for genuine federalism and the means of settlement of disputes between different levels of government must be clear (e.g. a constitutional court). Careful drafting of the constitutional texts is necessary, taking into account the views and interests of a broad range of Sudanese stakeholders. In order to achieve this, we recommend that Inclusive Sudanese consultation, with the support of local, regional and international expertise, be undertaken to build consensus for the urgent work of drafting the interim constitutions at all levels.

In considering the role of civil society, we recognise that cultural rights are as important as other human rights. As Sudanese society modernises and develops it must not ignore cultural values and traditions. Plans to modernise society in Darfur and throughout Sudan must be rooted in traditional structures. We assert that the genuine grievances of those Darfurians who have taken up

arms against the government must be solved if lasting peace is to be established. However, the most urgent need is to stop the violence and enable the return of the displaced to their land and villages in safety.

Distribution of National Resources

We recognise that unequal development, often caused by flawed economic planning for the Sudan as one unit, has caused discontent. There has been an economic dualism, favouring mechanised or irrigated industrialised agriculture over traditional agriculture and small producers. There is a great need for transparency and accountability. We recommend that:

1. A system of interconnected economic planning at the local, regional and national levels be established, with popular participation and involvement and an emphasis on traditional agriculture, integrated rural development and primary healthcare;
2. Established regional and national research institutes be consolidated and new ones established as necessary to serve the needs of the post-conflict Sudan;
3. Rigorous and effective anti-corruption measures be introduced to international standards.

Revenue Collection

We note that the proportion of revenue collected through direct taxation is much lower in the Sudan than in developed countries and that indirect taxation unfairly affects the poor. Also, a lack of transparency reduces trust and confidence in any government at all levels. If Darfur and other regions are to regain lasting peace, regional revenue must be reinvested in infrastructure, such as communication and transport facilities, at the regional level in accordance with regional development plans and priorities, to redress poverty reduction and chronic under-development. We propose that consideration be given to working out regional priorities for infrastructure facilities.

Promoting Inter-Regional Trade

We consider it essential that investment should focus on infrastructure that enhances the ability of Darfur to exploit its agricultural potential, e.g. roads, wells and boreholes. However, cessation of hostilities by all parties and restoring stability are pre-requisites for this, for example to make it more attractive for Darfurian people to stay in Darfur and to reduce export of wealth.

Conclusion

In addition to these proposals, we recommend that an accountable trust fund be established for the post-conflict reconstruction and rehabilitation of Darfur.

Past Marginalisation in Darfur: a Factor in Conflict

Remarks by Hon Ahmed Diraiqe (SFDA)

The marginalisation of Darfur is not new: it was the *cause célèbre* of the Darfur Development Forum founded in 1965, and has been the theme of discussions with parties to the Naivasha negotiations. If the Government of Sudan accepts that marginalisation has led to political and economic grievances in Darfur then its next step should be to negotiate with Darfurian civil, political and academic society and other interested parties.

Marginalisation is a colonial legacy: politically, increased educational opportunities in Khartoum under the Turkish-Egyptian administration created a central ruling elite; and economically, the colonial administration exploited the raw material in the regions (e.g. cotton) but invested predominately in the centre. These trends continued after independence in spite of the national goodwill for building an independent, united Sudan, and were exacerbated by poor communications. From the first military regime onwards, successive Sudanese governments have been unable to write a constitution recognising the religious and ethnic diversity of the Sudan. The IGAD-sponsored Declaration of Principles, which accepts that the Sudan is inhabited by people of diverse religious beliefs, must achieve universal recognition if the country is not to fragment further.

Discussion

Historically, the importance of the Nile for colonial powers encouraged economic centralisation, and the lack of a transport infrastructure and of education (there was no high school in Darfur before 1945, for example, much later than in Khartoum) made it difficult for Darfurians to become involved in national politics, despite the colonialists' political legacy of democracy. Efforts to write a constitution which can be applied nationally have been thwarted both by external interests and by a piecemeal, unequal approach to national unity.

Sudan is in the process of re-integration thanks to the negotiation of the Naivasha Protocols. Their viability rests on all Sudanese endorsing the Protocols and committing to their implementation, aided by international support. In the meantime, Darfur suffers both from micro-marginalisation (imbalanced income distribution and a lack of access to resources) and from macro-marginalisation (lack of access to production centres, markets and power structures). Macro-marginalisation especially can be dealt with at a political level, so politicians should take the first step in addressing Darfur's marginalisation. The constitution must address economic disparity in Sudan.

There has been marginalisation by omission and marginalisation by

commission. Regimes which guard certain ideologies have marginalised all those who are not part of that design, and this has been enforced by totalitarianism and by force, polarising the country. Taking up arms is a viable cultural choice in Sudan. In Darfur, the fact that many of those carrying arms against the government were from African tribes was used by the government to incite racially-based hatred; in fact, Darfur's problem is not racial but one of all Darfurians against the central government.

Structural marginalisation must also be tackled, both the encouragement of arms-carrying and the lack of inter-regional trade. For decentralisation to work (especially in Darfur, given that the Army is not national but largely Darfurian), political parties must be internally democratic, government must be demilitarised and business and banks must play a role (and must not mitigate against private enterprise). Centralisation is part of Arab culture, but cultural norms cannot be prescribed from the centre. In addition, tribal and religious affiliations (e.g. Ansar/Khatmiyya) are still strong. Tribal leaders should not be appointed; instead, civil society should be consolidated.

The development of human resources through good governance is essential, built on participation, accountability, transparency and the rule of law. The notion that Islam and democracy are unviable allies has been destroyed by the Malaysian, Senegalese and Indonesian experiences, and Sudan must accept the legitimacy of democratic aspirations as part of peace. The best way forward would be a CODESA-style conference (Convention for a Democratic South Africa), including a Truth and Reconciliation Commission; this would be a full conference, to which all Sudanese would be invited and at which everything, including the political agenda, would be discussed.

The Naivasha Protocols: Provision for Devolution

Remarks by HE Hassan Abdin (Sudanese Ambassador to the UK)

Since independence Sudan has been searching for peace and for viable unity. This has included a search for a political system and constitutional framework to replace the colonial system, but for fifty years this quest has been hampered by the conundrum that peace requires the agreement of principles and vice versa.

Democracy and federalism should be the product of negotiations to sustain a viable nation state, whether in Naivasha, Abuja or Cairo. Naivasha provides a useful precedent and should not be replicated or reinvented, especially given that the government delegation in Abuja has already indicated its willingness to use - and to act on - the principles agreed in Naivasha in addressing the situation in Darfur. Indeed, one of the recommendations, a land commission for tackling problems of land use and tenure in Darfur (*cf* Concordis Consultation, September 2004) has already been incorporated into government policy. The new constitution must be based on unity, justice, democracy and sustainable peace.

Discussion

The Naivasha Protocols are a major step forward for Sudan: they are necessary (but not sufficient), binding (but not inclusive) and internationally recognised. Machakos and Naivasha were agreements between two parties and so one party cannot be blamed for the shortcomings; instead, the agreements should be considered an opportunity for peace, unity, multiplicity and constitutionalism. They have in themselves created a climate conducive to discussion and consensus-building. Despite this, the whole exercise has been between North and South, yet the two sides do not represent their entire regions. Absent groups are expected to keep silent and bordering countries are expected to support the process. Regional and international goodwill will be insufficient without the inclusion of Egypt and Libya in the implementation of the Naivasha process. Ultimately, stopping the war and negotiating the peace are very different, and the people who negotiate a ceasefire are not necessarily in a position to negotiate and implement a viable peace.

Devolution and democracy should be the natural outcome of Naivasha, but in the meantime the role of the central government should be to set national minimum standards, e.g. in education, to wipe out marginalisation and regional inequality. The Naivasha Protocols will need also to address questions of self-determination (how much and for whom), water supply, human rights, the role of women, culture and even a national flag. As the international community has much influence in Sudan, the Security Council's endorsement of Naivasha, without addressing these issues which have been ignored, sent out the wrong message. The Naivasha negotiations and the crisis in Darfur have for different reasons broadened the international community's awareness of and interest in Sudan, and now the national community needs to be brought on board.

Wealth and power may be more difficult to share in the Darfurian context than the southern one, and although the Naivasha agreements should not be amended, other experiences, such as that of Mozambique, may be useful in their implementation. The opportunity should also be taken to put in place not simply a new constitutional framework but a countrywide constitutional process based on civil ownership and social justice. The Umma Party, by far the strongest party in Darfur, wants assurance that there will be free, fair and regular elections with universal suffrage, that there will be democracy not autocracy, that the rule of law (and not *shari'a* law) will be applied universally, that wealth sharing will be objective, and that security will be assured through an inclusive national army.

Federalism should not be invoked as a convenience, or as an excuse following the signing of the Naivasha agreements to divide the country into an Arab Muslim north and a non-Arab African south. The agreements have not dealt with the issue of national identity or with the serious political and religious tension which will ensue if the country is divided and the southerners' lack of

faith in the North is not addressed. There is substantial inter-marriage in Sudan, so the problem is one of reverting to tribalism rather than of ethnicity itself. This is not felt in Khartoum, and so the question of ethnic identity has been misunderstood. The difficulties are that national identity means multi-ethnicity, and that no party has come up with an appropriate way of addressing reconciliation. Federalism may win in the short term, but in the longer term the new constitution must address the complicated issues of ethnicity and religion, and there must be a sense of national identity and unity which overrides fighters' desire for partisan military success (given that both parties to the Naivasha agreements are military organisations) if power-sharing is to be effective and inclusive.

Peace is not the end, not just a ceasefire, but the beginning; peace means justice, equality and respect. The three concurrent peace talks (Naivasha, Abuja and Cairo) should feed into each other and into the wider political system so that there is genuine, nationwide democracy and bottom-up federalism. The Naivasha protocols are a promising step towards sharing power, but the Sudanese must be sure that the government is genuinely committed to the peace process, even if that means that it has to cede some power.

Balancing Responsibilities of Central and Regional Government I: Sudanese Experiences of Decentralised Government

Remarks by Bona Malwal (St. Antony's College, Oxford)

The failure – and paradoxically the success – of Naivasha is its attempt to 'achieve only what is achievable'; in doing so it has been exclusive (and previous peace agreements in Sudan have broken down for the same reason) but it has also given Sudan a chance to deal with its own problems. The danger is that after signing each party will choose to endorse or reject only parts of the agreement, because sharing power means losing power, and that Naivasha will then unravel faster than Addis Ababa. Federalism must be designed in such a way that it does not bring further fragmentation and marginalisation but with clearly devolved powers for regions on which central government cannot encroach and with a clear budget under which resources are not wasted. Furthermore, the agreements must not be subject to personalities, so that the failure of the Addis Ababa agreement is not repeated.

Discussion

Area councils and local government councils are all now lost entities, as is the power they once had. After a gradual process of post-colonial centralisation, Sudan took a step towards federalism in 1981 with the establishment of elected regional councils with independent budgets, then a step back in 1989, then

another step forward with the 1998 constitution, under which state governments are responsible for everyday life and the federal government for foreign policy, economic policy and defence. The problem lies not with the size of the state (cf France's many *départements*), but with ongoing tribalism, with the concentration of intellectuals in Khartoum and with a lack of commitment to financing state governments. Around 74% of local government's budget comes from the national government, and this accords with military regimes' historical use of local government as a means of imposing totalitarian politics more effectively rather than of giving power to the people. Participatory government should be free and representative rather than financed and dictated by the centre. Even if the national government does not devolve power to the region it should devolve services in order to address regional variances and marginalisation, and should allow people the right to express themselves.

Decentralisation is a colonial legacy and has been part of each system of government in Sudan, but as a political tool for political gain rather than as a nod to subsidiarity. Everyone has a right to basic services regardless of their financial situation and responsibilities should be balanced between central and local government, but which tier should decide which priorities? Greater acceptance of Sudan's cultural diversity, greater awareness of international federal experiences (e.g. Belgium, Switzerland, the UAE, the Soviet Union, Mozambique and India), and a greater body of literature on which to draw, would help to identify historical successes and failures. This would make it possible to implement effectively Naivasha's clear constitutional arrangements for local government, and could help to develop a new and effective system of governance for Darfur.

According to Lenin, "in the absence of checks, power flows upwards". Federalism and devolution must therefore be backed up by democracy and accountability, and security and the rule of law. State governments must have powers under a constitution which is observed by the centre, and should not be subject to budgetary and financial control by the centre (e.g. Nimeiri's removal of southern post office revenues to Khartoum). Sudan's experience has been positive in a negative sense, i.e. it has shown Sudan what not to do. Federalism is a form of self-determination and implies both physical and economic space and genuine, not formal, democracy (i.e. governors should be directly elected not appointed by the national government), checked by civil society.

Sudan's progress has been hampered not just by politics but also by desertification, natural disasters, limited resources, porous borders, poor infrastructure and tribal conflicts. The crisis in Darfur is a reflection of all this.

Balancing Responsibilities of Central and Regional Government II: International Experiences of Decentralised Government

Remarks by Marc Weller (University of Cambridge)

How do we generate a comprehensive constitutional settlement for Sudan and how, in particular, would it relate to Darfur? A settlement needs to recognise the sovereignty of all people if they are not to resort to armed struggle. What does the Naivasha settlement propose for other parts of Sudan, and how does it compare to the rest of the world's experience? Decentralisation is suggested as the overall solution to all of the problems of the South, to North-South and North-North relations, to relations between states and to issues of local governments. Decentralisation lies at the core of the proposed settlement, but what does it mean?

Simply, it relates to a hierarchy of competences under law. Classically speaking, devolution means that the all-powerful central government generously devolves some of the power to the states; e.g. in Mali, where the central government decides to pass power downwards. A modern understanding is the opposite, that the state enjoys a wide range of constituents who delegate power upwards, so that the state only enjoys the powers which have been delegated to it through the constitution. In other cases there exists a system in which power filters down in order to make those who start a conflict happy enough to stop it. However, in Sudan the North-South settlement was southern-driven, negotiated in light of the previous experience of federation. The international emphasis is on subsidiarity, i.e. exercising power closest to those who are affected by the exercise of power; this is a political construct of state-building.

Decentralisation has been the method of choice of resolving virtually all conflicts since the end of the Cold War. Most settlements result in the confirmation of non-self-determination in exchange for settlement (e.g. the draft plan for Cyprus, which provided for state union between North and South and gave to both entities significant independent powers on the agreement that the North would abandon any plans for self-determination, or the Dayton Agreement for Bosnia-Herzegovina, under which two entities which thought they were states were forced to accept a settlement which gives them far-reaching separate powers but does not allow them to form separate states). These are indissoluble unions, and they only work if the entities agree to give up self-determination in return for quite wide powers.

Self-determination settlements normally employ complex power-sharing; this balances the fact that more power has been transferred to more units. We find this in Sudan, where power and positions have been assigned to two parties. Sudan is unusual in that it has had its right to self-determination generated through the Machakos Protocol and the final settlement, gaining international

acceptance. Sudan is also unusual in that the power-sharing protocol points to the supremacy of the North-South negotiated peace agreement in relation to all constitutional issues across all of Sudan.

The loosest form of a state is a state union, i.e. two sovereign states which decide to exercise some powers together. Then there is indissoluble state union (*cf* Cyprus and Bosnia-Herzegovina), when one wants to preserve the continued unity of the two states. The more usual solutions are confederal states (two quasi-sovereign states which join as one state but in which each party's sovereign identity is still visible) and federal states (either through devolution or a full federation). Full federation means equal states, and it is this, rather than confederation, which exists on paper in the 1998 constitution.

Another solution is an asymmetrical federation, where some states have more power within a central state. Moldova is an example of this; Transdniestria is so independent that it could function as a federal state within a country which is not federal! Sudan is the same: there are umbrella institutions such as the federal parliament, but at the same time Southern Sudan has its own institutions. Sometimes we also find autonomies; these are asymmetrical because each region is individually distinct, and can come about through devolution or through a peace treaty or through a constitution in which the autonomous region has a veto (e.g. Åland Islands, Bolzano (Bozen)). Regional devolution is also an option, with enhanced local government such as in Wales and Scotland. A final option could be to achieve devolution through enhancing the powers of municipal councils.

Sudan is likely to have a mixture of these: enhanced local government; a federal system; asymmetry at least during the interim period; and possibly some enhanced regional cooperation. However, the central question in all these power balances is whether the state can remove powers it has granted. Where does original authority lie? The entity which holds original authority also holds residual authority, i.e. all the authority which is not specifically assigned.

The Sudan constitution of 1998 has a very loose assignment of powers between the centre and states and instead there is a long list of concurrent responsibilities. The Protocols are quite specific and advanced in ensuring that those who hold power at the moment will continue to hold power in the future. The timing of elections is rather flexible and the detail of provisions quite unusual. The holding of elections is crucial; there should be a genuine way in which parties can express themselves politically and not just through arms. The North and the South will have to demonstrate that others internally and externally have faith in them. The North will also have to respond to the demands made on it by the regions; Darfur is a sign that conflict will not be terminated in a settlement that is just North-South. Failure to engage other movements early results in the hardening of positions (e.g. in Yugoslavia), and one needs to empower opponents to avoid armed conflict.

Discussion

A system like the Sudanese proposal has never been tried and succeeded. Legally, it could work, as long as the parties are willing to exercise the powers they have assigned to themselves in a cooperative, modest and inclusive way. Self-determination has been advocated for the South because:

- The government speaks for the North, depicting Sudan as Islamist and Arab
- The Juba conference of 1947 was a very fragile basis which ignored history
- The long-drawn-out war has created separate consciousnesses

The Naivasha agreement contains elements that make it inevitably unworkable if left alone; the assumption that whatever is agreed becomes law and that others have to accept the distribution of the spoils. One very mistaken assumption is that the international community will continue in its present short-sightedness in being so keen to stop the war that they will let others get away with murder. Nonetheless, Naivasha has changed the intellectual and political climate; people are talking in moderate terms even though there are wide differences and national and international interests are being discussed rationally. As an attempt to stop the war it is positive *per se*. The question now is whether Sudan accepts the Protocols as they stand, or whether it builds on them by seeking a forum in which the details can be ironed out, so that they have legitimacy, consistency and sustainability. The need for an effective constitutional court is paramount. We recommend that a paper on Sudan's constitutional future, and that of a constitutional court, should be commissioned and translated for immediate circulation among political parties in Sudan.

There is no ready-made model for nation-building. We are guided by the will of the international community to achieve settlement. The agreement is directed at stopping the war and is part of an international context; it is not aimed at building the nation. For nation-building to be effective the process should be slower and should not be top-down. Sudden centre-imposed changes such as increasing the states' share of national revenue in the 2005 budget from SDD 63 billion to 499 billion, however positive and well-meant, will be ineffective unless there is sufficient competence and infrastructure at the local level.

The Sudanese Government claims as all administrations do that it represents the people, and it may well do so once the Protocols have donated it 52% of power, but the NIF captured parliament by force rather than by electoral majority, so it is hard for some parties to take its claim of representation seriously. Darfur and the East can be considered separate entities; their claim to self-determination should not be ignored. A real, full federation will address any concerns about who represents the North.

The agreement is a reflection of the international attempt to end a bilateral war. The approach has been 'let's keep it simple', and that has been done well.

Even those who have been in charge now have to open up, to build a wider consensus that does not just terminate the war, that does not just give self-determination to the South, but addresses the conflict in Darfur and possibly the East. A good constitutional design can be the outcome. This is likely to be complex, but the process must be inclusive and of high quality, and now that the war has ended let us hope that there is time to write an effective constitution. The status of Khartoum as a federal territory could also be a matter for the interim constitution, as well as the rights of minorities and majorities which have yet to be addressed.

The difference between the Protocols and the 1998 constitution is minimal. Both agree on a federal system and on division of power, both endorse three levels of power (federal, state and local), both agree on the role of the executive and the judiciary. The National Assembly did not succeed in its attempt to change from appointing governors to direct elections, but the constitution is still a good document and whether or not it was authored by someone 'good' is immaterial.

It is important to persuade the two principal parties that the essence of the agreement can be protected but its legitimacy extended. The main drawback in this emerging political system is that decisions can only be legitimised if they are blessed by the two negotiating parties. Yet legitimacy must imply wider support. South Africa's experience of turning a bilateral agreement into a national one could be useful, and the international community should not squander this opportunity by looking for short-term quick-fix agreements. Sanctions are ineffective, but there is a big moral authority which can be used to say that we want an agreement which is sustainable, meaningful and national.

Balancing Responsibilities of Central and Regional Government III: Balancing Traditional, Informal and Modern Institutions

Remarks by HE Imam Sadiq al-Mahdi (Umma Party)

Political conflicts, associated with the devolution of power to the regions, are common in Sudan. After the 1989 coup, the region was divided into three states; districts and local government were multiplied. The socio-political fabric of Darfur, which was the basis of its social immunity system, was disrupted. The government should immediately take forceful confidence-building measures, namely the replacement of officials with appointed state Governors who enjoy the confidence of the people until there are free and fair elections.

It is necessary to highlight the organic link between peace and democracy. All the highly coveted concepts of constitution and federation are meaningless without democracy because otherwise they express the will of the dictator. For

genuine decentralisation, democracy is necessary but not sufficient. Unless the decentralised units are economically viable, their political and administrative rights will remain theoretical. The Sudanese endeavour should seek the support of neighbouring countries and the international community.

Western powers believed that traditional societies would disappear, but that has not happened. Rather, old types of fundamentalism have increased in recent years. Development has failed because it ignored cultural values and traditions. Cultural rights are now as important as human rights. In Darfur, there was a failed effort to try to socially engineer the society, but this has been counter-productive. It leaves reform as the only viable alternative.

We must empower civil society. However, our concept of civil society should be broadened. It does not have to be comprised of modern organisations (as the West perceives), but should also include religious sects, tribes and political parties. Unfortunately, some civil society organisations have been manipulated and used as mouth pieces for political parties. They have to gain autonomy and become more democratic. Society must be mobilised and good governance, modernisation and development encouraged through a policy that recognises the importance of cultural and religious differences. Modernisation and development should be a strategic focus. Any attempt to dictate the terms of development will fail, as Darfur has shown. This will occur both top down (from the ruling power) and bottom up (through education and the media).

The humanitarian relief effort must be coordinated by a national supreme body. The political, economic, social service, security, administrative, social and tribal problems of Darfur should be part of the agenda of an all-embracing Sudanese conference modelled on the CODESA of South Africa. Such a conference should be empowered to ratify the IGAD-mediated protocols and to discuss and resolve the Darfur agenda and all other regional agendas.

Discussion

The growing civil society of Sudan has begun to influence public opinion. Civil society organisations have a role to play in building peace (despite their being in many cases extensions of the ruling party), as do friendships, inter-marriages, inter-communal trade and at an institutional level the recognition of Darfur's diversity and the reconciliation of modern and traditional elements of society. To some extent this process of transition has been under way for the last forty years, and much has already changed. Since Nimeiri's time there have been village councils, and there are now 35 universities in Sudan. Trade unions and women's associations have greater presence, as do the media and the more than 400 NGOs. Most NGOs are linked to international NGOs, and this informs and reforms the hitherto central role either of the state or of the traditional parties.

The growth of civil society is part of an Africa-wide trend towards more modern societies, assisted by market reforms and modern technology. The context of Sudan's transition to modernity has been its economic development. However, the political scene has not kept pace with social change, particularly because as people become richer and better educated they become more secular and less traditional. The conflict in Darfur is due to an economic downturn caused by drought, which in turn threatened economic interests.

Sudan's transition has also been badly managed, both locally and internationally, such as with the sudden introduction of unelected tribal chiefs. It is better to provide medical and social services and build the required infrastructure and then allow the markets and the people to dictate the pace of change. Ultimately it is a question of finding a balance between the traditional and the modern and between the local (whether tribal, traditional, religious or political) and the national interests.

Darfur is a microcosm of Sudan, with many of the same problems. Firstly, the conflict between sedentary farmers and nomads, which is both tribal and environmental and which through exploitation by the government has become an inter-ethnic conflict. Secondly, that those known as 'rebels' have understandable grievances about the marginalisation of Darfur and about the inequality between urban and rural Sudan. Thirdly, the humanitarian factor, not just the disease, malnutrition and insecurity of the camps in Darfur but also that farmers who have been forced to abandon their farms will be unable to grow food for themselves or the rest of the country.

Regional Distribution of National Resources

Remarks by Prof Adam Azzain Mohamed (University of Khartoum)

Regional analysis of Sudan is difficult. The region of Darfur became the provinces of North and South Darfur and then the states of Northern, Southern and Western Darfur, so data do not consistently refer to the same geographical or administrative area even though most people still refer to themselves by the region, rather than the state, from which they come. In addition, regional planners prioritise the growth of Sudan as a single unit, so there is no breakdown of development activities by region or by social sector. In 1976 an ILO-commissioned report showed that Sudan's economy was basically agricultural and characterised by an economically dual system of modern, mechanised agriculture and traditional, rain-fed agriculture. The report noted discontent by those in the traditional sector but suggested that for cost-benefit maximisation the economic, political and social emphasis should be on traditional agricultural. The report was largely ignored, perhaps because it showed the relative poverty of the non-Arab tribes (e.g. Fur, Nuba and Beja).

Unlike the Beja Congress and the Nuba Mountains parties, which were founded to put pressure on the central government for more representative wealth-sharing, the Darfur Development Front was not ethnic. Nonetheless, central governments tended to downplay the regional movements and to stigmatise their leaders as either racists or trouble-makers. This and the lack of a multi-party system have damaged the process of national integration which Sudan so desperately needs, and has led to a parochial and ethnic articulation of demands at the expense of good governance. An acceptable system of revenue-sharing has not been found. Instead, results have lost out to political rhetoric, and regional resources have been distributed in such a way that they are tilted in favour of central government, leaving local government unable to fund services while the central government earns hard currency from exports, oil, mining and sugar. As an indicator of this, household income in Khartoum rose by 20% between 1967 and 1983, compared with only 4% in Darfur.

The Naivasha Protocols lay the foundation for better revenue distribution, providing for the creation of the national reconstruction and redevelopment fund. This would aim to bring areas like Darfur up to the national standards, with specific references to the fiscal regime, the population, the Human Development Index, the region's geography and the effects of war. Revenue sharing must be clearly reinstated so that the present allocation is discontinued and the central government does not retain more than 40% of income. The criterion of underdevelopment should be weighted higher than other criteria, and a top-down approach should be avoided. It is inconceivable that a real federal system can be operated in a centralised political framework; nonetheless, before any new laws are implemented, reconciliation should be accelerated to stop the current crisis.

Discussion

It should be accepted as received wisdom that democracy is a necessary, but insufficient, condition for development. Naivasha is not a good model for sharing power or wealth, because power cannot be divided up only by those in power, and because there are too many non-objective criteria for wealth-sharing instead of criteria such as population, balanced distribution and the effects of war. The Protocols are important in addressing these issues, but we must also be careful that we are not endorsing a scenario in which those who make the biggest noise or have the biggest guns have the most influence.

The traditional sector has been replaced quite deliberately by the modern sector, and in Sudan this has manifested itself in the economy. Who benefits from the livestock or the tobacco in Darfur? What constitutes a national resource? Sudan suffers from a lack of planning. The bottom-up projects under Nimeiri (e.g. Jebel Marra) have been dismantled. Famines have

overthrown governments across the Sahel (e.g. 1906, 1914 and 1973), and structural adjustment programmes have worsened the situation. In the absence of civil society, the free market will not benefit those who are already poor, but state control of the market is not the answer. Planning is essential, and it is only possible with popular participation. This will also improve service provision.

Following Amartya Sen's claim that famine is never experienced under a democratic system, pressure groups need to stop the government from carrying out existing policies before it is too late. Inflation needs to be controlled, and credit needs to be extended to the rural poor. Land and language should be harnessed for unity. The civil service should be more competent and more accountable, so that we can move from inefficient relief to effective development.

We must always bear in mind the context of the Machakos and Naivasha protocols and be cautious about the extent to which they can be applied to Darfur. Federalism may not be the answer, as is demonstrated by the federal system's oppressive tax regime. Taxes are the cause of voluntary departures from Darfur, while drought and war result in involuntary emigration. More should be done to encourage people to remain in Darfur, to rebuild traditional agricultural lifestyles and to tax goods leaving the country rather than those entering it. This should be done in the context of central planning in the national interest. "National" does not mean "Khartoum-owned" but "belonging to the whole country", and we should therefore be developing in a way which connects the country, which harnesses human resources and distributes power effectively.

State and Federal Revenue Collection

Remarks by Dr Awad al-Sid al-Karsani (University of Khartoum)

Sudan's economy depends on one product (previously cotton, now oil), and not enough on direct taxes, which account for only 7% of revenue (compared with 25% in developed countries). There is also too great a focus on the unity of the state at an economic level, which runs the risk of replicating Nigeria's failures. To counteract this the government established the State Support Fund in 1995, which extends grants and financial support to eighteen states and is able to cover recurrent expenditure and development projects. Support depends on the state's performance, such as ability to raise taxes and human development indices, and on the state's population. The longer-term goal, following the recommendation of the committee which studied developed countries' experiences, is that the centre raises 55% of revenue and the states 45%.

The wealth-sharing protocol is based on the entire state, and it is along these lines that Sudan is trying to develop. However, there is no clear policy on how

to develop the private sector, and it is not clear how such bodies as the Land Commission and National Petroleum Commission will operate across the North-South boundary, and how inter-state commerce will be encouraged. The states have clearer responsibilities than in the constitution, with clear shares of wealth and genuine sources of revenues. The difficulty is that there is no gradual implementation, and it is questionable whether the states have the capacity to absorb up to a five-fold increase in revenue. Fundamentally, the spirit of a central state remains, and this will lead to the underdevelopment.

An alternative approach would be to see Sudan as a regional state and to attempt to build Sudan through integrating its regions with their neighbours (such as fisheries and water supply projects between Northern Sudan and Egypt, or trade across the Sahel region from Darfur). The lack of an integrationist approach is a result of - but may also be a causal factor of - inter-regional wars in Sudan.

Discussion

There is a general problem of underdevelopment, fuelled by a lack of accountability, transparency and planning in distributing wealth and in delivering services. There are also questions of policy and priority. For example, a commissioner, who has a political function and does not directly deliver services or improve development, costs the equivalent of 58 doctors.

The oil bonanza will not save Sudan. The majority is either exported, especially to China, or lost due to poor extraction techniques, and the 5% which is retained by Sudan is spent by a predatory state on security. To avoid this process of "Nigerianisation", there should be more accountability and more investment in the traditional sector, and steps taken to improve the absorptive capacity of the service and industrial sectors. Excessive salary differentials in the public sector (e.g. between senior civil servants and doctors) are gradually being addressed as part of a national plan to build structures to allocate revenue and wealth and to improve local planning and budgeting systems.

Under the federal arrangements of 1991 and the liberalisation that followed in 1992, the government has off-loaded the burden of social responsibility onto local stakeholders without providing funding. The Government has also failed to follow the IOA recommendation of 1996 that it adopt a strategy encompassing both the traditional and the modern approach and encouraging the informal sector, which is a net earner of foreign currency. There is a current focus on wealth sharing because of the Naivasha Protocols, but this should be extended to promoting agriculture (which receives little of what it generates in public revenue), to reducing regional disparities, and to moving away from the unsustainable exploitation of natural resources as a principal source of capital. Such resources as water should not be manipulated for

revenue.

Problems of taxation should also be addressed, particularly the central government's expectation that local taxes, which are difficult to collect, be claimed by local government. A possible solution is to create specialised banks, as in the Netherlands, which distribute the costs of services across society. Federalism needs to function properly at a fiscal level and not just a governance level. In the absence of a proper fiscal system the poor lose out to indirect and informal taxation. Opportunities such as privatisation have been squandered by the government; lack of political and financial accountability, and links between the military and the private sector under successive military regimes, have all harmed growth. There remain poor income distribution and widespread poverty, with 95% of the population living below the poverty line despite revenues from oil of almost \$2 billion. Both parties to the Naivasha Protocols spend too much on security, so Sudan is governed by the necessity of the reality rather than by its developmental priorities.

In Darfur specifically, financial problems have a number of potential causes: tribal tensions and especially politicised ethnicity; structural marginalisation and the imbalance of available resources; the cost of making people return to their homes; the difficulty of financing the small-holdings typical of traditional subsistence economies; the inconsistency of formal taxation in which zakat acts as a double taxation. Services are harder to provide in the regions because qualified people gravitate to the centre or abroad, and this in turn exacerbates the inequalities and inaccessibility of the regions and fuels corruption, which harms investment. At the political level the corruption is underlined by a lack of representation, by preferential treatment for Muslims and by a short-term view of agricultural demands and research. The balance of power which has led to the Naivasha Protocols must now impact on resource-sharing at a national level without reference to this balance of power.

Promoting Inter-Regional Trade

Remarks by General Ibrahim Suleiman (Darfur Forum)

Darfur's 6 million people live in approximately 200,000 square miles of semi-desert bordering Libya, Chad, the Central African Republic and the Democratic Republic of Congo. Agriculture is concentrated in southern Darfur and livestock in the north, and the main cash crop is groundnuts. The road infrastructure is poor, so the return on oil is usually considered higher in the long-term than the return on livestock exporting. In addition, much is traded illegally across the borders, including household items and sugar. A major limiting factor is illiteracy; little capital has been invested in Darfur in roads, railways or other development projects which employ local populations and would help to settle nomads (such as digging boreholes and building wadis). Nonetheless, Darfur has the potential to be an enormous producer of, for

example, camel burgers and groundnut oil, especially with foreign investment.

Discussion

Flourishing intra-regional trade requires good infrastructure, which itself relies on good administration, which relies on trust. Trust can be built by the traditional tribal leadership. This is not to say that the conflict in Darfur is tribal, as suggested by the government, but that the violence must stop if trade is to restart and that the transition from tradition to modernity must be properly managed. The conflict in Darfur is basically one of resources and infrastructure, and the government should, and to some extent does, take seriously its responsibility to improve infrastructure. It is easier for the government to shirk this responsibility if foreign troops are present and carrying out its job by proxy, but it should use the opportunity of foreign intervention to strengthen national unity and market forces by improving Sudan's basic infrastructure.

So far Sudanese infrastructure has focused on the Nile. It would be better to diversify and to consider the limitations in the availability of water resources. In Darfur, the desertification and overcrowding of land originally divided up between the tribes by the Sultan have been compounded by an influx of people from Chad. Elsewhere in Sudan, smuggling has harmed and distorted intra-regional trade, such as the camel trade with Egypt, which removes legitimate business and can bring disease.

Sudan must therefore address its border security and relations with its neighbours, which in turn will help to deal with smuggling, the conflict in Darfur, and the sentimentality of regional loyalties. Sudan could then become a net exporter of goods such as fodder and food oil. In improving trade, however, it should be ensured that profits are passed on to producers through formal (rather than simply informal channels) and not passed on only to the government in the form of taxation.

In addition, the introduction of small enterprises (such as for drying mangos, cf Red Sea Accord) and intermediate technologies would improve the micro-economic and macro-economic positions. Financial and technical services should be provided by civil society rather than by the government, regulating its obsession with big projects and allowing it to concentrate on schemes which are more viable and less grandiose. People, not projects, are the key to development, so the priority is to restore human rights, including the freedom of speech and expression. Alongside this should be programmes to improve free democratic governance and to consolidate the free market.

The use of land in Darfur – whether supporting informal, formal or illegal trade – is a key consideration and the obvious hidden agenda of the *janjaweed*. This has also turned the conflict in Darfur into an ethnic one, because land is a tribal

right. Nonetheless, there have been many conflicts over the centuries between pastoralists and sedentary farmers in Darfur which have been resolved by the tribes themselves. Problems have only developed when there has been government intervention, which has encouraged tribally-based land-grabbing and has resulted in the current armed rebellion.

ABOUT CONCORDIS INTERNATIONAL

Concordis International is a British non-profit organisation that seeks to achieve long-term transformation of relationships across conflict boundaries, by engaging all constituencies of a country or region in sustained examination of issues of common interest. These systematic and well-researched discussions move beyond the lines of confrontation to build on shared purpose and explore new possibilities for peace. Rather than becoming involved in official peace negotiations, we aim to build relationships of trust that pave the way for peace or contribute to post-conflict nation-building. The work is underpinned by values – such as justice and equity – that are shared by those of many faiths and traditions.

Concordis International's primary methodology involves a series of informal, low-profile consultations, held in a neutral venue and attended by key individuals linked to their respective leaders and constituencies. As they attend the consultations in a personal capacity, participants are not under pressure to maintain a particular party line. The consultations take place away from the public and media eye, and are carefully constructed on a solid foundation of in-depth research into the structural causes of conflict and consideration of the economic and social factors necessary to sustainable peace. Our wide network of academic contacts ensures that the preparatory research is of high quality.

Under the name Newick Park Initiative (NPI), the Concordis International team was instrumental in South Africa in establishing confidential dialogue between leading members of the ANC and the white establishment, contributing to the peaceful ending of apartheid. In the aftermath of Rwanda's 1994 genocide, NPI played a critical role in resolving issues of agriculture and justice, successfully bringing together senior Tutsis and Hutus to consider Truth and Reconciliation Commissions and traditional *gacaca* courts. In 1999, at the invitation of senior Sudanese, the Concordis team and the African Renaissance Institute launched the Sudan Peace-Building Programme and together ran six consultations. Subsequently, Concordis International has responded to requests from senior Sudanese to remain engaged, through facilitating informal dialogue aimed at developing consensus on post-conflict priorities for Sudan and contributing to the resolution of regional issues like Darfur and Eastern Sudan.

In addition to informal consultations, Concordis adopts other means of furthering peace processes – such as publications and capacity-building workshops – though always adopting a non-partisan approach. Peace-building work in countries other than Sudan – including the Democratic Republic of the Congo, Israel/Palestine and Afghanistan – is currently in a development stage. The work of Concordis International is funded through contributions from private individuals, community groups, NGOs, grant-giving trusts and foundations, and government agencies.

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