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Post-conflict Reconstruction of the Justice Sector in Sudan: 2007

Aim

To present a brief overview of the post-conflict reconstruction of the Justice Sector in Sudan in 2007.

Background and Scenario

Sudan has undergone 20 years of civil war leaving the state institutions (legislature, executive and judiciary) particularly in the South of Sudan weak, lacking capacity, infrastructure and barely functioning.

Currently, Sudan is embarking on a period of widespread reform, from the grassroots level right up to the very top level of government where Sudan is moving from a highly centralised state to a pluralistic and federal system. The drivers for these reforms are a series of peace agreements and protocols which include the Comprehensive Peace Agreement (CPA) (January 2005) and its subsequent Eastern Sudan Peace Agreement (ESPA) (October 2006), and the partial Darfur Peace Agreement (DPA) (May 2006). In tandem with these changes taking place centrally in Khartoum and in the Northern States, a different but complementary set of changes are taking place in southern Sudan.

After a decade of suspended and limited overseas development assistance due to civil war in Sudan, recommencement of aid is at an early stage. However, the on-going crisis in Darfur is causing Sudan to continue to be under varying levels of political and economic sanctions. This overshadows, interrupts and often limits the extent to which both the United Nations and other donors are able to engage with federal government institutions to create the necessary conditions for policy dialogue on the country's pressing development issues. Furthermore, Sudan, as one of the largest countries in Africa, presents substantial challenges with regard to the implementation of aid projects and programmes: distances are vast, internal communications are difficult and transaction costs are high.

Map of Sudan



Sudan Key Facts

Capital

Khartoum. **Population:** est. 2.4 million (Capital in the South Juba Population: est. 250,000)

Area

2,505,813 sq km (967,500 sq miles).

Population

32.9 million (UN estimate 2002).

Geography

Sudan is bordered by Egypt to the north, the Red Sea to the northeast, Ethiopia and Eritrea to the east, Kenya, Uganda and the Democratic Republic of the Congo to the south, the Central African Republic and Chad to the west, and Libya to the northwest. There is a marked difference between the climate, culture and geography of northern and southern Sudan. The far north consists of the contiguous Libyan and Nubian deserts which extend as far south as the capital, Khartoum, and are barren except for small areas beside the Nile River and a few scattered oases.

Government

Government of National Unity (GNU) - the National Congress Party (NCP) and Sudan People's Liberation Movement (SPLM) formed a power-sharing government under the 2005 Comprehensive Peace Agreement (CPA); the NCP, which came to power by military coup in 1989, is the majority partner.

Head of State

President Omar Hassan Ahmad al-Bashir since 1989.

Language

Arabic is the official language in the North. English is the official language in the South. Many local dialects are widely spoken.

Religion

Muslim in the north; Christian and traditional animist beliefs in the south.

Main Objectives

This case study concentrates on the context in which justice sector reform is taking place in Sudan and looks at the many spoilers and disablers inherent in such an environment. A recent review¹ of some of the rule of law and access to justice interventions taking place in southern Sudan considered that access to justice projects need to be better connected with the livelihood recovery programmes, peace building and with the customary law systems. Additionally the review recommended that the justice sector, including both the informal and the formal sectors should be considered as a whole (even if the statutory position does not reflect this stance) and equal weight must be apportioned to each of the institutions within the justice sector.

Non-state justice

One of the most complicating factors for the justice system across the whole of Sudan but most prevalent in the South is the existence of customary law, which runs parallel to the state system. The war has had a severe impact on the customary systems, increasing population movements and mixing tribes in urban locations, this destroys and interrupts the tribal hierarchy on which the customary system is based. The power of guns has further usurped this hierarchy and has undermined the chiefs' power. Furthermore the non-state system by is poor at upholding human rights and is inequitable in its treatment of women and children, although this criticism can also be levied at the formal courts. However despite the disruption which war has caused and the deficiencies in human rights, in comparison to formal justice system, the non-state system is functional and has the trust of, and is accessible to, the local population. It is estimated that 80% of disputes are resolved through customary system, with this figure rising to 100% in some rural communities.

The formal system has been severely neglected over the past 20 years, particularly in the South of Sudan. All aspects of the justice system are undeveloped, under equipped and under-trained from lawyers and court officials' right through to all aspects of the police and prisons. Pre 2005, Khartoum administered the whole of Sudan and therefore both the south and north were subject to sharia law. The common law system which had been imposed during the colonial years and up to the 1970s became moribund. Post 2005 and the CPA, common law has now been reintroduced in the south which has created a whole host of issues and complexities for the south. Most lawyers, court officials and police were trained in the old sharia law system; many people cannot write in English, most records are in Arabic. To add to this there is a dearth of common law textbooks and codified laws, and those which have survived the war are woefully out of date. Language is a common issue and a problem across all donor programmes as there is currently no common language. Although English is now the official language of the south, many of the older citizens speak their tribal language and English whereas many of those in their 20s and younger speak nothing but Arabic and those from the rural areas often only speak their tribal language. This makes working in any part of the justice system complex and adds to the transaction costs of donor activities, as laws and information about legal and human rights must be printed in many languages and translators employed – to name but two of the increases in costs.

¹ UNDP Sudan Strategic Partnership Review June 2007

Donor organisations are often tempted to look at the justice sector from the formal side alone and pay scant attention to the informal justice system. However, many justice sector reform projects around the world have discovered that they must consider and work with the non-state system if a programme is to be culturally and financially sustainable.² The counter argument to this is that countries like the south of Sudan emerging from a long civil war are hopefully going to develop their economy quickly, especially considering the natural resources which Sudan has in oil. Therefore as the economy grows increasing movements of people and attracting international investment the informal justice system will become less important to those who migrate to towns and are outside the tribal system. Furthermore it is argued that the development and globalisation of Sudan will mean that cases will become more complex, law will have to change quickly to keep up with the dynamic environment and traditional laws based on traditional values and beliefs will become less applicable in the developing world. Though many of these arguments have some basis of truth, a common mistake often made is that traditional laws are considered simplistic and static. Studies from around the world have proved this notion to be quite unfounded.³ Customary laws have survived because they have been able to stand the test of time because they have evolved. The reality in Sudan is that very little is known about the customary law, small scale studies have been undertaken in the passed 2 years, but the only wide scale studies are now out of date and obsolete. Thus there is a critical need for proper analysis and understanding of the laws and associated customs within the non-state system.

Because the non state system is so important to the culture of Sudan and in many case is the only provider of access to justice in many areas. The only solution and the more complex option for donors is to engage with both the formal and informal system. In Sudan this is particularly complex as the new government of the South is itself working out how to deal with the informal system, and because there is very little known about the informal system. Therefore, donors find themselves working on the basis of assumptions with a system which is not formally recognised by the government and whose position and relationship with the state system is not yet defined or known.

Finally, Chiefs and traditional leaders also play a large administrative and social role in the daily lives of much of the population. This is particularly important with regard to their role in reconciliation and peacebuilding. The war in Sudan has been highly complex and inter-tribal wars and power struggles have added to this complexity and continue to this day. Exploring how using tribal chiefs and elders as part of the wider peace-building agenda in re-establishing normal social bonds and practice is vital especially at sites of significant ethnic clashes such as Western Bhar el Ghazal, Jonglei and Upper Nile. To ignore these underlying tensions is to ignore potentially an issue which could disrupt the peace process and all donor programmes. As yet, the peacebuilding and governance and oversight role which has traditionally been played by the chiefs and tribal leaders is almost completely unexplored by the donor community who prefer to work with the government administration

² USIP 2007 Bridging Modernity and Tradition: Rule of Law and the Search for Justice in Afghanistan

: Available http://www.usip.org/pubs/usipeace_briefings/2007/1031_afghanistan.html see also

http://siteresources.worldbank.org/INTLAWJUSTINST/Resources/clash_of_two_goods.pdf See also OECD-DAC Enhancing the Delivery of Justice : Governance Peace and Security 2006 <http://www.oecd.org/dataoecd/27/13/38434642.pdf>

³ See cases of Burundi and Somalia <http://www.hdcentre.org/datastore/Justice/RuleofLawthroughimperfectbodies.pdf> and also

<http://www.hdcentre.org/datastore/Informal%20justice/Burundi%20final.pdf>

<http://siteresources.worldbank.org/INTLAWJUSTINST/Resources/EwaWojkowska.pdf>

structures; structures which are often completely absent and woefully undermanned and inexperienced.

Inherited Military Structures

Disarmament, Demobilisation and Reintegration (DDR) of ex-combatants is not often seen as an issue connected to rule of law programmes. However a large proportion of the ex-combatants who have so far been discharged from the Sudanese Peoples Liberation Army (SPLA) have been transferred to the police and prisons services. In one state where there are 12 prisons, 24 brigadiers were on the staff list. Furthermore the staff list of the prisons in this state indicated that there was almost one staff member for every prisoner. The vast majority of these staff members were ex-combatants. This over staffing of the prisons is seen across the whole of the prison service in Sudan and is as a result of informal DDR programmes by the army – of finding “jobs for the boys” as well as more formal programmes by the government of Sudan as well as donor. As a result of so many ex-combatants being transferred to the prison and police services, these institutions are woefully overstaffed and thus financially unsustainable even in the short term.

Where ex-combatants have been transferred across such institutions the military mindsets and structures remain. The police and prisons remained militarised, with the mindsets of serving soldiers using coercion and force to carry out police and prison duties rather than acting as a service to the population. Often those who hold onto their posts in the military are the most able and influential and those transferred to the police and prisons are those who are less able or influential and, because of the more sedentary nature of the jobs involved, are often near to retirement or medically unsound. Thus the rank hierarchy and the power balance between police officers, prisons, the military police, and the military becomes a serious problem. In the case of the civilian police service who continue to work alongside the military police, the latter of whom in most cases are better equipped, better trained than the civilian police, and often left to hold *de facto* control over an area.

There is no simple solution to the reintegration of ex combatants in a weak and nascent economy such as Sudan where the job opportunities are scarce. The re-training of ex-combatants in changing their mindset to becoming police and prison officials is critical, alongside training up new recruits who have never been part of an armed force is also a key step. However, dealing with ex-combatants is a major issue for the already weak rule of law institutions in Sudan. Potential rivalries⁴ are opening up between the military police and the civilian police, and current donor funding favours the civilian police, which can exacerbate these issues. It is highly important therefore that all sections of the justice sector including oversight and independent bodies (judiciary and human rights commissions) are also strengthened to avoid Sudan potentially moving towards a militarised police state. Dealing with ex combatants is a difficult and often politically sensitive and a long term problem requiring long term donor commitment. However it is important to note the potential detrimental effects that reintegration programmes can have on other sectors of society. Consequentially, in a militarised society such as Sudan, it is imperative that development and security initiatives work alongside each other

⁴Donors often find themselves in the difficult position of only being able to train the civilian police and not the military police even if the military police are in de facto in control , as training the military police can lead to accusations of re training the army.

Coordination and Linkages

In a dysfunctional and nascent state like the south of Sudan where the governance structures are weak and in some cases non-existent, the linkages and communications between the activities of donors themselves and between government activities are strained and weak. Often many donors are working in the same arena and their efforts are overlapping but without sight of each others activities. An example from Sudan would be that many donors backed by government agencies have decided to print and distribute the CPA in many different languages. Though theoretically this could be seen as a good foundational start for building awareness of the rights of people, realistically hundreds of copies are stacked in donor offices undistributed where distribution by another agency has already taken place. Lessons have not be learned and passed from one agency to another so the CPA is reprinted by another donor institution who has not yet learnt that a large proportion of the population is illiterate in any event.

Finally, the actual achievement and output that can be linked to such activities is tenuous. This is but one example of a lack of donor communication. This is not a problem which is exclusive to Sudan; in fact it is an oft repeated problem but one which appears in every donor programme. Because Sudan is in such a nascent and still fragile state, donor coordination is particularly lax and needs to be improved if the people of Sudan are going to be able to see and experience a peace dividend.

Conclusions

In post-conflict environments, there is often a multiplicity of problems, spoilers and unforeseeable challenges, combined with urgent needs in the country and the expectations of the host population and government. It becomes too easy in such situations to set up programmes as quickly as possible, without much planning and to spread the money and manpower too thinly. This has happened in Sudan and the problem is compounded by the demands of the government to work equally and fairly in each of the 10 states of the South. In appraising and reviewing such programmes, it must be remembered that small steps lead to smaller mistakes and that an all encompassing programme or project is impossible. Again in Sudan we see the problem that donors are too fixed on working with the 'formal institutions' at the centre of government and little attention is paid to informal structures and their interaction with the devolved state level institutions. Emphasis needs to be placed on how the central institutions can support primary community-based (and traditionally based) service provision in the states, towns and villages which can provide real and tangible access to justice. Furthermore, consideration needs to be given to the interaction and coexistence of these formal institutions with informal justice systems, and vice versa. Any development programme aimed at the justice sector of Sudan is necessarily going to be a long and ambitious undertaking.

Finally the rule of law and access to justice projects need to interact and coordinate with other security sector initiatives, such as reform of the military and other armed actors. Justice sector reform is an integral part of the overall security sector in Sudan and the various initiatives impact on one another. In a militarised society such as Sudan, it is imperative that development and security initiatives work alongside each other. This final and important step

can not be made without proper linkages and communications within donor agencies and between donor agencies and the Sudanese government.

Issues for discussion

- Think of ways in which the rule of law institutions could support peacebuilding initiatives.
- Consider the nexus between security and development and the role which rule of law plays within that nexus
- Consider how this programme in a post-conflict environment might differ from that in a benign environment (see Malawi case study for an example).
- Consider the role of traditional justice and analyse the benefits and disadvantages of involving traditional justice in a justice sector programme.

Further Research

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