

Explaining the Darfur Peace Agreement

Part 12

Human Rights

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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.