The African Union High-Level Implementation Panel (AUHIP)

– Four Years of Existence –
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Abbreviations

ASRF  Alliance of Sudan Revolutionary Front
AU    African Union
AUC   African Union Commission
AUPD  African Union High-Level Panel on Darfur
AUHIP African Union High-Level Implementation Panel
AUPSC African Union Peace and Security Council
AUPSD African Union Peace and Security Department
CPA   Comprehensive Peace Agreement
DDPD  Doha Document for Peace in Darfur
GoS   Government of Sudan
HoA   Horn of Africa
ICC   International Criminal Court
IDPs  Internally Displaced Persons
IGAD  Intergovernmental Authority on Development
LJM   Liberation and Justice Movement
NCP   National Congress Party
NSPD  New Strategy for Peace in Darfur
PoA   Programme of Action
PoW   Panel of the Wise
SCCED Special Criminal Court on the Events in Darfur
SPLM  Sudan People’s Liberation Movement
SPLM-N Sudan People’s Liberation Movement-North
UN    United Nations Organization
UNAMID African Union and United Nations Hybrid operation in Darfur
UNISFA United Nations Interim Security Force for Abyei
UNSC  United Nations Security Council
Introduction

29 October 2013 marked the fourth anniversary since the adoption of the report\(^1\) of the African Union High-Level Panel on Darfur (AUPD) by the African Union Peace and Security Council (AUPSC). Believed to be the most important AU political and intellectual assessment of the different dimensions of the armed conflict in Darfur and the overall political unrest in Sudan, the AUPD report clearly spells out the root causes underneath Sudan’s political difficulties as manifested by the armed conflict in Darfur. A product of \textit{in situ} study and action-oriented analysis of the socio-economic and political power structure in Sudan, the AUPD's report advanced comprehensive and balanced recommendations vital for addressing the situation in that country. Although, the AUPD report and its recommendations were not widely publicized outside the AU and United Nations (UN) institutions, they have been hailed by African diplomats, policy-makers and intellectuals, who were able to study them, as a blue print for justice, peace, reconciliation and political stability in Sudan. Because of their relevance and authentic nature, the AUPSC went as far as deciding that the AUPD's recommendations “... shall be the basis of the AU engagement in Darfur and its interaction with international partners.”\(^2\)

Alas the AUPD’s report, which is no longer accessible on the AU webpage at the time of the drafting of this Briefing Paper, remains an excellent document in the AU archives but valueless on the ground in Darfur and Sudan. This is because little efforts have been made to translate the report and its recommendations into action, particularly the recommendations on justice and healing, which are the object of the mandate of the AUPD. Inability to implement the widely celebrated recommendations is due to a lack of understanding, willingness and interest on the part of the Government of Sudan (GoS). Nevertheless, the AU showed no sense of urgency to see that the recommendations of its own Panel on Darfur were implemented and to exercise pressure on the GoS to that effect. Equally disappointing is the weak response of the UN and other peace partners of Sudan to exert the necessary pressure on the GoS and AU and ensure that implementation of the report’s provisions are prominent in the AU’s and Sudan’s agendas. The lack of interest and willingness to implement the

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AUPD recommendations left the mechanism put in place to conduct the implementation process i.e. the AU High-Level Implementation Panel (AUHIP), without options but to craft secondary areas of action as its *raison d'être*. Calls of the Sudanese and Sudan-focused civil society on the AUPSC to refocus efforts of AUHIP on the implementation of the AUPD's recommendations have not been heeded so far.\textsuperscript{3}

A significant development that would affect the AUHIP's future work is that in September 2013, the AUPSC decided to extend the mandate of AUHIP to cover the situation in the Horn of Africa (HoA). This key decision was reached without proper review of the AUHIP’s work, achievements and the challenges faced so far. A major area of concern is the fact that the expansion of the AUHIP mandate was decided within a very short timeframe with limited consultation, which indicates serious shortcomings in AUPSC’s supervisory role on AUHIP work. Counterproductive and irresponsive to the grievances of the population in both Sudan and the Republic of South Sudan, the extension of the mandate will, no doubt, hinder AUHIP in delivering its mandate. In reality such expansion of the mandate is expected to profoundly weaken the AUHIP’s work on Sudan and its ability to implement the AUPD recommendations.

Expanding the mandate of the AUHIP to deal with matters such as sub-regional economic cooperation, cross-border terrorism and religious fundamentalism in the HoA – as has been nuanced by informed sources in the region – will lead to a duplication of efforts and eventually weaken the AUHIP as well as regional and international mechanisms and initiative currently addressing these matters. This trend would ultimately shift attention of AUHIP from close follow-up of the implementation of existing agreements on the outstanding post-independence issues between Sudan and the Republic of South Sudan, including the delicate situation in Abyei, the demarcation of the international borders in addition to the disputed and claimed areas. Whatever the reasons, the expansion of the AUHIP’s mandate to cover the HoA dilutes the Panel’s mandate and the responsibility of its members and ultimately renders it practically impossible to effectively address the complicated and urgent questions of justice, peace, conflict prevention and democratic transformation in Sudan, issues that have been at the heart of the AUPD and AUHIP mandates since their inception.

The AU has indeed made tremendous efforts and spent much time to address the situation in Sudan as it represents a threat to regional and international peace and security. Sudan's long history of armed conflicts, humanitarian crisis and political unrest has been by far a major concern of the continental Organization since its creation in 2002. Measures adopted by the AU political decision-making bodies, especially the Assembly of Heads of State and Government and the AUPSC, play very important roles in engaging the GoS in permanent dialogue and in maintaining the momentum for collective regional action.

The AU's efforts and leadership in addressing the situation in Sudan are expected to continue for some years to come. To crown its efforts on Sudan with success, the AU must carry out regular audit of its previous and on-going interventions to address the shortcomings, eliminate loopholes and strengthen the success achieved. It is also crucial that measures taken by the AU organs on the situation in Sudan are consistent, relevant and reflective of the progress made on the ground, and above all, the AU needs to employ capable and credible enforcement and follow-up mechanisms. Without through audits of the progress of its work and the establishment of capable follow-up mechanisms and unless some innovative regional approach is designed, the implementation of the AUPD recommendations as well as the AU's overall intervention in this complicated situation would remain elusive without any future.

This DRDC Briefing Paper provides an analysis of the major areas of concern in the work of the AUHIP. It outlines areas of progress and weaknesses and recommends actions to be undertaken in order to give effect to some of the major measures agreed upon by the AU institutions, especially the recommendations of the AUPD, which are yet to be fully observed and implemented.

Abdelbagi Jibril
Executive Director
**General Observations**

The first task of two key provisions in the AUHIP mandate has been the follow-up of the implementation of the recommendations made by AUPD on the situation in Darfur. The main recommendations in this provision addressed, among other things, the questions of justice, accountability and combating impunity, reconciliation, healing, conflict prevention and democratic transformation in Sudan. As far as this key provision is concerned, neither the GoS nor the AUHIP made any meaningful implementation efforts proportionate to the urgency of the situation Darfur that can be reported in this Briefing Paper. The increase in the number of internally displaced persons (IDPs) in Darfur and the overall collapse of the security situation in the region during the last four years are the best reminders of the urgency of the situation that the AUHIP was mandated to address.

As a reminder, the idea of creating the AUPD had been discussed in the AU power circles for the first time as early as March 2005, following the release of the report of the International Commission of Inquiry on Darfur and the decision of the UN Security Council (UNSC) to refer the situation prevailing in Darfur to the International Criminal Court (ICC). However, no action was taken in this respect until 21 July 2008, when the AUPSC decided to create the AUPD at its 142\textsuperscript{nd} Meeting. GoS, as the primary concerned party, welcomed the AUPD efforts when in April 2009 the Panel started to look into issues of justice and reconciliation in Darfur and to recommend measures on accountability and combating impunity. The cooperation extended to AUPD by GoS was commendable as it allowed members of the Panel to meet and consult with a wide array of Sudanese actors, including government officials, opposition political parties, Darfur insurgent movements, IDPs, legal experts, pastoralists, women's groups and independent civil society in Darfur and Sudan at large.

Nevertheless, the belated and visibly reactive response of the AUPSC to investigating the situation in Darfur in addition to the initial fervent cooperation extended by GoS to the AUPD work consolidated the perceptions held by some observers that the AU move in authorising the AUPD to conduct inquiry on the situation in Darfur, which followed the issue of the arrest warrant against President Omar Al-Bashir by the ICC, was essentially meant to find him a

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way out of the ICC process. The growing neglect of the AUPD report within the AU, the uncertainty that characterized the AUHIP’s work in following up implementation of the AUPD’s recommendations as well as the indecisive nature of the AUPSC’s intervention vis à vis the situation in Sudan and South Sudan, widely confirmed the accuracy of this early finding. Sudan’s support for the AUPD’s work dwindled when the Panel assumed no position against the ICC process. The GoS, therefore, made no public pronouncement or expressed official position about the content of the AUPD’s report. It also remained silent on any plans to respect the decision of the African Heads of State and Government adopted on 29 October 2009 and to implement the AUPD recommendations. However, behind closed doors; the GoS fiercely opposed the contents of the AUPD report and exercised pressure on members of the Panel not to pursue its implementation. On some rare occasions, government officials and pro-government media commentators publicly criticized the report, especially the recommendations on the establishment of a hybrid court and the call for judicial reform in Sudan, labeling these recommendations as an assault against the independent judiciary in the country and a blatant interference in Sudan’s sovereign internal affairs.

The situation of no-war and no-peace prevailing between Sudan and the Republic of South Sudan is of too great of an importance to be overlooked by the regional or the international community. Averting armed conflict between the two sovereign States and creating conditions conducive to their existence as viable States that live side by side in a peaceful neighborhood is, therefore, a legitimate concern of the AU and its different institutions and mechanisms, including the AUHIP. Efforts of the Panel to bring together the leaders of the two countries in order to strike a political deal that averts war were encouraged by all stakeholders and partners. However, the experience of the AUHIP involvement in facilitating a final settlement of the outstanding issues between Sudan and South Sudan during the last four years reveals that close follow-up of the situation between the two countries would be better served by direct mediation led by the Intergovernmental Authority on Development “IGAD” with the

6 The AUPD’s mandate was established one week following the 14 July 2008 application of Mr. Luis Moreno-Ocampo, Chief Prosecutor of the International Criminal Court (ICC) for a warrant of arrest against President Omar Al-Bashir for the crime of genocide, war crimes and crimes against humanity. For about 9 months the Panel remained idle and it started its work in April 2009 only a few weeks after Pre-Trial Chamber One of the ICC issued a warrant of arrest against President Al-Bashir on 4 March 2009. Op. cit note 2
7 Report of the AUPD, (PSC/AHG/2(CCVII), Para. 320, pages 86 and 87
8 The Intergovernmental Authority on Development (IGAD) is the main sub-regional grouping that brings together countries of the Horn of Africa. It was established in 1996 to supersede the Intergovernmental Authority on Drought and Development (IGADD). IGAD regroups eight countries Djibouti, Ethiopia, Eritrea (suspended), Kenya, Somalia, Sudan, South Sudan and Uganda. IGAD’s mandate covers issues of trade and socio-economic
support of the AUPSC and UNSC. Such an approach would not only free up the AUHIP to focus specifically on implementing the AUPD recommendations and follow up the questions of political transformation in Sudan without being distracted by the situation between Sudan and the Republic of South Sudan, but it would also provide the AUHIP with the necessary complimentary support to its overall work. In addition, direct involvement of the IGAD and its Member States allows them, especially Ethiopia, which is more directly affected by the situation in Sudan and South Sudan, to put more effective pressure on the two sides. It is to be recalled that IGAD has played a vital role in initiating the negotiations that led to the signing of the Comprehensive Peace Agreement (CPA), which ended the war between North and South Sudan in 2005. IGAD is also behind the deployment of the United Nations Interim Security Force for Abyei (UNISFA) with Ethiopia taking leadership in sending troops and also in chairing IGAD for the past five years.

The AUHIP has successfully facilitated negotiations between Sudan and South Sudan and concluded a round of political negotiations with the signing of a series of nine framework agreements in September 2012.\textsuperscript{10} The framework agreements, which dealt with post-secession issues between the two countries, laid out the guiding principles and terms of reference and left the practical aspects, including the specific details of the agreements for elaboration by technical experts and specialised joint committees. The technical committees are also required to supervise the implementation of the signed accords. Another partial success story was the AUHIP’s proposal on the final status of Abyei, which was rejected by GoS but accepted by South Sudan. The AUPSC accepted the proposal on 24 October 2012 and invited UNSC to do likewise. The AUHIP proposal was in fact hailed by AUPSC as “… representing a fair, equitable and workable solution to the dispute between the two countries, which takes into account existing Agreements entered into by the Parties, as well as the needs and interests of the communities on the ground.”\textsuperscript{11}

However, these achievements are yet to yield tangible results on the ground. There is no prospect that full implementation of the agreed upon accords and a change in the situation prevailing between the two countries will be reported anytime soon unless a decisive signal is cooperation, development, environmental protection, humanitarian affairs, peace and regional security. Sudan and South Sudan Full Text of Agreements, World Peace Foundation, \textsuperscript{10} http://sites.tufts.edu/reinventingpeace/files/2012/09/The-Cooperation-Agreement-Between-Sudan-and-South-Sudan0001.pdf
sent by the AU and the world community to the two governments in order to expedite the final settlement. The limited progress made is either because of a lack of cooperation between Sudan and South Sudan in working out the technical details and to start the implementation of the AUHIP-brokered agreements or because of the inability of the AUPSC, in the case of the status of Abyei, to fully endorse the Panel’s proposal and persuade GoS to meet the aspirations of the people of that area in their quest to exercise their inalienable right to self-determination.12

The deadlock on the referendum in Abyei is a good example of the AUPSC inconsistency and weak response in support of the AUHIP’s work. Between 24 April 2012 and September 2013, the AUPSC has repeated its acceptance of the AUHIP’s proposal on the final status of Abyei on five occasions but fell short of fully endorsing it as the final and binding solution. The binding nature of the AUHIP’s proposal on Abyei has been affirmed by the AUPSC in its Communiqué of 24 October 2012. In that Communiqué the AUPSC was categorical that in the event that the two countries fail to reach agreement on the final status of Abyei within six weeks, then it will endorse the AUHIP proposal of 21 September 2012 as final and binding, and would seek endorsement by the UNSC of that proposal.13 During their 7th Annual Consultative Meeting held on 17 October 2013, both the AUPSC and UNSC refrained from endorsing the AUHIP proposal on the final status of Abyei and once again welcomed the commitment of Sudan and South Sudan to implementing the Agreement on Temporary Administrative and Security Arrangements for the Abyei Area, which had been agreed upon on 20 June 2011 and urged them to establish the Abyei Referendum Commission.14

There is no convincing evidence or indicator that the legislations to be promulgated or the institutions to be created on the basis of the administrative arrangements, which were agreed upon in June 2011 as the first step in preparing the ground for the conduct of the referendum in Abyei, will be put in place anytime soon. This unexplained long delay has been observed despite the fact that more than two years have lapsed since the two parties agreed to build these institutions and start working out the preliminary preparatory phases such as the voter eligibility verification, identification, registration etc.

Background of AUPD and AUHIP

On 21 July 2008 the AUPSC adopted decision PSC/MIN/Comm(CXLII), in which it requested that the Chairperson of the AU Commission (AUC) establishes the AUPD. In the words of that decision, the AUPD was to be composed of distinguished Africans of high integrity. Seven African statesmen, scholars and activists were appointed as members of the AUPD under the leadership of former South African President Mr. Thabo Mbeki. The AUPD’s members hailed from different African sub-regions with vast knowledge of governance and human rights issues. The AUPD was essentially mandated to examine the situation in Darfur “…in-depth and submit recommendations to Council on how best the issues of accountability and combating impunity, on the one hand, and reconciliation and healing, on the other could be effectively and comprehensively addressed.”

The creation of the AUPD was welcomed as a demonstration of Africa’s commitment to respect the sanctity of human life and combat the impunity with which serious crimes such as genocide, ethnic cleansing, war crimes and crimes against humanity are committed, which are two of the founding principles enshrined in the AU Constitutive Act. However, the AU’s handling of the developments in Sudan and its intervention that followed the creation of AUDP, demonstrates that the AU’s pronouncements in words were barely matched by deeds. To be precise one could assert that the manipulative attitude of GoS rendered relevant AU actions weak to effectively address the gravity of the situation on the ground. In Communiqué PSC/MIN/Comm(CXLII), the AUPSC requested the UNSC, among other things, to defer the process initiated by the ICC against President Omar Al-Bashir, in accordance with the provisions of Article 16 of the Rome Statute of the ICC. It also drew the attention of AUPD to take into account the work of the AU in promoting reconciliation and healing in Darfur within the context of operative paragraph 5 of UNSC’s Resolution 1593 (2005) through which the UNSC referred the situation in Darfur to the ICC. The impact of the ICC process on the AU’s decision to create the AUPD was again revealed in Decision PSC/PR/Comm(CLXXV) of 5

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March 2009, which was adopted by the AUPSC in response to the 4 March 2009 ruling of Pre-Trial Chamber I of the ICC to arrest President Omar Hassan Al Bashir.  

After six months of thorough investigation and consultations with the Sudanese stakeholders in Darfur and other parts of the country, the AUPD presented a comprehensive 125-page report, entitled "Darfur: The Quest for Peace, Justice and Reconciliation." The report, which is now an official AU document (PSC/AHG/2(CCVII), was adopted by the AUPSC at its 207th Meeting held at the Level of Heads of State and Government in their Summit, which had been convened for this purpose in Abuja on 29 October 2009. The AUPD report was largely considered as a credible and authentic African effort to address the root causes of armed conflicts in Darfur and Sudan, to combat impunity and to ensure that justice is provided for the victims, and finally, to regain peace in Darfur and the country. Evidence gathered in the report was compiled as first hand evidence collected after ardent work, including field visits and investigation among IDPs and other war victims in Darfur, in various parts of Sudan and in neighbouring countries. The recommendations reached therefore are directly influenced by the input and the concerns expressed by the people of Darfur, particularly the IDPs and other victims of the armed conflict in the region.

The AUPD report concluded by elaborating 97 detailed observations and recommendations stretched over 24 pages. In Communiqué PSC/AHG/COMM.1(CCVII) by which the AUPSC adopted the AUPD’s report, the Council stressed that the AUPD’s recommendations provided a sound roadmap for achieving justice, reconciliation and healing in Darfur, and thereby contributes to promoting sustainable peace and stability in Sudan. These recommendations did not only address the root causes of armed conflict and political unrest in Darfur and Sudan, but also proposed a core body of workable measures and outlined the way forward. In order to address the urgent nature of the crisis in Darfur, the AUPD’s report and recommendations entailed short, medium and long-term measures. The AUPD report and its recommendations were welcomed by the UNSC in its statement on Sudan (SC/9831, of 21 December 2009), in which members of the UNSC “… underlined their appreciation for the balanced and comprehensive nature of the recommendations to promote peace, justice and reconciliation in Darfur and Sudan as a whole.” The UNSC further called on the GoS and

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20 Communiqué PSC/PR/Comm(CLXXV) adopted by AUPSC at its 175th Meeting on 5 March 2009 http://www.issafrica.org/uploads/PSC175COM.PDF

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other parties in Sudan and the region to work with the AUHIP in coordination with the international community as appropriate.\textsuperscript{22}

To ensure that expeditious and sustained action was taken to implement the report's findings and recommendations, African Heads of State and Government requested that the Chairperson of AUC establishes the AUHIP and that the work of the Panel be led by former African Presidents Thabo Mbeki, Pierre Buyoya, and Gen. Abdulsalami Abubakar. In paragraph 11 (d) of Communiqué PSC/AHG/COMM.1(CCVII), the AUPSC spelled out the main task of AUHIP as “... to assist in the implementation of all aspects of the AUPD recommendations, as well as to assist the Sudanese parties in the implementation of the Comprehensive Peace Agreement (CPA) and other related processes, as part of the democratic transformation of the Sudan.”\textsuperscript{23} In addition, the African top political leaders requested the Chairperson of the Commission: “.... immediately to take the necessary steps to enhance its capacity to support the implementation of the recommendations of the AUPD, including the establishment of an appropriate unit within the AU Peace and Security Department.”\textsuperscript{24} Apart from designating a junior officer to liaise with the AUHIP, no other action so far has been taken by the AU Peace and Security Department (AUPSD) to establish the Unit as requested by the African Heads of State and Government.

One of the outstanding recommendations of the AUPD report is contained in paragraph 320, where the Panel recommended the creation of an “integrated justice and reconciliation response,” including the establishment of a hybrid criminal court to prosecute serious crimes committed in Darfur. The hybrid court is to be created within the Sudanese judicial system, and to be composed of Sudanese as well as non-Sudanese judges and legal experts. In the same paragraph, AUPD also recommended national reforms, including removing \textit{de jure} and \textit{de facto} immunities enjoyed by members of the security forces and government officials in the exercise of government functions in Darfur, revitalizing the Special Criminal Court on the Events in Darfur (SCCED) with AU-appointed judges and legal experts, and creating a truth, justice, and reconciliation commission to establish the nature, causes, and consequences of the conflict in Darfur from 2002 to 2009.\textsuperscript{25}

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{22} UN Security Council’s Press Statement on Sudan (No. SC/9831, AFR/1925), Department of Public Information, 21 December 2009 \url{http://www.un.org/News/Press/docs//2009/sc9831.doc.htm}
\item \textsuperscript{23} Communiqué PSC/AHG/COMM.1(CCVII), Para. 11 (d), page 3
\item \textsuperscript{24} Communiqué PSC/AHG/COMM.1(CCVII), Para. 11 (b), page 2
\item \textsuperscript{25} Report of the AUPD, (PSC/AHG/2(CCVII), Para. 320, pages 86 and 87
\end{itemize}
\end{footnotesize}
AUHIP in Action

Since its establishment in October 2009, members of AUHIP have been working tirelessly to address a myriad set of crises that face Sudan. Their area of intervention did not only cover the questions of justice, but they also addressed other matters such as economic recovery and external debt relief.26 In its activity report for 2010 and 2011 to AUPSC, AUHIP identified four priorities, namely (i) the implementation of the recommendations of the AUPD Report; (ii) the democratization of Sudan, including and especially through the conduct of the general elections; (iii) the completion of the implementation of the CPA; and (iv) the negotiation of post-referendum arrangements between the Sudanese Parties.27 After some preliminary consultations inside and outside Sudan, the AUHIP assumed its responsibility in earnest, and, in January 2010, the Panel elaborated its Phase One: Program of Action (PoA), which was an ambitious policy paper that prioritized 9 areas for immediate intervention. It was heartening to note that the AUHIP decided “…. to act expeditiously in order to meet the high expectations placed upon it by the Sudanese parties and public, the AU and the world.”28

As outlined above, specific areas of AUHIP intervention ranged from supporting efforts to accelerate the process of a resolution of the conflict in Darfur; to assist in the implementation of the CPA and facilitating negotiation of the post-referendum issues; working with political parties and other stakeholders to make unity attractive in South Sudan and to address issues of ethnic conflict in South Sudan. The PoA also provided for measures to ensure that the general elections organized by GoS in April 2010 were free and fair, that Sudan’s neighbours support conflict-resolution processes; and that the AUHIP coordinates international action on Sudan. By elaborating such an impressive PoA, the AUHIP has placed upon itself a mission impossible to be accomplished with practically no regular budgetary resources or institutional capacity. No reference has been made in the PoA to any plans to implement some of the urgent recommendations contained in the AUPD report. Instead, AUHIP overlooked this key provision in its mandate and decided to focus its attention on global issues of negotiations for political settlement between Sudan and South Sudan on the post-CPA matters.

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26 IMF & World Bank call on Sudan to maintain reforms, secure debt relief, Sudan Tribune, 20 October 2013
http://www.sudantribune.com/spip.php?article48512


AUHIP: Key Developments and Challenges

1. In April 2010 Sudan organized its general legislative and presidential elections during which AUHIP assumed the role of a quasi observer. The elections were dominated by members of the ruling National Congress Party (NCP) at the federal and States levels and were crowned by the re-election of President Al-Bashir amidst boycott and accusations by the opposition of rigging and ballot irregularities.

2. In late June 2010 the GoS, represented by the NCP, and the Sudan People’s Liberation Movement (SPLM) met in Mekelle (Ethiopia) to discuss the modalities for the negotiation and implementation of the post-referendum issues and arrangements. The Mekelle Memorandum of Understanding, which was signed at the conclusion of that political dialogue on 22 June 2010, identified the AUHIP, as the facilitator of the negotiation process to be supported by the IGAD, the IGAD Partners Forum and the UN. This decision proved to be of profound significance for the future role of AUHIP because the Panel had been accorded disproportionate prominence on matters of the CPA follow-up, which are the primary responsibility of the IGAD. Since then the IGAD seems to be in direct consultation with AUHIP but because of the IGAD’s passive role regarding follow-up of the CPA implementation, the AUHIP has been taking over more responsibilities. Despite the cooperation between IGAD and AUHIP, however, the latter’s involvement in following up the CPA implementation is creating overlapping and confusion in the absence of a clear cut division of labour between the entities.

3. On 16 September 2010, Sudan's Council of Ministers endorsed the New Strategy for Peace in Darfur (NSPD) and appointed a committee to implement it. The NSPD is a comprehensive action plan unilaterally promulgated by the GoS in a bid to domesticate solution of the armed conflict in Darfur. The NSPD identified five areas of government intervention according to their order of priority i.e. security, development, return of IDPs and refugees, reconciliation and political negotiations. The NSPD made no reference to the recommendations of AUPD report. The adoption of NSPD revealed GoS’s militaristic approach towards the armed conflict in Darfur.

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29 See Mekelle Memorandum of Understanding, 22 June 2010, accessed at http://www.gurtong.net/LinkClick.aspx?fileticket=1gJyktfZJfI%3d&tabid=124
4. In January 2011, the people of South Sudan exercised their right to self-determination and overwhelmingly decided to secede and create their own State. The Republic of South Sudan celebrated its independence on 9 July 2011.

5. On 14 July 2011, the GoS and the Liberation and Justice Movement (LJM) signed the Doha Document for Peace in Darfur (DDPD). GoS and LJM considered DDPD as the only answer to the crisis in Darfur and as a final and non-negotiable document. The AU and UN considered DDPD as the bedrock for further dialogue to yield a comprehensive peace settlement and invited the hold-out Darfur insurgent groups to join the peace process. Attempts of the AUHIP to introduce the AUPD report during the negotiations in Doha were not enthusiastically welcomed by the GoS as well as the mediators and key observers, such as the USA, UK, Norway and others. The signing of the DDPD and the political enthusiasm that followed overshadowed the implementation of the AUPD recommendations.

6. In response to the border clashes between Sudan and South Sudan and the destruction of the oil fields in Heglig area in early April 2012,\(^{31}\) AUPSC adopted Communiqué PSC/MIN/COMM/3.(CCCXIX) on 24 April 2012. The Communiqué outlined a comprehensive roadmap for peace between Sudan and South Sudan,\(^{32}\) which was eventually endorsed by the UN Security Council.\(^{33}\) This Roadmap provided a detailed framework with a 3-month time-bound ultimatum for the two countries to resolve the post-independence outstanding issues, including the final status of the Abyei area. The Roadmap indicated that in case the two parties disagree on any of the outstanding issues, including the referendum on the right to self-determination in Abyei, then the AUHIP shall propose a lasting solution, and that such proposal would be endorsed by the Council as a final and binding arrangement.\(^{34}\)

\(^{31}\) Khartoum denies South Sudan’s claim on bombing Heglig’s oil facilities; Sudan Tribune, Articles, 16 April 2012 at \textcolor{blue}{http://www.sudantribune.com/spip.php？article42269}
\(^{32}\) Communiqué PSC/MIN/COMM/3.(CCCXIX) adopted by AUPSC at its 319\(^{\text{th}}\) meeting on 24 April 2012 \textcolor{blue}{http://reliefweb.int/sites/reliefweb.int/files/resources/psc%20319\%20comm%20soudan%20sudan%20%204%202012-1.pdf}
\(^{34}\) Communiqué PSC/MIN/COMM/3.(CCCXIX), Para 16, page 14
7. On 23 September 2013 the AUPSC convened its 397th meeting at the level of Heads of State and Government and adopted Communiqué PSC/AHG/COMM/2.(CCCXCVII) in which the AUPSC decided to enlarge the AUHIP’s mandate to cover the HoA and contribute to the promotion of a holistic regional approach to the challenges of peace, security, stability and development in this African sub-region. The AUHIP is required to coordinate its intervention with that of IGAD in a mutually supportive manner.\textsuperscript{35} Details of the AUHIP involvement in the HoA are yet to be known. For this purpose the AUHIP has been requested to undertake consultations with the IGAD Chairperson to promote such approach in view of convening a conference on peace, security, stability, cooperation and development in the HoA.\textsuperscript{36} The consultative process between AUHIP and IGAD would play a key role in setting the standards for cooperation between the two entities and in drawing a roadmap for the expanded AUHIP mandate to cover the HoA. Unless agreement is reached on the need to refocus the AUHIP work on its original mission when it was created in October 2009, then the consultative process could well spell the beginning of the end of the AUHIP’s efforts to implement the recommendations contained in the AUPD report and it may eventually entail a change in its title and mandate in the near future. This is why the forthcoming consultative process remains a cause of concern for many commentators on the development of the current situation of AUHIP.

8. On 27 and 28 October 2013, the Dinka Ngok Communities organized a referendum on the right to self-determination in Abyei. The holding of the referendum, which was rejected by both GoS and South Sudan, was a unilateral act to determine the final status of the oil-rich contested region. It was the ultimate manifestation by these communities of their frustration concerning the AUPSC’s inability to endorse the proposal made by the AUHIP, which provided for the organizing of such a referendum in October 2013 at the latest date. The move of the Dinka Ngok Communities provoked the Chairperson of the AU Commission to say that: “... while understanding the frustrations arising from the fact that the Abyei referendum has not yet been held, as provided for by the Comprehensive Peace Agreement (CPA), stresses that this

\textsuperscript{36} Ibid
unilateral act is unacceptable and irresponsible.” 37 Facing this confrontation and unmatched challenge to its authority to oversee the conduct of the right to self-determination in by the people of Abyei, the AUPSC recognized the frustrations arising from the delay in organizing the Abyei referendum but warned “… all stakeholders in Abyei to refrain from taking any unilateral action likely to complicate the situation, and, in this regard, calls for maximum restraint.” 38

9. On 31 October 2013, the residents of Abyei, particularly the Ngok Dinka communities announced the results of their historic referendum and declared that they have decided overwhelmingly to fulfil their decades’ long aspiration to be part of South Sudan and join the nascent State. The unilateral referendum in Abyei was organized within the time framework proposed by the AUHIP for a settlement of the final status of Abyei, which has been accepted by the AUPSC as a “fair, equitable and workable solution” as well as the “best way forward in addressing the challenges at hand.” It was reported that about 98% of 64,775 registered voters turned out and that 99.89% of those who voted chose to join the Republic of South Sudan. This high voter turnout and the outcomes of the vote created a new dynamic in the area and increased the level of tension between the two main groups that inhabit the area i.e. Dinka Ngok and the Misseriya Arabs. The tense situation in the area requires that all efforts be mobilized to avert any attempts to create chaos and disorder. The outcomes of the plebiscite have no legal implications, neither on the two governments nor on the AU or UN. The government of South Sudan distanced itself from the public plebiscite but approval for it by the people of South Sudan and civil society were reported across the country. Indeed the results of the vote were dismissed as null and void by the GoS as well as by the Misseriya community who also live in the area. The popular support for the conduct of the referendum in Abyei is a test case for the AUPSC and leaves it without options but to endorse the AUHIP’s proposal and look urgently at the constraints that hinder its implementation. The conduct of this vote should also be used by GoS and South Sudan as well as their peace partners as a means to build internal and external support for a final and lasting solution to this situation.

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Areas of Concern

The AUHIP assumed its responsibilities with enthusiasm after the high level diplomatic and political support it received from 15 African Heads of State and Government in Abuja in October 2009. Shortly after the AUHIP’s high spirit and enthusiasm faded away when it started planning of its work. In addition to the hostile attitude of GoS towards implementation of the AUPD recommendations, the AUHIP also faced intuitional difficulties as its mandate does not provide for the establishment of an independent Secretariat to follow-up its work on the ground in Darfur. No efforts were also made to seek the support and facilities developed by UNAMID as the first step for the AUHIP to kick off its efforts. It was an ill advice that the AUHIP chose to start its work with a list of areas of intervention to be carried out simultaneously in more than one track. During the political talks between June and September 2012 as required by UNSC Resolution 2046(2012) which set 2 August 2012 as the deadline for the two countries to reach final agreements on the outstanding issues, the AUHIP sought to include negotiations of the situation in the Nuba Mountains and Blue Nile as a priority, leaving a side matters such oil wealth sharing, nationality issues, and the status of Abyei. For that propose a separate track of negotiations between GoS and the SPLM-N was envisioned. This unrealistic approach masked the Panel's vision and diverted its attention away from pursing a specific objective at one time.

In drafting the PoA and their agenda, it seems that members of the Panel were frustrated by the widening dichotomy between the governing recommendations they needed to implement and observe, on the one hand, and the reality on the ground, on the other. It was observed that “… the panel’s work has been stuck in crisis-response mode and as a result their work on democratic transformation within Sudan fell off the agenda in favour of shepherding negotiations between Sudan and South Sudan and preventing war.” Therefore, they chose to adapt to the political dynamic in Sudan hence their response has been more of a reaction to the priorities set by the governments of Sudan and South Sudan. This approach hindered AUHIP to work out informed policy options and determinants to pursue specific objectives they need to realize at different phases of their work. For example, the AUHIP chose to devote time and efforts during the legislative and presidential elections as well as the

referendum on the right to self-determination in South Sudan, which entailed a refocus of the Panel’s attention on matters under the purview of other established institutions.

The most serious obstacle that undermined the AUHIP’s work has been GoS’s opposition to the implementation of AUPD recommendations. The GoS particularly rejected the AUPD proposal that Sudan constitutes a hybrid court and undertakes legal and judicial reform, including the appointment of non-Sudanese judges in Sudan’s judiciary. GoS’s rejection of this proposal further confirmed its unwillingness to hold accountable government officials and security agents who are responsible for massive violations of human rights and international humanitarian law committed in Darfur. Sudan’s resistance to the establishment of a hybrid court, which directly emanates from the AU’s declared policy to combat impunity, has been met by indifference. Instead, the AUHIP has been demanding that AUPSC and other AU decision-making organs allow Sudan more time, which emboldened the position of GoS.

The AUHIP’s ill-advised beginning and GoS lack of cooperation could be the primary reason that support of the AU for implementation of the AUPD report and also for the work of AUHIP has dwindled despite the AUPSC’s repeated assurances to the contrary. The AU’s diminishing support for implementation of the AUPD’s recommendations was evident in successive inconsistent decisions adopted by the AUPSC in which it slowly reversed its previous positions and priorities. There is hardly reference to the report of the AUPD or the implementation of the recommendations contained therein in all the Communiqués recently adopted by AUPSC. Another example in the words of President Thabo Mbeki is that: one of the most important recommendations, which became an AU policy for the resolution of the conflict in Darfur, is that only an inclusive process of negotiations in which all Darfur constituencies would be able to participate would produce the necessary comprehensive and lasting agreement. This wise assertion was contradicted by the AUPSC in its 385th meeting held on 19 July 2013, when the Council stated that: “… the people of Darfur simply should not wait any longer for a comprehensive resolution of the conflict.”

40 Remarks of Mr. Thabo Mbeki, Chairperson of AUHIP to UN Security Council, NY, 9 February 2011. http://www.unisa.ac.za/contents/colleges/docs/Remarks%20of%20the%20Chairperson%20of%20AU%20High %20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%22

AUHIP’s Internal Limitations

The AUHIP faced a number of internal limitations that rendered the results of its work patchy. The AUHIP is essentially an *ad hoc* advisory body functioning under difficult conditions without sufficient resources or institutional backing. The AUPSC or AUHIP made no efforts to forge close work relationship between the AUHIP and relevant AU institutions or even to seek the support of independent AU advisory organs such as the AU Panel of the Wise (PoW).42 The PoW could have provided AUHIP with tremendous support in keeping the momentum, taking stock of the progress made, raising issues that AUHIP considers sensitive for it to take up for diplomatic reasons, and advising the AUPSC on the necessary support to the Panel. Hence, the AUHIP has been struggling alone, with little hope of success. AUHIP also lacked the necessary coercive power inherent in the functioning of regional groupings composed of States or other political or financial institutions. Because of these limitations and the contentious nature of the outstanding issues between Sudan and South Sudan, which represent a threat to regional and international peace and security, the AUHIP chose to focus its efforts on one part of its mandate i.e. to assist the Sudanese parties in addressing matters related to the CPA, and side-lined the other part i.e. to assist Sudan to implement the AUPD recommendations as part of the democratic transformation of the country.

The AUHIP is not the only actor to be blamed for limited outreach efforts to other important institutions dealing with the situation in Darfur at the time of the start of its work and ensure their support and cooperation. One of the major factors that hindered implementation of the AUPD report was the lack of a clear division of responsibilities which turned out in what had been seen as rivalry between the AUHIP, the Joint AU and United Nations Chief Mediator on Darfur of that time (Mr. Djibril Bassolé) and the government of Qatar as the host of the Doha Peace Process on Darfur. Without the support of the Chief Mediator and Head of the African Union Hybrid operation in Darfur (UNAMID) as well as a clear authorisation from the AUPSC to work on the ground in Darfur, the AUHIP was left alone with little hope of its excellent recommendations being translated into action.

The AUHIP’s partial success during its four years of existence is largely centred on its ability to have brokered a political deal between Sudan and the Republic of South Sudan, since on

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27 September 2012 the two countries signed nine post-secession agreements on a range of pending issues left over during the CPA implementation. The AUHIP internal limitations were of negative consequence to its work and these are manifested in the little progress, if any, that has been made. Absence of a co-erosive power encouraged Sudan and South Sudan to advance irreconcilable priorities to be observed before the accords are fully implemented. The GoS indicated that its first priority is to secure its international borders with South Sudan and end the insurgency within its own geographic confines and for that purpose it continues to insist that South Sudan expels leaders of the Alliance of Sudan Revolutionary Front (ASRF), especially the Darfur insurgents, dissolve and disarm the SPLA-N and constitute joint military units to guard the international borders between the two countries. Smooth implementation of these agreements is not expected, especially as the AUHIP has no real role to oversee their implementation which is a complicated and important task that was practically left to the discretion of the two contentious parties.

Another urgent conflict area on which the AUHIP has not been able to make any progress because of its internal limitations is the on-going armed conflict in the Nuba Mountains in Southern Kordofan and the Blue Nile States. The conflict in these two areas of Sudan is directly linked to none compliance with the provisions of the CPA on these two areas. In Communiqué PSC/MIN/COMM/3.(CCCXIX) of 24 April 2012, the AUPSC requested both the GoS and the SPLM-N to fully cooperate with the AUHIP and IGAD, to reach a negotiated settlement of the conflict in Blue Nile and Southern Kordofan States. Unfortunately the AUHIP could not make progress in this urgent situation and its efforts to bring the GoS and the SPLM-N to the negotiations table did not materialize. The AUHIP invitations to the two parties to meet on 15 March 2013 and 4 and 5 November 2013 were not even acknowledged by GoS. The SPLM-N confirmed that its delegations was ready to leave to Addis Ababa but a last minute notification from the AUHIP that GoS was not prepared to attend led them to cancel their travel plans.

43 Communiqué PSC/MIN/COMM/3.(CCCXIX) of 24 April 2012, Para. 16, page 4
The Role of the AUPSC

On the other hand, the AUPSC, which is the AUHIP parent body, shares the major part of responsibility concerning the Panel’s weak performance. Inconsistency has characterized successive decisions adopted by the AUPSC on Sudan and South Sudan. On a number of occasions, the AUPSC overlooked previous measures and commitments that were mutually agreed upon and collectively adopted. There are also concerns among some African diplomats, policy-makers and activists that decisions adopted by the AUPSC concerning the situation in Sudan or the relationship between Sudan and South Sudan are not precisely reflective of the actual deliberations that take place during the Council’s sessions on such matters. While the sources of such discrepancies are not yet known, all indicators suggest that the possible answer rests within the leadership of the AUPSD, which is the technical body that oversees the final review and editing of the agreed upon texts.

As the AUPSC is the main AU decision-making body in charge of preserving and maintaining peace in Africa and preventing, managing and resolving conflicts, it is, therefore, the favourite playground for African States that face conflicts and political unrest in order to protect their interests. It is therefore natural that Sudan is paying special attention to the AUPSC’s work and pursuing dangerous diplomatic manoeuvres aimed at creating division and confusion in the Council as well as casting doubt on its credibility. The sole objective of such manoeuvring is to water down measures to be taken by the Council that would affect its position and interest. In 2009 Kwesi Aning and Samuel Atuobi observed that: “... the AU's attempt to solve the continent's problems will continue to be thwarted by its lack of political will and the weakening of its norms and principles by some member states.” GoS interaction with the AU is the best example of this situation as it continues to use the AUHIP as a means to delay and frustrate action in the AUPSC.

Despite the apparent cooperation and understanding, the relationship between GoS and the AU has been a contentious one characterized by unfulfilled commitments, disappointment and deception. A major crisis is being avoided only because of the AU's inherent patience.

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44 Dr. Luka Biong Deng: Abyei Final Status: An account of indecision by the African Union, Sudan Tribune, Comments and Analysis, 1 July 2013, at http://www.sudantribune.com/spip.php?article47145
and restraint, as well as its compassion and solidarity with a member African State in turmoil. This could be the reason why the AU institutions, including the AUPSC appear to be helpless in the face of GoS intransigence and consequently a number of initiatives on Sudan that the AU has embarked upon were frustrated and failed. Different methods, including ill-treatment and intimidation are being used by GoS in an attempt that its views prevail. An example in point is the constraints placed by GoS on UNAMID, which have crippled the predominantly African military force from protecting the civilian victims of the conflict in Darfur.In reality UNAMID’s personnel are unable to protect themselves from attacks in Darfur and a number of its military and police were killed or maimed for life often in areas under the control of GoS, sometimes inside major cities of Darfur or in close proximity to Sudanese army checkpoints. In 2013 alone 14 peacekeepers were killed in different parts of Darfur, a situation to which the AUPSC expressed “... its deep concern at the deteriorating security situation in Darfur marked ... repeated attacks against UNAMID.” Despite the AUPSC’s repeated calls on GoS to apprehend the perpetrators of these attacks and bring them to justice, no one has been arrested for such crimes since the deployment of UNAMID on 1 January 2008.

Overt attempts of GoS to undermine efforts of the AUPSC and to prevent it from conducting its work were reported on many occasions since the eruption of the armed conflict in Darfur. The most recent and daring measure in this respect was GoS’s decision on 26 October 2013 to prevent members of the AUPSC from visiting the Abyei area as had been planned earlier and mutually approved. In Communiqué PSC/PR/COMM.(CDIII) issued by AUPSC on this occasion, the Council expressed “… its deep disappointment and regret that it was unable to undertake the visit to Abyei, as planned, on 26 and 27 October 2013, and discharge its duties ..., due to the insistence of Sudan that the visit be postponed for contrived security reasons, noting, in this respect, the discrepancies in the analysis, by the Parties, of the situation prevailing in Abyei.” The AUPSC further considered GoS decision to prevent it from visiting Abyei as “... obstruction to the discharge of its responsibilities.”

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50 Communiqué PSC/PR/COMM.(CDIII), Para. 3, page 1
AUHIP and the IGAD

An area of great concern has been the unclear working relationship between the AUHIP and the IGAD countries. During negotiations of the Mekelle Memorandum of Understanding in June 2010, the GoS’s delegation pushed the idea of appointing the AUHIP as the facilitator of the mediation on the post-secession issues. The GoS favoured involvement of AUHIP in the mediation between the two countries in a pre-emptive strike to prevent IGAD from leading the implementation of the outstanding post-secession issues that are of key interest to South Sudan. The AUHIP involvement in the mediation was also encouraged by GoS to ensure that the AUHIP will not have the necessary time and energy to start implementation of the AUPD recommendations. It appears that the SPLM negotiators approved the proposal to involve the AUHIP in leading the mediation on the post-CPA issues without proper evaluation of the Panel’s capacity and ability to assume this highly sensitive political responsibility. In almost all recent AUPSC Communiqués on Sudan and South Sudan there has been no clarification of the work relationship between AUHIP and IGAD. Instead emphasis was placed on the AUHIP involvement and it has been invited to take a leadership role while IGAD’s role has been relegated to that of a support partner.

Because of the specific nature of the work that led to the creation of AUHIP, then its mandate should have been limited to implementing the AUPD’s report and recommendations. It should have left aside other matters that needed greater political muscle to other regional and international actors, particularly the IGAD countries. The situation between Sudan and South Sudan is clearly a regional and international conflict as it involves two sovereign states and as such a different mediation mechanism is needed. The IGAD, as the custodian of the CPA, is the most appropriate institution to be called upon to follow up implementation of the outstanding post-CPA issues between Sudan and South Sudan. Despite its clear comparative advantage, the IGAD has refrained from continuing mediation between the two countries and its key role in following up implementation of the CPA was mysteriously overlooked. Strangely enough, the AUPSC agreed to place the heavy burden of negotiations between the two contentious parties on the AUHIP’s shoulders.

Throughout the years the IGAD developed vast knowledge and expertise on the complicated issues between Sudan and South Sudan. Unlike the AUHIP, the IGAD and its different institutions, including the Conflict Early Warning and Response Mechanism (CWARN), are
better equipped and placed to understand and deal with the complicated development and security needs both in Sudan and South Sudan. This is necessary as the fragile situation in South Sudan requires a holistic approach not only to ensure a stable and friendly relationship with its neighbors but also internal peace and political stability. This is not the case at the time being and the nascent nation experiences rebellion in some parts of its territory as well as occasional incursions by alien rebel groups such as the Lord Resistance Army (LRA). Serious political feuds among members of the ruling party in South Sudan are also growing and could lead to armed confrontations in the absence of efforts to support democratization in South Sudan.

Indeed the IGAD has its own limitations and more efforts from its members are needed to strengthen the regional organization. Political differences between members of the IGAD must be resolved through bilateral channels and the regional body must be empowered by all its members to pursue its efforts in marinating regional stability and development. GoS made no secret of its displeasure to see a key role for IGAD or at least some of its members mingling in the CPA’s follow-up. Unfortunately the IGAD countries did not resist GoS attempts to side-line them and to weaken the role of the regional organization. They also refrained from using their block power to threaten GoS with suspension or expulsion from the regional body for its uncooperative attitude. This option should be considered in case GoS persists in denying some members of IGAD their legitimate role in overseeing the progress made or to reject any meaningful role for the IGAD countries in following up implementation of the CPA and ultimately undermining IGAD’s role as the main regional body in charge of peace, security and conflict prevention in East Africa.
Conclusion and Recommendations

1. The AU has been at the vanguard of action on Sudan and South Sudan and it is expected to continue taking a leadership role in addressing the situation in the two countries for some years to come. Effective intervention needs to be based on policies and practices that place the interests of the people of Sudan and South Sudan, particularly of those in the armed conflict-ridden regions, as the AU's primary concern.

2. Although the AU Constitutive Act has reaffirmed the continent's commitment to combat impunity, prevent conflict and intervene to prevent the commission of genocide, war crimes and crimes against humanity, the AU’s response to the situation in Sudan informs us that more efforts are needed to institutionalize the AU’s norms and put in place the necessary mechanisms to achieve the AU's ideals and key objectives and ultimately relieve the countless African victims of such atrocities.

3. The AUPSC, which is the main AU organ in charge of peace and security on the African continent, has adopted a large number of important measures on Sudan and South Sudan. The AUPSC's follow-up of its decisions in this regard needs to be consistent, consolidating of and building upon previously agreed measures and binding commitments made by the two countries. It is also crucial that decisions adopted by the AUPSC concerning the situation in Sudan and those on the situation in South Sudan need to be precise and reflective of the deliberations that take place during the Council's sessions on such matters, which seems not to be the case at present. Consistent provisions and precise language are necessary guarantees to eliminate any possible misinterpretation of the provisions of such decisions.

4. The AUPD's report is the most important political and diplomatic AU's document that provides better understanding of the root causes of civil strife, political unrest and armed conflicts in Sudan. The report and its recommendations remain valid and need to be implemented in order to end the vicious cycle of armed conflict and political unrest in Sudan. Full implementation of the recommendations contained in the AUPD's report should be a key objective for Sudanese and Sudan-focused civil society advocacy groups.
5. Delay in the implementation of the AUPD’s recommendations, including those on justice, accountability, reconciliation and healing which are the objects of the AU’s long time intervention on Sudan, is unacceptable. There is general agreement that the AUPD’s recommendations on justice are, by and large, considered the most feasible in view of the country’s troubles with the international criminal system.

6. Effective follow-up of the implementation of the AUPD’s recommendations requires a precise mandate to this effect. Such a mandate would be better realized by enhancing the AUHIP’s role with that of a support and follow-up Committee to be led by 3 to 4 African Heads of State and Government currently serving in office. The Committee should assume responsibility for building national as well as regional and international momentum on the need to fully implement the AUPD's recommendations and report directly to the AU Assembly of Heads of State and Government and to the AUPSC on the progress made so far.

7. To enable the AUHIP to transition into its work on justice, political transformation, democratization and internal reform in Sudan as well as on the questions of a comprehensive approach to address the issues of peace and conflict prevention in the country, the AUHIP needs to continue direct consultation with interested Sudanese stakeholders in order to understand their response to the AUPD’s recommendations, ensure their support for the follow-up process and get a sense of the possible mechanisms to be put in place at the national and local levels for implementation of the recommendations.

8. Due to the complex nature of the situation in Sudan and the contentious relationship between Sudan and the Republic of South Sudan, there is a need for two separate tracks for effective AU involvement in the two countries. The first track would be under the leadership of the enhanced AUHIP on the questions of the implementation of the AUPD recommendations and other related internal matters on the situation in Sudan. The second track would be under the auspices of IGAD on follow-up of the CPA implementation and the post-secession issues between Sudan and the Republic of South Sudan.
ANNEX 1

Main Recommendations of the AUPD Report

A. ROAD-MAP TO A GLOBAL POLITICAL AGREEMENT

297. The Panel suggests a Road Map designed to provide immediate security for the populace while the talks commence, and equally importantly, to create an enabling environment in which the people of Darfur can participate fully in the process of determining the agenda and outcome of the dialogue about their future. The Road Map should therefore consist of the following steps:

a) The Government of Sudan and the Armed Movements should negotiate and agree to a Suspension of Hostilities Agreement/Truce, to be supported by unilateral measures undertaken in good faith and aimed at reducing violence in Darfur while the process of negotiations are underway;

b) Adoption of a Framework Agreement involving the Government of Sudan, the Armed Movements, political parties, civil society organisations, IDPs and refugees, the native administration, and the nomads of Darfur (collectively, “the Sudanese Parties”);

c) Negotiation of a Permanent Ceasefire, including an Agreement on Comprehensive Security Arrangements by the Government of Sudan and the Armed Movements, which takes into account all the sources of violence and insecurity in Darfur;

d) Negotiation of a Global Political Agreement by the Government of Sudan, the Armed Movements, political parties, civil society organisations, IDPs and refugees, the native administration and the nomads of Darfur;

e) The negotiations for a suspension under (a) need not delay the subsequent steps, especially the adoption of a Framework Agreement. Moreover, the negotiations under (c) and (d) can take place simultaneously;

f) The Joint Chief Mediator should give urgency to consulting with the stakeholders, in preparation for the comprehensive negotiations, and in that regard, should take into account the findings of the Panel. This should include consideration and resolution of the important issue of how the various constituencies would participate and be represented in the negotiations.

PSC/AHG/2(CCVII), Pages 81-82, Para. 297

300. Simultaneously with the processes of negotiating a suspension of hostilities with the armed groups, the Government of Sudan should take unilateral steps to reduce violence in Darfur. These steps would include: the consolidation of command and control over the security organs operational in Darfur; the strengthening of the Sudan Police Force; the
accelerated establishment of community police services for IDPs and people returning to villages and cooperation with UNAMID monitoring activities.

301. Alongside the above, UNAMID should extend non-military logistical assistance to the relevant Armed Movements and provide training and capacity building in ceasefire and related operations to the commanders of Armed Movements. This assistance and training would be extended to all groups that agree to suspend hostilities.

302. Once the Joint Chief Mediator has issued invitations to all the relevant constituencies to participate in the process of negotiations indicated above, the African Union should approach the United Nations Security Council to declare as terrorist organisations such Darfur armed groups as would refuse to participate in the negotiations.

PSC/AHG/2(CCVII), Page 83, Para. 300-302

Consulting Darfurians during Negotiations

310. The people of Darfur recall the consequences of their exclusion from the negotiations of the Darfur Peace Agreement signed in Abuja, and are determined not to allow a repetition of that experience. Recognising this reality, it will be necessary to afford the people of Darfur an opportunity to make representations to the negotiating Parties on the Agenda items for discussion at the talks. This will enable Darfurians as a whole to take ownership of the outcome of the negotiations about their future.

311. For this reason, parallel to the Negotiating Forums that will negotiate the Framework and Global Political Agreements, there should be established a Darfur Consultative Convention (DCC), through which the views of the people of Darfur can be obtained. The DCC would convene to receive reports from the formal Negotiating Forums, and feed its views into these Forums.

312. The establishment of the DCC, and its effective functioning, should be facilitated by the DDDC, including providing resources and expertise, in consultation with the relevant components of UNAMID and the Joint Chief Mediator.

313. Notwithstanding the importance of the DCC process, it is important that the Government of Sudan, the Armed Movements and all political players make additional efforts to promote a sense of national belonging, as one of the fundamental and necessary initiatives for the resolution of the Darfur conflict.

314. The Panel considers the need for the involvement of the Darfurian population in the peace talks to be self-evident; it will ensure that the priorities and aspirations of the people of Darfur and, as far as possible, the wider Sudanese constituency, is brought to bear on the negotiations. Whilst military matters are predominantly for the belligerents, non-belligerents have a contribution to make on all the other issues.
315. It will be for the Mediator, in consultation with representatives of the Parties, to work out the exact modalities for the selection and participation of representatives of non-belligerent parties. The DDDC, which has acquired experience in convening representatives of civil society and other stakeholders within Darfur, can play a key role in this process, working with UNAMID to support the negotiation process.

PSC/AHG/2(CC VII), Pages 84-85, Para. 310-315

**Road-Map for Justice and Reconciliation**

318. Delivering justice, promoting reconciliation and encouraging recovery and healing for the suffering the people of Darfur have endured requires a comprehensive, integrated, systematic and innovative approach which is anchored within the legal system of the Republic of Sudan, drawing from the diversity of the country’s legal heritage, its constitutional values and commitments under international law. It will also require a strengthening of the existing system with new mechanisms, including a special criminal chamber which shall be a hybrid court drawing on the expertise of qualified and appropriate judges from outside Sudan.

319. As already pointed out, it is neither possible nor desirable to build a barrier between the objectives of justice on the one hand, and reconciliation on the other. By linking Justice and Reconciliation, the Panel is making suggestions to enhance the prospects of reconciliation in order to complement initiatives on justice, and not as a substitute for robust legal measures capable of responding to the urgent and complex legal needs in Darfur. Reconciliation itself is not feasible without the political will to create an enabling environment of peace, security and economic recovery, once again highlighting the profound inter-linkages between peace, justice, development and reconciliation.

PSC/AHG/2(CC VII), Pages 85-86, Para. 318-319

**An Integrated Justice and Reconciliation Response**

320. The Panel considers that an integrated Justice and Reconciliation Response to Darfur (JRRD) is urgently required to deal with the conflict in Darfur. It should encompass a broad range of interventions reflecting the diverse justice and reconciliation needs, as well as the requirement to adopt effective and co-ordinated processes and institutions. The measures would include:

a) Comprehensive, independent and integrated national criminal justice processes, which shall include investigations and re-invigoration of all aspects of the Special Criminal Court on the Events in Darfur (SSCED) as the principal forum for delivering criminal justice for crimes relating to the conflict in Darfur;

b) A Hybrid Criminal Court which shall exercise original and appellate jurisdiction over individuals who appear to bear particular responsibility for the gravest crimes committed during the conflict in Darfur, and to be constituted by judges of Sudanese and other nationalities;
c) Reconciliation and truth telling mechanisms;

d) Compensation programmes and other forms of reparation for losses incurred during the conflict, giving victims a fresh start;

e) Measures for ensuring the safety and dignity of witnesses and participants in the processes of the JRRD, in particular victims of rape and sexual violence;

f) Provision for effective co-ordination between the different institutions and mechanisms envisaged by the JRRD, especially so as to avoid conflicts of jurisdiction;

g) Other measures for strengthening the justice sector in Darfur to deal with post-conflict violations;

h) Promotion and dissemination of information concerning all aspects of the JRRD through outreach programmes, especially within Darfur;

i) An effective national mechanism for overall supervision of the implementation of the JRRD, ensuring integration of the system nationally and within the states of Darfur.

**Criminal Justice Processes**

321. Criminal justice will be a significant, though not sufficient, pillar in the justice and reconciliation framework for Darfur. Currently, the criminal justice response to Darfur is ineffective and confusing and has also failed to obtain the confidence of the people of Darfur. It will therefore require changes to be introduced within the Sudanese legal system to provide effective accountability for the different levels of criminal participation. Alongside the formal system of national and hybrid courts, traditional justice mechanisms should be applied to deal with appropriate crimes and perpetrators at the community level.

**A Hybrid Court**

322. In order to facilitate the establishment of a Hybrid Court, the Government of Sudan should take immediate steps to introduce legislation to allow legally qualified non-nationals to serve on the judiciary of Sudan (c.f. section 23, National Judiciary Act, 1986). In this connection, the Panel notes that the Constitution of Sudan does not expressly prohibit non-Sudanese nationals from being appointed to the judiciary of Sudan, and would not therefore need to be amended.

323. The proposed Hybrid Court would consist of a Hybrid Criminal Chamber, which should be composed of panels of highly qualified and suitable individuals of Sudanese and other nationalities. The formula for nominating non-Sudanese nationals, and for constituting the judicial panels of the Hybrid Court, as well as for the deployment of prosecutorial and investigations support, would be proposed by the AU.

324. The Hybrid Court should be supported by dedicated prosecution, investigation and registry functions. Qualified Sudanese individuals would be joined by a staff, comparable in
seniority and role, to be nominated by the AU, to serve in key functions of the Court. As indicated below, in making such nominations, the AU would consult widely to obtain recommendations for nominees. The Hybrid Court should operate within the national criminal justice system of Sudan and the JRRD in particular: its functions would be additional and linked to the system of special courts discussed in this Report.

325. To support the work of the Special Courts across the three states of Darfur, the Government of Sudan should establish a body for overseeing and coordinating comprehensive investigations relating to the entire conflict in Darfur. This function will be necessary to avoid duplication of investigations and to provide a structure within which decisions about the processes or proceedings an individual may be subjected to can be undertaken, and to ensure harmonisation of working practices.

326. The investigations should reflect the full pattern of crimes and abuses committed during the conflict in Darfur, and should pay due attention to sexual crimes.

327. The AU should delegate to the investigations body qualified persons to work alongside Sudanese to provide the necessary range of skills for investigating and prosecuting international crimes, and particularly for sexual crimes.

328. The AU should, in consultation with the Government of Sudan, delegate jurists or judges to sit on the Special Courts, either as observers or members of the bench, as the case may be. The AU should be responsible for initiating and overseeing this process.

329. The specific functions of the observers and staff to be delegated to support the Special Courts should be determined through the consultation between the AU and the Government of Sudan. The observers and staff should be required to submit regular reports to the AU and the Government of Sudan.

PSC/AHG/2(CCVII), Pages 86-88, Para. 320-329

**Measures to Aid the Return of Displaced Communities**

346. The end of the conflict will enable the displaced population, including refugees, to exercise their right to return to their original homes and locations of residence. As they return, many are likely to encounter difficulties. All affected Darfurians are entitled to restitution of their properties that have been expropriated, to compensation for loss or blighting of property, as well as to other forms of reparation for harm suffered as a result of the conflict.

347. In this regard, the Government of Sudan, assisted by UNAMID, should take steps to relocate people who have illegally occupied villages and land evacuated by IDPs and refugees to enable the rightful owners to reoccupy their land. The Government should consider establishing a Standing Body, including representatives of IDPs and repatriated refugees, to investigate land ownership and occupation. More generally, the Commission should examine the question of land alienation and resettlement, and identify mechanisms which will allow disputes arising from land to be settled in a satisfactory manner.
348. Working together with UNAMID, the Government of Sudan should engage the IDPs and refugees to facilitate their voluntary return to their homes. This requires provision of adequate protection and the necessary conditions of safety and security, as well as the provision and rehabilitation of services and amenities in the areas of return.

PSC/AHG/2 (CCVII), Page 93, Para. 346 to 348

**Representative and Effective Local Governance**

355. The capacity of the people of Darfur to use local mechanisms to promote justice and reconciliation, and the ability of the Government to implement constructive policies in Darfur with regard to resettlement, restitution, development, reparations and on justice itself, depend on how people perceive and relate to the civil service and the native administration. From the numerous complaints the Panel heard from the people of Darfur, it is clear they do not regard what currently exists in Darfur as a strong, politically neutral system capable of responding to their problems, needs and aspirations. In this context, the Agenda of the Global Political Agreement should include a review of local government in Darfur, in order to establish structures which are judged to be credible, accessible, effective and accountable to the people of Darfur.

PSC/AHG/2 (CCVII), Page 95, Para. 355
Annex 2


We, the participants at the 2nd Civil Society Forum on Sudan and South Sudan held in Addis Ababa, Ethiopia, 16th-18th May 2013, within the context of the 21st Ordinary Session of the AU Assembly of Heads of State and Government dedicate this session to the legacy and memory of the late Paramount Chief Kuol Deng Majok of Abyei.

Taking note of the report of the AU High-Level Panel on Darfur (AUPD), as contained in Document (PSC/AHG/2(CCVII), adopted by the AU Peace and Security Council at its 207th Meeting held at the Level of Heads of State and Government in Abuja on 29 October 2009;

Welcoming the findings and recommendations contained in the AUPD's report as an authentic African intellectual contribution agreed upon by eminent African statesmen and experts, and that they represent the best policy options to comprehensively and effectively address the issues of accountability, justice and combating impunity, on the one hand, and peace, healing and reconciliation on the other;

Recalling Communiqué PSC/AHG/COMM.1(CCVII) adopted by the AU Peace and Security Council on 29 October 2009 in which the Council stressed that the AUPD's recommendations provide a sound roadmap for achieving peace, justice, reconciliation and healing in Darfur, and thereby contribute to promoting sustainable peace and stability in Sudan; Fully endorsing the Council's decision that the AUPD's recommendations shall be the basis of the AU engagement in Darfur and its interaction with international partners;

Taking note of para. 11 (d) of Communiqué PSC/AHG/COMM.1(CCVII) in which the Peace and Security Council requested the Chairperson of the AU Commission to establish an AU High Level Implementation Panel (AUHIP), composed of Presidents Thabo Mbeki, Pierre Buyoya, and Gen. Abdulsalami Abubakar, to oversee the implementation of the recommendations of the AUPD report and to promote democratization in the country; and

Fully convinced that the AUPD report provides an important opportunity for better
understanding of the root causes of violence and armed conflicts in Darfur and Sudan at large and that full and scrupulous implementation of the recommendations contained therein paves the way for sustainable peace, stability, reconciliation and justice in Sudan.

We call upon the 21st Ordinary Session of the AU Assembly of Heads of State and Government to:

1. Renew the mandate of the AUHIP and reaffirm its support to the full implementation of the recommendations contained in the AUPD report as a key policy option that would lead to improved security in Darfur; the voluntary return of refugees and internally displaced persons to their areas of origin, and to early recovery and development programs; justice and reconciliation and eventually the conclusion of a comprehensive political agreement.

2. Request the Chairperson of the AUHIP to prepare a comprehensive work plan and to propose the necessary mechanisms, which shall include civil society participation, to supervise the implementation of the recommendations of the AUPD's report.

3. Urge the International Sudan Consultative Forum, currently known as the Sudan-South Sudan Consultative Forum (SSSCF), to establish a coherent policy towards a holistic resolution of the problems of Sudan that would enable the international community to coordinate its activities relating to the peace and democratization in Sudan.

4. Urge the AUHIP and the Peace and Security Council to increase their efforts in liaising with the Government of Sudan to ensure that viable conditions are established for the return of the internally displaced persons and refugees to their places of origin.

5. Urge the Government of Sudan, the opposition forces (both armed and non-violent, and civil society organizations) to foster national dialogue in order to achieve national consensus for a peaceful resolution of the conflicts and for democratic transformation.

Done at Addis Ababa, Ethiopia, 18 May 2013