

## **The Darfur Peace Agreement: Part 14 The CPA, the DPA and the EPA**

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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.