

Explaining the Darfur Peace Agreement
Part 11
Darfurians in the Civil Service and Education

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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.