

Explaining the Darfur Peace Agreement

Part 10

Land

Alex de Waal

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 Darfurian 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.