



CONCORDIS PAPERS VII

**Intra-Governmental
Relationships in Sudan**

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 their 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 seventh 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. Our aim 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 and Recommendations

The Comprehensive Peace Agreement (CPA) of 2005 has given rise to a number of new constitutions across Sudan - at a national, regional and state level - as well as bringing about a number of ministerial changes in both Khartoum and Juba. In many cases the division of constitutional competence and ministerial responsibility remain poorly defined.

The CPA's Interim Constitution has also re-affirmed Sudan as a federal system of government, yet much remains to be done in order to make federalism a *de facto* reality across the country - both in the Government of National Unity and within the states themselves.

The content of this paper reflects the presentations and discussions which took place at a Concordis consultation held in Khartoum in March 2006, entitled *Intra-Governmental Relationships in Sudan*. The goal of the consultation was to discuss and galvanise support for policy initiatives that would both improve relationships between the different spheres of government in Sudan and help to facilitate a federal system of government under the new arrangements inaugurated by the CPA.

Key recommendations made by the participants during the discussions included the following:

- Relationships between national, state and local authorities need to be clarified in order to reduce ambiguity and respect legislative autonomy.
- The federal system should be established in totality across the country in order to promote democracy, maintain diversity and speed up the process of economic development in the states.
- The states - particularly those in the South - should be given deliberate technical and professional assistance in order to facilitate the establishment of federalism and to improve administrative capacities.
- The establishment of 26 separate constitutions across the country contains the potential for conflict and should be rethought.
- There needs to be clear direction from the central government if federalism is to take root; the Ministry of Federal Government (MFG) must become the focal point of this process.

Foreword

Dr Taj el-Sir Mahjoub, National Council for Strategic Planning

The Sudanese people need to build confidence to establish and sustain a culture of peace. What are the common denominators and how do we work out each others' needs? Traditions, organisations and institutional mechanisms are all important. What is the best way to accommodate real reconciliation and to change views on the ground? How do we make unity an attractive option?

Ultimately, **peace** can only be achieved if there is:

Political will

Empathy

Alliance-building

Cessation of all hostilities

Execution of commitments by all sides

Without these key elements, all attempts at peace will be merely a façade with no practical relevance. We need to think together, understand and accept one other. Divisive issues have widened the gaps, but we all share a desire to improve the welfare of the people of Sudan. Let us locate the root causes of Sudan's conflicts and address them; let us talk in a rational and constructive way. Only then will we move ahead.

Decentralisation and the Promotion of Good Governance

Remarks by Dr Awad al-Sid al-Karsani

The Ministry of Federal Government

The Ministry of Federal Government (MFG), created by presidential decree in 2005, is responsible for the development and co-ordination of federal rule in Sudan. Theoretically, the MFG has considerably more political weight than its predecessor, the Federal Government Chamber, since the Interim National Constitution both acknowledges Sudan as a 'decentralised state' and calls for a government agency to co-ordinate intergovernmental linkages and relations.

In practice, however, the legislation enacted by the CPA has reduced the ministry's role to that of conducting research on international developments of federal systems, rather than driving the push towards federalism itself. Elsewhere, the MFG has been endowed with new responsibilities, such as its reconciliation function which gives it jurisdiction over inter-tribal mixing and conflict resolution.

Strengths and Weaknesses of the Ministry of Federal Government

Some MFG departments achieve a considerable amount towards the development of federalism. The Department of Co-ordination and Follow-up, for example, co-ordinates relations between the centre and the localities, and follows up the states' measures to implement federal rule. Its role in resolving boundary disputes - where it has often convinced states to resort to extra-legal means to resolve controversies - has also been particularly constructive.

Another strength is the Twinning Co-ordination Unit, which works to improve relations between the North and South through facilitating bilateral agreements to provide training for Southern states in administration, provision of basic services, and water and electricity management.

Alongside these strengths, however, the MFG has also been weakened by its recent reconfiguration which has created confusion between its departments over their roles and responsibilities. Several departments have found themselves with diminished responsibilities compared with their jurisdiction under the FCG, which questions their viability as individual entities.

The MFG's failure to undergo a comprehensive reorganisation in recent years means that it continues to suffer from a lack of a planning department, poor internal communication and unbalanced staff numbers. Furthermore, insufficient recruitment planning has undermined the MFG's ability to recruit suitable employees and has caused several ministries to be understaffed.

Recommendations

The MFG will only contribute to the establishment of federal rule if it is widely accepted as its focal point. Establishing this reputation demands that the MFG takes on new areas of responsibility and strengthens existing roles:

- Adopting an effective advisory and co-ordinating role, with a clear mandate. This will involve the development of a wide-ranging, scientific knowledge of federalism.
- Involving the Sudanese people in the federal system through educating them in innovative ways about federalism, its roles and responsibilities.
- Strengthening the administrative abilities of the states - particularly in the South - through providing financial guidance and training in tasks such as water provision electricity management.
- Resolving boundary disputes; this has become one of the MFG's most important roles and should become an institutionalised aspect of its duties.

Secondly, in order to increase its efficacy, the MFG's structure and staffing practices need to be improved in the following ways:

- Strengthening the weaker sub-departments of the MFG to consolidate them and make them more viable as individual entities.
- Developing high levels of managerial skill, technical capacities, thematic knowledge and creative thinking amongst its employees, in order to increase trust in its capabilities amongst all levels of federal rule.
- Establishing a planning and follow up unit to increase its planning capacity.

Finally, the international community must provide the MFG with sufficient financial and technical assistance to enable it to:

- Finance capacity building by local and international experts, as well as the improvement of logistics and communication networks.
- Solidify a new map for the states through resolving boundary disputes.
- Carry out field visits to allow vital monitoring on the ground.

Discussion

Federalism is a vital means of achieving democracy since it increases and enhances local participation. Even a hint of federalism encompasses steps towards democracy. In Sudan, though decentralisation has historically been promoted as a solution to resolve political crises, the establishment of councils and regional governments inaugurated local participation in government for the first time. In order to establish federalism there must be broader participation in government, diversity and unity, and increased development in the states.

Federalism may exist in Sudan in theory, but it has failed to be implemented in practice - while the states have had the opportunity to take on some powers of autonomy they have failed to do so. It is vital that the states are informed of their constitutional powers and that they are helped to exercise them.

In order to bring about *de facto* federalism on the ground, certain ingrained political assumptions and dynamics prevalent in Sudan must be modified. In terms of the national government, those in power must be provided with incentives to give up their current authority; too few individuals are willing to relieve themselves of power to make way for full-blown federalism. Federalism also demands a shift of power to the localities - not just to the states but to the people themselves. This in turn demands an alteration in the mindsets of the majority of Sudanese, whose deeply-held acceptance of centralisation needs to be discarded in order to allow federalism to take root.

Historically, the Ministry of Decentralisation has stifled and limited the growth of local administrations in Sudan in order to safeguard its own role within the government of the country. Today, it appears that the MFG may be falling into the same trap, since it is failing to implement a national minimum standard in local government across the country. Effective decentralisation will only become a reality if it is driven by a central department which facilitates relations between the states and the national government; it is vital that the MFG takes on this role proactively.

In the past, conflicts between the centre and the localities would be resolved by the national government. Today, concurrency has become the responsibility of the Ministry of Justice, which determines how a conflict should be resolved. It would be far better if the MFG itself had a mechanism for conflict resolution to rule on disputes over concurrency.

Despite initial jubilation following the establishment of decentralisation in the 1990s, the ability of the states to facilitate economic development in their own areas of jurisdiction has proved to be limited. Today, the vision to improve this situation is lacking. The MFG should launch a new mission to provide technical support to the states - based perhaps on the example of the Department of Provincial and Local Government in South Africa.

Intra-governmental Relationships in Sudan

1. Current Legislative Relationships

Remarks by Hon Ustaz Mohamed Ahmed Salim

The CPA added a third level of government to the two-tiered system of state and federal administration; namely, the regional government of Southern Sudan. For the first time in Sudan's history, the ten southern states of the country were amalgamated into one political entity, with its own legislative, executive and judicial bodies. Its powers are such that the region of Southern Sudan is now in many regards like a partner in a confederate system, as opposed to a unit in a federal one. This system has transformed Sudan into a unique political entity, with a federal system in the north and a semi-confederate arrangement in the South, both inherently linked together by the same constitution.

The present constitution delineates the distribution of powers in Sudan by dividing them up into five 'lists' or 'columns': the national powers, the region of Southern Sudan, the states, the concurrent powers shared by more than one level, and the residual powers list. Each of the first three lists - the national powers, Southern Sudan and the states - command an exclusive field of jurisdiction, meaning that no other level of government is permitted to interfere with or encroach upon their legislative powers. Since these three bodies derive their legitimacy directly from the national constitution, each one is considered as an independent authority, on an equal footing with the others.

The ultimate safeguard against conflicts of jurisdiction is the national constitution, the supremacy of which guards against intra-governmental disputes by deeming instances of legislative encroachment as unconstitutional and therefore illegal. In the event that a conflict arises as a result of infringement of responsibilities, the aggrieved body is permitted under section 122 of the constitution to appeal to the Constitutional Court in order to ensure that its legislative independence is upheld.

Besides this overriding safeguard, the constitutional contains several other measures designed to guarantee smooth interaction and peaceful co-existence between different governmental bodies. One precaution is the adoption of a bicameral parliamentary system through which the upper chamber, the Council of States, can check any national bill which negatively affects the interests of the states (section 91[4]). Another safeguard is the requirement imposed on all levels of government to respect each other's jurisdiction and to assist in co-operating, co-ordinating and refraining from obstructing or hindering other functions (section 26). A third measure is the establishment of the MFG as a liaising body, the responsibility of which is to maintain governmental co-operation and to work to enhance, develop and promote the performance of the

governmental bodies through conducting research and seminars.

Despite clearly regarding local government as playing an integral role in governance across Sudan as a whole, the national constitution omits to deliberately safeguard its independence *vis a vis* the authority of state bodies. Since the autonomy of local government is not upheld by the constitution, responsibility for establishing and regulating its functions has been left to state authorities. It is of fundamental importance that legislative relations between local governments and state authorities are clarified in order to protect the former from unnecessary interference on the part of the latter. In particular, the practice of repealing local orders passed by municipal councils on policy grounds should be terminated.

A more sensible approach would be to limit the intervention of state authorities in the affairs of local government to cases of irregularities or illegalities, thereby only allowing states to intervene in order to protect the form of the constitution. Without such a safeguard - codified by the national constitution - the local legislature in Sudan will continue to be subordinated to the authority of the states, leading to a *de facto* paralysis of local government across the country.

2. Local Government Structure and Responsibilities

Remarks by Dr Muktar Mohamed Alassam

When considering the subject of local government structure and responsibilities, it is worth bearing in mind certain key themes. The first is the subject of unity - are the central and local governments in Sudan a unified entity? The second is participation: are the local governments participating effectively in the overall government structure in Sudan, and are elected representatives participating fully in democratic processes? Finally there is the issue of division of powers amongst different levels of government. Are the boundaries and responsibilities clearly defined? There needs to be a clear distinction between the responsibilities of local and central government, particularly in terms of responsibility for services at local levels in Sudan. Moreover, sources of fiscal support must be more clearly identified and defined.

In theory, the relationship between the central government and state units should be one of partnership, not dominance. State governments should have their own financial resources, be able to appoint its own staff, and be trusted to have its own 'conscience'. In the context of the new inter-governmental structure in Sudan, however, local government is tending to be suppressed through its subordination to the central government. In reality, states have been prevented from creating new, state-level councils to run their affairs by the current state ministries, who want to retain control over grassroots populations.

Discussion

It is important to bear in mind that the current constitution is only transitional; it is therefore important to start preparing today for the next one. Southern Sudan has made significant steps towards being an autonomous entity within a federal system since 2005. The Southern government has its own financial resources and central bank, for example, as stated by the constitution and the CPA. There is certainly no federal government in the North which is equivalent to the government of the South; the latter is an independent entity, while the central government continues to interact directly with the northern states. In some senses, Southern Sudan is closer to a confederate system than a federal one, though it is not strictly either. On the other hand, a confederate system of government involves minimum contact with the upper rule. It might therefore be more accurate to describe the system in the South as a federal system.

All states in Sudan now have their own constitution, yet uncertainty prevails in some areas as to how federalism works in practice. There is, for example, an ambiguity concerning the relationship between state and national powers. On the one hand, some state authorities are actively seeking to hasten the economic development of their areas under their jurisdiction, which may conflict with the goals of the national government; on the other hand, some national ministries claim that the states are interfering with their national areas of authority, such as higher education.

There needs to be clarification about the relationships between national, regional, and local governments, and between the state commissions and the national government line ministries. In particular, the following questions and ambiguities need to be resolved: How can the fiscal relationships be coordinated? Should it be possible to transfer money directly to local government? Whilst there is a fiscal and financial monitoring commission which is supposed to lay down the criteria concerning the transfer of resources, whose jurisdiction does it fall under?

The current system of decentralisation in Sudan is such that there are currently 26 separate constitutions and flags within the same country. This situation is unnecessary and contains the potential to lead to conflict - constitutions at national and regional levels would be far more effective for Sudan. It is vital that a central apparatus in Sudan plays the role of facilitating a federal system in order to keep the country together as a single entity. The national government should not permit state parties to exist; rather, each party should function at state level.

The CPA has enabled some of the states to establish international relationships in the form of aid, development and investment. This may be unorthodox but it will almost certainly improve living standards in individual states.

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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