

# Explaining the Darfur Peace Agreement

By Alex de Waal

## Part 1

### Disarming the Janjaweed and Armed Militia

This is the first in a series of articles concerning the Darfur Peace Agreement (DPA), explaining how different parts were negotiated by the Government and Movement delegations, what the paragraphs mean, and how they should be implemented. This first article asks, how are the Janjaweed and other armed militia to be disarmed?

One of the toughest questions in the negotiations in Abuja that led to the DPA was how to control and disarm the Janjaweed and other armed militia in Darfur. The Movements' negotiators raised this issue time and time again, and went line by line over every relevant paragraph over many long weeks. Each of the Movements' negotiators—Ali Tirayo (SLM-Minawi), Mohamed Adam (SLM-Abdel Wahid) and Tajudeen Niam (JEM)—was closely involved in this issue, and the GoS security team led by General Ismat al Zain was extremely professional and examined every detail. Everyone in the peace talks knew from the beginning that long-term peace and security in Darfur requires the control of all the militia and paramilitary forces, some of which have terrorized Darfurians since the 1980s, and some of which were only recently established.

Security experts agree that the DPA articles concerning the Janjaweed are some of the toughest parts of the whole Agreement. For the first time there is a practical plan for controlling and disarming the Janjaweed. This is a credit to the GoS and Movements negotiating teams in Abuja and the hard work they put in.

When the Government of Sudan (GoS) signed the “Humanitarian Ceasefire” in N’djamena in April 2004, it made a commitment to disarm the Janjaweed. Two months later the United Nations Security Council passed Resolution 1556 that insisted that Khartoum should disarm the Janjaweed, within one month. Shortly afterwards, the Government presented a plan for disarmament to the Darfur Ceasefire Commission, but the plan was rejected by the African Union and the representatives of the Movements.

The responsibility for disarming the Janjaweed and other armed militia falls on the GoS. This principle was laid down by the UN Security Council. And throughout the Abuja talks, the Movements insisted that because the GoS had armed these militia, it was responsible for disarming them too. However, the entire process of controlling and disarming them is to be supervised and monitored by the Ceasefire Commission (CFC) and the Joint Commission (JC). Both of these bodies are chaired by the African Union and include representatives of the SLM and JEM as well as the international community. At every stage of the disarmament process, all those represented on the CFC and JC must be satisfied that the GoS has properly completed its task.

Article 314 of the DPA demands that the GoS produces a plan for disarming the Janjaweed 37 days after “D-Day”, which was 16 May (eleven days after the signing of the Agreement in Abuja). But the DPA also spells out in detail how many aspects of this disarmament are to be done. The Movement negotiators insisted on this, and the GoS delegation insisted that the provisions should be practical. The DPA has a detailed timeline and different provisions covering different armed groups.

The timetable for disarming the Janjaweed is part of the overall sequence of steps for the Comprehensive Ceasefire and Final Status Security Arrangements in Chapter 3 of the DPA. There is a simple principle governing the steps. For every action that the armed forces of the Movements (SLA and—if it should sign up—the JEM) are asked to take, the GoS has to take a step beforehand. The ceasefire works on the principle of protecting the weaker parties—in this case the Movements and the civilian population—from the stronger party, which is the GoS and the armed militia. This means that the Movements are not required to redeploy their fighters until the Government has withdrawn its troops and controlled or disarmed the Janjaweed—and this has to be verified by the CFC and JC, which means the Movements’ representatives have to confirm this themselves.

The DPA spells out a number of the steps that the GoS has to take in its steps for controlling the Janjaweed and armed militia.

- Paragraph 315 spells out some of the measures the GoS should take, including restricting Janjaweed to garrisons and cantonment sites, disarming them of heavy weapons, and ensuring that they cannot pose a threat to the Movements’ assembly sites.
- Paragraph 316 demands that any armed militia that violates the ceasefire should be immediately disarmed.
- Paragraph 366 specifies that the Janjaweed must be prevented from moving into any areas in which they can pose a threat to civilians including especially IDPs.
- Paragraph 367 spells out some of the measures to be taken during Phase 2 of the Ceasefire (which begins 82 days after “D-Day”) including confiscation of motor vehicles and heavy weapons, actions to enforce control, and prosecutions.
- Paragraph 417 specifies that the Movements only move their fighters to assembly sites when the disarmament of the Janjaweed is verified, after phase 3 of the ceasefire (127 days after “D-Day”).
- Paragraph 457 lays out the timetable for all these activities.

Some of the Janjaweed groups originate from foreign countries, and have been causing havoc in Sudan. According to the Tripoli Agreement between Sudan and Chad, signed on 8 February 2006, the two countries are supposed to disarm all rebel elements from the other country that are present on their territory. Paragraphs 341-344 of the DPA underline these obligations. But a Janjaweed is a Janjaweed whatever his nationality: any foreign Janjaweed are outlaws and the GoS must deal with them under the toughest provisions of the paragraphs concerning the Janjaweed.

In the peace talks, the Movements argued strongly that some of the Janjaweed have been absorbed into paramilitary groups including the Popular Defence Forces and the police. The GoS asked, “Who are the Janjaweed?” The Movements demanded a mechanism to deal with all the paramilitary groups in Darfur, whether or not they could be called “Janjaweed.” This was included under a section called “Reform of Selected Security Institutions”.

- Paragraph 446 specifies these institutions, including the PDF, Border Guards and Border Intelligence, and Police including especially the Nomadic Police.
- Paragraph 447 specifies what shall happen to these institutions: their size shall be reduced to pre-conflict levels or below, their members must be drawn from all communities and they must have the trust of all communities, and they must be respectful of human rights and controlled by democratic bodies.

The organization responsible for this is the Darfur Security Arrangements Implementation Commission (DSAIC), which is set up by the DPA. The head of the DSAIC is appointed by the Movements and answers to the Senior Assistant to the President, who is also a nominee of the Movements. The GoS objected strongly to this, demanding that the head of the DSAIC should be an appointee of the GoS (with a deputy from the Movements) and should answer to the President. However, on the final day of the negotiations—5 May—the GoS accepted the AU proposal, while registering its reservation. Another provision in the DPA is for a Security Advisory Team to be provided by a foreign country or international organization, agreed by the Parties. The GoS was also unhappy with this provision, but finally accepted it. The Security Advisory Team will be part of the DSAIC and have an important role in restructuring these institutions.

At the same time as these paramilitary forces are to be downsized and reformed, the police force is to be built up, in such a way that it can truly enjoy the confidence of the people and provide law and order. More details of this will be covered in the article on the security of IDPs.

The DPA speaks of Janjaweed and other armed militia. However, the negotiators at Abuja were well aware that there are many militia that are not Janjaweed and do not pose the same kind of threat to the civilian population. During the Abuja talks, there was much discussion about whether to recognize these groups as “self-defence tribal militia” or under a similar name. In the end, the decision was made to deal with this issue through the Darfur-Darfur Dialogue and Reconciliation (see Paragraph 453). More details of this will be covered in the article on community peace and reconciliation.

When the security arrangements chapter was completed and presented to the GoS and the Movements in Abuja, the overall reaction was: “this is a tough deal for Khartoum.” Most of the reservations expressed by Dr. Majzoub al Khalifa, in his speech on 5 May in which he accepted to sign the DPA, concerned security arrangements. The Movements were much more pleased—which was not surprising, as their negotiators had been extremely tough on these issues. Minni Minawi was satisfied. Dr Khalil Ibrahim said, “The security

arrangements are generally OK.” On security arrangements, Abdel Wahid al Nour said on that morning, “The documents submitted are acceptable. We have accepted that part.” Nine days later, Abdel Wahid had second thoughts and wrote to the GoS asking for assurances that the SLM would be fully involved in monitoring the disarmament of the Janjaweed. Dr Majzoub replied in a letter dated 14 May, and emphasized that the disarmament of the Janjaweed was guaranteed by the CFC and the DSAIC, both of which included the SLM. Sadly, Abdel Wahid still refused to sign.

For the Janjaweed to be neutralized and disarmed, and the people of Darfur to live in peace and safety, much more will be needed than a signed Agreement. The good faith of the GoS and the Movements is essential. The African Union and international community have strenuous monitoring and verification tasks to do. But, as this article has tried to explain, the DPA is very good start. As this article has also shown, the security arrangements chapter was hammered out over many months of hard negotiation between the GoS delegation and the Movements’ representatives, and its most important provisions are ones proposed, developed or agreed by the SLM/A and JEM, and agreed by the GoS.

## **Part 2**

### **Security For IDPs and Refugees**

This is the second in a series of articles concerning the Darfur Peace Agreement (DPA), explaining how different parts were negotiated, what the paragraphs mean, and how they should be implemented. This article asks, how is security to be provided for internally displaced persons (IDPs) and refugees? The first article considered the disarmament of the Janjaweed.

The conflict in Darfur has driven millions of people from their homes and left them in camps for IDPs in Darfur and refugee camps in Chad. Apart from the miserable conditions in these camps, and the sadness and distress of being away from their homes, the IDPs have faced serious security problems including violence and harassment. Refugees and IDPs are also fearful that security may not be guaranteed when they return home.

The Movements’ negotiators were deeply concerned about the security of the IDP camps and raised this at an early stage of the negotiations in Abuja. The lead security negotiators—Ali Tirayo, Mohamed Adam and Tajudeen Niam—worked in close coordination on these points. Article 26 of the DPA is the outcome of their initiative, with Paragraphs 262-281 painstakingly negotiated over many long weeks. The United Nations and humanitarian NGOs also had a big input into these provisions alongside the African Union. The GoS security delegation led by General Ismat al Zain was tough and professional, and examined every detail. The outcome is a set of provisions that are workable and can provide real security improvements for displaced people, both in their camps and as they return to their homes.

Paragraphs 263-269 of the DPA are concerned with setting up Demilitarized Zones (DMZs) around IDP camps. The reason for this is that many camps—especially the smaller ones away from the major towns—suffer from attacks by armed elements, resulting in people being killed, injured and raped, and property stolen. The Movements’ delegates insisted that each camp should be surrounded by a DMZ so that IDPs can move in safety, and the camps themselves are better protected from attack. The GoS agreed. The relevant paragraphs are concerned with a series of questions about how to decide on these DMZs and how to provide security and policing in them. The actual language in the paragraphs sometimes looks confusing, because different provisions are needed for IDP camps in GoS-controlled areas, and those that are in areas controlled by the Movements.

One basic principle is that AMIS should decide on how big the DMZs should be and where their perimeters should lie. Some restrictions are spelled out. For example, if a camp is next to an urban area, that urban area doesn’t become demilitarized—it is still controlled and policed by the GoS in the normal fashion. The secured perimeter is restricted to the boundary between the camp and the town. Or if a camp lies next to the approach to an airport, the GoS can still deploy its airport protection forces to protect aeroplanes as they approach and take off.

Another basic principle is that no armed persons should be allowed in the DMZ. This doesn’t include off-duty soldiers, who might live next to an IDP camp—or even in a camp itself. They can go home through a DMZ as long as they don’t take their weapons. This doesn’t exclude the police either. Policing functions need to be carried out in these zones. During the negotiations, one proposal made was that AMIS civilian police should do all the police work in DMZs. But the African Union soon realized this wouldn’t work. AMIS simply doesn’t have enough police officers, and its officers also don’t have the legal powers to arrest people. Instead, the GoS and Movements agreed that Sudanese police officers would do the police work, under AMIS monitoring. In camps in areas controlled by the Movements, AMIS along with the Movements’ police liaison officers will do the policing.

Security inside the IDP camps was another big concern. Each day, the AMIS officer working with the AU Mediation received a situation report from Darfur, and most days it would include a report of violent incidents inside IDP camps. How should IDP camps be policed? The GoS police officers in the talks insisted that, as a matter of law, only Sudanese police should be allowed to undertake policing activities. But they also recognized that their policemen didn’t enjoy the trust of the IDPs themselves, and simply couldn’t do the job. The Movements’ delegates at first demanded that AMIS or UN police should be brought in—but this wasn’t practical.

An excellent compromise was agreed between the GoS and the Movements. This is found in Paragraphs 272 and 273. This provides for a “Community Police” force to be established. The Community Police are to be selected from the community itself and will work with community leaders. The training is to be done by AMIS, and the security situation and the policing itself are to be monitored by AMIS. The GoS will grant the Community Police legal authority, and cases for prosecution must be handed over to the

regular judicial authorities, where they can be investigated and prosecuted under AMIS monitoring.

The basic concept behind “Community Police” is a transitional arrangement until a properly professional police force is established, respected by all and able to ensure law and order across Darfur. The Community Police drawn from the IDPs can be an important part of that new force. As the IDPs return home, their Community Police will return with them, providing security for the returning IDPs, and bit-by-bit become an integral part of the reformed police force in Darfur.

Establishing and training the Community Police in IDP camps is one of the main responsibilities for the AMIS civilian police officers in the coming weeks and months. The AU has already requested that its civilian police units be strengthened for this purpose. The Community Police should give immense confidence to the IDPs that their basic security needs will be met. Paragraphs 274-279 specify that all police units in Darfur should pay special attention to the needs of women and children, including women police officers and special counters to deal with reported crimes against women and children.

The new Community Police force will be one assurance that IDPs will have security on their return home. There are other assurances too.

- Paragraph 159 lays down the principle that all IDPs and refugees who have lost their land are entitled to have their land rights restored.
- Paragraphs 163-167 are concerned with the state Land Commission and how it will operate to ensure that rights to land are properly respected. The head of the Land Commission is a person chosen by the Movements.
- Paragraph 366 requires that the Janjaweed are disarmed and removed from any areas of civilian habitation or IDP camps.

Speaking in the final session of the Abuja talks on 5 May, Abdel Wahid al Nour said that the security arrangements provisions were accepted. A few days later, however, he changed his mind and asked for clarification, and wrote to Dr Majzoub al Khalifa on 14 May asking for an assurance that “SLM/A shall contribute in the process of ensuring the safe return of refugees and IDPs to their homes including mounting joint patrols for this purpose.” Dr Majzoub’s reply the same day was: “the request of the Liberation Movement as to be part of the evaluation of the process [of security of return of IDPs], such objective is absolutely, seriously and uncompromisingly agreed upon.”

Dr Majzoub did not respond specifically on the question of “joint patrols”—units comprising both Sudan Armed Forces and Movements—an issue newly raised by Abdel Wahid that week. However, three points can be made regarding this. One, the Community Police will return with the IDPs. Two, in any area that has been recognized by the DPA as controlled by the Movements, the Comprehensive Ceasefire ensures that the Movements remain involved in ensuring security. And third, the DPA provides for the integration of 4,000 Movement combatants into the army into units in which they

comprise either one third or one half of the soldiers. The DPA doesn't specify where these units should be deployed, but there is no reason why they should not be deployed in areas of returning IDPs and refugees.

The text of the DPA has much more detail concerning IDPs than refugees. For example, it doesn't include any provisions for Community Police for refugees. This is because refugees are outside Darfur—and also because the Movements' negotiators didn't raise the issue. But the spirit of the Agreement allows for Community Police to be established among returning refugees as well as IDPs. This will need the GoS and the Movements to agree on details of how to implement the DPA—the sort of additional details that are essential if it is to work.

Any agreement has gaps and details to be worked out as it is implemented and as circumstances change. Good faith between the Parties is essential if this is to work. Good advice, technical inputs, assistance and monitoring from AMIS and the international community is also important. The DPA is a good start: its details on the security of IDPs are a tribute to the good sense, skill and concern of the negotiators on both sides—the GoS and the Movements. It can work.

### **Part 3**

#### **Compensation and Assistance to Victims**

This is the third in a series of articles concerning the Darfur Peace Agreement (DPA), explaining how different parts were negotiated, what the paragraphs mean, and how they should be implemented. This article asks, what provisions are there for victims of the conflict to receive compensation and assistance?

The conflict in Darfur has left millions of people destitute and without the basis for a livelihood. They cannot return to their homes and rebuild their lives, restoring their dignity and self-reliance, without assistance. For Darfurians, payment of compensation is also the symbolic end to a conflict. And in the Abuja negotiations that led to the DPA, the question of compensation arose as one of the most difficult and controversial.

On the final day of the negotiations in Abuja, all three of the Movements' delegations raised the question of compensation, asking for more. Minni Minawi went into the final session of the Abuja talks not knowing what amount of money the GoS was ready to put on the table, and one of his reservations was the GoS had not yet specified how much it was going to pay and when. When he agreed to sign, Minni raised the issue of compensation and assistance as one of his concerns. That same night, before going into the last session, Abdel Wahid al Nour's delegation said that the wealth-sharing provisions were "95% acceptable." When asked what was the remaining five per cent, the head of Abdel Wahid's wealth-sharing team, Abu al Bashir Abbaker, said "more compensation is needed."

The DPA provides not one but three mechanisms for providing compensation and victims' assistance. The first is the Compensation Commission, which is detailed in Paragraphs 199-209.

- Paragraphs 199-201 establish the right to compensation or restitution, and the legal mechanism for providing it. The Compensation Commission is empowered to examine every single individual case. These paragraphs indicate that the Compensation Commission shall continue until all claims have been settled.
- Paragraph 204 ensures that the Compensation Commission is coordinated with Property Claims Committees (which are established to sort out disputes over who owns which land or other assets) and the Darfur Reconstruction and Development Fund.
- Paragraph 207 indicates the range of different kinds of awards that the Compensation Commission can make, ranging from restitution of stolen assets, cash payments, in-kind assistance in the form of animals or agricultural tools, to medical, psychological, and legal assistance.

The DPA doesn't specify from where compensation should be paid. But it is clear that the Government is responsible.

The second mechanism is a Compensation Fund, which is to be set up under the Compensation Commission. Because the Compensation Commission was expected to take some time to review and assess individual claims, the Movements' negotiators demanded a quicker mechanism. As a result, the GoS agreed to a simplified procedure for giving compensation, which is the Compensation Fund.

- Paragraphs 210-211 set up the Compensation Fund for rapidly paying out interim awards and says this should be done within three months.
- In Paragraph 213 the GoS provides \$30 million as an immediate payment into the Compensation Fund.

There has been a lot of misrepresentation of the amount of money available for compensation. It is worth noting that the Compensation Fund is specially provided only for the immediate, interim awards, and that \$30 million is only the first payment. \$30 million is not the ceiling for the Fund. The Compensation Commission is expected to work over many months and years and its awards are not limited to any amount determined by the Compensation Fund—which covers the interim awards only.

These paragraphs were negotiated in detail by the Movements' negotiators. Jibreel Khalil was a particularly articulate exponent on behalf of JEM and the SLM teams worked hard too. On the side of the GoS, Dr. Lual Deng argued in favour of general assistance for rehabilitation and reconstruction, rather than specific funds for compensation. The international donors were sympathetic to his argument. One reason for this was that they were worried about setting a precedent: they didn't want rebel groups in other civil wars to insist on compensation or reparations as a precondition for making peace. In Southern

Sudan, the SPLM had negotiated a very good wealth-sharing package, but hadn't insisted on individual compensation.

It is worth noting that the DPA provides that the Compensation Commission should be headed by someone nominated by the Movements.

The third mechanism for assisting the Darfurian victims of the conflict is the Darfur Reconstruction and Development Fund (also to be headed by someone chosen by the Movements). This is a much larger funding mechanism intended to support all the activities necessary for rebuilding Darfur, including packages for agricultural rehabilitation (seeds, tools, fertilizers, etc.), rebuilding Darfur's livestock wealth (providing animals and veterinary services), rebuilding schools, health services, roads, and wells, providing micro-credit to people to rebuild their small businesses, and a host of other activities. Rehabilitation packages will be given to individual households, in the form of in-kind grants. The GoS is committed to providing \$300 million this year and \$200 million for the next two years for these activities.

A Joint Assessment Mission that includes international agencies and donors will assess the needs in more detail over the coming months, and donors will pledge funds at a conference in September or October in the Netherlands. It is likely that the aid provided by foreign donors will be much larger than the funds provided by Khartoum. But donors don't like to give to a compensation fund—they argue that compensation or reparations are the responsibility of whoever caused the damage in the first place. Donor assistance will be given for assistance to victims, for the return of IDPs and refugees to their homes and their rehabilitation and rebuilding their livelihoods—but the word “compensation” won't be used.

The one thing normally excluded from rehabilitation packages is cash grants. Also, while farming assistance is given to people who were formerly farmers, and micro-credit to artisans and traders, there is no mechanism that specifically restores what has been lost. All will get more-or-less similar levels of assistance, without regard to what they may have owned before.

In agreeing to sign the DPA on 5 May, Minni Minawi clearly said that he was looking at the bigger picture—the overall level of assistance for rehabilitation and reconstruction—and not at the Compensation Fund alone. That assistance is likely to be ten or twenty times greater than the Compensation Fund.

Since the signing of the DPA the issue of compensation has become even more controversial. It was the number one reason that Abdel Wahid gave for refusing to sign. On 14 May he wrote a memorandum and submitted it to Dr. Majzoub al Khalifa, seeking clarification on some outstanding issues. The first thing Abdel Wahid asked for was an increase in the funding for compensation to \$100 million with further increases possible. Dr. Majzoub responded the same day:

“The first paragraph [of Abdel Wahid’s memorandum], which has talked about increasing the amount of the government support and its payment to the Compensation Fund set up by the proposed Compensation Commission, which will include others, as stated, we are confident that the duty of the Sudanese people, generally, and the government and its institutions will continue until all the displaced and refugees of our people are returned and settled in a dignified way finding shelter and have the capacity to produce their livelihood as well as empowering every single individual of them with their legitimate rights whether granted by law or tradition.”

This response was not enough to satisfy Abdel Wahid. But it does show that more assistance is on the table, and that the principle of the Compensation Commission is law and rights, not a ceiling of any amount stipulated by a Compensation Fund.

In the last month, discussions have continued about how the GoS and international donors can increase the amount of assistance they can provide to Darfurians, and how that assistance can be dispatched speedily and can reach individual households. The mechanisms are all provided for in the DPA. The remaining question is the implementation.

The SLM/A and JEM negotiators in Abuja were very effective in hammering out an agreement on wealth sharing. The GoS delegation was extremely cooperative in proposing mechanisms for funding reconstruction and development in Darfur. As the Movements negotiators themselves said, this part of the DPA represents about 95% of their demands. There is more work to be done on compensation, but the DPA provides the basis on which to work out a deal that is fully acceptable to the people of Darfur.

## **Part 4**

### **The Transitional Darfur Regional Authority**

This is the fourth in a series of articles concerning the Darfur Peace Agreement (DPA), explaining how different parts were negotiated, what the paragraphs mean, and how they should be implemented. This article asks, what is the Transitional Darfur Regional Authority (TDRA) and why was it proposed by the African Union Mediation?

One of the most controversial issues in the Abuja negotiations was the question of whether Darfur should be constituted as a single Region or should remain as three states. The Movements’ negotiators insisted that Darfur was historically constituted as a single political and administrative entity and had only been divided by administrative fiat in 1994, and should be returned to that status immediately, with its pre-existing borders. Their chief negotiators—Abdel Jabbar Dosa for the SLM-Minni Minawi and Abdel Rahman Musa and Ibrahim Madibo for the SLM-Abdel Wahid, plus Ahmed Tugod Lissan for JEM—insisted on this to the last. The GoS delegation, led by Dr. Majzoub al Khalifa argued that the status quo of three states was supported by most of the population

and was also consistent with the Interim National Constitution. The most that Khartoum was ready to concede was a “coordinating council” for the three States.

Three times during the Seventh Round of peace talks in Abuja, which lasted from November 2005 until May 2006, the GoS and the Movements had direct, bilateral talks on power-sharing issues. In January and February, the GoS and the SLM-Abdel Wahid actually reached their own bilateral agreement—but then Abdel Wahid pulled out. In March, Vice President Ali Osman Taha met with Khalil Ibrahim in Tripoli. Khalil reported that Taha had agreed to the Region, but no sign of any such agreement could be seen at the negotiating table in Abuja. In April, Vice President Ali Osman Taha spent three weeks in Abuja and had numerous discussions with the leaders of the Movements, but they couldn’t agree on the Region or on how to divide power in Darfur.

By mid-April the Abuja talks were making progress on many issues—most of wealth-sharing and much of security arrangements—but were getting stuck on some basic issues of power-sharing. The African Union Mediation decided to present some compromise proposals. International partners also worked to make some enhancements in the final days, using the same framework.

The challenge facing Dr. Salim Ahmed Salim and his team was not just how to identify a middle position between the Parties, but also to take account of several other important concerns.

One obvious consideration was that the SLA and JEM had not won the war, and therefore could not dictate their terms. They would have to compromise. And they would have to accept that the Darfurians who hold posts in the legislature and executive today are indeed Darfurians with equal rights—the Movements could not claim to represent 100% of Darfur and exclude others. The GoS was in a more powerful military and political position, but it had not won either. It would have to concede a significant amount of power to the Movements. After much debate, the Mediators accepted the principle that the National Congress Party should keep a bare majority in whatever government system was agreed for Darfur—as it had done in the Nuba Mountains and Blue Nile in the CPA. It simply wasn’t possible for the Movements to negotiate the GoS out of power.

A second consideration was the importance of respecting the spirit of the Naivasha Comprehensive Peace Agreement. This was not just a matter of maintaining the delicate balance the CPA had established between North and South, but also keeping the intact the CPA’s principles of democracy and pluralism. The Declaration of Principles for the resolution of the Darfur conflict, signed in June 2005, had already specified that any agreement reached in Abuja would be incorporated into the Interim National Constitution. But that was not an invitation to ride roughshod over the provisions of the INC. The reasons for this included the fact that the CPA and INC have far-reaching provisions for the democratic transformation of Sudan, including free elections to be held in 2009. The Mediators reasoned that the DPA should enable Darfurians to become a full part of Sudan’s national process of democratic transformation. The DPA should not set Darfurians apart from that democratic process. And a central part of that democratic

transformation should be the chance for Darfurians to choose their type of state or regional government.

The CPA also gives official status to the many different languages of Sudan, meaning that this did not need to be negotiated in Abuja. It initiates a process of changing Sudan's security institutions into smaller, non-partisan, professional institutions. It provides mechanisms for the devolution of power. For these reasons and others, the CPA is an asset to the people of Darfur and not an obstacle to them, and the achievement of peace in Darfur—which also means the fuller participation of Darfurians in national political life—should become a means of ensuring the more faithful and rapid implementation of the CPA.

A third consideration was practicality. Darfur is ravaged, half of its people driven from their homes, facing a huge task of reconstruction and reconciliation before normal life can begin again. In these circumstances, it is better to build on what exists—the existing states administration—rather than destroying it, and better not to create any conflicts that do not already exist. For this reason, the Mediation preferred to propose to keep intact what is already there for state and local government, and establish new institutions for the specific tasks of implementing the DPA.

A fourth principle was that whatever was agreed in Abuja was purely interim. Sudan as a whole is in an interim phase—a transition from war to peace, from authoritarianism to democracy, from humanitarian relief to social and economic development. Anything agreed at Abuja would only last until elections were held across the nation. And the country as a whole faces the challenge of adopting a permanent constitution following the 2011 Southern referendum on self-determination. What was at stake in Abuja was not Darfur's permanent status, or a permanent division of power between the parties, but purely an interim arrangement for the next few years.

Most of the provisions for security arrangements and wealth sharing arose directly from the discussions held between the GoS and Movements' negotiators. This was not possible for the power-sharing chapter. Instead, the Mediators based their proposals on the principles outlined, and above all on the principle of democratic transition.

What the GoS and Movement negotiators did agree on was the importance of democracy and free elections according to the timetable of the INC. It was only logical to extend the democratic principle to the concept of the Region—to allow the people to decide. And in their bilateral negotiations in January and February, the GoS and Abdel Wahid had explored the idea of a transitional or interim administrative authority for Darfur. From this, the Mediation developed the idea of the TDRA. It has important powers, a large budget, deals with the most important issues facing Darfurians today, and lasts until there is a referendum on whether Darfur should have a permanent Region or not.

Because the TDRA is transitional, this gave the Mediators scope for proposing more power for the Movements. According to the principle that the Movements could not negotiate the GoS out of power, any fully-fledged Region would have had to be

controlled by the NCP. But the TDRA can be controlled by people chosen by the Movements. Each of the bodies that collectively make up the TDRA is to be headed by someone chosen by the Movements. And the TDRA itself is chaired by the Senior Assistant to the President, the fourth most senior individual in the Presidency, who has more extensive competencies than even the Vice President.

Paragraph 50 of the DPA spells out the composition of the TDRA. As well as the Senior Assistant to the President and the Governors of the three Darfur States, it includes:

- Head of the Darfur Rehabilitation and Resettlement Commission, the body that will oversee the social and economic reconstruction of Darfur;
- Head of the Darfur Reconstruction and Development Fund, which will dispense the funds made available by the central government and international donors for reconstruction and development;
- Head of the state Land Commission, which will oversee the resolution of disputes over land tenure;
- Head of the Darfur Security Arrangements Implementation Commission, which has wide-ranging powers and competencies over disarmament and demobilization, the restructuring of security institutions, integration of former combatants, and a host of other security-related tasks;
- Chairperson of the Darfur Peace and Reconciliation Council, an institution which will be established at the Darfur-Darfur Dialogue and Reconciliation;
- Head of the Darfur Compensation Commission, which will oversee the process of making compensation awards and disbursing the monies in the Compensation Fund.

All of these posts are to be filled by individuals of integrity, nominated by the Movements. Taken collectively, the institutions that fall under the TDRA have command over more resources than any State government. The Movements' power-sharing negotiators gained a great deal for their people.

Meanwhile, the three Darfur States remain, with a direct relationship to the central government, continuing their existing activities. One of the three Governors is to be a nominee of the Movements, and the other two States are to have Deputy Governors nominated by the Movements. In each State, the Movements nominate two ministers plus an adviser with ministerial rank. This is a straightforward compromise between the GoS and the Movements' positions.

The Movements' negotiators in Abuja pointed out that because the NCP still has a simple majority in each State legislature, and four ministers, there is the potential for a clash between the TDRA and the States. They won an additional concession from the GoS. In such cases, Paragraph 54 states that the conflict is to be referred to the Presidency—where the Senior Assistant to the President has to be consulted on all matters relating to Darfur.

The Movements' negotiators won another important concession from the GoS. Paragraph 61 returns the borders of Darfur to where they stood at Independence on 1 January 1956. The Southern border with Bahr el Ghazal will be determined by the North-South Boundary Commission and the precise location of the northern boundary will be demarcated by a technical committee.

At the heart of the DPA's provisions for sharing power are the 2009 elections and the 2010 referendum. Whoever wins those elections in Darfur, controls Darfur, whoever wins the referendum on the status of Darfur, determines whether Darfur is one or three. The combination of CPA and DPA gives the people of Darfur democratic rights and opportunities they have never before enjoyed. The challenge facing the Darfurian people and the parties to the DPA is to make this democratic transformation into a reality.

## **Part 5**

### **How to Include the Different Darfur Movements**

This is the fifth in a series of articles concerning the Darfur Peace Agreement (DPA), including what has happened since the signing on 5 May. This article is concerned with the question of representation of different Movements and fractions of Movements.

One of the biggest obstacles to the Darfur peace process has been the fragmentation among the Movements, and the fact that many groups have knocked at the door and sought representation. There is no solution to this problem that satisfies everyone. This meant that the African Union, in partnership with the international community, had to make a number of difficult decisions. This article outlines how those decisions were made and what provisions exist in the DPA for including additional groups.

The Darfur peace process began in September 2003 with a 45-day ceasefire between the GoS and SLM/A and continued in April 2004 with the N'djamena Humanitarian Ceasefire. JEM joined the negotiation process at that point, and the meetings shifted to Abuja, Nigeria, in August 2004. The first major dilemma on the question of who was to be represented arose when the NMRD split away from JEM and demanded representation at the talks. The AU, supported by its partners, decided not to allow NMRD to join the negotiations. Instead, the AU invited the NMRD to join the peace process after an Agreement had been reached, at the Darfur-Darfur Dialogue and Consultation. The main reason for turning away NMRD was the fear that if any new faction was recognized, this would encourage the Movements to fragment and any ambitious commander or political leader to form a breakaway faction and demand a seat at the table.

The second major dilemma was who to recognize as the leader of the SLM/A. At the beginning, Abdel Wahid al Nour was acknowledged as Chairman. But by the Fifth Round in Abuja, he was using his authority as Chairman to reject SLM/A commanders who came to the talks. Those commanders represented real groups on the ground and wanted a stake in the negotiations, as part of the SLM/A. Abdel Wahid pushed them aside and refused to contemplate any dilution of his authority as Chairman. Meanwhile, Minni Minawi had organized the Haskanita Conference which chose him as Chairman, in

the absence of Abdel Wahid and many of his supporters. The AU chose to recognize both Abdel Wahid and Minni Minawi as leaders of different groups in the SLM/A. At a meeting in Nairobi in November 2005, the U.S. tried to bring the two factions together and failed. It then persuaded them to at least adopt a common negotiating position—which lasted only a couple of months.

During the last round in Abuja, a group of 19 delegates from Abdel Wahid's faction split, and tried to seek recognition from the AU. The AU refused this, on the grounds that it would only recognize the two SLM/A leaders, but it allowed the "Group of 19" to stay in Abuja and engage in informal discussions, in the hope that it would rejoin Abdel Wahid (or one of the other groups) and find a means for joining whatever agreement was signed.

The DPA itself has two provisions that provide space for other armed groups. The first is in the Comprehensive Ceasefire, Paragraphs 334-337, "Compliance with the Ceasefire by Other Armed Groups and Militia That Are Not Parties to This Agreement." These paragraphs were drafted with groups such as the NMRD, the "Group of 19" and other armed groups aligned with the Movements in mind. Paragraph 334 requires the signatory parties (to date, GoS and SLM/A-Minawi) first of all use non-military means to ensure that the other armed groups comply with the ceasefire. For example, negotiations and traditional forms of conflict resolution are proposed. Paragraph 335 requires the signatory parties to report on these activities to the Ceasefire Commission (CFC) each month. Paragraph 336 enjoins the CFC to determine the best ways of dealing with groups that do not respect the ceasefire, if necessary referring the matter to the AU Peace and Security Council. Paragraph 337 suggests some tougher measures that the PSC may decide to authorize against groups that persistently violate the ceasefire, such as interdicting arms and ammunition, creating new buffer zones and forcible disarmament.

The second provision is the Darfur-Darfur Dialogue and Consultation, which is a mechanism whereby all Darfurian groups can be represented. The DDDC is also required to set up a Peace and Reconciliation Council which could find ways and means of ensuring that other armed groups become part of regionwide peace.

In the event, of course, the DPA was signed by only the GoS and Minni Minawi. This leaves an important anomaly in the Comprehensive Ceasefire. This is that the SLM/A-Abdel Wahid and JEM remain signatories of the N'djamena Ceasefire and several other agreements, and therefore remain as members of the CFC and Joint Commission. However, the CFC and JC have gained extensive new powers under the DPA. There are many more activities to be monitored and verified than in the past. These include the disarmament of the Janjweed, the disengagement and redeployment of GoS forces, and the demilitarized zones around IDP camps. Because it has signed the DPA, the GoS is required to disarm the Janjaweed and redeploy its forces. But the SLM/A-Abdel Wahid and JEM, which have not signed, are not required to disengage and withdraw their forces, and therefore should not have any role in monitoring and verifying GoS actions under the DPA Security Arrangements chapter. This implies a two-tier CFC and JC, which restricts SLM/A-Abdel Wahid and JEM to merely monitoring violations of the former ceasefire.

Also, Paragraph 250 gives the strengthened CFC and JC new powers for publicizing violations, recommending prosecution of violators, and referring cases to the AU PSC for further action. The SLM/A-Abdel Wahid and JEM, because they did not sign the DPA, will not be in a position to decide on any of these measures—though they may have such measures imposed on them in accordance with the procedures.

The fact that only Minni Minawi signed from among the Movements has led to the situation in which the significant individuals from the SLM/A-Abdel Wahid and JEM have approached the AU wanting to be associated with the DPA.

The failure of Abdel Wahid and Khalil Ibrahim to sign the DPA left many of their followers deeply unhappy—especially those who had been involved in negotiating the DPA. Abdel Rahman Musa, who had headed Abdel Wahid’s negotiating team, arrived at the signing ceremony in the Presidential Villa in Abuja with 13 colleagues and a letter, asking to be admitted to the peace process. Abdel Rahman and his group were embraced by President Olusegun Obasanjo, who was presiding over the ceremony, who then asked both Dr Majzoub al Khalifa and Minni Minawi to embrace them too. After this, several leading individuals either contacted the AU or traveled to Addis Ababa to find a way of becoming part of the process.

The AU leaders were clear that only the three recognized leaders were authorized to become full signatories to the DPA. Up to now, the signature page of the DPA contains only the signatures of Majzoub al Khalifa and Minni Minawi, plus the African and international witnesses as guarantors. But the AU could not turn away individuals who wanted to express their support. Individuals cannot “sign up” to the DPA as if they were recognized parties. But they can sign a “Declaration of Commitment” to the DPA.

The AU delayed until after the final deadline for Abdel Wahid and Khalil to sign on 31 May, before making any response to those additional individuals wanting to commit themselves to the peace process. One reason for the delay was continuing efforts to try to bring those two leaders into the fold. A joint AU-EU-Norwegian effort continued with Abdel Wahid until the deadline, trying to convince him to meet with First Vice President Salva Kiir and Minni Minawi in Yei, to bridge the remaining differences. AU and international representatives stayed with Abdel Wahid until the very end, discussing his concerns over compensation, security arrangements and guarantees for implementation and trying to find means of meeting whatever legitimate concerns he was raising. The efforts of the AU and its partners finally failed when Abdel Wahid abruptly cancelled his trip to Yei, after Salva Kiir had already arrived in the town to receive him.

Meanwhile, the EU and the Slovenian Government continued to engage with Khalil Ibrahim right up until the deadline. This effort did not succeed either.

Having been spurned by Abdel Wahid and Khalil, the AU could not turn away those senior members of the SLM-Abdel Wahid and JEM who wished to come forward and express their support for the peace agreement. But the AU also did not want to create any further splits in the Movements. In particular, it was worried that some individuals who

came forward claiming to be members of the Movements might not in fact be genuine. So the AU decided two criteria for allowing individuals to sign the “Declaration of Commitment.” Either they had to be accredited delegates to the peace talks, or military commanders or political leaders known to AMIS in Darfur. Based on these two criteria, the AU accepted a Declaration of Commitment signed by four individuals: Abdel Rahman Musa, Ibrahim Madibo, Abdel Rahim Adam Abu Risha and Adam Saleh Abbaker. The ceremony for signing this Declaration took place in Addis Ababa on 8 June and the document was received by the AU’s Commissioner for Peace and Security, Said Djinnit.

What does this Declaration of Commitment mean? It is a sign of good faith by the individuals who signed it and their followers. But in terms of inclusion in the implementation of the DPA—for example having a right to participate in the allocation of posts under the Movements’ quota—that depends upon the decision of the sole Movement signatory, Minni Minawi. How Minni cooperates with those who have already signed the Declaration of Commitment, and those who may sign in the future, is a political decision. Minni would be well advised to carefully welcome his brothers-in-arms from the other Movements into the institutions and processes for implementing the DPA.

It is now too late for Abdel Wahid and Khalil to sign the DPA, unless the existing signatories—the GoS and SLM/A-Minawi—should agree to change the rules. But political leadership requires that Minni seek a way to expand the political base of support for the DPA by including all Darfurians who are committed to peace and who believe that the DPA provides a framework and a stepping stone to a just and lasting peace.

## **Part 6**

### **Guarantees for the DPA**

This is the sixth in a series of articles concerning the Darfur Peace Agreement (DPA), explaining how the Agreement was negotiated in Abuja and how it can be implemented. This article deals with the question: how do we know it can work? What are the mechanisms and guarantees?

In the Abuja talks, there was little trust between the negotiating teams from the GoS and the Movements. This was no surprise, given the horrific violence that has occurred in Darfur over the last few years, and the breakdown of previous agreements such as the N’djamena Humanitarian Ceasefire. The experience of negotiating an end to African civil wars is that the process usually takes at least four years—and in the case of Southern Sudan, it took more than ten years from the adoption of the IGAD Declaration of Principles to the signing of the CPA. It takes many years to build trust, and even then the implementation of agreements faces formidable problems. Everyone concerned with Darfur was not ready to be that patient, and so every effort was made to accelerate the process by providing extra layers of guarantees.

On both sides, there were people who opposed reaching any negotiated settlement. Some members of the Government believed that the Movements were too weak, too fragmented and too unrepresentative of the Darfurian population to be a viable partner in peace. Some argued that the Movements were representing a foreign agenda and were not truly Sudanese. Better, they felt, to allow the war to continue and the Sudan Armed Forces to finish the job. On the side of the Movements, there were some who so distrusted and hated the Government that they believed that peace was impossible without a complete change in the regime, and that any peace agreement would simply postpone the inevitable showdown. Most of the criticism of the DPA from western activists is a variation on the argument, “what use is a peace agreement if the National Congress Party stays in power?”

The rapid conclusion to the DPA negotiations in April-May this year means that, uniquely for an African peace agreement, confidence-building between the parties has to take place after the agreement is signed, not beforehand. The technical experts on the security arrangements talks had recommended that the GoS and the Movements first sign a ceasefire, and then use the implementation period of the ceasefire for confidence-building, assuming that as the two sides worked together on monitoring the ceasefire, they would build confidence. In principle, everyone agreed that this was the way to proceed. But the sheer scale of the violence in Darfur, the depths of the humanitarian crisis, and the way in which the Darfur conflict was holding up the implementation of the CPA and thereby poisoning the very chances of democracy throughout Sudan, meant that the AU and its international partners decided they had to move more quickly. So, unlike in the South and the Nuba Mountains, where a ceasefire was agreed first, and implemented and monitored while the talks continued, in the Abuja talks the comprehensive ceasefire is part of the overall agreement itself.

Therefore no-one should be surprised that the main criticism of the DPA is “how can this be implemented given that the two sides don’t trust each other?” It is a fair point. The answer lies in looking at the mechanisms for monitoring and verification in the text of the DPA, and the international engagement and international guarantees provided, outside the DPA, by the United States, the UN and other international partners.

One of the first issues raised by the SLM/A and JEM negotiators in Abuja was the weakness of the existing mechanisms for monitoring and verification of the ceasefire. One stumbling block was the continued presence of Chad as a leading member of both the Ceasefire Commission (CFC) and the Joint Commission (JC). At first the Movements objected to this (especially JEM) because of their poor relations with the Chadian Government. Later, Khartoum objected. By the middle of the seventh round of the talks, the Chadians resolved the problem by quietly taking a back seat.

A more difficult problem was enhancing the powers of the CFC and JC themselves, and making sure they operated effectively. Paragraph 250 of the DPA was the outcome of this: it allows the two institutions to take tougher measures against groups that violate the ceasefire, including recommending sanctions against them. The CFC, JC and AMIS are also given much stronger powers for monitoring and verifying all aspects of the

comprehensive ceasefire, including the movement of forces, the disengagement and redeployment of troops, and the use of heavy weapons.

Another demand of the SLM/A and JEM was for a much tougher international protection force. At first, the negotiators insisted that they wanted the UN to come in as part of the Agreement itself. But the AU Mediation had no power to deliver this, even if the sides had agreed. Instead, it was agreed that the discussions could include measures for strengthening the AU force—both the military and the police—and that if the GoS agreed to change the AU force into a UN peacekeeping operation, then “UN” would simply replace “AU” at the relevant places in the text of the DPA.

The DPA may not mention a UN force, but the signed Agreement is in fact a prerequisite for any UN force. In 2004 the AU dispatched troops to Darfur on the basis of a very shaky ceasefire—something the UN Department of Peacekeeping Operations would never have done. The UN, with its long experience of peacekeeping, insists that there must first be a peace to keep before it sends troops. The UN only sent troops to Southern Sudan and the Nuba Mountains after the signing of the CPA. Similarly, with the DPA now signed, the UN will consider sending a force to Darfur. But it needs Khartoum’s consent. The main focus of the international politics of Darfur has now shifted from pressing the sides to sign the DPA, to pressing Khartoum to accept a UN force.

The last sections of the DPA deal with the implementation schedules and plan, while Article 33 concerns the Darfur Assessment and Evaluation Commission. These are aimed at putting in place a similar structure for implementation as exists for the CPA. The AU Mediation was well aware that the CPA implementation has lagged. But nobody expected the CPA to proceed on track while the conflict in Darfur raged unabated. It is only with the DPA signed that we can truly expect the spirit of the CPA to become a reality.

The Darfur Assessment and Evaluation Commission is a mechanism for the international community to become closely engaged with all aspects of the implementation of the DPA. It needs to be set up soon. Already there are important deadlines looming, and if the GoS and the SLM/A-Minawi fail to meet them, then the DAEC should examine the reasons for the delay and take whatever action is needed.

In addition to the international involvement in general assessment and evaluation, the DPA provides for a Security Advisory Team, drawn from an international organization (such as the UN) or a foreign country, to play a leading role in implementing the final status security arrangements. Details of this can be found in Paragraphs 395-398. The inclusion of the SAT was a big concession by the GoS and a major win for the Movements’ negotiators. The SAT will serve as an impartial referee on the implementation of such things as the integration of the Movements’ fighters, the restructuring of the PDF and police, and the disarmament and demobilization process.

The most important page of any peace agreement is the last page—the signature page. In the case of the DPA, as with the CPA, the signatures of the Sudanese leaders are followed immediately followed by the signature of the witness (Dr Salim Ahmed Salim) and the

guarantors, including the AU's own leaders (President Olusegun Obasanjo, President Denis Sassou-Nguesso and President Alpha Konare) and a long list of international guarantors (beginning with US Deputy Secretary of State Robert Zoellick and British Development Secretary Hilary Benn). What do these people and their governments bring to the DPA, to ensure that it is properly implemented?

The first thing to note is that the DPA does not change or supplant any of the existing UN Security Council Resolutions concerning Darfur. The situation in Darfur will still be raised regularly at the UN Security Council. The GoS is still obliged to disarm the Janjaweed and to permit humanitarian supplies to reach all people in need. The arms embargo is still in force. The DPA does not change the mandate of the International Criminal Court. UN Security Council Resolution 1591 empowers the Council to impose sanctions—such as assets freeze or travel ban—on any individual who violates the arms embargo or obstructs the peace process.

The Movements' negotiators in Abuja didn't raise these issues. They didn't need to. They were already in place and nothing in the DPA could change them in any way. The DPA is silent on some of the most important issues facing Darfur, not because they were forgotten, but because they were dealt with elsewhere.

With the DPA signed and in effect, UN Security Council Resolution 1591 can now be applied to any individual who obstructs the implementation of the DPA. This is an amazingly tough measure. It is the first time an Africa peace agreement is backed up by such a strong mechanism. The first targets of any such sanctions are likely to be those political and military leaders who flout the ceasefire and launch military attacks aimed at blocking the DPA.

The DPA gives AMIS extra powers for protecting civilians and monitoring the obligations of the GoS and the Movements to do the same. But, as it is widely known, AMIS has too few troops and materiel to be able to do this job properly. It is essential that AMIS is expanded. If Khartoum can agree to a UN force, it is essential that it is large and well-equipped.

A final level of guarantee for the implementation of the DPA is the political commitment of the highest level of international leaders. President George W. Bush wrote personal letters to both Abdel Wahid al Nour and Minni Minawi, assuring them of his commitment to the faithful implementation of the DPA. Bush's letters specified his particular concerns with power-sharing and security arrangements. In addition, international donors are already pledging major funds for the rehabilitation and reconstruction of Darfur. Bush also wrote to President Omer al Bashir, indicating that the signing and implementation of the DPA would be a prelude to improving relations between the U.S. and Sudan.

The greatest misgiving of the Movements over the DPA is their lack of political control of the Darfur States. Although the TDRA is controlled by the Movements' nominees, the Movements have only minority representation in the State legislatures and executives.

This is of course only an interim provision until the 2009 elections, but many in the Movements fear that they will not be able to compete fairly in those elections. The AU and international community are well aware of these concerns, and in Abuja there were extensive informal discussions about what needed to be done to allay these misgivings. It was recognized that the process of free and fair elections begins with the national census and the compilation of the electoral roll, and includes the assurance of a free press and freedom to campaign, with all parties having access to the media, right the way through to the fairness of the voting on election day and counting of votes thereafter. There is immense international goodwill for Darfur and determination to make sure that Darfurians exercise real democracy when the votes are cast in three years' time.

On the final afternoon of the Abuja talks—5 May—President Obasanjo, U.S. Deputy Secretary Zoellick and British Development Secretary Benn met privately with Abdel Wahid at length and produced every possible guarantee that an African or western government can produce. These were not enough for Abdel Wahid, who still refused to sign. Abdel Wahid demanded that the Americans intervene in Darfur as they had done in Bosnia. He forgot that even when NATO sent troops to Bosnia, they did not win the Bosnians' war for them—the Bosnians still had to accept a peace deal that was much less than they had wanted. After the Dayton peace agreement, in which the Bosnian Government gave away huge areas of territory to the Serbs, the Bosnian President Alija Izetbegovic said, "This may not be a just peace. But it is more just than continuing the war."

The international partners are also well aware that while the National Congress Party has a formidable electoral machine, the Movements have very little in the way of a party organization. They don't have party offices, vehicles, magazines, and the other necessary infrastructure for mounting a political campaign. Their people don't have the skills of organizing civilian parties, publishing newspapers and running campaigns. For these reasons, international donors are actively considering how best to assist the Darfur Movements with capacity-building for their forthcoming transformation into civilian parties. Many international donors came forward with offers of this kind of support in Abuja.

The ultimate guarantees on any peace agreement are the good faith of the parties who sign it, and the determination of the people themselves to ensure that peace is assured. The DPA comes with some of the strongest guarantees of any peace agreement in modern times. But it is the hard work and determination of the Sudanese people that will make it a reality. The Movements' leaders who have signed the DPA, or signed a Declaration of Commitment to the DPA, have taken a courageous step. They have trusted that their people will back them in peace and democracy.

## **Part 7**

### **Community Peace and Reconciliation**

This is the seventh in a series of articles concerning the Darfur Peace Agreement (DPA), explaining how different parts were negotiated—including which negotiators insisted on

which articles—what the paragraphs mean, and how they should be implemented. This article deals with the question of what is next: how the DPA can serve as the foundation for a process of peace and reconciliation among Darfur’s fractured and divided communities. It is important that the letter and spirit of the DPA are properly understood by all Darfurians and other Sudanese, so that the Agreement can be implemented and peace can return to Darfur.

As the Darfur peace talks entered their fifth round a year ago, it was clear to all involved that any peace agreement signed between the GoS and the two Movements represented there—the SLM/A and the JEM—could only be the first step in a longer process of community peacebuilding and reconciliation. Many groups were not represented in Abuja, and many issues could not be adequately discussed. For example, all the complicated issues of land ownership could only be discussed at the level of general principles—the specific problems of who owned which piece of land could not be resolved.

This, incidentally, is one reason why the AU Mediation and the international partners were keen for the peace talks in Abuja to come to a rapid conclusion. Only when the DPA had been agreed there by the political leaders, would it be possible to begin the equally important process of creating peace, locality by locality, across Darfur. Only with the leaders’ signatures on the DPA would it be possible to bring other groups to the table.

There are two main elements to the ongoing community peace and reconciliation efforts. One is Chapter 4, which concerns the “Darfur-Darfur Dialogue and Consultation” and the other is the Peace and Reconciliation Council, a subsidiary body of the Transitional Darfur Regional Authority, which will be set up by the DDDC.

The DDDC is contained in the “Declaration of Principles” signed by the GoS and the Movements in July 2005. It is important to note that both Abdel Wahid al Nour and the JEM signed this Declaration a year ago. Today, it is hard to see how they could participate in the DDDC without having signed the DPA itself and become part of the implementation process of the DPA. But they both support the idea. In fact, Abdel Wahid was very enthusiastic about the DDDC, and only asked for very minor changes to the DDDC sections of the DPA. (He wanted 75% of the representatives to be from tribes and communities, not the 60% proposed in the DPA.)

The most important element of a successful DDDC is political independence. Past efforts to conduct reconciliation among Darfurians have all been undermined through political interference. For this reason, all of the most important figures in the DDDC are independent from any of the political parties. The conference itself will be chaired by an African on the highest integrity and stature (this could be a Sudanese citizen of course). The Preparatory Committee and Panel of Experts will also be chaired by independent individuals. The DDDC will be funded from a variety of sources including international donors.

The main event of the DDDC is a conference with up to one thousand participants. Six hundred of these will represent all the communities of Darfur, based on tribal and geographical representation. Special attention will be paid to ensure that all communities are represented including all minorities. The other four hundred will represent stakeholders including political parties, civil society organizations, religious leaders, business leaders, members of the diaspora, trade unions and professionals. Special efforts will be made to include a strong representation of women.

The DPA gives two main functions to the DDDC. The first is the “political function.” This is to popularize and disseminate the DPA among all groups in Darfur. In Abuja, there was a lot of debate about whether the participants at the DDDC should be able to amend the DPA in any way. The clear decision of all the negotiators was “no”—once the DPA had been signed by the political leaders it should not be changed. However, many aspects of the implementation of the DPA should be open to discussion and interpretation.

Two particular political functions are spelled out in Paragraph 480. One is that the DDDC can “act as a mechanism of last resort to break the deadlock on specific issues.” Although no details are given on these issues, the meaning is clear. If, by the time that the DDDC convenes, there are unresolved issues about how important elements of the DPA should be implemented, the DDDC will be able to offer its advice on what steps to take, and the GoS and the Movements should listen carefully to that advice. Paragraph 482 reiterates this point: “The DDDC may advise how best to implement specific elements within this Agreement.”

Related to this is the challenge to the DDDC that it should bring all groups that were not represented in the Abuja talks into the Darfur peace process. One of the challenges of the DDDC is to find a means for ensuring that all these groups are properly represented in Darfuri institutions. Because most of the posts in the State legislatures and executives are already allocated to existing parties, the DDDC will need to find creative ways of incorporating these groups. Greater flexibility is possible in the institutions set up as part of the TDRA, because these are new and there will be more opportunities for inserting representatives of different groups. The composition of the Peace and Reconciliation Council is not specified in the DPA and it would be logical and quite consistent with the spirit of the DPA to ensure that all groups, regardless of whether they were represented in Abuja, should be represented on this Council.

Note that the political function of the DDDC is consultative; it does not enjoy any authority to overrule the signatories to the DPA. This may disappoint some Darfurians who would like to see a gathering of Darfuri representatives as a form of sovereign assembly. However, in a democratic process, any such gathering cannot enjoy authority above that of formally constituted legislatures. The outcomes of the DDDC will be referred to the State and national authorities and to the TDRA. According to the CPA and DPA, free and fair elections will be held in 2009, for both national and state assemblies, and those assemblies will enjoy legislative authority in accordance with the Constitution.

But the DDDC will enjoy immense moral authority and its recommendations will be impossible to ignore.

The second political function of the DDDC, mentioned in Paragraph 480, is to establish mechanisms for conflict resolution and reconciliation. Paragraph 503 further stipulates that the DDDC shall establish the Peace and Reconciliation Council as a standing mechanism for peace and reconciliation in Darfur. It does not go into any further detail on this, but everyone recognizes the need for an effective and trusted mechanism for ensuring local stability. It will be essential that all communities have some representation on the Peace and Reconciliation Council.

The “social and traditional function” of the DDDC overlaps with the “political function.” This is the unique added value of the DDDC: it is the means whereby representatives of all communities are invited to take responsibility for rebuilding Darfur as a multi-ethnic society. Paragraph 484 spells out some of the issues to be addressed by the DDDC, including:

- (1) Measures for popularizing and implementing the DPA;
- (2) Inter-communal and inter-tribal reconciliation;
- (3) Safe return of refugees and IDPs;
- (4) Land, water and natural resources, locations and regulation of nomadic migration routes;
- (5) Human security and socio-economic issues;
- (6) Small arms control and the interim regulation of community defence groups pending final disarmament;
- (7) Ensuring that political differences are addressed through civil political processes and not through violence;
- (8) The status and powers of Native Administration;
- (9) Measures to preserve the multi-ethnic character of Darfur; and
- (10) Measures to address the special issues and concerns of women.

These issues are among the most fundamental to the people of Darfur. This is an ambitious agenda and nobody expects that all these questions can be resolved in a single conference, no matter how good the preparation and how well-chosen the delegates. But the DDDC can represent an important start.

In order for the DDDC to succeed, good preparation is essential. The DPA provides for a Preparatory Committee to be set up, chaired by a representative of the AU, and including representatives of the GoS, the Movements, civil society, and the international community. The Preparatory Committee is asked to undertake some extensive consultations. A Committee of Experts is also called for. This will be composed of Sudanese and international experts on Darfur, who can prepare background papers and advisory briefs for the Chairman of the DDDC.

The DPA does not give a specific timetable for convening the DDDC. This is wise, because the preparatory consultations may take some months to complete. It is more

important for the process of dialogue and consultation to be thorough, exhaustive and inclusive, than for it to be quick. The divisions caused by the war in Darfur will take a long time to heal. The people of Darfur will need the opportunity to sit together and discuss their many issues at length, to have the confidence to examine their problems honestly and to find ways of achieving solutions that can be accepted by all.

## **Part 8**

### **The Comprehensive Ceasefire**

This is number eight in a series of articles concerning the Darfur Peace Agreement (DPA), explaining how different parts were negotiated (and especially what the different negotiators insisted upon), what the paragraphs mean, and how they should be implemented. This article is concerned with one of the first and most important aspects of the Agreement, namely the ceasefire.

A ceasefire is signed between enemies who, by definition, do not trust each other. A ceasefire is more than simple ceasing firing or stopping hostilities—it has to include mechanisms to ensure that neither side violates the agreement, and mechanisms to ensure that those who do violate are exposed rapidly, and if necessary condemned and sanctioned. A ceasefire also has to be designed in a way that it can build confidence between the opposing forces. Each side needs to know what the other side is doing, either through directly observing it or through the reports of a trusted third party intermediary. Each step that one side takes, which might make it militarily vulnerable to the other, needs to be matched by a step taken by the opposing party. Ceasefire documents are usually accompanied by a map, and also by an exercise in mapping and verifying the positions of the opposing armies.

The April 2004 N’jamena “Humanitarian Ceasefire” failed. It failed partly because it was a weak agreement (there was no map), partly because two different versions existed (the GoS version had an extra sentence written in by hand, requiring the Movements to assemble their forces—and the Movements’ version didn’t include this), and partly because no trust at all existed between the opposing forces and the mechanism set up for guaranteeing the ceasefire—AMIS—was not given the mandate or force size sufficient for its task. The GoS security negotiating team, led by Gen. Ismat al Zain, and the Movements’ security negotiators, led by Ali Tirayo, Mohamed Adam and Tajudeen Nyam, all came to Abuja determined to improve on the past failures. They did a fine job.

The first plan for the negotiations in Abuja was “ceasefire first”: to agree on a much stronger ceasefire before moving on to all the other issues necessary to achieve a peace agreement. In the event, the ceasefire negotiations took so long that the deadline imposed by the African Union Peace and Security Council for an overall agreement was already looming by the time that the discussions on the ceasefire were approaching completion. As a result of these long discussions, the ceasefire is one of the most detailed and comprehensive parts of the whole agreement. It is one in which both the GoS and the Movements’ negotiators had maximum input. The main reason why it took so long is that the Darfur ceasefire is extremely complicated and the issues are very sensitive. Literally,

these are life-and-death issues, and the negotiators on both sides took them very seriously. And the main reason why no agreement was reached on a stand-alone ceasefire was that both the GoS and the Movements wanted to see the shape of the final overall DPA before they signed up to the ceasefire.

Chapter 3 of the DPA, which deals with the Comprehensive Ceasefire, is the most detailed part of the whole document. It is much more detailed than any ceasefire agreements reached in Naivasha for the South or the Nuba Mountains.

The Darfur ceasefire has a preparatory phase, lasting 37 days. During this time, the parties and AMIS need to draw up plans for how to implement the ceasefire, including disarming the Janjaweed. The responsibility for disarming the Janjaweed falls on the Government (the Movement negotiators insisted on this) but it is to be monitored by the Ceasefire Commission, which includes the Movements and international representatives. Another key activity is verification—carrying out spot checks to see the actual location of the forces on the ground across Darfur. The activities that follow all depend upon the GoS, the Movements and AMIS all agreeing on a “Master Map” of the location of the forces, and this map can only be drawn up when the exact location of those forces can be verified. The 37 days come to an end on 23 June.

Once the verification is complete, any unauthorized movement of any military forces by either side is a violation of the ceasefire. Paragraph 298 of the DPA lays out the “main rules” for the movement of troops—the GoS and the Movements can only move their troops, or move supplies, with 72 hours’ advance warning to AMIS and the permission of AMIS.

The preparatory phase is followed by three phases: disengagement, redeployment and limited arms control. One of the resource persons for the ceasefire talks, Dr Laurie Nathan, described the phases by comparing them to the end of a boxing bout. In disengagement, the referee holds the two boxers apart. In redeployment, he sends them to their corners. In limited arms control, the boxers take off their gloves. After that, they leave the ring. Then, the DPA enters the “final status” phases, which include the assembly of the Movements’ forces, disarmament and demobilization, the reform of the PDF and police, and the integration of the Movements’ fighters into the national army.

The fundamental principle of the ceasefire is a series of reciprocal steps. Because the GoS is the stronger party, it is required to take bigger steps and to take them first, before the Movements take the relevant step. The first step is disengagement. This has four main aspects, summarized in Paragraph 323.

- (1) The Sudan Armed Forces and the Movements’ forces are limited to their “areas of control.” This means that they must withdraw any units—usually small ones of a company size or less—that are deployed in forward positions where they may come into direct contact with the forces of the other side. The AMIS Force Commander is responsible for drawing up a map that specifies these “areas of

control.” One of the major tasks undertaken in Abuja was for the AU Mediation team together with AMIS officers to draw this map.

- (2) The CFC creates Demilitarized Zones (DMZs) around IDP camps. These DMZs have been described in the second paper in this series. It also demilitarizes humanitarian supply routes, such as the key road between Nyala and el Fashir. The forces of both sides have to withdraw from these roads, which are then controlled by AMIS.
- (3) The CFC also creates “Buffer Zones” in the areas of most intense conflict, to separate the contending parties. These can include areas where the Movements have been fighting the Sudanese army, or where different factions of the Movements have been fighting one another. As the AMIS Force Commander was drawing up his map, some of the areas considered for these demilitarized buffer zones included the towns of Tawilla and Korma and the immediately surrounding areas.
- (4) Lastly, any militia associated with either side must respect the ceasefire and also withdraw. The GoS is also required to implement the first stage of its plan for disarming the Janjaweed (see paper one in this series).

This phase of the Ceasefire is supposed to start 37 days after “D-Day” (i.e. on 23 June) and last for 45 days (until 3 August). This is a rapid timetable for what will be a complex set of actions. The security experts in the Mediation had earlier proposed that ninety days would be more realistic for completing these activities, but both the GoS and the Movements argued that it could be done more quickly.

The next phase is more challenging. This is redeployment: the withdrawal of the different forces to smaller areas where they can be more effectively monitored. This creates much larger areas of Darfur in which no armed units are allowed except AMIS—or units on specific missions with the permission and monitoring of AMIS. Paragraph 345 summarizes these activities.

In line with Paragraph 350, the Sudan Armed Forces must withdraw all their units to battalion-sized positions. As battalions are typically situated in garrisons, this is in effect a withdrawal to barracks. On the side of the Movements, the key is the map drawn up by the AMIS Force Commander. The Movements do not have garrisons or battalion-sized units, so they must withdraw to areas clearly specified on the map, to positions close to their sectoral command centres. Heavy weapons and vehicles have to be withdrawn to these positions too.

This withdrawal is possible only in the context of increasing security provided by the control of the Janjaweed and other militia. During this phase, the GoS is required to restrict the Janjaweed and armed militia to specific locations and begin the process of disarmament, starting with heavy weapons. This is specified in Paragraphs 366-367.

The redeployment phase is due to be completed after a further 45 days—i.e. by 19 September. This is also an ambitious target, especially given that this is the middle of the rainy season. But the difficulties of supplying small units during the rains also gives commanders a good reason for rapid redeployment to large unit bases.

The third phase is limited arms control, which means ensuring that all heavy weapons are routinely inspected by AMIS and cannot be used for any offensive military activities. During this phase, there is also a special provision for supplies to be provided to the Movements' forces. Recognizing that the Movement's fighters need to be fed and provided with medical care and shelter, Article 28 of the DPA allows for the Movements to ask for assistance for rations, water, medical supplies, shelter, and clothing. The Movements' negotiators also asked for fuel and spare parts for vehicles to be included, but the GoS refused, fearing that these might be used for military activities. Abdel Wahid al Nour also asked for what he called "fun services" to keep his troops entertained, but this request did not make it to the final text.

The arms control provisions do not include withdrawal of aircraft and helicopters. However, there is a complete ban on hostile military flights and far-reaching provisions for AMIS to monitor all airfields to ensure that this ban is observed.

The greatest problem with the Darfur ceasefire is that there are ongoing hostilities in Chad and across the Chad-Sudan border. As a sovereign government, the GoS has not only a right but a responsibility to protect its international border. The DPA cannot infringe upon this right. In February, the Governments of Sudan and Chad signed the Tripoli Agreement to try to resolve their differences. The Tripoli Agreement does not have a strong enforcement mechanism and in fact very little has been done to enforce its provisions. While instability continues in Chad and cross-border military activities remain, the implementation of the ceasefire will face a major obstacle. Either a political resolution to the Chad conflict, or a very robust mechanism for enforcing the Tripoli Agreement, will be needed.

The Comprehensive Ceasefire in the DPA is a strong section. If it is implemented properly and faithfully, it will provide real security and protection to the people of Darfur. It will build confidence and create safe conditions in which all the other aspects of the DPA can be implemented, in which people can return to their homes, and reconstruction can begin.

But some important steps are needed for the Comprehensive Ceasefire to be a reality on the ground. The military commanders of the Movements that have not yet signed the DPA, must become part of the ceasefire. There must be a resolution to the Chad conflict. The Government must be sincere and effective in developing and implementing its plan for controlling and disarming the Janjaweed. All the parties must be genuinely committed to making the ceasefire work. And AMIS must be strengthened, or a strong and capable UN force must take its place.

## **Part 9**

### **The Future of the Movements' Combatants**

This is the ninth in a series of articles concerning the Darfur Peace Agreement (DPA), explaining how different parts were negotiated, what the paragraphs mean, and how they should be implemented. This article focuses on the controversial question of the future of the armed forces of the Movements: how many should be integrated into the national army and other security services, and in what way, and what should happen to the remainder.

The question of the integration of combatants was one of the very last issues to be resolved in the Abuja talks. The version of the DPA presented to the parties on 25 April did not contain figures for the numbers to be integrated: it just had “x” where each number would be. And it did not contain details on how those numbers would be integrated: would rebel units be absorbed into the army, would individuals be integrated on an individual basis, or would special integrated units be formed? The Movements’ negotiators pressed for the largest number of their fighters to be integrated, forming special units. The Movements’ negotiators also demanded that they should keep their forces intact under separate command for at least five years. Their aim was something as close as possible to what the SPLA had achieved for Southern Sudan.

The GoS delegation at first insisted that all the Movements’ combatants should be disarmed and should return to civilian life. The GoS argument was that the guerrillas were not professional soldiers who could easily become part of a regular army, and that the CPA demanded that the national army should be reduced in size rather than expanded. They also said that there was already sufficient representation of Darfurians in the army. The Movements’ negotiators won their case: after making strenuous objections, the GoS delegation backed down.

When the GoS accepted the principle of integration, the SLM/A negotiators also abandoned their demand for keeping a separate command throughout the interim period. Only Khalil Ibrahim of JEM stuck to that demand until the end—while also demanding that the GoS pay the salaries of his army.

Throughout the three stages of the Comprehensive Ceasefire, which last five months, the Movements’ forces remain intact under their existing command and control structures. They disengage from the Sudan army, redeploy, and have their heavy weapons limited to secure areas under AMIS supervision. But the processes of assembly, integration and disarmament begin only on the completion of these phases, 160 days after “D-Day.” This depends on the completion of the previous phases—including verification of specific steps in controlling and disarming the Janjaweed. The Movements only lay down their arms when the Janjaweed are already disarmed and the Sudan army has withdrawn to its main garrisons. This sequence of steps represents an important concession by the GoS and a success for the Movements’ negotiators in Abuja, notably Ali Tirayo, Mohamed Adam and Tajudeen Nyam. Minni Minawi also took a close personal interest in negotiating these elements of the DPA.

During the first months of the ceasefire, AMIS must identify good locations where the Movements can assemble their forces. These places must be chosen carefully so that they have all the essentials to support a camp. They must also be secure. For guerillas used to moving and hiding, assembling in camps is a sensitive issue—the fighters fear that they may be attacked and wiped out. Assembly of the Movements will only begin when security is assured: when the Janjaweed and other militia have been disarmed and removed from the vicinity of any assembly sites, and the Government army has also redeployed back to barracks, with its heavy weapons under inspection and its airfields also closely monitored.

The purpose of assembly is to allow the Movements' soldiers to be fed and housed, and kept under control. It will be possible to select those who are going to go forward for integration into the army and other security services, on the basis of their fitness, skills, qualifications and their own personal choice. They can also be given some training. The remainder who are going to be demobilized and return to civilian life can meanwhile be given assistance, reorientation and training.

One of the most controversial issues in the Abuja talks was the number of combatants from the Movements who should be integrated. While the GoS tried to minimize the number, the Movement leaders tried to maximize it. If the SLA and JEM really had the 60,000 troops that their leaders jointly claimed at some points, it is astonishing that they didn't win the war—while if they just had the 5,000 fighters claimed by the GoS, it is amazing that the Sudan army didn't defeat them years ago. The question of numbers was resolved only in the very final days of the Abuja negotiations, when the U.S. delegation arrived, and took this question on as a priority.

In the end, the formula agreed was: 4,000 fighters from the Movements should be integrated into the national army and 1,000 into the police and other security services. A further 3,000 will be given special training for other positions in civilian life—a better deal than normal disarmament and demobilization. When AMIS carries out the process of verification of the positions of forces it will also verify the numbers of fighters that the Movements have, so that the correct proportions of combatants can be chosen from the different Movements.

One of the fears of the Movements was that their fighters might be integrated, but then dispersed in small numbers throughout army units across the country. The SLM/A negotiators were insistent that when their fighters were integrated, they should be integrated in sufficiently large numbers in every integrated unit that they could, if need be, protect themselves. However, the GoS was equally insistent that the army should only have one command structure and that units should have only one loyalty. There were to be no “Joint Integrated Units” such as those that had been set up with the SPLA.

The compromise proposal is found in Paragraph 410. This details that groups of between 100 and 150 of the Movements' combatants are to be integrated into SAF battalions, so that they compromise approximately one third of the force strength of those battalions. In

certain areas, the integrated combatants will comprise half the force strength. These areas may be where refugees and IDPs are returning and need additional assurances for their security. There are also provisions for selected commanders from the SLA to become officers in the SAF. One of every three battalion commanders in the integrated units is to be a former guerrilla.

The Movements' negotiators were determined that the DPA should ensure that their fighters should be deployed in Darfur after integration and that they should not be quickly demobilized as part of the national plan for reducing the size of the army. The GoS was insistent that there should be a unitary command structure for the army and all officers and men should be treated alike. But the Government negotiators accepted that, in view of the unique conditions in Darfur, some exceptions needed to be made for the transitional period. As a result, Paragraphs 404 and 405 specify that integrated fighters are to be deployed in Darfur for five years and that during this time they cannot be removed from the army because of army restructuring. The overall size of the armed forces in Darfur should also not be increased as a result of the incorporation of former combatants.

Both the GoS and the Movements were concerned that the guerrillas should be given sufficient training to be full and equal members of the army. This is one of the reasons why the Government accepted the idea of "integration". While "absorption" is merely a process of bringing individual soldiers or units within the army, "integration" involves giving them training and orientation so that they become fully part of the army. A Technical Integration Committee is to be set up to oversee this. The principles for the TIC are laid out in Paragraphs 399-407. It is important to note that the whole process of integration will be closely coordinated with the process of reforming the Sudanese Armed Forces in line with its restricted peacetime duties, as laid out in the CPA.

The most important institution for the entire security arrangements plan is the Darfur Security Arrangements Implementation Commission (DSAIC). The head of this is to be a Darfurian of integrity, respected by all, and nominated by the Movements. The composition of the DSAIC is specified in Paragraph 392: it includes the Governors of the three Darfur States, a representative of the army command, representatives of the Movements, and representatives from the international community (the Joint Commission, AMIS and the Security Advisory Team). One of the biggest concessions by the GoS at Abuja was that the DSAIC is not headed by a GoS appointee and it reports to the Senior Assistant to the President, not to the President himself. Dr Majzoub al Khalifa specifically expressed this reservation for the record on the morning of 5 May, before saying he would sign the DPA.

In addition, one thousand former combatants are to be absorbed into the police and other security services. This provision was not discussed in great detail in the Abuja talks and much of the detail of this will need to be worked out by the DSAIC. For example, it was generally agreed that former guerrillas rarely make good policemen, and that it is better to recruit and train civilians to the police force. It was also agreed that many of the security institutions in Darfur—such as the Popular Defence Force, the Border Guards

and the Nomadic Police—would need to be reformed during the coming years. The principles and procedures for that reform are laid out in Paragraphs 446-449, which are some of the most important details in the entire DPA. The DSAIC has to review each of the security institutions and make recommendations for their size, mandate, composition and activities, and the Government is then required to institute the reforms.

Paragraph 447 in particular lays out how official security institutions in Darfur should function, undergoing transformation from their current status as belligerent organizations in wartime, to their future status of serving the people in peacetime. Their size, capability and mandate must be commensurate with the tasks to be performed by them; they are to be run impartially and professionalism, with members drawn from all groups and without political or ethnic bias; they must be controlled by the correct civilian authorities and respect human rights; they must include women in all ranks and be respectful of women; and they must carry out their tasks in such a way that they are trusted by the people of Darfur. Many of these organizations (such as the PDF) will need to have their size reduced—but at the same time they will need to recruit new members so that their composition better represents all Darfur's communities.

In the meantime, the capability of the Police Force is to be built up, so that it is truly representative of the people of Darfur and can serve their interests and enjoy their confidence. Paragraphs 450-452 on the police need to be read alongside Paragraphs 272-273 which deal with the establishment of the Community Police force for IDP camps and returning IDPs.

It is likely that implementing the long-term security arrangements for Darfur will be a lengthy, complicated and difficult process. It will need patience, goodwill and careful monitoring—combined with a good understanding of the spirit and letter of the DPA by Sudanese people and their representatives.

## **Part 10**

### **Land**

This is the tenth in a series of articles concerning the Darfur Peace Agreement (DPA), explaining how different parts were negotiated, what the paragraphs mean, and how they should be implemented. One of the reasons for this is that it is important for the Sudanese people as a whole—and the people of Darfur especially—to understand the spirit and letter of the DPA, so that it can be implemented so as best to serve the interests of the people and bring lasting peace to Darfur. This article focuses on central question of land tenure. Conflict over land is one of the major reasons for the war in Darfur.

A year ago, the Declaration of Principles for the Darfur peace agreement was signed by all the main parties in Abuja. This made reference to traditional land ownership and how it must be respected. But land is a very complicated issue and the controversies over land ownership cannot be resolved quite so simply.

There is a contradiction between traditional land tenure and ownership, especially the hakura system, and Sudanese land law. According to Sudan's land laws all unregistered land belongs to the state, which can allocate leases without reference to who is actually living on the land. These land laws have disadvantaged rural communities at the expense of commercial farmers and state development schemes which have not brought benefits to the local population. In the Nuba Mountains and Blue Nile this was a major reason for people to take up arms and join the SPLA. In the case of Darfur there are few cases of major commercial farms or mechanized schemes, and in fact the largest rural development projects have promoted smallholder farming. Instead, the main challenge to traditional land tenure has come from migration, especially north to south migration on account of desertification in northern Darfur, which has led to widespread settlement of northern Darfurians on land in other parts of Darfur, and the immigration of Chadians including large numbers of nomads.

Environmental change and migration means that the hakura system must be applied with some flexibility. Traditionally, the concept of hakura is not equivalent to "tribal land ownership." The idea of a tribal "dar" is different. Each hakura was an individual grant of jurisdiction over land. The individual in question could often be a tribal leader in which case he exercised that jurisdiction on behalf of his people, or alternatively people would congregate in his hakura and thereby identify themselves with the hakura (e.g. the Birgid). The hakura system has historically included a principle of hospitality—newcomers are entitled to settle on free land provided that they respect the customs of their hosts. It also made a distinction between the native administration office holder, who adjudicates disputes over land, and the person who actually allocates the land.

One of the causes of Darfur's conflict has been the inability of the land ownership and land management systems to cope with the demand for farms and pasture. The numbers of people and animals have grown while the land itself has become degraded through over-use and because of declining rainfall. Darfur's land can certainly support many more people than the six million people who live in the region today. But for Darfurians to not only survive but prosper, the land must be used more efficiently than in the past. Experience of rural development the world over demonstrates that small farmers are usually the best custodians of the soil—and Darfur is no exception. Darfur's developmental challenge is to enable its capable farmers and livestock owners to apply their skills to gaining a livelihood, without creating conflict and without degrading the natural environment.

The DPA is not a blueprint for social and economic development. But it does provide some important guiding principles that can enable Darfur to achieve sustainable development. At various points the Agreement makes reference to the need for land ownership systems and ecological management to ensure equitable development and avoid environmental degradation. It refers to policies to address the challenges of access to pasture and water and to overcome tensions arising from competition between farmers and herders.

But the DPA's most basic principle is the rights and equality of Darfurians. For that reason, and in line with the 2005 Declaration of Principles, it has a clear bias in favour of traditional land ownership. This is asserted in two main ways. Paragraph 110 clearly recognizes that hawakeer have legal standing and priority over other claims on land. This is a very important concession made by the GoS, which makes it clear that the Government is not free to grant whatever leasehold rights it desires over unregistered land.

The second main principle is the right of return of refugees and IDPs to their places of origin. This is asserted at a number of points in the DPA, for example Paragraph 108. In Paragraph 176, this right of return of refugees and IDPs is fleshed out by specifying that these people must be provided with protection including access to courts. Other provisions for the security of returning refugees and IDPs, such as the community police and the possibility of deploying integrated units in areas of return, have been detailed in the second paper in this series.

While the right to return is deeply enshrined in the DPA, there may be instances in which it is simply not practical for an individual to take his or her piece of land back. For example Paragraph 175 makes reference to major development projects that may be inconsistent with land legislation. Paragraph 159 reads:

“All displaced persons and other persons arbitrarily or unlawfully deprived of rights to land shall have those rights restored to them. No person or group of persons shall be deprived of any traditional or historical right in respect of land or access to water without consultation and compensation on just terms.”

The correct interpretation of this paragraph is important. It is crystal clear that every Darfuri has his or her right to land restored. There is to be no large-scale transfer of land from one group to another. However, land use changes may occur, for example in order to halt environmental degradation or to make the best use of limited land resources. In some cases, individuals may not keep their previous farmland or their earlier rights of access to water, and in such cases they must first be consulted and then compensated. This is an important advance on what has sadly been the normal practice in Sudan, in which customary rights to land are swept aside when mechanized farms are set up or the authorities lay claim to land used by small farmers.

Restoring traditional rights to land will be a complicated business. There are bound to be disputes. Paragraphs 197-198 set up Property Claims Committees to adjudicate any disputes arising as people return to their lands.

One important land issue that will need to be addressed by the Property Claims Committees is women's right to land. In the traditional land tenure system of the Fur and other Darfur farming peoples, women have tenure of land in their own right. It is particularly important this aspect of customary land tenure is preserved as people return to their villages.

The issue of nomadic routes and land rights is addressed at several points in the DPA. While both GoS and Movements' negotiators recognized that nomads have always been part of Darfur's social fabric, and that they have the right to continue to practice their livelihoods, there was much controversy and disagreement over how this should be implemented in practice. The Movements argued that it would be enough to include a general provision for freedom of movement, while GoS representatives wanted every nomadic migration route to be mapped out in accordance with the recent work of state committees. In particular, the Movements' negotiators insisted that many problems had arisen in the last few years because certain nomadic groups had tried to open up new migration routes, cutting through farming areas and impinging on the land rights of other groups.

A compromise was agreed, which hinges on the words "customary" and "historic"—the nomads' rights to migrate with their herds are respected, but in accordance with the same old and well-established principles that grant farmland to settled communities. So Paragraph 158 asserts that the right to "traditional or customary livestock routes" is to be respected.

Recognizing that nomadic migration is a security issue of immediate relevance, the chapter on security arrangements also includes provisions for ensuring that nomads' security is ensured, and that they do not create security problems for the populations they move amongst. Paragraphs 288 and 289 require AMIS to draw up plans for regulation of movement along "historic" nomadic migration routes. This falls under the ceasefire provisions, indicating that it must be done quickly, but also that the arrangements made by AMIS are only interim ones until a lasting settlement of this issue is reached.

This means that, with immediate effect, "historic" nomadic routes should be opened up for the movement of nomads, under the regulation of AMIS. Next, the Darfur-Darfur Dialogue and Consultation should consider "the locations and regulation of nomadic migration routes" (Paragraph 484(d)). And finally, Paragraph 158 indicates that Sudan's land laws must be reformed in order to take better account of customary land rights:

"Tribal land ownership rights (hawakeer), historical rights to land, traditional or customary livestock routes, and access to water, shall be recognised and protected. All levels of government shall institute a process to progressively develop and amend the relevant laws to incorporate customary laws, practices, international trends and practices and protect cultural heritage."

This is a general requirement for overhauling the land laws and it is reiterated in Paragraph 162.

At this point, the negotiators in Abuja faced a problem. Darfur is part of Sudan and a basic principle of national sovereignty is that one set of laws should apply across the country. Residents of other parts of Sudan face similar problems over land ownership and there is a need for a comprehensive national approach to land law and land use planning—an approach that takes into account everyone's needs for land, the importance

of good land use planning especially because of the problems of desertification, as well as customary land rights which vary from place to place. It would not make sense for Darfurians to have one set of laws while other Sudanese have another legal regime controlling land. Apart from anything else, there are many people of Darfurian origin living in other parts of Sudan, and if Darfur were to be given a privileged land law status, the original inhabitants of other parts of Sudan might start demanding that too, which would disadvantage Darfurians residing there.

Fortunately, the CPA recognized this problem and established a National Land Commission specifically for this purpose. What the DPA therefore does is to establish a Darfur state Land Commission as the mechanism for protecting Darfurians' land rights, to coordinate with the National Land Commission. Paragraphs 163-169 detail Darfur's state Land Commission, its composition and powers. This will oversee all the land tenure questions discussed in this article, such as arbitrating disputes over land tenure, establishing and maintaining records of existing and historical land use, the application and reform of land laws, and recommending measures for land use planning. It should also ensure that women's customary land rights are not lost. Its head is to be a nominee of the Movements and its membership is to include representatives of all the groups that have interests in land ownership and use.

The Darfur states are also required to establish a Planning Authority for the purpose of land use management plans. At the insistence of the Movements' negotiators, who were well aware of how governmental land planning can violate the rights of ordinary people, the guidelines for land use planning and development are laid out in some detail in Paragraph 171. The three paragraphs that follow it place safeguards on how these plans are to be developed, implemented, regulated and monitored. Among other safeguards, the state Land Commission is required to review the merits and legality of land use planning decisions. The head of the Land Commission will shoulder onerous responsibilities.

The issue of land ownership is certain to be one of the most important questions debated at the Darfur-Darfur Dialogue and Consultation. While the DDDC cannot reopen the DPA for renegotiation, the clauses of the Agreement provide plenty of scope for Darfurians to find means of managing and resolving their land ownership challenges in a way that is satisfactory to all.

## **Part 11**

### **Darfurians in the Civil Service and Education**

This is the eleventh in a series of articles concerning the Darfur Peace Agreement (DPA), explaining how different parts were negotiated, what the paragraphs mean, and how they should be implemented. This article focuses on the question of Darfurian representation in the national civil service and educational institutions. It presents the arguments put forward by both the Movements' negotiators and their Government counterparts and the rationale for why the African Union presented its proposals.

A fair representation of Darfurians at all levels of governmental administration was a fundamental demand put forward by the Darfur Movements in Abuja. The Government delegation did not challenge this point head on. Instead it argued that Darfurians were already well represented in many institutions (for example the army), that it did not make sense to have quotas for Darfurians to be represented in every single institution (should they have equal representation in marine transport, for example?) and that the basis of an independent civil service and autonomous universities should be access based on merit, not place of origin. The Movements and the Government also disagreed on how many Darfurians there are, and who should count as a Darfurian. Sometimes the discussions became extremely technical, for example over how to calculate the percentage of all Sudanese counted in the 1993 census who are Darfurians, given that the full number of Southern Sudanese were not counted in that census. What looks at first like a simple question of fairness can become extremely complicated when it comes to implementing it in practice.

Paragraphs 16-22 of the DPA spell out the basic principles that should govern the representation of Darfurians in all levels of government. The most important details are contained in Paragraph 17, which refers to “relevant precedents and population size”, Paragraph 18 which refers to “the principle of inclusion... taking into account the requirements concerning qualifications and competence” and Paragraph 19 which speaks of “affirmative action.”

Let us examine these principles one by one. What are the “relevant precedents”? One key point here is that Darfur is not the only disadvantaged part of Sudan and a second point is that the Southern Sudanese and the people of the Nuba Mountains, Blue Nile and Abyei have been awarded a carefully negotiated deal under the CPA. Whatever rights the Darfurians won in the DPA should not be at the expense of the Southerners and the residents of the Three Areas, or whatever provisions might be made for the people of Eastern Sudan.

So, the most important precedent is the CPA. The CPA lays down important principles and mechanisms for transforming Sudan into a democratic multi-ethnic nation in which all people are fairly and equitably represented. The Movements and GoS agreed that the CPA was an excellent precedent: the question was how to implement it, with special reference to Darfur.

The CPA precedent also relates directly to the second principle of “population size.” During the North-South talks, the question of the proportion of Sudanese who are Southerners arose. Because no census has been conducted in Southern Sudan since 1955 (and even the reliability of that census is open to question), nobody could say for sure how many Southerners there were in Sudan. The 1993 census counted only about 16% of Sudanese as Southerners, a number which is certainly too low. The CPA contains provision for a national census to be conducted to settle this question—and of course this census will include Darfur. Until this census is conducted, there is no scientific answer to the question “how many Southerners?” Instead, the CPA addressed the question in a political manner—the GoS and SPLM agreed on a “fair” representation for Southern

Sudan in the Naivasha negotiations. Their answer to this question was, Southerners are one third of the whole nation. So in the CPA, one third of positions were allocated to Southerners in the National Assembly and other national institutions. 150 out of the 450 seats in the National Assembly are for the South.

The problem facing the Darfurian negotiators at Abuja was, that the 1993 census only counted about 15% of Southerners. It counted 18% Darfurians—and the population of Darfur was growing faster than other parts of Sudan, partly because of immigration from Chad. So some of the Movements' negotiators said that Darfur should get 20% of the seats in the National Assembly and 20% of the posts in the civil service, etc. The Government negotiators did not answer this challenge directly. But it was clear to the Mediators that if they accepted the 20% it would create a problem: they couldn't cut back on the one third given to the South, and to add 20% to 33% would make 53%, leaving just 47% for all the other parts of Sudan—which surely wouldn't be fair either.

The problem was made more difficult because most of the Movements' negotiators argued that Darfur actually represented double that number—forty per cent—or even more of the total population of Sudan. What they meant was not the people residing in Darfur but Sudanese or Darfurian ancestry, a category that includes many Sudanese resident in the capital, in Gezira, eastern Sudan and other parts of the country. But if the Movements were arguing on behalf of all Sudanese of Darfurian origin, they were double-counting those “Darfurians” who live in Khartoum or Wad Medani or anywhere else outside Darfur. These people are entitled to vote and participate as residents of wherever they happen to live—but if they also count as “Darfurians” and therefore give extra weight to the representation of Darfur residents, they count twice over.

No agreement was reached on these issues in Abuja. The African Union Mediation proposals were a compromise. On one hand, they accepted the argument that the Darfur Movements should be represented outside Darfur, and proposed that one ministerial position in Khartoum State be a person nominated by the Movements. On the other hand, the Mediation did not accept the Movements' figures that 40% of all Sudanese should be considered Darfurians.

The AU Mediation did not propose a definitive or scientific figure for the number of Darfurians. This is left to the national census—and according to Paragraph 84, Darfurians must be effectively represented in the Population Census Council. But it accepted a guideline based on the 1993 census. According to that census, the residents of Darfur represented 22% of those counted in Northern Sudan. (The proportion of Darfurians to all Sudanese could not be calculated because it was accepted that the 1993 census did not count all Southerners.) This gives an interim quota for Darfurians of 22% of whatever is provided for Northern Sudan.

Wherever the DPA mentions “population size according to the 1993 census” as a criterion, this is what it refers to. So for example, Paragraph 76 sets up a Panel of Experts under the National Civil Service Commission to examine the representation of Darfurians in the civil service and recommend immediate action to remedy imbalances. The terms of

reference for the Panel include that it should be guided by the principle of population size. What this means is that—until the census results are known—it will regard 22% of Northern Sudanese representation as a “fair” representation for Darfurians. Similarly, in the current National Assembly there are 300 seats for Northern Sudan. 22% of this is 66 seats: this should be a fair quota for Darfur.

It is important to remember that “Darfurians” means “residents of Darfur.” People of Darfurian origin residing in other parts of Sudan are not included in these quotas, just as they are entitled to vote, or be elected as MPs, in other parts of Sudan quite separate from their Darfurian origin. So the Darfurian quotas should be applied exclusively to residents of Darfur, and people of Darfurian origin residing in other parts of Sudan should still be able to compete fairly and without discrimination along with all other Sudanese. When the Panel of Experts examines Darfurians’ representation in the civil service and other institutions, it must focus on both questions: are the residents of Darfur fairly represented? And, are Sudanese of Darfurian ancestry resident in other parts of Sudan fairly represented?

It is also important to take note of the principle of non-discrimination within Darfur. All the negotiators at Abuja took it for granted that all residents of Darfur should be treated equally. This includes people who recently migrated from Chad and who may only recently have acquired Sudanese citizenship. The Movements’ negotiators insisted that one reason why the Darfurian population was so large was that many people of Chadian origin had settled in Darfur recently. By including them in the Darfurian population, the Movements were extending equal recognition to them as Darfurians and Sudanese.

The other key principle is “affirmative action.” The principle of affirmative action is short-term action to remedy imbalances and overcome obstacles. This has to be read and interpreted in the light of the need for qualifications and competence among all people selected for government service.

The Movements’ negotiators at times tried to argue that “affirmative action” meant that Darfurians should be given more than the quota of positions set by population ratio. This is not logical, because if Darfurians are over-represented, then it follows that people from other parts of Sudan must be under-represented. What is possible, through affirmative action, is either to lower the barrier for Darfurians to enter certain jobs or obtain entry to educational institutions, or to temporarily expand the quota of Darfurians entering certain institutions or professions. Paragraph 77(c) opens up the option of immediate affirmative action in recruitment and training. And Paragraph 132 requires immediate capacity building for Darfurians in the field of public finance and intergovernmental relations, including expenditure management to ensure accountability, so that more Darfurians are qualified for these positions.

The DPA did not need to set up permanent special institutions to ensure fair representation of Darfurians in the legislature, because this is already taken care of through the relevant provisions of the CPA. The National Elections Commission and

Population Census Council are already set up by virtue of the CPA. The question is to ensure effective Darfurian representation in them, and this is specified in Paragraph 84.

The principle of equitable representation in the civil service and judiciary is also enshrined in the CPA. What is left is the mechanism for ensuring that this is delivered for Darfurians. The representation of Darfurians in the constitutional court, national supreme courts, other national courts and the judicial service commission is covered in Paragraph 73. The institution for ensuring a fair representation of Darfurians in the civil service is the National Civil Service Commission (Paragraph 75) and especially a Panel of Experts under that Commission (Paragraph 76). The Panel will determine the representation of Darfurians in all tiers, to investigate and verify imbalances and recommend appropriate measures at all levels, and to report within one year.

It will take some time to ensure that all Sudanese communities, including Darfurians, are fairly represented in the civil service. This is especially the case because a cardinal principle is that all should be qualified, and training new entrants from Darfur and other disadvantaged parts of Sudan may take some time. So the DPA includes an emergency measure for immediate implementation.

Paragraph 77 demands that the GoS is required to set interim targets for the representation of Darfurians in civil service positions including the most senior, such as Under-Secretaries, Ambassadors, Board Members and Chairpersons of parastatals. The Movements object that (a) no numbers are given and (b) this important task is given to the Government. But it should be remembered that the fourth most senior post in the Government will be held by a nominee of the Movements, and that the President is required to consult him on all matters relating to Darfur. After signing the DPA, the Movements become part of the Government of National Unity.

One of the early challenges of implementing the DPA is for the parties in the Government of National Unity and SLM to agree on these targets. This should be a priority for the implementation discussions that need to be held urgently. The GoS leadership should come forward with fair proposals as soon as they can, because Darfurians will see this as a key test of the Government's good faith in implementing the DPA.

For Darfurians, the question of education is particularly important. Providing education falls into two parts: one is the issue of restoration of schools in Darfur and providing resources for educational institutions. Most of this is dealt with by the provisions for reconstruction in the DPA's sections on wealth-sharing. Paragraph 153 requires that the GoS provide \$300 million for the Darfur Reconstruction and Development Fund in 2006. Some of this should be spent on rehabilitating schools. Paragraph 179 lists educational facilities among those that should be included in urgent rehabilitation programmes for returning IDPs. In addition, Paragraph 369—which is in the section dealing with the ceasefire—also specifies that essential services should be restored to areas controlled by the Movements even before the Movements begin to disarm. Education heads the list of

those services to be restored. (Paragraph 369 was included at the insistence of Abdel Wahid's negotiators.)

Another immediate and interim measure is specified in Paragraph 86(b), which is the exemption of school fees for new Darfurian students for five years. This is intended to help make sure that Darfurian children catch up on their lost years of schooling.

Finally, the DPA provides a quota for Darfurians in higher education. The Movements' negotiators insisted on this and the Government fiercely resisted. Paragraph 88 specifies that not less than 15% of students in universities in national capital and 50% of students in Darfur's own universities should be Darfurians, for a period of ten years.

Do all these provisions in the DPA meet the demands made by the SLM and JEM negotiators in Abuja? The answer is that they do not. The leading negotiators—Abdel Jabbar Dosa, Abdel Rahman Musa, Ibrahim Madibo and Ahmed Tugod Lissan—all asked for larger percentages and more strictly enforced quotas. And they held their positions to the last. But they did win some important concessions from the Government negotiating team, and this article has outlined what those concessions are. If those provisions of the DPA that are explained in this article are implemented swiftly, fairly and in good faith, then it will be a significant step forward for Darfurians.

## **Part 12**

### **Human Rights**

This is the twelfth in a series of articles concerning the Darfur Peace Agreement (DPA), explaining how different parts were negotiated, what the paragraphs mean, and how they should be implemented. This article focuses on human rights and how they are respected and promoted in the Agreement.

The very first articles of the DPA are concerned with the basic principles of human rights. Paragraph 2 states that citizenship is the basis for civil and political rights and obligations; Paragraph 6 specifies the rule of law and the independence of the judiciary; Paragraph 7 is a commitment to human rights and fundamental freedoms; and Paragraph 14 stresses the cultural and social diversity of the Sudanese people. Article 3, Paragraphs 23-43, re-state many of these points in more detail. These paragraphs between them comprise a powerful statement of the full range of human rights including civil and political liberties, and social, economic and cultural rights.

Someone who is familiar with the Interim National Constitution will quickly notice that these sections of the DPA are in fact almost entirely repetition of the relevant parts of the CPA and INC. All these provisions have already been signed onto by the Government of Sudan when it signed the CPA in January 2005 and adopted the INC later in the same year. Why was it necessary to re-state all these same details for the DPA? Would it not have been simpler for the DPA to have just affirmed that the Parties will abide by the relevant human rights provisions in the CPA? The reason for repeating all these

paragraphs is that the Darfur Movements' negotiators insisted that the DPA's human rights provisions should be no weaker than the CPA's, and the Mediation also believed that it was important to emphasize the fact that the DPA is complementary to the CPA, and that Darfurians have equal rights as human beings and as Sudanese citizens. The Government accepted this argument.

Darfurians are urged to read these paragraphs in detail. For example, Paragraph 39 reads, "Ethnic and cultural communities shall have the right to practise their beliefs, use their languages and develop their cultures within their customs." This provides a constitutional guarantee on the protection of the diverse languages and cultures of Darfur. Although this same provision was included in the CPA, for the first time it is now specifically guaranteed with respect to Darfur. This should mean, for example, that tribal languages should be properly recorded and written down, with their oral traditions and customs preserved. There should be an opportunity for primary schoolchildren to learn in their own tribal languages.

The human rights provisions of the DPA include the protection of basic human rights, such as the prohibition on torture, the release of all those persons detained in connection with the conflict (Paragraphs 364-5), and the immediate and unconditional release of child soldiers. The SLM/A-Minawi negotiators (Ali Tirayo and Abdel Jabbar Dosa) and JEM negotiators (Ahmed Tugod Lissan and Tajudeen Nyam) were particularly insistent on the clauses mentioning the release of all those detained in conjunction with the war. They rejected an earlier draft that mentioned only "prisoners of war" because, they said, civilian sympathizers who had been arrested and detained would be excluded by that narrower definition. The Government negotiators agreed to the broader provision.

Paragraphs 275-279 also provide immediate measures to ensure the protection of women and children, especially in IDP camps. For example, the police must now have special counters, staffed by women police officers, where women can report crimes committed against them.

Aware that the police are essential to the protection of human rights, and that the police need to be reformed before they can do this properly, the DPA has important clauses dealing with the police. Paragraphs 272-273 specify the creation of a Community Police force in IDP camps, drawn from the IDP communities themselves. Paragraph 451 requires that the Darfur Security Arrangements Implementation Commission should initiate a thorough-going review of the police and make recommendations for reform. Darfur's police force should be respectful of human rights, subject to the rule of law and democratic accountability, drawn from the different communities of Darfur, should include women at all ranks, and should enjoy the confidence of all communities (Paragraphs 446-447).

The DPA includes provisions for social and economic rights (Paragraph 97) and equitable development (Paragraph 106) with special attention to the least advantaged areas (Paragraph 145). Throughout these provisions, particular attention is paid to the right to a livelihood, including access to land, markets and services, restitution of property, and

judicial review of administrative actions that may affect livelihoods. It pays special attention to the needs of returning refugees and IDPs, including their need for access to justice. Paragraph 185 lays out this principle, Paragraph 186 refers to the specific needs for women to have access to justice, and Paragraph 190 opens up the possibility of mobile courts providing justice rapidly and efficiently. Paragraphs 191-2 provide that IDPs and refugees should have all the necessary documents to enable them to realize their rights, with a special provision for issuing replacement documents in the cases where the originals have been stolen, destroyed or lost.

The details of these human rights provisions were agreed over many long months by the negotiators in Abuja. The paragraphs on social and economic rights were discussed in detail by the SLM/A and JEM negotiators with their counterparts from GoS. Numerous resource persons and experts were also called upon for advice. The resulting document bears the fingerprints of all—the credit must lie not only with Minni Minawi and the GoS wealth-sharing negotiator (Dr Lual Deng) but also with Abu al Bashir Abbaker of SLM/A-Abdel Wahid and Jibreel Khalil of JEM, who had major substantive inputs as well.

The DPA is silent on some of the most important human rights concerns, such as the call for justice. For example, the DPA does not include any special provisions for accountability for human rights abuses and does not mention the International Criminal Court. The reason for this silence is that these questions are dealt with elsewhere. The UN Security Council has already referred Darfur to the ICC, which is undertaking its investigations. The DPA does not change that: it neither blocks the ICC nor facilitates it.

However, some of the provisions of the DPA may change the context in which the ICC carries out its work. For example, if the peace agreement leads to the setting up of courts that bring human rights violators to trial, then it is possible that the Chief Prosecutor of the ICC may choose to limit or even call off his investigations, on the grounds that Sudanese courts are able to do the job. The principle of “complementarity” in the statute of the ICC means that it can only mount a prosecution if it is satisfied that the domestic judicial system cannot do so or will not do so. The recent report of the ICC’s Chief Prosecutor to the UN Security Council indicates that so far he is not at all satisfied that the Sudanese police and judiciary are doing this task.

In civil wars, the insurgents fighting for “liberation” usually regard death and destruction as the price to be paid on account of the struggle for liberation. Social and political change is the reward for winning. At the end of the struggle, the victims or their surviving relatives receive the moral compensation of seeing this change, as well as their representatives sharing power, and the perpetrators of the crimes being punished. Darfur is unique in that liberation movements demanded material compensation for the victims of war, and the GoS agreed. This is the first time that a peace agreement for a civil war has so explicitly detailed compensation.

The DPA contains provisions for the restitution of stolen or destroyed property (Paragraphs 194-198) and compensation for the victims of crimes (Paragraphs 199-213).

In Abuja, the Movements and the Government agreed on the principle of compensation—what remained at issue was the question of how much should be paid. The Movements’ negotiators were dissatisfied with the GoS’s promise of \$30 million, and did not accept the general assurance that this amount was just a first step and not a ceiling.

Because the principle of compensation is so new, it is still not clear what consequences will follow. The reason why the Movements’ negotiators insisted on compensation was that the payment of compensation is traditional at the end of a conflict. But the conflicts that have ended with compensation payments are all inter-tribal or pre-colonial: never before has a liberation war ended in this way. Does this mean that in future, all liberation fighters will include “compensation for crimes committed” as part of their political manifestos when they launch their rebellions? Or does it mean that by accepting compensation, the Movements’ leaders are abandoning any higher political ideals? Compensation is also traditionally the end of the process of seeking justice. Does this mean that if the GoS provides sufficient compensation to the victims of crimes, that those victims will consider the file closed and this will block any judicial investigations of the crime in question?

The DPA is also silent on another key question: the mandate of AMIS and whether there should be a handover to a UN force. The reason for this is simple: redefining AMIS’s mandate or calling for the UN fell outside what the DPA could decide. The DPA is an agreement between the GoS and the Movements, not the GoS and the African Union or the United Nations. But some parts of the DPA are relevant. In Paragraph 230 the GoS and the Movements request the AU to provide AMIS with the force levels and capabilities for it to fulfill its mandate. Paragraph 232 repeats this with reference to AMIS Civilian Police. Paragraph 233 asks for AMIS to increase its observers to cover all of Darfur and respond quickly and efficiently to all complaints of violations; the next Paragraph asks for a greater AMIS Civilian Police presence in IDP camps; while Paragraph 237 authorizes unimpeded AMIS access to all detainees.

Although the DPA doesn’t mention the UN, resource persons from the UN were present throughout the negotiations in Abuja and made many contributions to the mediation. For example, much of the language in the DPA on the protection of women and children and on security measures for IDP camps was suggested by UN lawyers and resource persons. If a UN force does take over from AMIS, it will take over with many of the provisions of the DPA in place, designed so that they can equally be implemented by the AU or the UN.

The spirit of the DPA is clear: civilians should be protected from all violence and AMIS or its UN successor should be empowered to carry out this protection wherever possible. But an agreement between Sudan and the AU to revise the mandate of AMIS, or with the UN to bring in a new UN force, is a separate task.

## **Part 13**

### **Rebuilding Darfur**

This is number thirteen in a series of articles concerning the Darfur Peace Agreement (DPA), explaining how different parts were negotiated, what the paragraphs mean, and how they should be implemented. This article focuses on the question of rebuilding Darfur.

The Movements' negotiators had two main worries in the talks. One was that Darfur is shattered and needs both immediate and long-term assistance to rebuild. More than two million refugees and IDPs need urgent assistance to return home; there are many areas that have been entirely cut off due to the war; and the basic infrastructure and livelihoods of the people of Darfur are devastated.

The second worry was that one historical reason Darfur's regional and state governments was because those governments rarely if ever received their fair share of funds from Khartoum. Almost as soon as a regional government was set up for Darfur in 1981, it was bankrupt. The story hardly changed over the following two decades. The amount due from the centre was small and what was actually delivered was always a fraction of what was due. Without any money, Darfur's governors and ministers were powerless to determine the fate of Darfur, and they were always prone to manipulation from Khartoum. The Movements' negotiators—led by Abu al Bashir Abbaker and Jibreel Khalil—insisted that this should never be allowed to happen again. On the GoS side, the negotiating team was led by Dr Lual Deng, who shared the same concerns. Dr Lual had also been closely engaged in negotiating similar provisions in the CPA and was therefore ideally placed to help craft the right mechanisms.

Darfur has immediate needs. The DPA has provisions for protecting humanitarian relief including the demilitarization of humanitarian supply routes (Paragraphs 282-286). Urgent programmes for return of IDPs and refugees are laid out in Paragraphs 176-213, which include the provisions for restitution and compensation (see articles 2 and 3 in this series). The Darfur Rehabilitation and Resettlement Commission is set up to implement this, with its tasks detailed in Paragraphs 182-197. The DRRC falls under the TDRA and will be headed by an appointee of the Movements. Paragraph 369 also calls for immediate measures to restore essential services to areas controlled by the Movements. Each of the Movements' negotiators can see their own handiwork in these paragraphs.

This article focuses on the longer-term rehabilitation and development provisions for Darfur. The overall aim is specified in Paragraph 104, which is the achievement of the Millennium Development Goals (MDGs). The GoS and its international partners have pledged to achieve these goals by 2015. Goal 1 is to reduce by half the number of people living in extreme poverty and suffering hunger, compared to a baseline of 1990. We should underline that this is half the number in this condition in 1990, not the number today—Darfur must catch up on what it has lost before proceeding towards the goal. MDG 2 is achieving universal primary education for boys and girls. Number 3 is achieving equality between girls and boys in education. Goal 4 is reducing child deaths

by two thirds compared to the level in 1990. MDG 5 is cutting by three quarters the number of women who die in childbirth. Number 6 is rolling back malaria and reducing the spread of HIV and AIDS. Goal 7 is ensuring environmental sustainability, and the final goal is building a partnership for development.

These details are not listed one by one in the DPA. But the MDGs are mentioned several times and this is what the GoS and the SLM of Minni Minawi have signed on to.

In the same way, the DPA does not provide a detailed blueprint for Darfur's infrastructural development. All Darfurians know that their region needs electricity, clean water and better roads. All Darfurians recall the promise of the Salvation Road—and the fact that it was never built. Darfurians anticipate that when Darfur is properly linked to the rest of Sudan, many social and economic benefits will follow. These details are not included in the DPA, but Paragraph 104 states that “A program for development of basic infrastructure shall be formulated to integrate Darfur with the rest of the economy.” The DPA does not specify who must formulate the plan, but there is an underlying principle throughout the Agreement that the responsibility for implementing the DPA falls upon the Transitional Darfur Regional Authority, its institutions, and its Chairperson, who is also Senior Assistant to the President. It is fair to assume that this infrastructural programme should be formulated by the TDRA. As in so many aspects of the DPA, the crux is the implementation.

The key institution set up by the DPA is the Darfur Reconstruction and Development Fund (DRDF). This also falls under the TDRA and will be headed by a nominee of the Movements. Paragraph 153 provides seed money from central government of \$300 million for 2006 and \$200 million for each of 2007 and 2008. This amount is to be adjusted in accordance with the assessment of the Joint Assessment Mission (specified in Paragraph 103). The Movements' negotiators then raised the concern that they needed guarantees that the money would not dry up as soon as short-term donor projects were complete. Sub-paragraph (c) was therefore added, which commits the GoS to allocating enough funds to the DRDF to complete all the projects identified, until the end of 2015.

According to the DPA, Darfur's Joint Assessment Mission (D-JAM) is supposed to be set up and report to a donor conference within three months (i.e. by mid-August). At the Abuja talks, the Netherlands Government (represented by its Minister for International Cooperation and Development, Agnes Van Ardenne) offered to host this donor conference. The dates have slipped somewhat: the D-JAM began its work only in late June and the donor conference is now scheduled for October.

The international donors are well aware that Darfur's farming cycle places a severe time constraint on them. The 2006 rainy season has been lost and it is essential that Darfur's farmers return home to plant for the 2007 season. If the seeds are to be in the ground by May or June of next year, then people will need to return to their homes several months before that, so that they can rebuild their houses, clear the fields, and resolve any disputes over ownership. Large-scale return of refugees and IDPs should therefore begin in about

six months' time—which means that the funds for rehabilitation and the implementation mechanisms need to be in place within weeks of the October donors' conference.

In addition to the specific funds for rehabilitation and development, the DPA provides some details for how Darfur's State Governments are to be financed by central government. If the people of Darfur should choose to create a Region in the 2010 Referendum, then the same principles will apply to that Region. Paragraph 113 lays out the principles of fiscal federalism, namely that each expenditure function is assigned to the level of government that most closely corresponds with the area served by the function.

The DPA chapter on wealth-sharing does not give a figure for the percentage of the national budget that should be provided to Darfur. Critics of the DPA have fastened on to this, demanding that the figure should be there. The reason why no figure is provided is that there is a national mechanism for generating that figure, provided for in the CPA, and the negotiators in Abuja agreed not to prejudge what that figure might be. Instead, the GoS and Movements agreed on the mechanism, and agreed on the seed money for the DRDF—a total of \$700 million over three years.

The relevant parts of the CPA are those that establish a National Revenue Fund (NRF) and a Fiscal and Financial Allocation and Monitoring Commission (FFAMC). It is the FFAMC that should come with the figure for Darfur's share. Because the establishment and functioning of these national institutions has fallen behind schedule, the Movements' negotiators insisted that the details of how the NRF and FFAMC should function should be spelled out in some detail in the DPA. The GoS chief negotiator for wealth-sharing, Dr Lual Deng, brought experts from Khartoum to explain why the Naivasha negotiations had reached the formula that is found in the CPA, and to ensure that the provisions of the DPA are fully consistent with the CPA, as well as being fair and workable.

Paragraph 121 requires the appointment of an independent Panel of Experts, recommended by the FFAMC, to propose formulae for how to allocate resources between the central government and the states, and allocation between different states according to their respective needs. The FFAMC must be independent and have the capacity to perform its functions. Perhaps most importantly, the Panel of Experts is to be established immediately, the FFAMC must become operational in the Fiscal Year 2006, and the recommendations for the allocation of funds must be submitted and approved by the Government in time for inclusion in the 2007 national budget. Paragraph 126 further stipulates that the FFAMC must institute a transparent and consistent formula for transferring funds to all states, with guarantees that these funds should not be withheld.

Some of those experts have already made their opinions known. In a background paper prepared for the African Union Mediation, Dr Adam Azzain Mohammed, of the Institute for the Study of Public Administration and Federal Governance, University of Khartoum, argued that the current level of transfers from centre to state government is far too low (about 7% of total allocations), and should preferably exceed the Nigerian level (40%) and approach the level achieved in Ethiopia (65% of the total). Dr Adam noted that the

CPA's provisions for fiscal federalism were sound enough to satisfy the demands of Darfurians. In line with his analysis, the DPA complements and expands upon the CPA.

These special provisions detailed in the DPA apply not just to Darfur but to all of Sudan's states. They show how the negotiators in Abuja—both for the GoS and the Movements—had learned from the experience of the CPA, including both its fine principles and its lagging implementation, and designed an agreement that strengthens the CPA to the benefit of all. Now the challenge is to make it work: to assign the right experts to produce fair figures for how revenue should be allocated to Sudan's states.

The Movements' negotiators, however, still insisted that Darfur still demanded special treatment. Paragraph 129 details Darfur's specific fiscal entitlements, repeating that it is entitled to resources from the National Reconstruction and Development Fund and the Multi Donor Trust Fund (established by the CPA) in addition to the allocations spelled out earlier. The DPA also provides for Darfur states to have access to international loans and grants. Another guarantee is provided in Paragraph 127: Darfur States can initiate proceedings in the Constitutional Court if they do not receive the funds they are due.

No guarantees are completely foolproof. But these are about as strong as it gets. Let us recall, again, that for the first time ever, the DPA allows Darfur State Governments, the Transitional Darfur Regional Authority, and institutions under the TDRA such as the DRDF, to receive funds directly from international donors.

Overall, the negotiators on both sides in Abuja agreed fully on the DPA's provisions for reconstructing Darfur and for fiscal federalism and the allocation of enough money to cover Darfur's budgetary needs. Even the negotiators for the Movements that rejected the DPA agreed on this section, which they regarded as one of the strongest and most technically sound parts of the Agreement. It is also one of the most important, because the failure of successive central governments to provide sufficient money to Darfur's states has been at the root of both Darfur's developmental neglect and its political crisis too. The DPA has been designed to give Darfurians the funds they need and the guarantees of those funds. What is needed now is the technical capacity and expertise to ensure that the institutions established by the DPA can exist in reality as well as on paper, and the goodwill to make sure they can function.

## **Part 14**

### **The CPA, the DPA and the EPA**

This is fourteenth in a series of articles concerning the Darfur Peace Agreement (DPA), explaining what lies behind the long and complicated text of the Agreement. This article situates the DPA in the context of the Naivasha Comprehensive Peace Agreement and the hoped-for Eastern Sudan Peace Agreement ("EPA"), asking the question, how should we now envision the future of the Sudanese nation?

The DPA was negotiated as one part of a step-by-step approach to solving Sudan's problems. In 2004, the Kenyan mediators and the international partners took the decision

to make the CPA the priority—in part because they did not anticipate reaching a quick agreement on Darfur and didn't want to keep the North-South peace as a hostage to an intractable conflict in Darfur. At the time, the Darfurian Movements complained that they were being neglected. Then, once the CPA had been signed, the Movements complained that many of their demands were simply ruled unacceptable, because they were not consistent with the CPA. For example, JEM's opening position was that there should be five Regions in Sudan with a Vice President from each one. At that time the SLM wanted a clear separation of religion and politics in Northern Sudan, an issue that the GoS, SPLM and international partners insisted had been settled at Naivasha.

Then, after July 2005, once the CPA and INC were in place, the main political attention switched to negotiating an end to the Darfur war, and many other Sudanese complained that the implementation of the CPA was being forgotten. It is certainly true that the diplomats in Khartoum divided their time and energy between key CPA challenges such as setting up the Assessment and Evaluation Commission and the Abuja negotiations. Important parts of the CPA implementation have lagged behind schedule.

Today, everyone hopes that there will be a settlement to the conflict in eastern Sudan—but that negotiating the “EPA” will not mean that the implementation of the CPA and DPA languish.

The implementation of the DPA will be just as complicated as the CPA. In some ways it is more demanding because of the fragmented situation on the ground in Darfur and the complexity of Darfur's security arrangements. Somehow, Sudan's political leaders and international partners must find a way of focusing both on the specific demands of implementing the DPA (and hopefully the EPA) while also paying attention to the bigger question of how Sudan is to undertake its overall national transformation to democracy, development and security for all. There is a danger of becoming so focused on the details and day-to-day challenges that the big picture is forgotten.

One of the criticisms most widely heard of the AU Mediation in Abuja was that, especially in the DPA's power-sharing chapter, its “compromise” proposals were not really a compromise at all, but were too close to the GoS position. Underlying this criticism is the view that the victims of the conflict in Darfur demand much stronger guarantees for their rights, their political participation and their protection, in the face of a government that is responsible for their suffering—a government that they simply don't trust. This “from the ground up” view is a perfectly legitimate. It is also consistent with the Constitutive Act of the African Union, which is strong on human rights and includes the important principle of intervention in the internal affairs of states when there are severe humanitarian crises and human rights abuses.

There is another framework and logic, which strongly influenced the African Union. Although the AU affirms the right and duty of intervention for humanitarian reasons, it remains an association of states dedicated to preserving stability in the state-based order across Africa. The Constitutive Act commits Member States to constitutional rule and democracy. One of the basic motives for the AU's Chief Mediator was therefore to

preserve the CPA and INC as the foundations for Sudan's sovereignty and democratization. He wanted to ensure that the DPA supported the CPA, and did not unravel it.

The CPA provided a framework for much of the negotiation of the DPA. The basic principles of the CPA include democratic transformation, human rights and political pluralism, fiscal federalism, security sector reform and the downsizing of the national army. At every point, the GoS negotiators—both NCP and SPLM—referred to these principles and insisted that they should not be altered. On this point, the AU agreed with the Government of National Unity. The DPA did not need to go into any detail on democracy because it is all already provided for.

Neither would the DPA have been workable if it had set off conflicts in other parts of Sudan. On this point, Dr Magzoub al Khalifa repeatedly reminded the African Union Mediation that he had obligations to ensure the continued stability of areas such as Kordofan and that any Agreement should not complicate the search for peace in Eastern Sudan. It wouldn't be a true peace agreement if it sparked off a conflict in another part of Sudan. Both Dr Magzoub and the SPLM members of the Government delegation insisted that the delicate and hard-won North-South division of power in the CPA could not be altered in any fundamental way. The AU Mediation was also sympathetic to these arguments.

Throughout the Abuja discussions, members of the AU team reminded the Movements that any power sharing formula decided in the DPA would be purely interim—it would last for just three years until the elections are held. “Better to make sure you have effective representation in institutions such as the Population Census Council and the National Elections Commission,” they argued, “rather than pushing for a few extra seats today.” But where trust is low, people demand assurances today instead of uncertain promises of future gains. The Movements' negotiators were not convinced by the idea of pinning their hopes on future elections—even with promises of generous donor support to change the liberation fronts into civilian political parties.

The leaders of the SLM/A and JEM are fervent unionists. They recognize that the rights of Darfurians are best promoted within a united Sudan, and that the SPLM and Southerners in general are strategic allies. One of the tragedies of the Darfur peace process is that the SPLM and the Darfur Movements failed to reach a common understanding. Some of the Movements' leaders misunderstood the SPLM's strong commitment to the CPA as being indifference to the rights of Darfurians, whereas in fact it is a genuine belief that the CPA represents the best chance for unity and democracy in Sudan. Some SPLM representatives became frustrated with the Movements' leaders, thinking that their commitment to the Darfurians was making them underestimate the extent to which Sudanese had suffered in their struggles. That misunderstanding has continued since 5 May. When Abdel Wahid al Nur refused to fly to Yei on 2 June to meet with First Vice President Salva Kiir and Minni Minawi, he squandered an important opportunity for building a coalition in support of unity and democracy. The historic

tragedy of the people of Sudan's provinces is that they repeatedly fail to unite around a common political platform.

The July 2005 Abuja Declaration of Principles specifies that anything agreed in the DPA shall become part of the Interim National Constitution. This is a fundamental assurance that the DPA has full legal standing and is not a document that is legally subservient to the CPA. The implementation schedule for the DPA specifies that immediately after “D-Day”—which was 16 May—the GoS should begin the task of ensuring that the DPA is approved by the legislature and adopted into the law and constitution of Sudan. It needs a three-quarters vote in both the National Assembly and Council of States. It is the task of the main partners in the Government of National Unity to make sure that this happens expeditiously.

The incorporation of the DPA into the INC means, for example, that even though the definition of the Presidency in the INC does not provide for a Senior Assistant to the President, now that the DPA has been signed, the Constitution must be adjusted to incorporate that change. The powers and competencies of the Senior Assistant to the President are defined primarily with regard to Darfur (he or she will chair the Transitional Darfur Regional Authority, and he or she must be consulted by the President on all matters concerning Darfur), but there are also other national competencies as well. The Movements' negotiators insisted that any senior Darfurian in government would only have real power insofar as he or she had weight in national decision-making. The post of Senior Assistant to the President will now become part of the revised INC.

What exactly is the status of the Senior Assistant? Paragraph 65 reads, “The Senior Assistant shall be the fourth ranking member in the Presidency.” Critics of the DPA have interpreted the word “in” to mean that the Senior Assistant is not a full member of the Presidency, as defined in the INC, but is merely “in” the office in the same way that other officials can have posts in the President's office. But if we examine the actual powers and competencies assigned to the Senior Assistant in Paragraph 66, we see that these are far-reaching—greater and more specified in some respects than the powers of the Vice President. In the light of these powers, it is less important whether the Senior Assistant and Chairperson of the TDRA is “in” or “of” the Presidency.

During the last week of the Abuja negotiations, the two SLM leaders pushed as hard as they could to make the Senior Assistant position as powerful as they could. On the last day they began to have second thoughts, and worry what would happen if this position were to be given to their rival. Perhaps the post of Senior Assistant should be separated from the Chairperson of the TDRA, the SLM negotiators suggested. From a practical point of view it does make sense to divide up the powers of this post, because the workload is so large. But the underlying reason for fusing the powers of the Senior Assistant and the Chairperson of the TDRA was the Movements' own argument, from the outset, that Darfur needed an arrangement on the same template as Southern Sudan, where the head of the Government of Southern Sudan is also a senior figure in the national Presidency. So the formula wasn't changed. But the question remains, who will be the Senior Assistant?

The GoS conceded in the Declaration of Principles that the DPA would become part of the INC. But this was not *carte blanche* for the DPA to override any aspect of the INC. Changing the INC is a delicate business.

Some parts of the Constitution are easier to change than others. For example, the DPA makes major changes to Darfur State Constitutions. It increases the number of seats in the assemblies from 48 to 73 and changes the balance of power between the parties. (There has been some discussion on the point of whether the Darfur States can change their constitutions further, after the signing of the DPA, or not. One viewpoint is that if the Darfur-Darfur Dialogue and Consultation makes a strong recommendation by consensus on States' constitutions, then appropriate changes should be made.) The creation of the TDRA and the organization of the referendum on the status of Darfur scheduled for 2010 are also important amendments to the INC.

These changes are focused on Darfur. At a national level, the DPA proposals make much more modest changes to the INC and the national balance of power. For example, the idea of increasing the number of seats in the National Assembly to make room for the Darfur Movements' demands for representation was one idea that was discussed. It was rejected because any increase would have reduced the proportion allocated to the South and also pushed the National Congress Party quota below 50%, and because it would have led to an over-representation of Darfur relative to other parts of Northern Sudan.

Because the GoS and the Movements could not agree on a formula for the Movements' representation in the National Assembly, the Mediation proposed its own. Twelve seats in the National Assembly was a disappointment for the Movements, which had demanded many more. Everyone recognizes that twelve is a small number. But the Mediation wanted to minimize changes to the CPA percentages intact in the National Assembly. On the principle that there should be no losers in a peace agreement, only winners, the Mediation did not want to propose a formula that involved any MPs losing their posts. On the understanding that space would also be needed for the Eastern Front, not all the vacant posts could be allocated to the Darfur Movements. So the Mediation formula proposed just twelve seats until the 2009 elections are held. This proposal was made on the understanding that international partners would provide assistance to the Movements to enable them to transform themselves into political parties and contest those elections on a level playing field. That assistance is on offer today.

The same principle was applied to ministerial posts. Paragraph 69 allocates one cabinet ministerial post and two ministers of state to the Movements, while insisting that the six ministerial posts currently filled by Darfurians remain allocated to Darfurians. And in accordance with the argument that the representatives in the Council of States are not chosen along party lines but are instead respected elders from the community, the question of Darfur's representation in the Council of States was deferred for the Darfur-Darfur Dialogue and Consultation (Paragraph 72).

The Mediation, the international partners and civil society organizations recognize that the Movements were disappointed in the power-sharing formulae in the DPA. The DPA did not satisfy the Movements' demand for parity in representation at the level of Darfur, it did not create a Region straightaway, and did not give them a Vice President. But critics should still bear in mind that the allocation of posts is just an interim measure until elections are held. And the DPA does give the Movements the power to nominate the majority of positions in the TDRA, which is the most powerful institution for implementing security arrangements, rehabilitation and development in Darfur. The Abuja peace negotiations awarded the SLM/A and JEM legitimacy, both in national political processes and on the international stage. Because they had not won the war, the negotiations could not give them power. The DPA gives them a foundation on which they can wage a political struggle using democratic means.

Do the Movements' leaders and members have the confidence to abandon the armed struggle and turn to peaceful political mobilization? If the DPA provides stability to Darfur—especially through the faithful implementation of the security arrangements and the wealth-sharing provisions—then the efforts of Sudanese and their international partners can switch back to the national agenda of implementing the CPA and transforming Sudan into a functioning democracy. If that can happen, the rising tide of democracy can lift Darfurians, along with all other Sudanese, and enable them to achieve their democratic right of fair participation in all aspects of national life.

The big challenge for Sudan's political leaders is to raise their eyes from the short-term tasks of treating the nation's problems one by one and instead focus on the wider task ahead of reconstituting Sudan as a united and democratic nation. The DPA allows the Darfur Movements to become part of this common national process—although with smaller representation than they wanted, at least until elections. The same will be true of any peace agreement for Eastern Sudan. The DPA and the EPA are buttresses to that: the central pillar for this task is the CPA and the INC.

## **Part 15**

### **Leadership for Implementing the DPA**

This is fifteenth and last in a series of articles explaining the Darfur Peace Agreement (DPA), explaining what lies behind the long and complicated text of the Agreement. As these articles have tried to explain, the text of the DPA is strong and reflects the hard work put in by the negotiators on both sides. This final article asks, what kind of leadership will be needed to implement the Agreement?

The responsibility for implementation falls first and foremost on the Government of Sudan and the SLM/A. Of these two parties, the GoS is the more powerful and capable by far and therefore shoulders the heavier duties. As Dr Magzoub al Khalifa and Minni Minawi sat opposite one another in the Presidential Villa in Abuja on the afternoon of 5 May, President Obasanjo said, "Unless the right spirit is there this document is not worth the paper it is written on."

Few Sudanese have read the DPA. Most have only learned about it from the commentaries of political pundits—many of whom have not read it themselves, but just looked into it to see if it deals with the issues that concern them. Some have looked only at page 107 and seen the two signatures of Dr Magzoub and Minni. Many Darfurians who don't support either the NCP or Minni Minawi, having failed to see the signature of a leader who they believe represents their real interests, have simply dismissed the DPA out of hand.

I urge Sudanese to read the text—and read it with explanations and commentaries to hand. Even though Abdel Wahid al Nour and Khalil Ibrahim did not sign the DPA, their negotiators had a major input into the text, especially on security and on wealth-sharing. But understanding what has been agreed in the DPA and why has little meaning, unless the Government and SLM/A are ready to implement it in the right spirit. Implementing a peace agreement requires much more than sticking to the letter of the text.

The DPA should be debated. There are ambiguities in the text and issues to be settled during the implementation. It is not a crime to criticize and oppose the DPA—it is a basic right to disagree, and it is the duty of an informed and active citizen to form an opinion on a matter of such importance. No-one can be sanctioned or imprisoned for simply opposing the DPA—the only reason for taking this kind of measure against someone is if he actively undermines it, for example by launching military attacks. Proper debate is essential. There are many shortcomings of the DPA, and they can only be identified and remedied if there is open discussion. The DPA is not a Koran or a Bible—the contents can be amended with the agreement of the signatory parties. In fact, as circumstances change, we can be sure that changes will be made. The important thing is that changes should be made by consent and that any changes should either be improvements, or they should be inescapable, in response to the pressure of events.

The more that the Sudanese people understand the spirit of the DPA, the better they will be able to call the GoS and SLM/A to account in its implementation, and the better they will be able to press for improvements.

The task of implementing the DPA will fall not only on the political parties but also on technocrats. One of the central provisions of the DPA is the Transitional Darfur Regional Authority and its various constituent organs, which are to deal with security, reconstruction, land, peace and reconciliation, etc. Paragraph 66(e) provides that, when nominating the heads of these bodies, “the Senior Assistant to the President shall consider prominent and well-respected individuals who are capable of commanding the confidence of all parties.” Most Darfurians—elites and ordinary people—have confidence that impartial technocrats can do better than politicians in making peace a reality.

Many implementation tasks will also fall on community and tribal leaders. The Darfur-Darfur Dialogue and Consultation will be a very important step in moving peace forward. The Peace and Reconciliation Council, to be set up at the DDDC, will be an opportunity

for respected elders of the community to use their wisdom in settling many of the local conflicts that cannot be resolved through the DPA.

The African Union and its partners, including the UN and US, have a secondary responsibility for implementation. There is a tendency for the Sudanese parties to blame the AU when things go wrong in Darfur, but they must always be aware that the AU can only monitor and verify an agreement that the parties themselves have agreed to. A referee cannot make bad teams play a good football match—but he can spoil a good game by bad decisions and even lose control of the match.

The “referee” for the DPA is currently the AU, although the AU has asked the UN to assist and ultimately to take over the mission in Darfur. But the referee also includes international partners. Pages 107-108 of the DPA contain the signatures of 14 international guarantors, from African countries (Nigeria, Congo, Libya, Egypt), the AU, the UN, the EU, the Arab League, the U.S., U.K., Canada, Norway, France and the Netherlands. The EU provides one deputy chairman for the Ceasefire Commission, a range of international partners are on the Joint Commission, and a neutral country or international organization is slated to provide the Security Advisory Team (it should be chosen soon). All of these comprise the international implementation team.

What qualities should this implementation team possess? They should be capable, organized and energetic—but also patient in the face of complication and delay. They should have a long-term vision twinned with a commitment to see that the best is done. They should always be well-prepared and well-informed, but also ready to take the initiative and bear the criticism that always rides with being out in front.

What qualities should be avoided in choosing the implementation team and especially its leaders? There are three types of person who would spell disaster.

The first is the functionary, who just insists on doing his or her job according to the book, who cannot be bestirred to work late at night or travel rough in the villages of Darfur to find out what the people are thinking. Implementing a peace agreement is no standard bureaucratic job, for the person who counts the hours until signing off and who keeps an eye on the per diems.

The second is the quick-witted charmer who relies on his or her sharp political instincts to stay ahead of the game, but fails to do sufficient preparation and doesn't work hard enough to make the administrative systems function. Such people often get far through bluff, because of loyal subordinates whose hard work may pave their way, and through the goodwill of their peers. But this approach simply isn't enough to manage a delicate process that requires a detailed understanding of a complicated agreement and the patient building of trust between parties. A casual approach that relies on protocol and the ability to size up a situation as it arises may be enough to charm one's way through a diplomatic reception but more solid qualities are required for the serious work of implementing peace. Meeting the rigorous deadlines for implementing the DPA is no job for someone who is casual or easily distracted.

And the third danger is to appoint someone who has an outsize ego. Conviction, determination and a thick skin are required—but these must be balanced by a readiness to study the details and manage the complexities, listening to advisers and subordinates. The leaders of the implementation team must know the text of the DPA so well that they are never caught out by an issue of procedure that they didn't expect; they must know the parties intimately, and their strengths and weaknesses. No single person can manage the implementation process. Good managers who know how to delegate and trust their professional staff are needed.

Many African leaders are tolerant of senior staff who under-perform, and are unwilling to appear disrespectful by being more demanding. Peace in Darfur is far more important than the occasional hurt feelings of a civil servant. Just as Paragraph 250 provides the Joint Commission with extensive powers to name and shame, and even sanction, individuals for failing to do meet their obligations under the Comprehensive Ceasefire, so too should the members of that Commission call to account those in the implementation team—even its leaders—who fail to do their jobs.

Many Sudanese are disappointed with the capacity of the AU in Darfur and are campaigning for the UN to take over. It is certainly true that the UN has much more experience with handling peace building operations, and has a more established institutional apparatus, more funds and more people who have done this kind of job before. But let us have no illusions that the arrival of the UN—should President Bashir allow it—will solve the problems of peacekeeping and implementing the DPA. The same basic problems will remain whether it is the AU or the UN. When Darfurians see the size, expense and lifestyle of the UN presence they may wish to have the AU back!

Most of the debate on the peacekeeping force has focused on the numbers of troops, the logistics, the mandate, and whether it falls under the AU, UN or even NATO. This debate misses the key issue: what is the long-term vision of the mission? What does the mission intend to leave behind when it completes its job, and how does it intend to use its time in Darfur—five years until the end of the transition, at least—to achieve the task?

Anyone who has seriously analyzed the situation in Darfur realizes that three preconditions are necessary for success.

First, the international mission will need to be in place for at least five years. Darfur cannot be stabilized quickly. It will take at least until the end of the transitional period in 2011 for security to be restored, for a police force to be built up, and for militias to be brought under control. Once this timeframe is accepted, then the peacekeeping mission can be designed accordingly. Its members should be required to be acquainted with Sudanese society and should learn at least enough Arabic to function socially. They should be posted for long enough to understand how the communities function and to gain the trust of community leaders. They shouldn't simply be content with doing their job for six months or a year and then departing.

Second, this effort at stabilization must be an all-inclusive effort. Forcible disarmament—providing security without obtaining the consent of the armed groups—is simply impossible. The leaders of all Darfur’s communities must be made part of a collective effort at stabilizing the region. If the importance of collaboration is recognized, it will quickly be obvious that the great majority of the peacekeeping work can be done by the communities themselves. For example, the task of controlling and disarming undisciplined elements within the militia can be done largely by the tribal authorities, with monitoring by international elements. Let Darfurians and the international mission work together.

Third, success is possible only if the long-term aim is to restore the authority of government (that is, “government” not “the current government”) and establish a stable and unified Sudanese state. Government as a feature of life, in the sense of a state that delivers security and basic services, and regulates key aspects of civil life, simply does not exist in Darfur and has not existed for some years. The very idea of the state as an entity that has authority over the territory of Sudan and represents the interests of all Sudanese citizens has all-but-vanished. The only long-term solution to Darfur’s crisis is to restore the concept of “government” which in turn can only be done if Darfurians—and all other Sudanese citizens—have confidence in their state. This concept of “government” includes an independent civil service, a native administration chosen by the people, and state authorities that deliver essential services such as health and education to all.

All Sudanese aspire to have this kind of government. Some see the current Government of National Unity as the only option while others want to transform the nature of the state. The reality of a negotiated end to Sudan’s wars—through the CPA, DPA and hopefully the EPA—means working with the government in power today. It is today’s government which has the major responsibility for implementing the DPA.

No-one pretends that implementing the DPA will be straightforward. But the best start is to understand the Agreement and to work in a spirit of cooperation, professionalism and goodwill to make it a reality. Leadership for implementing the DPA must come, first and foremost, from Sudanese political leaders. If they are wise, they will appoint independent and impartial technocrats, men and women of integrity who are trusted by the people, to key positions. They will also allow the people to choose their Native Administrators and minimize political interference in those positions. But an onerous responsibility also falls on the leaders of the AU and international organizations and partners in Sudan. Their leadership is also required: they must take the DPA as seriously as if their own personal futures depended upon it.