

Promoting the rule of law in post-conflict Sudan

by Yasmine Sherif

The main protagonists in Sudan's conflicts have committed to peace but the obstacles to building good governance are enormous.

The Comprehensive Peace Agreement (CPA) signed between the Government of the Republic of the Sudan (GoS) and the Sudan People's Liberation Movement/Sudan People's Liberation Army (SPLM/SPLA) on 9 January 2005 represents a major opportunity for restoring the social contract between Sudanese authorities and the citizens of Sudan.

However, in order to maximise the impact of the renewed commitment to building a just and peaceful Sudan, it is essential also to acknowledge the fragile state in which Sudan and her people are currently held captive. For, as Sudan emerges from a protracted war and moves forward towards a political settlement, the country remains stifled by conflict and by weak governance and rule of law institutions.

Against these realities, the promotion of rule of law in Sudan is a long-term objective, which will require an incremental approach towards a larger vision. While the CPA represents a formal commitment by the GoS and the largest southern rebel group to standards conducive to democracy, justice and peace, the peace-building process will need to advance and expand these aspirations through immediate and medium-term interventions that can serve as building blocks for long-term development and, perhaps, even a peace dividend.

The peace-building process must seek to empower national stakeholders to actively engage in preventing and bringing an end to violations of international and national laws and standards and restore confidence in informal and formal law-enforcement and judiciary institutions. Time is needed to build a culture of justice that is responsive to long-term

capacity building and sustainable human development.

The challenge

Decades of war have militarised Sudan. Legislative, judiciary and law enforcement institutions suffer from capacity deficits and a lack of adequate training.

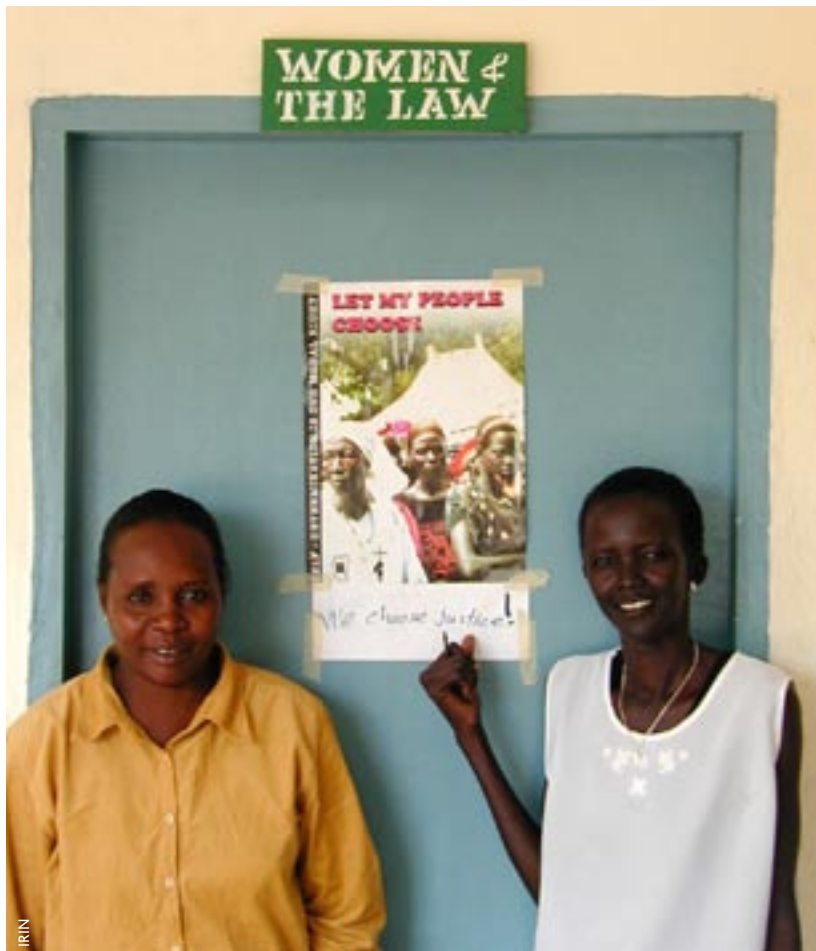
The institutional and operational gaps in the rule of law sector are compounded by a massive circulation of small arms, continued low-intensity conflict in some parts of the country and a lack of public confidence in an impartial justice system. Military and security forces are the principal agents of 'law and order', often at the cost of basic human rights. The authority bestowed on military and security actors constitutes the greatest threat to justice, peace and sustainable development taking root in Sudan. Decades of over-centralised government, absence of rule of law practices, huge development disparities between the centre and the regions and weak or non-existent administrative capacities make matters worse. It is anticipated that violence will continue to plague certain areas in spite of the CPA. In the current environment, and imbued with a strong sense of a right to own arms, communities view their arms as the only means of protection in the absence of the rule of law. As people return to places of origin disputes over land and other property are certain to intensify.

While Sudanese society at large has suffered the consequences of armed conflict, the brunt of the war has been borne mainly by the South, where there is an extreme absence of the most basic physical, human and institutional capacities. There is a chronic shortage of competent and independent judiciary and enforce-

ment agents. The fact that only 22 of the 750 trained judges envisaged under the CPA are in place highlights the need for establishing a paralegal training centre to fill the gap in the number of qualified professionals during the Interim Period. The physical infrastructure of the court system in southern Sudan is practically absent. Traditional justice is still administered under a tree, while even higher courts in towns lack windows. The judiciary has virtually no means of transportation, communication or other essential resources necessary to administer justice, such as libraries, law books or even the text of the few laws promulgated by the SPLM. There is a need to strengthen traditional conflict resolution mechanisms in the South (along with the establishment of viable statutory, conventional rule-of-law institutions) and to ensure that policemen – almost all of whom are demobilised SPLM soldiers – receive training in community-based policing.

Customary law has in the past been integral to peaceful conflict resolution which means that the establishment of statutory structures cannot be done without due regard to traditional mechanisms. However, it will be necessary to review customary laws and practices against international human rights standards. Women and children are particularly vulnerable within the customary system as practised in southern Sudan. Often not considered legal subjects, women cannot own property, while juvenile justice appears non-existent.

In the North, judiciary structures are more developed but the independence of the judiciary seems to have been compromised – as evidenced by the arbitrary dismissal of qualified judges, attorneys-general and law officers. Existing legislation fails to guarantee the full spectrum of human rights and fundamental freedoms, while military decrees and emergency laws undermine those rights currently protected by statutory law. Although physical infra-



When southern Sudanese women attempt to get a divorce, they are sometimes sent to prison. The Bahr-al-Ghazal Women's Legal Centre works to prevent this and to uphold the rights of those imprisoned.

structure does exist in major towns, large areas in the North remain grossly underdeveloped, with one police officer per 1,000 inhabitants. In terms of gender equity and equality, particular concerns have been raised regarding the (in-)ability of women to seek justice and appeal decisions. Judges need to be offered refresher courses in all matters of modern jurisprudence, including gender justice.

Women prisoners are vulnerable. Estimated at about 2% of the prison population, their main crimes are brewing alcohol, prostitution and petty theft. Most are displaced from the South and are the family's sole breadwinner. Most women do not understand court procedures and lack both the language skills and legal counselling necessary to defend their case. A number of women bring their children with them to the prison, which, in turn, lacks any budget to provide for the children's needs. Many imprisoned children appear to be street children displaced by the war. Vagrant children are criminalised and staff of penitentiary and correction institutions are generally

not qualified to handle juveniles. The problem of street children and their detention is a serious one that will require investment in education and social services, as well as measures to upgrade the juvenile justice system and encourage respect for the rights of the child.

The prison system is in an extremely bad state. There are some 55 prisons but many are not operational, or only partially functioning. Conditions are dire and inconsistent with international human rights standards. Prisoners lack food, health services, water and electricity. Often they are let out on day release to search for food to survive. As with the police service, many wardens are former military officers and, due to their background, conduct duties as soldiers rather than in a manner consistent with international standards. None of the wardens has received any training.

While the IGAD-led peace process has contributed to building confidence and political reconciliation between GoS and the SPLM, the lack of information and communication

has created barriers between southerners and northerners and amongst southerners themselves. There is an urgent need to invest in a national dialogue, as well as in the South-South dialogue that has already begun. Similarly, there is a need for a new institutional culture based on citizenship, a sense of service, professional honesty and integrity. Government officials, as well as the general public, desperately need knowledge of international human rights standards.

The peace-building process

In establishing an environment that is conducive to the rule of law, it is fundamental to replace a military culture with a constitutional and legal framework, competent law enforcement and an independent judiciary. Without these basic components in place, little progress can be made. These can only be realised through a multi-sectoral approach. Interventions to address the rule of law must be reinforced by parallel efforts to demobilise armed actors in line with the CPA, combat corruption and ensure accountability and transparency in all of the structures of governance. A comprehensive and integrated approach to rule of law will require a broader framework that addresses:

- law enforcement, the judiciary and legal reform
- demobilisation, disarmament and reintegration (DDR) and security sector reform
- decentralisation, public administration and elections
- establishing electoral laws, monitoring compliance and creating a political and security environment that is conducive to free and fair elections
- bringing legal processes closer to communities

The need for institutional capacity building in all these sectors is enormous. While in the North, existing structures will need rehabilitation and reform, the South will need massive support to establish institutions from scratch. Professionals in the North will be in need of upgraded training and refresher courses while the South must acquire a whole new workforce of professionals. The Joint Assessment Mission (JAM) outlines

in detail the institutional capacity-building needs across all sectors, not the least in the Rule of Law Sector. Adopting an incremental approach, the JAM has identified the following immediate and medium-term objectives:

- to strengthen the immediate competence and capacity of governance and rule of law institutions to provide human security and access to justice, with particular respect to gender, while protecting human rights
- to improve human resource capacity, backed up by an adequate legal framework and institutional, operational capacity
- to ensure that confidence building and reconciliation are given due attention in the design and implementation of the rule of law programmes, so as to promote lasting transformation of a conflict-prone society
- to contribute to creating an environment that is conducive to the implementation of the CPA, including the return and reintegration of displaced persons, other returnees, including reintegration of former combatants; and, eventually, long-term capacity building in the rule of law sector, free and fair elections and good governance.

In the final analysis, peace can only be built and sustained where capac-

ity building addresses both institutional and attitudinal reform. As in any other post-conflict situation where societies are shattered and deeply affected by a protracted civil war, confidence building must be a cross-cutting priority that underpins humanitarian, developmental and political action. Without an attitudinal change towards justice and equality all other efforts will be undermined; ultimately, the social contract between the state and its citizens is restored and sustained by the human component of that society.

While a formal peace agreement can kick-start the process of peace building, the effects of armed conflict often require a long process of behavioural adjustment. New and progressive ways of advocacy and training will be required. Field-based experiences prove that legal and structural reform alone is not sufficient in promoting respect for human rights in post-conflict situations. Rather, efforts must also be made to assist national stakeholders to acquire a deeper comprehension of universal human rights and the ethical standards inherent in Sudanese culture. Programmes must be aimed at cultivating positive attitudes and healthy belief systems, which can replace negative attitudes that reinforce a violent culture. National stakeholders must be supported and given the tools to unearth

their own powers to have a positive impact on their environment. Only then can we truly build the capacity of national stakeholders to integrate human rights and core values of justice in their own sphere of power, day-to-day life and responsibilities.

Finally, progress indicators must be redefined. The overriding objective of the rule of law is to restore a viable social contract between the citizens and the state – a contract that protects the full spectrum of human rights, be they civil and political, or economic, social and cultural. Against this objective, the impact of an effective rule of law programme must, ultimately, be measured not by the number of policemen or lawyers trained but rather by the degree of safety, justice and empowerment experienced by the citizens of Sudan.

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1. www.db.idpproject.org/Sites/IdpProjectDb/idpSurvey.nsf/wViewCountries/