

AU Pushes for Hybrid Courts

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African Union explores ways in which local courts could bring justice to Darfur, but critics warn this may be impractical. By Tajeldin Abdhalla Adam, Assadig Mustafa Zakaria Musa and Katy Glassborow in Hilversum and Blake Evans-Pritchard in The Hague

African Union representatives have been meeting officials in Khartoum and Darfur to discuss whether local justice can be implemented on the ground, despite fears that the Sudanese legal system is not up to the task.

An AU report published at the end of last year recommended establishing a new hybrid court system, consisting of both local and foreign judges, in order to prosecute perpetrators of war crimes in Darfur.

This report represented an attempt by the AU to bridge the gap between those who doubt the capability of local Sudanese courts and government officials who remain suspicious of international involvement.

A new AU panel is now looking at how these recommendations can be turned into policy on the ground.

Florence Mumba from Zambia, who helped to draft the original AU report, highlighted the importance of supporting justice at the local level.

"It is better to hold trials inside the country [rather than the Hague], where the crimes are committed, in order to show victims that justice is being done and to educate the people about what the international community is condemning," she said.

But challenges remain. Most significantly, Sudanese president Omar al-Bashir, himself wanted for war crimes by the International Criminal Court, ICC, has repeatedly stressed that he does not want any international involvement in war crimes tribunals. This would also rule out the role that hybrid courts could play.

And many Darfuris remain deeply suspicious of local justice, claiming that the courts are effectively controlled by the government, and therefore favour international engagement in the justice process.

Christopher Hall, a senior legal adviser for Amnesty International, who describes the Sudanese legal system as a sham, is sceptical that a hybrid system of justice would work.

"If you look at the current record of Sudan's courts, it will be extremely difficult to develop an effective hybrid system," Hall said. "At the moment, Sudan is not cooperating with the ICC to arrest anyone. What evidence is there that they would cooperate any more with a hybrid court?"

Hall's remarks point to what many commentators see as one of the main flaws in trying to introduce hybrid courts into Sudan. Now that the ICC has charged the country's president with seven counts of war crimes and crimes against humanity, Khartoum has become even more openly hostile towards the court.

Salih Osman, a lawyer from Darfur, notes that in June 2005, three months after the UN referred Sudan to the ICC, there was some attempt to establish a special court to try those responsible for Darfur crimes.

But, Osman says, the court ultimately proved to be ineffectual and was simply an attempt by the government to show the international community that they were doing something about the atrocities in Darfur in a bid to stave off ICC intervention.

"The mechanisms set up by the government of Sudan failed to deliver justice," he said. "The court was not independent and international standards were not applied."

In total, 30 cases were brought before the special court, resulting in ten convictions. Charges mainly included robbery and murder, although there was also one case of rape.

"These charges do not reflect the severity of crimes committed in Darfur," Osman said. "Nothing was mentioned about the systematic attacks on civilians or their forcible deportation."

The special court is now no longer in operation, Osman said, adding that “nothing has really changed”.

“For hybrid courts to work, there needs to be a lot more demonstration of willingness on the part of the government of Sudan that they'd be committed to this as a genuine process of accountability,” said Caitlin Reiger, deputy director of the prosecution department at the International Center for Traditional Justice, ICTJ, an NGO. “The technical details can be worked out a lot more easily.”

Reiger says that the success or failure of hybrid courts in other regions of the world has almost always depended on the support they have from the local administration.

“In Sierra Leone, the request was unambiguous,” she said. “The UN came in and assisted and there has been a fairly high level of cooperation throughout. In Cambodia, it's been far more politically fraught, partly because of the ambivalence of the national [government] about whether they really want this court or not.”

Reiger adds that a hybrid court for Sudan would “open a whole can of worms” as to whether proceedings in the country would be able to take the place of the ICC. Under the Rome Statute, the ICC should only take on cases where national jurisdictions are unable or unwilling to prosecute.

Claudia Perdomo, an ICC spokeswoman, declined to comment about the feasibility of hybrid courts in Sudan.

“At this stage, Sudan remains under our jurisdiction,” she said. “The validity of hybrid courts would be a matter for ICC judges to decide. Any comment about them at this stage would simply be speculation.”

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