

HUMAN RIGHTS IN DARFUR: WINNERS AND LOSERS IN THE SEARCH FOR JUSTICE?

by John Lewis



Sudan's new Government of National Unity leaders, President Omar Al-Bashir (right) and the late First Vice-President John Garang, in 2005.
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Introduction

The conflict in Darfur may be the first conflict to result from a peace agreement. Just as peace was being signed between southern Sudanese rebels and the Government in Khartoum, the conflict in Darfur erupted. In Darfur, the fighting emerged out of a similar situation of desperation as in the South in which the local population had almost no access to the central government. While the people of Darfur provided the central government with bodies for service in the military – many to fight in the South, ironically – Darfuris received poor and abusive government in return. In the mid-1980s, when drought and famine hit the region, the central government's response was negligible and inept. When the rebellion broke out in 2003, the government unleashed a terrible counter-attack with bombardments from the air and paramilitary forces on the ground.

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While the consequences for the civilian population in Darfur have been horrific, peace in Darfur, like peace in the South, may require a weak commitment to justice, at least in the short- to medium-term.

Early developments

During the mid-1980s the people of Darfur, western Sudan, suffered a terrible famine. As a result of the spreading Sahara, reduced rainfall, and increasing pressure on the land, between 100,000 and 200,000 people died. Many northern tribes moved South to avoid the advancing desert and find pasture for their herds. Given the local and national governments' inability to deal effectively with new demands on land, conflict between settled and nomadic groups erupted.

In 2003, a rebellion of mostly settled Darfurians broke out against the national government for its failure to deal with the region's problems. Rebel groups launched a surprise attack on El Fashir, the capital of North Darfur, damaging government aircraft and helicopters and looting fuel and arms depots. This was followed by another major attack on Mellit, the second largest town in North Darfur, where rebels again looted government stocks of food and arms. In response, the Sudanese government dismissed the governors of North and West Darfur and other key officials, and increased its military presence in Darfur, unleashing the now-infamous *Janjaweed*, a group of nomadic fighters on horseback armed by the national governments of Sudan and Libya.



Reduced rainfall, advancing desert and famine: a UN aid vehicle near El Fasher in North Darfur.
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As its people starved, the Sudanese government's supply of weapons improved considerably as the country began to export its oil – with the help of foreign companies – and these arms became available for use in Darfur with the onset of the peace talks in the southern regions of the country. More than 2 million people perished in the decades-old conflict in the South, largely through government intransigence and war-induced famine. But while negotiators in Nairobi were deadlocked – on the issue of whether Khartoum should be governed under Islamic law – and while the fighting in the South had essentially dropped off, Darfur became a "region in flames", according to human rights activists, once the government unleashed its counter-insurgency.

The combatants



An SLA rebel in South Darfur.

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The present conflict in Darfur essentially sets the Government of Sudan and its allies against an insurgency composed of two main groups, the Sudan Liberation Army (SLA) and the Justice and Equality Movement (JEM), each with their own interests and supporters. From the outset, however, the rebel groups were chiefly composed of three ethnic groups, the Zaghawa, Fur and Masaalit. Over the last few years, under increasing attack by the Janjaweed, members of some smaller groups, including many "arabized" peoples, have joined the rebellion.

Like the conflict in the southern part of the country, the Darfur conflict has developed racial and cultural overtones, threatening to shatter a historic but fragile pattern of co-existence between Arab-speaking northerners living around Khartoum and Afro- and arabized-Sudanese spread throughout the West of the country.

Whereas the earlier conflict in the South pitted Christian and other religious Afro-Sudanese against the mostly Arab and Islamic government of the country, the conflict in Darfur is being fought

between Muslims, who largely self-identify as either African or Arab.

By mid-2004 the mounting toll of death and displacement forced the crisis in Darfur onto the stage of world affairs. A formerly unreported conflict over natural resources escalated into what many have referred to as "the first genocide of the twenty-first century".

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The results

The conflict has escalated since 2003, with fighting concentrated in North Darfur. The government has launched offensives against the SLA in Um Barou, Tine, and Karnoi, in response to the SLA attacks on El Fasher, Mellit, Kutum, and Tine (the latter on the border with Chad and an important trade route to Libya). Government response consisted of heavy bombing by Russian-made Antonov aircraft plus ground offensives of government troops using heavy equipment including tanks, many of them supplied by China.

As with all conflicts, a disproportionate number of refugees and internally displaced persons (IDPs) affected by the conflict are women and young girls who are most at risk of sexual abuse and gender-based violence. Since the outset of the conflict, there have been disturbing reports of sexual attacks on children under 10 years old.¹ Violence against women surged in 2006, with more than 200 instances of sexual assault in five weeks around the Kalma camp in South Darfur alone.² Most of the victims are assaulted when they leave camps and villages to collect firewood, a necessity that forces them to walk miles into the bush where they are vulnerable to attacks by Janjaweed militia or members of the rebel groups.



A mother and daughter at IDP Camp Otash, Nyala, South Darfur: a disproportionate number affected by the conflict are women and children.

© WFP/Lizette Karlsson

By the end of 2008, 300,000 people had been killed during the conflict according to the United Nations, and at least two and a half million more displaced. While food and water delivered by aid agencies to the remaining population of Darfur is an attempt to address survival needs, humanitarian assistance continues to be endangered by the insecurity of the region. Both sides in the conflict, the rebels and the government-allied forces (the Janjaweed militia) continue to violate ceasefire agreements, including attacks on the displacement camps and humanitarian workers. Planting crops is almost impossible for people living under the threat of such attacks.

Who's responsible?

In 2008, Darfur was referred to the International Criminal Court (ICC) for investigation. In early March, 2009, the ICC issued an arrest warrant for Sudan's President, Omar Hassan al Bashir, after charging him with war crimes and crimes against humanity. This followed the request on November 20, 2008, by the prosecutor of the ICC for arrest warrants for three rebel leaders believed to be responsible for attacks on international peacekeepers.

Evidence continues to show the Sudanese government's support for the Janjaweed, however, and its responsibility for the greatest number of atrocities in Darfur. Human Rights Watch research indicates that, in spite of all the evidence of massive atrocities committed by its allied militia, the Sudanese government resumed recruitment of new militia forces in late 2006.

Few would disagree that Sudanese President al Bashir has presided over a regime responsible for gross crimes against humanity, nor that the culture of impunity amongst world leaders must be challenged. But beyond that there is wide disagreement over important elements of peace and justice.

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Peace vs. justice

Those who support the ICC indictment talk of the gravity of the alleged crimes and the need for justice. Even if it can be demonstrated that the President took no steps to encourage rogue security force elements and their Janjaweed auxiliaries to attack civilians at Darfur, supporters of the ICC argue, he is still accountable for not restraining them. They suggest that the indictment will force the Khartoum regime to make peace in Darfur, and prosecution — even if it fails — would be a salutary deterrent on potential tyrants elsewhere.

Desmond Tutu, the former archbishop of Cape Town, South Africa, argues that Africa cannot afford to let al Bashir off the hook: "African leaders argue that the court's action will impede efforts to promote peace in Darfur. However, there can be no real peace and security until justice is enjoyed by the inhabitants of the land. There is no peace precisely because there has been no justice. As painful and inconvenient as justice may be, we have seen that the alternative - allowing accountability to fall by the wayside - is worse."



Sudan's President briefs correspondents on Darfur at UN Headquarters in 2006: Al-Bashir is now indicted for crimes against humanity.

© UN Photo/Erin Siegal

Those who urge caution offer a more nuanced argument which does not sit well in the world of good vs. evil, or black and white solutions. These people are not necessarily rejecting the ICC. Few outside al Bashir's own circle would suggest that he does not have crimes to answer for. However, the current indictment risks causing further violence and suffering in Sudan.

Peace now ...

In a worst case scenario, according to long-time Sudan-watcher John Ashworth, destabilising al Bashir's National Congress Party (NCP) could lead to the collapse of the already fragile peace agreement with the South, which ended 22 years of war. This puts southern Sudanese, including their government, in a difficult position. While they have no love for al Bashir due to the atrocities committed during the war in the South (crimes for which he is not being indicted), for better or worse they are stuck in a partnership with the NCP as co-signatories of the CPA. If the CPA collapses, the prospect of peace in Darfur, already very distant, will recede still further.

In the shorter term, the grip of the state security organs has tightened. Sudanese civil society organisations have been closed, students arrested, public rallies orchestrated to raise the ante, and a climate of fear created amongst moderates who might support the ICC indictment or oppose the regime. Despite the easing of some restrictions after the signing of the CPA, there is still a formidable state security apparatus which has not been reformed since the years of military dictatorship.

The Khartoum regime has also retaliated against international aid agencies in northern Sudan. Humanitarian agencies have faced rising numbers of attacks on their workers and restrictions on their work by government forces and armed opposition groups. Sudan expelled 13 international and three local humanitarian organizations from Darfur in March in response to the ICC's arrest warrant of al Bashir. As fighting escalates with the ending of the rainy season, and fresh attacks on civilians drive thousands more people from their homes, humanitarian access to civilians in Darfur will remain seriously compromised.

... justice defined ...

The ICC is seen as a tool of Western interests. The perception of the ICC is that it has so far concentrated on African issues and has not addressed cases which are of interest to the non-Western world. Since the establishment of the ICC in 2002 to prosecute individuals suspected of genocide, war crimes, and crimes against humanity, the court has issued arrest warrants against 13 people, including al-Bashir. All the people indicted are Africans. ICC investigators are all located in Africa, investigating atrocities in Uganda, the Democratic Republic of Congo, the Central African Republic and Darfur.

Seen in that context, it is unsurprising that al Bashir has accused the ICC of a colonialist conspiracy against Africa by ignoring crimes among the "neocolonizers" in Gaza and Iraq. Pakistan, too, another "friend of the West" has not attracted much attention in the name of "justice".

Without minimising the atrocities committed against civilians in Darfur — by Sudanese security forces and Janjaweed militiamen — it is easy to understand why there may be perceptions of anti-African bias and wilful ICC myopia towards American actions in the Middle East. But prominent political and military figures who were not African have been indicted by a UN tribunal following the internecine fighting in the former Yugoslavia in the 1990s. And the ICC is considering cases outside Africa, including national leaders like President Alvaro Uribe of Colombia. But a more fundamental question concerns the nature of justice during a conflict like Darfur, according to Ashworth and others with connections inside Sudan.

Many see only the narrow terms of retributive justice: finding someone guilty and punishing her/him. But there are other models. Restorative justice recognises that something has gone wrong and must be put right, that relationships have been broken and must be healed, in such a way as to bring the most benefit to the most people. It may involve trials and punishments, but only as part of a broader process.

There is a thread of this in Darfur, according to expert Alex de Waal, although it is more difficult to discern a single clear message from Darfuris. When Darfuris speak of their right to justice, according to de Waal: "They talk about restorative justice. They talk about returning to their homes. They talk about compensation. They talk about being able to resume the life they've lost. I do not see how [the ICC process] has taken a single step forward in terms of all those other components of justice."³

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The Sudan Council of Churches, a force in the southern Sudan peace process, states: "The Church believes in justice without compromising peace and stability of the nation. There is no dichotomisation.... societies in transition like Sudan need other instruments and other models in order to supplement one form of justice. There should be holistic justice that encompasses accountability, truth recovery, reconciliation, institutional reform and reparations." And Thabo Mbeki, heading an African Union panel on Darfur, says that while ICC indictments may strike a blow against impunity, they will do little to soothe the hatreds that have spawned rapes and massacres.

... justice delayed

The government in Khartoum has been largely uncooperative with all attempts to establish peace and justice in Darfur. Investigators of the ICC, whose mandate was established by the Security Council of the UN, have been blocked in their investigations by the government. The Sudanese Minister of Justice has implausibly declared that Sudan is better equipped than the ICC to investigate human rights violations occurring within its borders. In the six years since the outbreak of violence in Darfur, no major actor in conflict has ever been charged by the Minister or his courts.

The government remains convinced of a military solution to the conflict. But the decision to expel NGOs made by the NCP was accomplished without consultation and against the will of the Sudan Peoples' Liberation Movement (the NCP's partner in



UN humanitarian aid helicopter in Darfur: new challenges confront remaining agencies after the expulsion of over a dozen international NGOs.

© WFP/Diego Fernandez

government) and that puts an additional strain on relations between the two parties. Many fear a return to war in the South as a consequence of the NCP's recalcitrance.

Nations in transition need stability and peace. Justice can be broader than trials and punishment, particularly during the search for peace. But justice, in some form, will come. Peru has just tried their former leader, Alberto Fujimori, finding him guilty of acts he commissioned as President 18 years ago. Argentina has done the same. In order to begin to establish peace and reconciliation in Sudan, the punishment of al Bashir may need to wait.

International responsibility

The international community has once again become culpable in large scale loss of life in Africa through its inaction. With ample warning of the crisis, coupled with the twenty year history of abuses committed against southern Sudanese, the UN Security Council refused to authorize the resources necessary to halt the Janjaweed and force the government of Sudan to make concessions at the negotiating table, as deaths continued to mount. The cries of "never again" heard since the genocide in Rwanda have rung regretfully hollow.

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It would be convenient to say that "it's all about oil", that the world's thirst for hydrocarbons is the reason for the world's silence on Sudan, but it's not that simple. It's a tidy argument to link oil to Darfur, as some have done, but the situation is far more complicated and difficult to understand. All conflicts have multiple causes and interpretations, and the one in Darfur is no different. It is about oil, but it is also about climate change, genocide, neo-colonialism, and religious fundamentalism.

Regardless, the impact of the conflict on the civilian population of Sudan and, like Rwanda, the consequences of inaction will be evident for years in Darfur. Villages have been burned to the ground, water sources poisoned, and populations traumatized through large scale loss of life. The region will need sustained costly humanitarian support for decades to come as the result of a crisis that, sadly, could have been avoided.

Notes and links:

1. Tara Gingerich and Jennifer Leaning, **The Use of Rape as a Weapon of War in the Conflict in Darfur, Sudan**, prepared for USAID, October 2004 <<http://physiciansforhumanrights.org/library/documents/reports/the-use-of-rape-as-a-weapon.pdf>>.
2. International Rescue Committee, **"Increased Sexual Assaults Signal Darfur's Downward Slide"**, 23 August 2006 <<http://www.theirc.org/news/latest/increased-sexual-assaults.html>>.
3. Alex de Waal, on the Kojo Nnamdi Show, **"Indicting Sudan's President for War Crimes"**, aired on National Public Radio, 9 March 2009. <<http://www.ssrc.org/blogs/darfur/2009/03/09/alex-on-the-kojo-nnamdi-show>>.