Intractable conflicts in Africa: The international response to the Darfur and South Sudan crises

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Abstract: *This article considers the intractable conflicts and human rights situations in Darfur, Sudan and South Sudan, respectively, against the international responses they elicited. Intractable conflicts are conflicts that have lasted for a long time with resistance to settlement despite various attempts at intervention and conciliation. These conflicts from neighbouring nations have both elicited extensive engagement from the international and regional communities but, while some clarity regarding the direction to be taken has been achieved in the case of South Sudan, the situation in Darfur remains dire. The article analyses the difference in the peace-building approaches in the two conflicts and how these approaches have contributed to the different outcomes in Darfur and South Sudan. Following an exposition of intractability in the introduction, the second section applies the factors identified to the case of Darfur, confirming that this indeed is an intractable situation. It then considers the international response to the conflict in Darfur and the mechanisms employed by the global and the regional community in an attempt to address this conflict. The third section considers the situation in South Sudan and the international response, noting that efforts were led by the regional and sub-regional bodies, with the UN's role being to complement these efforts. The methodology employed is a comparative analysis, in which the international and regional legal and institutional responses to the crisis in South Sudan are analysed with a view to identifying the lessons to be applied in addressing the situation in Darfur, utilising theoretical and functional approaches to legal and political interventions. The final section draws from the insights gained in comparing the international response in Darfur and South Sudan, and concludes by attempting to extract general principles about intractability and the effectiveness of international responses to situations considered to be intractable, noting in particular the importance of regional and sub-regional bodies taking the lead in efforts to resolve intractable conflicts.*

Key words: *conflict; intractability; human rights; South Sudan; Darfur*

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1   Introduction

Intractable conflicts are conflicts that have lasted for a long time with resistance to settlement despite various attempts at intervention and conciliation. The article considers the conflicts in South Sudan and Darfur, Sudan, which have both elicited extensive engagement from international and regional communities, in an attempt to analyse the difference in the peace-building approaches in the two conflicts and to understand how these approaches have contributed to the different outcomes in Darfur and South Sudan.

This introduction considers the general definition of intractable conflicts and the characteristics or factors that make a situation intractable. The second section applies the factors identified to the case of Darfur, confirming that this indeed is an intractable situation. It then considers the international response to the conflict in Darfur and the mechanisms employed by the global and the regional community in an attempt to address this conflict, including United Nations (UN) Security Council resolutions, international sanctions, and responses from the African Union (AU). The third section considers the situation in South Sudan and the international response, noting that, while the peace process in South Sudan is mainly led by the sub-regional trade bloc, the Inter-Governmental Authority on Development (IGAD), and the AU, the global community led by the UN has played a crucial role in complementing these efforts. The methodology employed is a comparative analysis, in which the international and regional legal and institutional responses to the crisis in South Sudan are analysed with a view to identifying the lessons to be applied in addressing the situation in Darfur, utilising theoretical and functional approaches to legal and political interventions. The final section draws from the insights gained in comparing the international response in Darfur and South Sudan, and concludes by attempting to extract general principles about intractability and the effectiveness of international responses to situations considered to be intractable.

Simply stated, intractable conflicts may be defined as conflicts that have lasted for a long time with resistance to settlement, despite the various responses from different stakeholders (Crocker et al 2005: 5). Crocker et al argue that a conflict becomes intractable due to factors that include the geographic location of the conflict; the level of willingness to accept settlement; unsuccessful peace-making efforts; historical grievances; and a lack of social cohesion. In identifying the nature of intractable conflict, Kriesberg (2005: 65) provides three elements: First, an intractable conflict is a conflict that is complex by its nature and persists for a long time; second, it is considered to be destructive by observers; and, third, various interventions fail to solve the conflict. In addition, any kind of support to either of the armed groups involved contributes to the protracted nature of a situation (Wallensteen & Sollenberg 1998: 621). Further elaborating on the characteristics of intractable conflicts, Bercovitch (2003) analyses intractability in terms of actors, issues, duration, relationship, geopolitics and management. Accordingly, he concludes that intractable conflicts involve actors who have long-standing complaints on issues of identity, recognition or values, which complaints persist for a long period causing mass atrocity and violence. In addition, he indicates that such conflicts occur among two significant groups, and these groups usually resist

peaceful settlement, leading to failed peace-keeping efforts. However, the intractability of conflicts does not mean that they cannot be settled at all, as there are possibilities through which they can be resolved (Coleman 2006: 533). In fact, the termination of and recovery from intractable conflicts are identified by Kriesberg (2005) to be the last phase of an intractable conflict. Kriesberg summarises the phases of intractable conflicts as starting with the outbreak of the conflict; followed by an escalation of violence; followed by the unsuccessful settlement of mediation efforts; followed by the institutionalisation of the conflict; followed by the de-escalation of the conflict; and, finally, the termination of the conflict (Kriesberg 2005: 72). An intractable conflict, thus, in simple terms may be defined as a conflict that has existed for a considerable time between strong military groups that have no interest in settling their dispute, and who often have external support enabling them to continue their conflict, seemingly indefinitely, with no clear resolution in sight. Intractable conflicts persist in a number of countries on the African continent, but the article is limited to two of these conflicts that have elicited significant responses from the international community, namely that in the Darfur region of Sudan and the protracted conflict in South Sudan.

2   Failure of interventions in the intractable conflict in Darfur, Sudan

Intractable conflicts are demoralising. Apart from destabilising the families, communities and international regions in which they occur, they tend to perpetuate the very conditions of misery and hate that in the first place contributed to these conflicts (Vallacher et al 2010: 262).

The conflict in Darfur, which continues to this day, reached its peak in February 2003 and was widespread in the north, west and south (Hagan & Palloni 2006: 1578). The main conflict is between the Sudanese armed forces, on the one hand, and the Sudan Liberation Movement (SLM) and Justice and Equality Movement (JEM), the two groups that had rebelled against the central government due to what they perceived as marginalisation, on the other (Brosché 2008: 7). The Janjaweed militia, a group believed to be affiliated with and supported by the government, also joined the government in attacking SLM and JEM (Salih 2008: 8). The three Darfur tribes of Fur, Massalit, and Zaghawa, including civilians, were the main victims of the conflict, which resulted in killings, rape, abduction and the destruction of property and welfare infrastructure (Brosché & Rothbart 2013). Since its independence in 1946, Sudan has witnessed successive civil wars, including the north-south conflict as well as conflicts in the Nuba Mountains, the Upper Blue Nile, and the Beja region (Sikainga 2009). The conflict in Darfur erupted due to grievances over historical marginalisation and, in particular, over the use and control of natural resources in the region (Sakainga 2009). The intractability of the Darfur conflict is further entrenched by the fact that various peace-keeping missions, attempts at settlement and even the indictment by the International Criminal Court (ICC) of the President for war crimes have failed to resolve the conflict, which continues to have a devastating effect on the lived realities of millions of people. This international response

directed towards resolving the conflict and their failure is discussed in the next section.

An important factor which has contributed to the intractability of the Darfur conflict is that it is not a single conflict of a group rebelling against marginalisation by the centre; rather, 'communal conflicts' underpin the existing conflict (Mohamed 2009: 8). There are three main conflicts: an inter-groups conflict; region-centred conflict; and communal elite conflict (Mohamed 2009: 8). The inter-group conflict mainly is a fight over resources and land by different local groups. During the past few decades, Darfur has witnessed drought and desertification which have led to the displacement of nomadic communities in Darfur (Salih 2008: 7). The nomads fled to the territories of the sedentary tribes, and this gave rise to conflict over resources between the nomads and farmers of sedentary tribes (Salih 2008: 7). This conflict had been settled for some time but has, however, re-emerged in the past few years (Salih 2008: 8). The region-centre conflict was prompted by the marginalisation of non-Arabic people by the central government. Almost all government regimes in Sudan have thus far neglected the Darfur people's quest for human and economic development, resulting in the underdevelopment and marginalisation of a relatively resource-rich region (Bassil 2004: 26). Adding to the complexity is the power struggle among the local rebel groups pitting the Arabs against the non-Arab communities (Crisis Group 2015a). Finally, the communal-elite conflict is the result of conflict among the elite of the rural communities particularly over the holding of political positions (Mohamed 2009: 8). Taken together, it is clear that these overlapping and often opposing conflicts of interest could lead to a physical conflict such as the one which currently exists, which is difficult to disentangle and resolve.

Another factor that contributes to the intractability of the conflict in Darfur is the cross-border effect on neighbouring countries, an example being Chad where the Janjaweed have crossed the border, attacked civilians and caused displacement of many people (Bercault 2007: 859). This changes the nature of the conflict from a non-international armed conflict into an international armed conflict, which adds another dimension to the already-existing conflicts and ultimately results in a prolongation and increase in the magnitude of the conflict, both characteristics of intractable conflicts. Furthermore, the intractability of the conflict is entrenched by the massive nature of its destructive impact, which includes internal displacement. The UN has indicated that the Darfur conflict is the worst humanitarian crisis in the world (United Nations News Centre 2004). According to the UNHCR (2015), 400 000 new internal displacements were recorded between January and August 2014 alone. In January 2015, 100 000 people were displaced, bringing the number of people in need of humanitarian assistance to 6,9 million (Crisis Group 2015a). All these factors are exacerbated by a complete lack of political will on the part of the current leadership to negotiate for peace. These facts illustrate the complex nature of the Darfur conflict. Given that the conflict has existed in various forms since at least 2003, thus for almost 15 years, that the military rebel and government-sponsored groups have no interest in finding a resolution and that despite all the interventions there is no clear resolution in sight, the conflict in Darfur clearly is an instance of intractable conflict.

3   Global response to the Darfur crisis

This sub-section and the one that follows are aimed at giving a narrative overview of the different responses by the global and regional communities to the crisis in Darfur with the aim in the final section to be able to compare this to the responses to the South Sudan crisis in order to assess the effectiveness of the different approaches. A number of different strategies or measures have been employed at the global level, particularly by the UN, in an attempt to bring about a resolution of the conflict in Darfur, including resolutions of the Security Council, the indictment of the President of Sudan at the ICC, and various unilateral and multi-lateral sanctions against Sudan.

3.1   United Nations Security Council resolutions

The first UNSC resolution on the situation in Darfur, Resolution 1547, was adopted on 11 June 2004. Its purpose was to set up an 'advance team' (UNAMIS) to 'prepare for a future United Nations peace-support operation [in Darfur] following the signing of a comprehensive peace agreement' (United Nations 2004a). About a month later, the UNSC demanded as per its power under Chapter VII that 'the government of the Sudan disarms the Janjaweed militias' (United Nations 2004b). However, this resolution lacked implementation mechanisms and was ignored by the government of Sudan mainly because for the next few months the UNSC was preoccupied with the peace process in Southern Sudan which culminated in the signing of the Comprehensive Peace Agreement in January 2005 (Prendergast & Sullivan 2008).

Thereafter the focus shifted back to the crisis in Darfur, and in March 2005 three resolutions, Resolutions 1590 (2005), 1591 (2005) and 1593 (2005), followed in close succession. These resolutions dealt respectively with the establishment of the UNMIS, a peace-keeping mission consisting of 10 000 military personnel; an asset freeze and travel ban on certain persons who were considered to have had a significant role in the Darfur crisis; and the referral the situation in Darfur to the ICC. While these resolutions together had the ability to bring about real change in the region, some factors prevented any meaningful action to flow from them. One of the most important reasons is that there was division among the P5 (the five permanent members of the Security Council) about the way in which to approach the situation, leading to the abstention of Russia and China from these resolutions (Prendergast & Sullivan 2008). There have even been allegations that China was supporting the government of Sudan and was providing them with fighter jets and training (Prendergast & Sullivan 2008). Without agreement among the P5, it is unlikely that any real action will follow on the implementation of resolutions, as was indeed the case. Second, there was no consultation with the African states on these resolutions, with the result that they also were reluctant to co-operate with the UNSC (Prendergast & Sullivan 2008).

In 2006 the negotiations seemed to start paying off, and the Abuja Peace Agreement was signed in May 2006 between the government of Sudan and one of the large rebel groups. However, this agreement was not signed by two of the smaller rebel groups (United Nations 2005). The UN maintained its peace-keeping forces on the ground, and in late 2006 it was decided that the UN should launch a joint mission with the AU. However,

it took until July 2007 for the requisite resolution, Resolution 1769 (2007) to be adopted by the UNSC. This was the first time such a joint mission was attempted, and it was the biggest UN mission after that in the Balkans (Prendergast & Sullivan 2008). Yet from the beginning there was a continued power struggle within the UNAMID, with the UN continuing to blame the AU for any failures and insisting that it was primarily a UN mission since it had been constituted by a UN resolution (Prendergast & Sullivan 2008). In 2011, through Resolution 1997 (2011), the UNSC recalled UNMIS in order to leave UNAMID as the only UNSC-constituted body present in Sudan.

The security situation in Darfur continued to deteriorate, and while UNAMID was there as a peace-keeping mission, there was no peace to keep and they repeatedly failed in their main mandate of ensuring the protection of civilians (Prendergast & Sullivan 2008; Abdulbari (2015). Members of UNAMID were also killed, and blame is unofficially attributed to the government of Sudan (Prendergast & Sullivan 2008). In 2011 a further peace agreement, the Doha Document for Peace (DDP), was signed between the government of Sudan and the Liberation and Justice Movement providing for power sharing and a compensation fund for victims of the conflict in Darfur. This was intended to bring peace to the region, but conflict, human rights violations and internal displacement continued. The escalating violence in Darfur in February 2014 led to the adoption of UNSC Resolution 2148 (2014) in April 2014 in which the mandate of UNAMID was revised to focus on the following three priority areas: the protection of civilians; mediation between the government of Sudan and non-signatory armed movements; and support for the mediation of community conflict. In February 2016, there was a new bout of hostilities which led to tens of thousands of civilians fleeing their homes in Darfur (United Nations Human Rights Council 2016a). As can be seen from this exposition, the Security Council has been highly involved in the situation in Dakar, albeit often not with the required results – sending large peace-keeping troops, working together with the AU in a manner which had never before been attempted and even going so far as to refer the matter to the ICC.

3.2   International Criminal Court

The resolution of the UNSC in 2005 referring the conflict in Darfur to the ICC led to retaliation by the government of Sudan through the expulsion of all Western aid groups from Darfur (International Coalition for the Responsibility to Protect 2015). However, the fact that both China and Russia abstained in this decision and the fact that very little funding was provided for the prosecution process, indicate that from the outset there was no clear commitment by the P5 to ensure the success of the legal process. Further, the AU Assembly of Heads of State and Government resolved on 3 July 2009 not to co-operate with the ICC as it felt its concerns had been ignored by the UNSC, such as the potentially negative impact of the arrest warrant against Al-Bashir on the ongoing peace processes in Sudan, and the fact that they viewed the warrant as a violation of customary international law related to the immunity of sitting heads of state (Mekuriyaw 2016: 119). The resolution of the Assembly of Heads of State and Government asked for a stay of prosecution of Al-Bashir. However, this resolution was not acted upon by the UNSC. This lack of co-operation and co-ordination between the regional powers and UN

bodies on efforts and initiatives to address the challenges in Darfur in a concerted manner is a factor which has contributed to the continued intractability of this conflict.

The decision by the AU not to acknowledge the ICC's warrant of arrest has enabled the government of Sudan to act with impunity and ignore the ICC process (Prendergast & Sullivan 2008). Various states that are party to the Rome Statute of the ICC, such as Kenya, Uganda and South Africa, have also failed to arrest President Omar al-Bashir when he was on their territory. South Africa argued that this failure was due to being 'caught between its obligations under the Rome Statute and those that grant immunity to heads of state' (Ngari 2017). Initially, it seemed that no political consequences would flow from this violation of an international obligation. However, in a decision in December 2016 – the first of its kind – the ICC decided to rule on whether South Africa had acted contrary to its obligations under international law by not arresting Al-Bashir during his visit to the country in 2015, and in July 2017 determined that South Africa 'had the ability to arrest and surrender him and it chose not to do so'. However, there will be no real consequences, since the ICC did not proceed to apply any of the measures at its disposal, such as referring the matter to the UNSC (De Wet 2017). Similar proceedings are underway at the ICC against Uganda (Journalists for Justice 2017). The failure by the international community to support the process led the Prosecutor of the ICC to announce in December 2014 that the investigation would go into hibernation until the UNSC provides the necessary support and co-operation (Bensouda 2014). Since then, the ICC has determined that as it is a UNSC referral to the Court, the UN members have an obligation to co-operate, but nothing more has come of it (International Coalition for the Responsibility to Protect 2015).

While many African countries supported and participated in the establishment of the ICC and have even referred cases to the ICC, the arrest warrant against a sitting head of state was only one of the steps in the disenchantment African states have experienced in relation to the ICC (Mekuriyaw 2016: 119). Further criticism of the ICC by African states include selective prosecution, with successful prosecutions being focused disproportionately on the global south and particularly Africa (Mekuriyaw 2016: 126). This has led a number of African states, including South Africa, to declare that they would opt out of the ICC. It is thus not surprising that to date there has been no attempt to adhere to arrest Al-Bashir.

It is interesting to note that in other cases of similar internal conflicts, the precedent is that of the institution of special mechanisms. This took the form of special tribunals in Rwanda, the former Yugoslavia and Lebanon, an *ad hoc* chamber in Senegal (Cassese 2012: 495) as well as the intended hybrid court in South Sudan. These special mechanisms have in most cases been considered to be legitimate and have enabled the prosecution of war criminals locally (Cassese 2012: 495). Another benefit is that such courts or tribunals can be used in conjunction with other transitional justice processes, such as a 'truth commission and reparations authority' in order to ensure comprehensive justice processes and reparation for the victims (Lucey & Kumalo 2017). Finally, given the amount of backlash that the UNSC's decision to refer the situation in Darfur to the ICC has generated, it would in all probability also have been

a smarter decision in terms of international relations to opt for the less politically-loaded option of a tribunal at national level. The question thus remains as to why in the case of Sudan the situation was referred to the ICC rather than considering an analogous solution to those that have seen such success in the past and that continue to be used in other situations. One reason for this may be the continued presence of Al-Bashir as the head of state in Sudan for more than 28 years, a person who has no interest in a transitional justice process that would see him being prosecuted for genocide and other massive human rights violations. Another reason may be that while tribunals have generally been set up in countries where the majority of the country had been involved in the violence, either as perpetrators or victims, in the case of Darfur, this is a small region of a vast country, which means that most parts of the country remain relatively unaffected.

3.3   Sanctions

Apart from the purely political steps discussed above, one of the ways in which the international community displays its dissatisfaction with a particular country, in a manner that may have far-reaching implications, is through the imposition of sanctions. The UNSC during an extraordinary meeting in Nairobi in 2004 attempted to impose sanctions on Sudan, but because of the interests of China and Russia in the Sudanese oil industry, this attempt failed (Global Policy Forum). However, UNSC Resolution 1564/2004 stated that if Sudan did not co-operate, particularly with the AU monitors, the UNSC 'would consider taking additional measures, including sanctions, to affect Sudan's oil sector and the government or its individual members' (United Nations 2004c). These threats were followed through in one of the 2005 trio resolutions, as referred to above. However, the effectiveness was limited in that the expert panel which was to determine to which persons the travel ban and asset freeze would apply took more than a year to be set up (Prendergast & Sullivan 2008). Even after the panel submitted 17 names to the UNSC, no meaningful action was taken (Prendergast & Sullivan 2008). The sanctions against people blocking peace in countries such as Sudan were been renewed in April 2016 (*Sudan Tribune* 2016). Thus, the success of sanctions by the UN, even where they go beyond mere threats or warnings and are effected, is called into question by the lack of willpower displayed in their enforcement. Often individual states do not abide by UN-imposed sanctions and continue their relations with them, with the result that these measures are further undermined.

   Arguably, the unilateral coercive measures (UCM) taken by various states against an individual state are much more effective, particularly where these states are important trading partners. In the case of Sudan, states that imposed such UCMs include the United States of America (US), the United Kingdom and the European Union. Some of these UCMs, particularly those of the US (which were finally lifted in October 2017 after having been in place for 20 years (Dahir 2017) are of a comprehensive nature, meaning that they do not target specific persons but apply to the whole country (Saeed 2015). These sanctions include trade embargoes, which block the transfer of money to Sudan and limit access to vital technological tools (Sperber 2014). Since this is not in line with the approach followed by the UNSC which aims to target specific persons, rather than the country as a whole in order not to cause undue

and unfair suffering (United Nations Human Rights Council 2015), in December 2015 the UN Special Rapporteur on Human Rights and International Sanctions called on states to review these policies, given that they appeared to have had no effect on the elite and disproportionately affected the poor (Prendergast & Sullivan 2008). Perhaps heeding this call, but also taking into account the political situation and the strategic position of Sudan as a partner in their fight against terrorism, the US lifted the harshest trade embargoes in October 2017 after a 16-month review period. While this is good news for the people of Sudan on an economic front, it also brings to an end one of the most serious political sanctions against the country.

4   Regional response to the Darfur crisis

4.1   Role of the African Union in the conflict in Darfur

Apart from the efforts by the global community led by the UN to address the conflict in Darfur, using some of the most 'serious' tools at its disposal, including extensive peace-keeping missions and even going so far as to indict the President of Sudan, the AU was similarly taking action. The AU is the 55-member continental political body formed in 2001 to replace the Organisation of African Unity (OAU). The AU has been actively involved in the peace process in the conflict in Sudan in line with its objective under article 3(f) of the Constitutive Act of the African Union to 'promote peace, security and stability on the continent'. These efforts, however, have not been successful, probably due to the AU's lack of resources and lack of political will by member states (Keith 2007: 153). For example, the AU peace-keeping mission sent to Sudan (African Union Mission in Sudan (AMIS)), did not function adequately and efficiently due to underfunding and understaffing (Keith 2007: 154).

Furthermore, the AU has been disparaged as a 'club of dictators' who do not generally respond to violations of human rights, but rather are concerned with securing the sovereignty of their own states by insisting on the doctrine of non-interference (Gottschalk & Schimdt 2004: 139). Apart from the reasons given by the AU for rejecting the decision of the ICC to indict Al-Bashir, discussed above, one of the reasons often cited why the AU has refused to co-operate with the ICC is that they are 'protecting one of their own'. This attitude is also on display during review processes, such as the Universal Periodic Review (UPR) of the UN, where states are given the opportunity to engage their peers on issues of concern in their countries. It is the custom of African states in this and similar fora not to criticise each other and to 'stick together'. For example, despite the many issues that they may have raised, none of the African states raised any issues during Sudan's UPR process in 2011. This general trend of lack of political will to support processes which may have negative implications for their peers may to some extent explain the failure by heads of state to invoke article 4(h) of the AU Constitutive Act, which gives the AU the mandate to intervene in a member state in respect of grave circumstances such as war and genocide. The failure of the AU to utilise this power, which is one of the key characteristics distinguishing the AU from the non-interventionist nature of its predecessor, has been a contributing factor to the prolongation of some of the most protracted situations on the continent.

Not much diplomatic pressure has been exerted by the AU on Sudan's President Omar al-Bashir to resolve the crisis. The AU went to the extent of allowing Sudan to host its annual summit in 2006 amidst the crisis, despite its rules of procedure that require the summit to take place in a conducive political atmosphere (Udombana 2005: 1188), which only served as an endorsement of his regime. Al-Bashir was also allowed to visit and leave South Africa despite a South African court order for his arrest (Aljazeera 2015). As late as November 2017, a case brought by civil society in Uganda to arrest Al-Bashir when he was visiting the country was dismissed by a Ugandan court on the basis that it was 'unnecessary', since 'Uganda is awaiting sanctions by the UN Security Council for failing to arrest President Bashir in May [2016]' (*New Vision* 2017).

4.2   African Commission on Human and Peoples' Rights

The African Commission on Human and Peoples' Rights (African Commission) is the body mandated to promote and protect human and peoples' rights and interpret the African Charter on Human and Peoples' Rights (African Charter). The Commission has played a critical role in the crisis in Sudan, but it can only adopt recommendations, the binding nature of which is disputed as the African Commission is a quasi-judicial body. For example, the Commission undertook a fact-finding mission to Darfur in 2004 and established that there were massive human rights violations committed by armed militias, some of them supported by the government, which included the killing and rape of civilians (African Commission on Human and Peoples' Rights 2004a). The Sudanese government responded to the report by insisting that it was taking all steps possible to protect human rights in the conflict and, as such, it considered the report as reflecting unsubstantiated allegations mainly peddled by the media (Government of Sudan 2005). Despite this reaction from the government and the failure by the AU to implement the African Commission's recommendations, the findings contributed to exposing the situation on the ground to the international community.

The African Commission has also passed a number of resolutions calling upon all parties to the conflict to desist from preventing humanitarian assistance missions to the civilian populations (African Commission on Human and Peoples' Rights 2004b) and urging President Bashir to co-operate with the investigations by the ICC prosecutor (African Commission on Human and Peoples' Rights 2005). It is worth noting that the AU resolved in 2009 not to co-operate with the ICC due to what it considered a lack of consultation by the UNSC when referring the Darfur crisis to the ICC and the threat such action posed to any peace efforts. While the actions of the African Commission are commendable, the effectiveness of its decisions depends upon the AU. In terms of article 59, all measures taken within the provisions of the African Charter remain confidential until such time as the Assembly decides otherwise. This implies that the Commission on its own does not have the power to implement its own recommendations. This can only be done by the AU, which has been described above as lacking the political will.

One of the measures at its disposal which has not been employed by the African Commission is the procedure in article 58 of the African Charter. In terms of this article, the Commission has to refer cases of serious or massive human rights violations to the Assembly of Heads of State of the

AU (Assembly), following which the Assembly can direct the Commission to do an in-depth study of the case. However, to date the Commission has been hesitant to use the procedure under article 58, partly because of the tendency of the heads of African states to show solidarity and not to expose each other's failings.

4.3   African Peer Review Mechanism and the African Court on Human and Peoples' Rights

The African Peer Review Mechanism (APRM) is a mutual and voluntary self-monitoring programme of AU member states aimed at promoting and reinforcing high standards of governance. The mandate of the APRM is to ensure that the policies and practices of participating countries conform to the agreed values in the following four focus areas: democracy and political governance; economic governance; corporate governance; and socio-economic development (New Partnership for Africa's Development 2004). Sudan is a voluntary member of the APRM. The APRM undertook a mission in January 2016 to Sudan upon the invitation of Sudan. However, this had nothing to do with the crisis in Darfur, but was rather a pre-country review mission with the aim of having an appreciation of the National Dialogue currently taking place as part of the APRM procedural phases (African Peer Review Mechanism 2016). The voluntary nature of the mechanism makes it less effective as the APRM heads of state often avoid criticising one another in order to avoid provocation and retaliation.

Sudan signed the Protocol Establishing the African Court on 9 May 1998, but has not ratified the Protocol. While the decisions of the Court are binding on members who have accepted its jurisdiction, the Court has no jurisdiction over Sudan as the latter has not ratified the relevant Protocol. Therefore, the Court cannot adjudicate over the crisis in Darfur.

4.4   Failed AU-UN joint mediation

Negotiations on the Darfur crisis started in 2003 with an AU-UN peace initiative led by the then Chadian President, Idriss Deby, and this process led to a 45-day ceasefire agreement between the government and SLM in September 2003 (Netabay 2009). However, both parties soon violated the ceasefire and problems of impartiality on the side of the mediator led to a failure of the process (Netabay 2009). In 2004 the same mediation team managed to negotiate a ceasefire agreement for humanitarian assistance. A comprehensive mediation process began in 2004 in Abuja, Nigeria, initiated by the UN Security Council which assigned the AU to undertake the negotiations (International Crisis Group 2014).

The AU team was led by the then President of Nigeria, Olusegun Obosanjo. However, because of attacks by the government on Darfur, the rebel groups refused to finalise the negotiations (Netabay 2009). At the same time, the UN and the government of Sudan adopted a Communiqué on Darfur indicating the steps that should be taken by the government (Slim 2004). The Abuja negotiations resumed in June 2005 under the leadership of Salim Ahmed Salim, the former Secretary-General of the OAU, and supported by the UN, the US and the UK. The government of Sudan, the SLM and JEM were initially party to the negotiations, but only the government and SLM signed the May 2006 Darfur Peace Agreement

(DPA) which was the agreement flowing from this negotiation (Nathan 2006: 1).

Far from leading to peace, the DPA led to an escalation of the conflict. First, the negotiations for the DPA did not include all rebel groups or tribal leaders and also did not take sufficient account of the perspectives of civilians (Flint 2010: 14). During the negotiations, there was a split in the SLM, and the leader who signed the DPA was not regarded by all in the rebel group as a legitimate representative, thereby leading to internal conflict in this group (Flint 2010: 9). A second failure of the DPA is that it included deadlines for elections and referenda that were not practical (Nathan 2006: 4). In general, the process of the peace agreement for the DPA was rushed as the EU and the governments supporting the mediation threatened to withdraw support unless an agreement was reached expeditiously (Nathan 2006: 4). Thus JEM, which represents one of the largest ethnic groups in Darfur, rejected the DPA because in an attempt to finish before the deadline, the mediators drafted an agreement without sufficient input from the parties (Nathan 2006: 5). Therefore, the DPA was a fatal agreement that did not settle the conflict in Darfur; rather, it led to the perpetuation of the conflict as the rebel groups that were not represented in the mediation process joined forces and attacked the government and SLM (Taddele 2007).

Another negotiation attempt was launched in 2007 under joint AU-UN leadership (Brosché 2008: 59). These negotiations took place in Libya, and this venue was contested. Other contested issues were the approach to be followed and the team involved as well as the lack of political will to implement agreements (Brosché 2008: 61). This process was postponed due to a lack of participation by main rebel leaders in the peace process (Netabay 2009). In addition, the leaders of the mediation team had different perspectives on the approach to be followed, which led to conflict within the mediation team (International Crisis Group 2014). A new joint UN-AU mediation team was established in June 2008, but was soon followed by the AU establishing a High-Level Panel on Darfur. Thereafter, the UN-AU mediation continued in Doha, Qatar, in 2009. During the mediation the international community facilitated the establishment of an umbrella group for the rebels called the Liberation and Justice Movement (LJM) in order to overcome the fragmentation of rebel groups, but this initiative was rejected by many of the groups (International Crisis Group 2014). Despite this, the Doha Document for Peace in Darfur (DDPD) was adopted in May 2011. On 14 July 2011, the government of Sudan and LJM signed a protocol highlighting their commitment to the DDPD. In September 2012, JEM was split and a splinter group led by Mohamed Bashir Ahmed (JEM-Bashir) was created, which signed the DDPD in Doha in March 2013 (*Sudan Tribune* 2013). However, to date the other JEM faction and the two SLM groups have not signed any agreement with the government of Sudan.

The peace negotiations for Darfur did not persuade the main rebel groups and the majority of the Darfur population, who continue to boycott these processes and initiatives. The peace negotiations thus have failed to address the communal conflict and to build trust among the parties involved in the conflict. More devastating is the lack of implementation of the agreements by the government. This has deteriorated the trust of the

rebel groups as well as the Darfur population and has contributed to the continued intractability of the situation.

On 23 March 2016, the government of Sudan and opposition forces signed an agreement for inclusive dialogue to serve as a practical way forward towards ensuring progress in the negotiations on cessation and permanent ceasefire in the conflict (African Union 2016a). While this is not the same as a peace agreement, and while it was only the first step in a long process towards the resolution of this intractable conflict, perhaps this presents renewed hope for an AU intervention. While in 2016 there were shocking accusations of the use of chemical weapons by the government on communities in Darfur (Al Jezeera 2016), by 2017 the 'level of armed hostilities in Darfur has continued to be significantly lower than in previous years' mainly due to a major military victory of the Sudanese government in September 2016 (Security Council Report 2017). However, the inclusive dialogue process, which came to an end in October 2016, was rejected by a large opposition coalition, including the leader of JEM who stated that this 'inclusive dialogue' in fact excludes some opposition and civil society groups and has resulted in a partial political process (*Sudan Tribune* 2016), again highlighting the ever-divided nature of any processes undertaken in relation to Darfur.

5   Conclusion on Darfur

Following the path of intractability discussed earlier, the conflict in Darfur has passed the eruption, escalation, failed peace-keeping and institutionalisation phases and, as such, continues to be an intractable conflict. The military victory of the Sudanese government over some of the rebel groups in Darfur in 2017 has seen the start of a phase of de-escalation of violence in the area. However, this ceasefire is not the result of sustainable transitional justice, and it thus remains to be seen whether it will be possible to go from there into the recovery phase – the final phase in the resolution of an intractable conflict – or whether it is just a momentary lull, whereafter the rebel forces will regain their strength and the conflict will continue. It is clear from the discussion above that single efforts by individual actors have failed to resolve the conflict, and so have the unco-ordinated efforts of the various actors. Despite the variety of international responses as well as various mechanisms to resolve the conflict in Darfur, the situation remains unresolved. The international responses have failed due to a lack of co-ordination at the regional and global level. Furthermore, the attempted responses have neglected the civilian population, who continue to face displacement and a lack of access to basic services, and who are not fully integrated into the discussions on peace, such as the inclusive dialogue. The international community has thus failed to deliver on its responsibility to protect the population in Darfur (De Waal 2007: 1054). Furthermore, because the current ceasefire is the result of a military victory, this means that one of the main reasons why the conflict arose in the first place, namely, the marginalisation of the people of Darfur as well as scarce food resources, has not been addressed, with the result that most displaced people have not been able to return home. The conflict should be addressed in a comprehensive rather than piecemeal manner (Slim 2004). Therefore, more co-ordination and partnership among the various actors at the regional and global levels is necessary. Further, while it is important that the negotiation should give

priority to ceasefire agreements to end violence, the international community should also focus on strong negotiations that address the root causes of the conflict (Slim 2004). The start of the resolution of this intractable conflict may have taken place with almost a year of vastly lower conflict rates. However, the international community cannot allow itself to be lulled into a false sense of security. The decision by the UN to remove almost a third of its peace-keeping troops at the end of 2017 may upset this delicate balance (Sengupta (2017). The lack of trust among the opposing groups also remains. How can the international community work together to contribute to sustainable peace in Darfur? It may be possible that valuable lessons may be learnt from the approach of the international community to the conflict in neighbouring South Sudan.

6 South Sudan crisis: A regional and global complementary response

6.1 Historical background to the South Sudan crisis

The history of conflict in South Sudan can be traced to pre-independence Sudan, particularly the sunset years of colonialism (Kebbede 1997: 27). The mostly Christian south, which had been administered separately from Juba during colonial times, expressed fear that unification with the predominantly Muslim Arab north following independence would result in its marginalisation (Peace Direct 2015). These concerns were ignored, and Sudan declared an independent state on 1 January 1956 incorporating the south with no federal arrangement (Kebbede 1997: 20). The southerners were soon vindicated when the new Khartoum government pursued a policy of neglect and exclusion immediately after independence. Thus, the discontent that began on the eve of independence soon escalated to a civil war that lasted until 1972 when the Addis Ababa Agreement on the Problem of South Sudan was signed on 27 February 1972 ushering in a federal arrangement (Shinn 2005: 242). This, however, lasted only 11 years and war again broke out in 1983 when the Khartoum government introduced Shari'a laws in the south, divided the south into three regions and dissolved the regional assembly (Young 2012). This was propounded by the discovery of oil in 1979, and the proceeds were channelled to the north (Kebbede 1997: 7).

This war lasted until 6 January 2005, when the Comprehensive Peace Agreement (CPA) was signed (United Nations Mission in South Sudan 2004) under the auspices of the Inter-Governmental Authority on Development (IGAD), an eight-nation Horn of Africa regional economic community. By the time the CPA was signed, the several rebel groups in the south had coalesced into one formation, the Sudanese People's Liberation Movement/Army (SPLM/A) (African Union 2014a: para 41). In line with the CPA, South Sudan gained autonomy on 9 July 2005 under Dr John Garang as President of South Sudan and First Vice-President of Sudan. However, Dr Garang died in a helicopter crash on 30 July 2005 and was succeeded by his deputy, Salva Kiir, who led South Sudan to independence on 9 July 2011 following a referendum. Dr Riek Machar became the Deputy President.

6.2   Socio-political context of the current crisis

Of relevance to the current crisis is the fact that in 1991, a faction led by Dr Riek Machar split from the SPLM/A and aligned with President Bashir's Khartoum government only to rejoin in 2002 towards the conclusion of the peace process (Akol 2003: 76; Aljazeera 2014). A culmination of the internal ideological wrangles within the SPLM/A that had by this time taken ethnic dimensions between the Nuer and Dinka, this split has been considered as one of the events that left deep scars within the SPLM/A which it carried into independence (The Sudd Institute 2014; African Union 2014a: paras 42-44). This is particularly so since the SPLM/A pecking order had to be rearranged to accommodate Dr Machar's return, a fact that caused a lot of unease (African Union 2014a: para 50). This unease was to pronounce itself progressively after the untimely death of Dr Garang when Salva Kiir became President following the 2010 elections with Dr Machar as his deputy (The Sudd Institute 2014). The relationship between the two is reported to have been frosty with the two factions running something akin to parallel governments (African Union 2014a: paras 50-52). These political divisions sown over the decades have since taken ethnic undertones, thereby creating divisions beyond the political class to the general population.

Commentators have also pointed out that the CPA largely ignored democratisation in the rush to achieve and sustain long overdue peace, resulting in cosmetic peace (LeRiche & Arnold 2013: 36; 132). As a result, the world allowed the government of South Sudan significant leeway when it failed to show commitment to democratic principles for the new nation. The government of Salva Kiir utterly failed to strengthen institutions of democracy (African Union 2014a: para 45). This failure saw historical divisions go unaddressed, and healing and reconciliation take a back seat in the new nation.

Even though the events of 15 December 2013 triggered the violence, feelings of discontent at the government's failure to translate the CPA into a tangible development initiative already were rife amongst the populace (African Union 2014a: para 70). Chiefly, the government miserably miscalculated by failing to initiate a much-needed healing and reconciliation process that would have helped the young nation embrace the past and forge a path to sustainable development (Jok 2015: 8). To compound this failure, the government failed to take advantage of the vast oil resources in the country to address years of marginalisation and underdevelopment resulting in high levels of poverty, unemployment and frustration (African Union 2014a: paras 70-80). Instead, corruption was rife in the young government leading to weak national institutions, mismanagement of natural resources and nepotism with the end result of an inability to provide basic social services (De Vries & Justin 2014: 3). This compounded public frustration which only required a political trigger.

Things took a turn for the worse in July 2013 when President Kiir dismissed Dr Machar together with a number of rivals from his cabinet (Johnson 2014; African Union 2014a: para 63). Violence eventually broke out on 15 December 2013 when President Kiir accused Dr Machar of an attempted *coup* and attempted to arrest him and disarm members of the Presidential Guard from Machar's Nuer ethnic extraction (De Vries & Justin 2014: 6). The AU Commission of Inquiry on South Sudan

(AUCISS), however, has determined that there was no evidence of any such *coup* attempt (African Union 2014a: para 68), which leads to the conclusion that this was a purely politically-motivated decision on the part of President Kiir to remove a democratically-elected deputy from a different ethnic background, and whom, based on the co-operation of his faction with the government of Sudan, he would have seen as an outsider, in an attempt to get rid of possible rivals and opposition to his government.

6.3   IGAD-led peace process

Being custodians of the CPA and out of a sense of responsibility for the new nation's well-being, IGAD swiftly responded to the dismissal of Dr Machar by sending a delegation of its foreign ministers to Juba. The delegation, accompanied by AU and UN representatives, assessed the situation and recommended IGAD-led peace negotiations to commence within ten days and called for the continued support of the AU and the UN (Inter-Governmental Authority on Development 2013a). The UNSC responded to this call on 24 December 2013 through Resolution 2132 (2013) by increasing the overall force levels of the United Nations Mission in South Sudan (UNMISS) to 12 500 to protect civilians at risk and deal with the rapidly deteriorating humanitarian situation. This then shifted the mandate of the mission from providing capacity building to civilian protection. The AU, on the other hand, directed the AU Commission to support the IGAD-led peace process (African Union 2013a). The IGAD Heads of State and Government (IGAD-HoS) resolved on 27 December 2013 to immediately appoint General Lazarus Sumbeiywo of Kenya and Ambassador Seyoum Mesfin of Ethiopia to lead mediation efforts between the rival South Sudan factions and further called upon the AU and UN to complement the IGAD-led peace process and respond to the unfolding humanitarian crisis (Inter-Governmental Authority on Development 2013b). Complementarity in this sense thus means that the initiative and the lead is taken by one body, IGAD, and that other international bodies, instead of attempting completely separate and unrelated processes to address the same conflict, or having multiple organisations who all try to take the lead, support the initiative of a body that is closer to the ground, thus lending legitimacy to the process and also ensuring that the intervention has the available resources to succeed. In this regard, because IGAD is made up out of neighbouring countries, they have a particular interest in the stability of any state in their region, hence the swift and effective response. However, such initiatives can only succeed with the backing, not least financially, of bodies such as the UN and AU.

Despite a difficult start, a Cessation of Hostilities Agreement (CoH) was signed by the parties on 23 January 2014 in Addis Ababa, Ethiopia (Inter-Governmental Authority on Development 2014a) which was to be monitored by a ceasefire Monitoring and Verification Mechanism (Inter-Governmental Authority on Development 2014b). The UNSC, through Resolution 2252 (2015), extended the mandate of UNMISS to 30 November 2014 with an extended mandate to support the implementation of the CoH through, *inter alia*, protecting the Monitoring and Verification Mechanism. The mandate of UNMISS has since been extended severally. Despite the CoH and the subsequent Agreement to Resolve the Crisis in South Sudan of 9 May 2014 (Inter-Governmental Authority on Development 2014c), parties showed very little commitment and

hostilities continued (Crisis Group 2015b). This prompted IGAD to threaten collective punitive action on 10 June 2014 directing the parties to honour the 60-day deadline for a peace agreement (Inter-Governmental Authority on Development 2014d). The AU-PSC supported IGAD's position by expressing readiness to impose targeted sanctions upon IGAD's request two days later on 12 June 2014 (African Union 2014b). IGAD and the AU-PSC repeated these threats two months later, this time providing a 45-day timeline for an agreement for a transitional government on national unity (Inter-Governmental Authority on Development 2014e). However, an agreement was not arrived at within the deadline, and the IGAD-HoS on 7 November 2014 during its Assembly of HoS invited IGAD member states to impose collective asset freezes, travel bans and arms embargos against the warring parties, and called on the AU-PSC and UNSC to help with the implementation.

Jolted by the possibility of regional sanctions, the parties signed the Rededication and Implementation Modalities for the CoH on 9 November 2014, basically reaffirming their commitment to implementing the CoH (Inter-Governmental Authority on Development 2014f). With the process back on track, the parties signed the IGAD-mediated Areas of Agreement of the Establishment of the Transitional Government of National Unity (TGNU) in the Republic of South Sudan on 1 February 2015 (Inter-Governmental Authority on Development 2015a). The momentum, however, quickly dissipated prompting the UNSC to unanimously resolve on 3 March 2015 through Resolution 2206 (2015) to designate those frustrating the peace process for imposition of sanctions. This was followed by IGAD's restructuring of its peace efforts by officially roping in the AU, UN, IGAD Partners Forum, China, the US, UK, EU and Norway to form IGAD-Plus as the new driving force (Crisis Group 2015b). The AU-PSC also formally requested the UN to urgently designate individuals under its Resolution 2206 (2015) for imposition of sanctions (African Union 2015a), which request the UNSC honoured by imposing sanctions on high-ranking officials of the SPLA and the SPLM/A-in-Opposition, three from each side (United Nations 2015).

6.4 African Union Commission of Inquiry on South Sudan

While the peace process was ongoing, a simultaneous and equally vital process was also underway. On 30 December 2013, and for the first time in the history of the AU, and indeed that of its predecessor, the OAU, the AU directed the AU Commission and the African Commission to establish a commission of inquiry, the AU Commission of Inquiry on South Sudan (AUCISS), to investigate human rights violations and other abuses during the South Sudan conflict and to make recommendations for ensuring accountability, reconciliation and healing (African Union 2013a).

The above decision is also significant for the reason that the AU directed the AU Commission to work with the African Commission on this despite the fact that South Sudan was at the time the only AU member not party to the African Charter, which created the African Commission. Had South Sudan been a party to the African Charter, the African Commission would have been in a position to undertake a fact-finding mission to South Sudan such as the one to Darfur discussed above. The Commission would also have been able to entertain communications concerning South Sudan's failure to address the historical human rights violations from the

liberation struggle, the effects of which sowed the seeds for the current conflict. Hopefully, its recommendations would have helped avert the relapse into violence.

The AUCISS, however, stepped in where the African Commission had no jurisdiction, completed its investigations and presented its final report on 24 July 2015 to the AU-PSC (African Union 2015). The AU-PSC felt that it would not be prudent to immediately publish the report in light of the ongoing IGAD peace process. The final report of AUCISS was released on 26 September 2015. It identified the underlying causes of the conflict and implicated both parties in wide-spread and systematic human rights abuses, including massacres, the recruitment of child soldiers and sexual violence against women. Finally, the report recommended addressing the economic sources of the conflict; justice for the victims through institutional reform; reconciliation and holding accountable those with the greatest responsibility for the atrocities; and disarmament, demobilisation and reintegration of the various armed groups

6.5   Peace Agreement on the Resolution of the Conflict in the Republic of South Sudan

On 17 August 2015 the IGAD-Plus mediation produced the Agreement on the Resolution of the Conflict in the Republic of South Sudan (Peace Agreement) (United Nations Mission in South Sudan 2015). The Peace Agreement provides for a transitional government of national unity (TGNU) with President Salva Kiir remaining President and the rebel faction of Dr Machar selecting the First Vice-President, ostensibly Dr Riek Machar. The TGNU was to last for 30 months, at the end of which period elections were to be held. Further, the Peace Agreement established a permanent ceasefire, the unification of forces and a multi-stakeholder Joint Monitoring and Evaluation Commission (JMEC) to monitor its implementation. Significantly, the agreement also provided for the Hybrid Court for South Sudan (Hybrid Court) to be established by the AU with jurisdiction to prosecute those responsible for international crimes committed during the conflict. Both parties signed the Peace Agreement and, to complement its implementation, the UNSC on 9 October 2015 extended the mandate of UNMISS with an enhanced force ceiling of 13 000 through Resolutions 2241 (2015) and 2252 (2015).

The delayed arrival of Dr Machar in the capital, Juba, initially raised concerns over commitment to the peace process and delayed the swearing in of the TGNU. As a result, the UNSC, through Resolution 2280 (2016) of 7 April 2016, renewed the sanctions it had earlier imposed in a bid to increase the pressure on the parties to expedite the formation of the TGNU. Dr Machar eventually arrived in Juba on 26 April 2016 and was sworn in as First Vice-President (United Nations News Centre 2016).

6.6   Healing and reconciliation

As discussed above, the lack of a healing and reconciliation process is one of the underlying causes of the current crisis in South Sudan. In recognition, the AUCISS recommended that for sustainable peace to be achieved in South Sudan, a healing and reconciliation process ought to be undertaken with urgency to address divisions and injustices of the

liberation struggle which have been considerably deepened by the current conflict (African Union 2014a: cap IV).

There are growing AU efforts towards a continental framework on healing and reconciliation as an appropriate transitional justice option for post-conflict states. Thus far, the AU has developed the Policy on Post-Conflict Reconstruction and Development, and commissioned a report on the role of national reconciliation in peace-building and development (African Union 2013b). The AU Panel of the Wise has also documented the use of justice and reconciliation in African (African Union 2013c). The African Commission passed Resolution 235 on transitional justice in Africa on 23 April 2013 in which it considered the Transitional Justice Policy Framework by the AU and tasked a commissioner to prepare a study on transitional justice in Africa, one of the objectives being to determine the role of the African Commission in implementing the AU framework and how the Commission can assist in the transitional justice system in Africa. The study was extended for a further two years through Resolution 278, and the report is due in May 2016 for consideration by the African Commission.

AUCISS recommended the establishment of a truth and reconciliation commission modelled along the AU's recommendation of infusing traditional forms of reconciliation and accountability (African Union 2014a: paras 977-979; African Union 2013b: para 12). This recommendation has been incorporated in the Peace Agreement which provides for the establishment of the Commission for Truth, Reconciliation and Healing (CTRH) to investigate human rights and other violations dating back to a determined period since the Sudan civil war with a view to promoting truth, healing and reconciliation (United Nations Mission in South Sudan 2015: cap V). In this regard, the CTRH is obliged to adopt best practices from Africa and beyond. This peace and reconciliation process in South Sudan, therefore, not only has AU goodwill, but also substantial AU expert material to work with.

6.7   Conclusion on Sudan

As a postscript, it is important to note that the crisis in South Sudan is far from over. Subsequent to the presentation of this paper, Kiir and Machar again fell out in July 2016, leading to Machar again fleeing South Sudan and controversially being replaced by Taban Deng Gai as First Vice-President. These developments have made the situation even more fragile. Fighting between government forces and several armed opposition groups, some loyal to Machar, still rages. Once again, IGAD is leading a process it has dubbed the High Level Revitalisation Forum for the Implementation of the Peace Agreement which aims at achieving recommitment to the 2015 Peace Agreement. At the same time, the IGAD heads of state, the AU and the UNSC have co-operated in marshalling a Regional Protection Force to secure Juba and free up UN peacekeepers to enable them to spread out to the countryside.

The progress made in South Sudan before the event of July 2016 is attributable to the co-operation and complementarity exercised by the IGAD, the AU, the UN and other stakeholders. While this initial success may appear to have been eroded by events post-July 2016, significant hope remains in the IGAD-led process of revitalising the Peace Agreement, backed by the AU and the UN. As this process slowly gains traction, it is

important to note the transitional justice mechanisms provided for under the Peace Agreement and the progress, if any, so far made in their implementation. Notably, the Peace Agreement provides for the establishment of an AU-mandated hybrid court to investigate and prosecute those responsible for international crimes committed during the conflict (United Nations Mission in South Sudan 2015: cap V). The UN Human Rights Office (UNHRO) released a report on 10 March 2016 confirming the massive human rights violations highlighted in the AUCISS report and recommending to the UNSC to consider referring the matter of South Sudan to the ICC should the AU fail to expeditiously establish the hybrid court (United Nations Human Rights Council 2016b). The same concerns have been raised by the Commission on Human Rights in South Sudan established by the UN Human Rights Council in March 2016. The above reports and recommendations are quite significant as they serve to impress upon the AU the urgency of establishing the hybrid court and ensuring its functional efficiency. The AU should not consider this a threat, but should rather embrace the unique opportunity to spearhead an actual African solution towards South Sudan's accountability deficit (Nyagoah 2016). This will serve as a welcome departure from the prevailing state of impunity around the continent to which the AU seems blind. The AU has since made some progress in this regard and drafted the statute for the hybrid court, which statute is currently being considered by the transitional government of South Sudan. However, while the Peace Agreement requires the South Sudanese Parliament to enact the statute, the AU can invoke its powers under article 4(h) of its Constitutive Act and establish the court should South Sudan fail to co-operate expeditiously. The above provision empowers the AU to intervene in a member state in the event of international crimes.

The co-ordination of responses between IGAD, the AU and the UN yielded some degree of success before July 2016. Hopefully, if the same co-operation is afforded to IGAD's latest revitalised efforts, sustainable solutions will be found to South Sudan's complex situation. The continued goodwill of all these actors and the spirit of good faith, mutual respect, co-operation and complementarity are necessary to ensure that South Sudan recommits to the Peace Agreement, co-operates with the hybrid court and ensures the effective operation of the CTRH and domestic traditional justice efforts in order to deliver justice to victims of this senseless conflict and nurture sustainable peace and stability.

7   Conclusion and lessons learnt

The article sought to explore the intractable human rights situation in Sudan and the potential of the current South Sudan crisis to become an intractable human rights situation. In this regard, the article has compared the international interventions and exposed the major points of divergence between the responses in the two situations. While international efforts by different actors, such as the UN and the AU, to solve the Darfur crisis have been largely unco-ordinated, the response to the South Sudanese crisis has been a co-ordinated effort by the sub-regional bloc IGAD, the AU, the UN and the international community in general. The result has been that, while suspicion and a lack of trust between the various stakeholders in Darfur have resulted in the situation becoming intractable with no foreseeable solution, the co-ordination and complementarity in

stakeholders' responses to South Sudan initially resulted in a fragile ceasefire, the formation of a unity government and a shaky beginning of a process to accountability, peace, healing and reconciliation.

Intractable situations, however, can be resolved. While the most effective way is to have preventive policies to prevent the occurrence of intractable conflict, Darfur has long passed that stage. In the case of Darfur, the aim should be to interrupt and try to reduce the intractability. In addressing this, parties should first reach an agreement to permanently end the violence, instead of the current unstable situation where a ceasefire was imposed by the government through military victory. This does not necessarily mean that the situation has been resolved, but it can be reduced while negotiations are ongoing. South Sudan served as a good example of how this could work. A good step in this regard would be for the government of Sudan to stop its support for militia groups taking part in the conflict; to support a demilitarisation of the region and a de-escalation of hostilities. Second, the effort of stakeholders, both inter-governmental and non-governmental organisations, should focus on the development of peace to deinstitutionalise the conflict, that is, to provide an alternative livelihood for those who are the front warriors. In order to address the root cause of the problem and achieve healing, the parties involved in the conflict as well as third parties should aim at policies that can address the grievances that led to the conflict in the first place.

These are processes which to date have not received sufficient attention in the Darfur crisis. The ICC process has been stalled, and even if it were to go ahead, a criminal prosecution may ensure accountability to some extent for those in the highest office, but it would not bring healing and reconciliation to the nation as a whole. The suggestion made above that a comprehensive justice and reconciliation process be set up through the establishment of a special tribunal, in conjunction with a truth and reconciliation commission and a reparations mechanism, may go some way to seeing a consolidation of the dividends of the ceasefire. These efforts, however, can be achieved only if all stakeholders are on board, and given the mistrust which continues to exist between civilians and rebel groups, on the one hand, and the government, on the other, as well as the continued failure of the joint AU-UN initiatives to bring about any real change, this may be a long shot in the case of Darfur. However, a process similar to that in South Sudan, which is led by a sub-regional body with the support of the larger international community, may be the best way to proceed. Such negotiations, however, would have to make a greater effort to ensure that all concerned feel included in the process, and that the outcome results in material improvements for those on the ground.

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