

BRINGING PEACE TO DARFUR: LESSONS OF THE DARFUR PEACE AGREEMENT

I. INTRODUCTION.....	172
II. UNDERSTANDING THE CONFLICT IN DARFUR.....	175
A. <i>A Brief History of Sudan</i>	175
B. <i>The Darfur Region</i>	178
C. <i>The Rise of Conflict</i>	179
D. <i>The Formation of Rebel Groups</i>	180
1. <i>The Sudan Liberation Army/Movement</i>	180
2. <i>The Justice and Equality Movement</i>	182
E. <i>The Government of Sudan and the Janjaweed</i>	183
III. THE DARFUR PEACE AGREEMENT	186
A. <i>The Power Sharing Protocol</i>	187
B. <i>The Wealth Sharing Protocol</i>	192
C. <i>The Security Arrangements</i>	196
D. <i>The Darfur-Darfur Dialogue and Consultation</i>	202
IV. BRINGING PEACE TO DARFUR.....	203
A. <i>Increased Representation at the Negotiations and Addressing Core Issues</i>	204
B. <i>Mechanism for Justice and Accountability</i>	206
C. <i>A Realistic Role for UNAMID</i>	208
V. CONCLUSION	209
VI. APPENDIX	211
A. <i>Glossary of Acronyms</i>	211

“There can be no single solution to this crisis. Darfur is a case study in complexity. If peace is to come, it must take into account all the elements that gave rise to the conflict.”¹ – Ban Ki-moon, Secretary General of the United Nations

I. INTRODUCTION

Amina is a survivor of the first genocide of the twenty-first century.² The Janjaweed attacked her village located in Darfur, Sudan.³ They shot and killed her husband.⁴ As she fled her village with two of her children on her back and two in her arms, she was chased by roughly twenty Janjaweed fighters.⁵ They ripped her five-year old son from her arms.⁶ When she stopped to plead for his life, they threatened to kill her;⁷ Amina had no choice but to continue running.⁸ She could hear her son screaming for her as the Janjaweed threw him into the fire of the burning village but she could not stop running.⁹ In spite of her speed, Amina lost another son to the brutality of the Janjaweed.¹⁰ The Janjaweed took him from her and shot him twice, once in his back and once in his side.¹¹ He was only seven years old.¹² Amina was never able to bury her children.¹³

1. Ban Ki-moon, *What I Saw in Darfur: Untangling the Knots of a Complex Crisis*, WASH. POST, Sept. 14, 2007, at A13.

2. DON CHEADLE & JOHN PRENDERGAST, *NOT ON OUR WATCH: THE MISSION TO END GENOCIDE IN DARFUR AND BEYOND* 80 (2007); BARACK OBAMA & SAM BROWNBACK, *Introduction* to *NOT ON OUR WATCH: THE MISSION TO END GENOCIDE IN DARFUR AND BEYOND* xii (2007).

3. CHEADLE & PRENDERGAST, *supra* note 2, at 80.

4. *Id.*

5. *Id.*

6. *Id.*

7. *Id.*

8. *See id.*

9. *Id.*

10. *Id.*

11. *Id.*

12. *Id.*

13. *Id.*

Despite the world's commitment after the Rwandan genocide to never tolerate genocide again,¹⁴ the international response to the atrocities in Darfur has been painfully slow.¹⁵ The Government of Sudan and the Janjaweed are acting with relative impunity.¹⁶ Indeed, the Government of Sudan, with the help of the Janjaweed, continues to indiscriminately and purposefully attack the people of Darfur.¹⁷ They are killing innocent civilians, pillaging and burning the villages, and raping the women.¹⁸ And, they are getting away with it.¹⁹

The United Nations has described what is happening in Darfur as "the world's worst humanitarian disaster" and the United States has condemned it as "genocide."²⁰ In an effort to achieve peace, the Government of Sudan and the Darfur rebel groups²¹ entered into peace negotiations in 2006 under the auspices of the African Union (A.U.).²² These negotiations resulted in the Darfur Peace Agreement (DPA),²³ which was signed by the Government of Sudan and one rebel faction.²⁴ In

14. OBAMA & BROWNBACK, *supra* note 2, at xii. In 1994, 800,000 people were killed in 100 days in Rwanda due to their ethnicity. United Human Rights Council, Genocide in Rwanda, http://www.unitedhumanrights.org/Genocide/genocide_in_rwanda.htm (last visited Oct. 17, 2008).

15. CHEADLE & PRENDERGAST, *supra* note 2, at 5.

16. See HUMAN RIGHTS WATCH REP., ENTRENCHING IMPUNITY: GOVERNMENT RESPONSIBILITY FOR INTERNATIONAL CRIMES IN DARFUR 8 (2005), <http://www.hrw.org/reports/2005/darfur1205/> [hereinafter ENTRENCHING IMPUNITY].

17. Int'l Comm'n of Inquiry on Darfur, *Report of the International Commission of Inquiry on Darfur to the United Nations Secretary General*, 3, (Jan. 25, 2005), available at http://www.un.org/News/dh/sudan/com_inq_darfur.pdf [hereinafter *Commission of Inquiry*].

18. CHEADLE & PRENDERGAST, *supra* note 2, at 7–8.

19. See ENTRENCHING IMPUNITY, *supra* note 16, at 8–9.

20. JULIE FLINT & ALEX DE WAAL, DARFUR: A SHORT HISTORY OF A LONG WAR xii (2005).

21. The term "rebel groups" is used throughout this Comment to refer to the two Darfurian rebel groups, the Justice and Equality Movement (JEM) and the Sudan Liberation Army/Movement (SLA/M), and their various factions.

22. UNITED NATIONS, THE UNITED NATIONS & DARFUR: FACT SHEET 1, http://www.un.org/News/dh/infocus/sudan/fact_sheet.pdf.

23. Darfur Peace Agreement, May 5, 2006, available at http://www.unmis.org/english/2006Docs/DPA_ABUJA-5-05-06-withSignatures.pdf.

24. Press Release, U.S. Dep't of State, Darfur Peace Agreement (May 8, 2006), available at <http://www.state.gov/r/pa/prs/ps/2006/65972.htm>.

spite of the high hopes for success,²⁵ the DPA has failed to bring peace to the region, and the parties began new peace talks in October 2007.²⁶

Partially in recognition of past inaction in the face of grave atrocities, the United Nations 2005 World Summit “culminated with an agreement that the international community, acting through the United Nations, bears a responsibility to help protect populations from genocide and other atrocities when their own governments fail to do so.”²⁷ Many question whether or not the United Nations and the international community are doing enough to stop the genocide in Darfur.²⁸

This Comment considers the reasons for the DPA’s failure and suggests changes that should be made in future peace agreements. First, this Comment briefly describes the atmosphere in which the conflict arose, as well as some of the root causes of the conflict. Next, this Comment focuses on the DPA and understanding why it failed. Finally, this Comment examines three things that should be done during the current peace negotiations to ensure that some of the mistakes of the DPA are not repeated: (1) all interested parties need to be adequately represented at the negotiations to address core issues, (2) any new peace agreement must create a mechanism for justice and accountability, and (3) any new peace agreement must provide a realistic role for peacekeeping forces.

25. See INT’L CRISIS GROUP, DARFUR’S FRAGILE PEACE AGREEMENT, AFRICA BRIEFING NO. 39, 1 (2006), http://www.crisisgroup.org/library/documents/africa/horn_of_africa/b039_darfur_s_fragile_peace_agreement.pdf [hereinafter FRAGILE PEACE AGREEMENT].

26. INT’L CRISIS GROUP, DARFUR’S NEW SECURITY REALITY, AFRICA REPORT No. 134, i (2007), http://www.crisisgroup.org/library/documents/africa/horn_of_africa/134_darfur_s_new_security_reality.pdf [hereinafter NEW SECURITY REALITY].

27. Alicia L. Bannon, *The Responsibility to Protect: The U.N. World Summit and the Question of Unilateralism*, 115 YALE L.J. 1157, 1157 (2006).

28. OBAMA & BROWNBACK, *supra* note 2, at xii; INT’L CRISIS GROUP, DARFUR: THE FAILURE TO PROTECT, AFRICA REPORT No. 89, i (2005), http://www.crisisgroup.org/library/documents/africa/horn_of_africa/089_darfur_the_failure_to_protect.pdf [hereinafter FAILURE TO PROTECT].

II. UNDERSTANDING THE CONFLICT IN DARFUR

The conflict in Darfur began as the second civil war in Sudan was coming to an end.²⁹ This crisis has many different causes including “security, politics, resources, water, and humanitarian and development issues.”³⁰ At least 300,000 people are thought to have died during the conflict and another 2.7 million have been forced to flee their homes.³¹

A. *A Brief History of Sudan*

Sudan is located in northeastern Africa.³² The environment of the Sudan is harsh and “suffers from inadequate supplies of potable water, declining wildlife populations because of warfare and excessive hunting, soil erosion, desertification, and periodic droughts.”³³ Most of Sudan’s population is composed of Africans and Arabs.³⁴ Sudan’s northern populations are mostly Muslim, while the south is predominantly animist and Christian.³⁵ Sudan’s harsh climate and scarce resources coupled with ethnic, tribal, and religious differences have created a history of conflict.³⁶

29. THE ALLARD K. LOWENSTEIN INT’L HUMAN RIGHTS CLINIC & THE ALLARD K. LOWENSTEIN INT’L HUMAN RIGHTS PROJECT, AN ANALYSIS OF SELECT COMPANIES’ OPERATIONS IN SUDAN: A RESOURCE FOR DIVESTMENT 2 (2005), <http://acir.yale.edu/pdf/YaleLowensteinSudanReport.pdf> [hereinafter A RESOURCE FOR DIVESTMENT].

30. Ban Ki-moon, *supra* note 1.

31. Neil MacFarquhar, *Why Darfur Still Bleeds*, N.Y. TIMES, July 13, 2008, at WK5.

32. LIBRARY OF CONG., COUNTRY PROFILE: SUDAN 3 (2004), <http://leweb2.loc.gov/frd/cs/profiles/Sudan.pdf>.

33. *Id.* at 4.

34. *Id.* at 5.

35. *Commission of Inquiry, supra* note 17, at 17.

36. *See, e.g., id.* at 20–23 (describing the growth of the tension in the Sudan as desertification and drought making resources scarce, increased tribal access to weapons, differences between sedentary and nomadic tribes, and the differences between “so called African and Arab tribes . . .”); *see, e.g., Commission of Inquiry, supra* note 17, at 21 (describing the growth of tensions between the tribes in Sudan as desertification and drought make resources scarce).

Sudan has been involved in political violence and armed conflict since it gained independence from British colonial rule in 1956.³⁷ The northern Sudanese (often referred to as “Arabs”) were politically favored by the British colonial policy over the southern and western Sudanese (often referred to as “Africans”).³⁸ In the time leading up to Sudan’s independence, the British placed political power for the Sudan region in the hands of northern Sudanese, leaving the southern Sudanese virtually powerless and unrepresented in the government.³⁹ Since independence, most large scale violence in Sudan has been between the Government of Sudan in Khartoum (in the North) and southern rebel groups.⁴⁰ There have been two civil wars between the North and the South since Sudan’s independence.⁴¹

Both of these civil wars started because the government in Khartoum arbitrarily denied the South political power.⁴² Indeed, the first civil war started in 1955 when the Arab-led Khartoum government broke their promise to the southern Sudanese to create a federal system.⁴³ Fearing political marginalization, southerners sought to gain their independence by engaging in a civil war.⁴⁴

37. *See id.* at 18.

38. INT’L CRISIS GROUP, CONFLICT HISTORY: SUDAN (2006), http://www.crisisgroup.org/home/index.cfm?action=conflict_search&l=1&t=1&c_country=101 [hereinafter CONFLICT HISTORY]; Scott Baldauf, *In Sudan, Another Conflict could Eclipse Darfur*, CHRISTIAN SCI. MONITOR, Feb. 27, 2008, <http://www.csmonitor.com/2008/0227/p06s01-woaf.html>.

39. GlobalSecurity.org, Sudan—First Civil War, <http://www.globalsecurity.org/military/world/war/sudan-civil-war1.htm> (last visited Oct. 17, 2008) [hereinafter First Civil War].

40. Scott Straus, *Darfur and the Genocide Debate*, 84 FOREIGN AFFAIRS 123, 124 (2005), <http://www.foreignaffairs.org/20050101faessay84111/scott-straus/darfur-and-the-genocide-debate.html>. The government of Sudan became plagued by one-party rule after the National Congress Party’s (NCP) take over of the democratically elected government in 1989. FRAGILE PEACE AGREEMENT, *supra* note 25, at 7.

41. Straus, *supra* note 40, at 124–25.

42. *Id.*

43. First Civil War, *supra* note 39.

44. *Id.*

The first civil war lasted for seventeen years, from 1955 to 1972.⁴⁵ The war ended with the signing of the Addis Ababa Accords, which granted southern Sudan wide regional autonomy on internal matters.⁴⁶ This agreement was unconstitutionally revised in 1977 by the government in Khartoum after the discovery of oil.⁴⁷

The second civil war began in 1983 after President Gaafar Nimeiri's unilateral decision to implement Islamic Shari'a law throughout the country on both Muslims and non-Muslims.⁴⁸ These events induced southern army officers, led by John Garang, to mutiny and form the Southern People's Liberation Army/Movement (SPLA/M).⁴⁹

The second civil war ended on December 31, 2004, with the signing of the Comprehensive Peace Agreement (CPA).⁵⁰ The CPA does primarily three things. First, it creates a new post of Vice President to be held by a southerner.⁵¹ Second, it gives southern Sudan greater autonomy by withdrawing the current national army and giving the south 50% of the oil field revenues.⁵² Finally, the CPA provides for a referendum on secession in 2011.⁵³

45. *Id.*

46. *Id.*

47. CONFLICT HISTORY, *supra* note 38.

48. GlobalSecurity.org, Sudan Second Civil War , <http://www.globalsecurity.org/military/world/war/sudan-civil-war2.htm> [hereinafter Second Civil War] (last visited Oct. 17, 2008). Gaafar Nimeiri was the president of Sudan from 1969–1985. *Commission of Inquiry*, *supra* note 17, at 18.

49. *See* Second Civil War, *supra* note 48.

50. *Commission of Inquiry*, *supra* note 17, at 19. The CPA was built around the CPA and the continuing success of the CPA is vital to the DPA. INT'L CRISIS GROUP, DARFUR: REVITALISING THE PEACE PROCESS, i–ii, AFRICA REPORT NO. 125 (2007), [http://protection.unsudanig.org/data/darfur/papers/ICG%20-%20Darfur%20-%20Revitalising%20the%20peace%20process%20\(Apr07\).pdf](http://protection.unsudanig.org/data/darfur/papers/ICG%20-%20Darfur%20-%20Revitalising%20the%20peace%20process%20(Apr07).pdf) [hereinafter REVITALISING THE PEACE PROCESS].

51. *See* FLINT & DE WAAL, *supra* note 20, at 32. John Garang, the commander in chief of the SPLA/M, was the first Vice President. *Id.* at xii. Garang died in a helicopter crash in July 2005 after he had been vice president for just three weeks. *Id.* Flint notes that “Garang’s presence in the Khartoum government would have been a powerful force against government-sponsored aggression in Darfur.” *Id.* at xiii.

52. *Id.* at 32.

53. *Id.* at 31–32. While the CPA is one step in resolving the conflicts in Sudan, it does little for Darfur. *Id.* at xiii. It is an agreement between “northern and southern

B. *The Darfur Region*

The conflict in Darfur erupted in 2003 as the negotiations to end the civil war between the North and the South came to a close.⁵⁴ The conflict is very complex and has been largely influenced by the region's geography, history, and ethnography.⁵⁵

Darfur is a region located in the westernmost part of Sudan and while it is a generally dry region, it is not a desert.⁵⁶ Darfur was originally a sultanate,⁵⁷ which fell to British rule.⁵⁸ In 1917, Darfur was incorporated into Sudan.⁵⁹ In 1994, the region was divided into three states: North, South, and West Darfur.⁶⁰

While there are a few major towns in the region, the majority of the population lives in small villages.⁶¹ Darfur's economy is maintained by subsistence farming, limited industrial farming, and cattle herding.⁶² Even though the local government controls the region,⁶³ the historic tribal structure can still be found.⁶⁴ For simplicity, the tribes can be broken up into three different categories: (1) agriculturalist, (2) sedentary cattle herders, and (3) nomadic and seminomadic cattle and camel herders.⁶⁵ The agriculturalist tribes include the Fur, the

military elites that short-changes Darfur's share of the nation's power and resources." *Id.* The CPA allocates 52% of the positions in the executive and legislative branches at the national and state levels to the dominant political power in the North, the National Congress Party (NCP), and 28% to the SPLA/M, leaving 14% to northern opposition and 6% to southern opposition. FRAGILE PEACE AGREEMENT, *supra* note 25, at 7.

54. Alex De Waal, *The Wars of Sudan*, NATION, Mar. 19, 2007, at 16, 16–17.

55. *Commission of Inquiry*, *supra* note 17, at 21–22.

56. GÉRARD PRUNIER, *DARFUR: THE AMBIGUOUS GENOCIDE 1–2* (2d ed., Cornell University Press 2007). Darfur is one of the most landlocked parts of Africa. *Id.* at 2.

57. A sultanate refers to "territory ruled over by a sultan." OXFORD ENGLISH DICTIONARY 164 (2d ed. 1989). And a sultan is generally described as a "ruler of a Muslim country." *Id.*

58. *Commission of Inquiry*, *supra* note 17, at 20.

59. *Id.*

60. *Id.* The Government of Sudan appoints a governor (Wali) to each of the three Darfur states. *Id.*

61. *Id.*

62. *Id.*

63. *Id.*

64. *Id.*

65. *Id.*

Barni, the Tama, the Jebel, the Aranga, and the Massaleit.⁶⁶ The sedentary cattle herders include the Rhezeghat and the Zaghawa.⁶⁷ The nomadic and seminomadic herding tribes include the Taaysha, the Habaneya, the Beni Helba, and the Mahameed.⁶⁸ In spite of the fact that 40% of Darfurians are not Arabs,⁶⁹ all Darfurians are Muslim⁷⁰ and generally speak Arabic.⁷¹

C. *The Rise of Conflict*

The violence between the Government of Sudan and the SPLA/M first began to affect the Darfur region in the 1980s.⁷² In 1991, while the SPLA/M and the Government of Sudan were fighting in Darfur, the government began to support the formation of an “Arab Alliance” to control the non-Arab ethnic groups in Darfur.⁷³ In an attempt to resolve ancient disputes over land and water rights, these Arab groups used their recently acquired arms to attack the Zaghawa, Fur, and Massaleit communities.⁷⁴ By the end of the attacks, the Arab groups had killed 3,000 people and destroyed 600 non-Arab villages.⁷⁵

66. *Id.* The agriculturalist tribes are sedentary and depend on crop production to survive the months during and following the rainy season. *Id.*

67. *Id.*

68. *Id.*

69. GlobalSecurity.org, Military: Darfur, <http://www.globalsecurity.org/military/world/para/darfur.htm> [hereinafter Military Darfur] (last visited Oct. 17, 2008).

70. FLINT & DE WAAL, *supra* note 20, at 10.

71. *Commission of Inquiry*, *supra* note 17, at 20.

72. See U.S. DEP'T OF STATE, PUBL'N. NO. 11182, DOCUMENTING ATROCITIES IN DARFUR, (2004), <http://www.state.gov/g/drl/rls/36028.htm> [hereinafter DOCUMENTING ATROCITIES IN DARFUR].

73. *Id.*

74. *Id.*

75. *Id.*

D. *The Formation of Rebel Groups*

The political marginalization and violence against African communities in Darfur led to the formation of two loosely allied rebel groups, the Justice and Equality Movement (JEM) and the Sudan Liberation Army/Movement (SLA/M) (not to be confused with the South's SPLA/M).⁷⁶ These rebel groups began attacking government military installations in February 2003.⁷⁷

The members of both rebel groups came from mainly three tribes: the Fur, the Massaleit, and the Zaghawa.⁷⁸ Together these rebel groups have a political program that focuses on gaining more participation in government.⁷⁹ The JEM and the SLA/M "seek equitable development, land rights, social and public services, democracy, and regional autonomy" rather than self-determination like the South's SPLA/M.⁸⁰

1. *The Sudan Liberation Army/Movement*

The SLA/M, originally known as the Darfur Liberation Front,⁸¹ emerged slowly from tribal based movements formed to resist the government's Arab supremacist policies and the government sponsored attacks in Darfur.⁸² The SLA/M brings together three tribes: Fur, Massaleit, and Zaghawa.⁸³ During the movement's inception, the leadership of the movement was divided among the tribes and each tribe picked their own

76. A RESOURCE FOR DIVESTMENT, *supra* note 29, at 3.

77. *Id.*; *Commission of Inquiry*, *supra* note 17, at 23. In 2003 the SLA/M consisted of some 4,000 rebels; the JEM had fewer than 1,000. DOCUMENTING ATROCITIES IN DARFUR, *supra* note 72.

78. *Commission of Inquiry*, *supra* note 17, at 23.

79. *Id.*

80. Amar Idris, *Understanding the Genocide Politically: The Case of Darfur*, SUDAN TRIB., Sept. 9, 2005, available at http://www.sudantribune.com/article.php3?id_article=11564.

81. Military Darfur, *supra* note 69.

82. See FLINT & DE WAAL, *supra* note 20, at 76; A RESOURCE FOR DIVESTMENT, *supra* note 29, at 3. The Government of Sudan responded to the initial attacks by the Darfur Liberation Front on government installations in 2002 by imprisoning the movement's leadership. FLINT & DE WAAL, *supra* note 20, at 77-78. The Government of Sudan wrongly believed that the movement would die without leadership. *Id.* at 78.

83. FLINT & DE WAAL, *supra* note 20, at 76-77.

representative.⁸⁴ The Fur people chose Abdel Wahid to be chairman.⁸⁵ The Zaghawa chose Abdallah Abakar to be military commander.⁸⁶ The Massaleit chose Mansour Arbab to be deputy chairman.⁸⁷ The SLA/M's "Political Declaration" demands "a new Sudan that belongs equally to all its citizens."⁸⁸ Their main goal is to create a secular government.⁸⁹

However, the SLA/M has been plagued by disunity since its inception.⁹⁰ Tension and distrust among the different tribes has made finding a unified voice and cohesive leadership difficult.⁹¹ Indeed, the leaders of the SLA/M have struggled against each other for primacy.⁹² The primary struggle within the movement has been between Abdel Wahid and Minni Minawi,⁹³ who succeeded Abdallah Abakar as military commander.⁹⁴ Khartoum has been able to manipulate these tensions and divide the movement by exploiting the geographical and ethnic differences.⁹⁵ As a result, the SLA/M fractured into several splinter groups.⁹⁶ The major fracture created two SLA/M groups:

84. INT'L CRISIS GROUP, AFRICA BRIEFING NO. 32, UNIFYING DARFUR'S REBELS: A PREREQUISITE FOR PEACE 2 (2005), http://www.crisisgroup.org/library/documents/africa/horn_of_africa/b032_unifying_darfur_s_rebels_a_prerequisite_for_peace.pdf [hereinafter UNIFYING DARFUR'S REBELS]. The movement consists of three main leadership positions, each to be held by a different tribe. *Id.* The position of chairman is to be held by a Fur; the military command is to be held by a Zaghawa; and the deputy chairmanship is to be held by a Massaleit. *Id.*

85. *Id.*

86. *Id.*

87. *Id.* Khames Abdallah succeeded Mansour Arbab as deputy chairman. *Id.* The SLA/M was offered support by John Garang, the leader of the SPLA/M. FLINT & DE WAAL, *supra* note 20, at 81. It is reported that the SPLA/M helped the SLA/M organize politically and militarily, but the SLA/M denies any links with the SPLA/M. *Id.*

88. *Id.* at 82.

89. FLINT & DE WAAL, *supra* note 20, at 82.

90. *See, e.g., id.* at 73–77.

91. *See, e.g., id.* at 83–88 (explaining the tensions between the three tribal groups).

92. UNIFYING DARFUR'S REBELS, *supra* note 84, at 3–4.

93. *Id.*

94. *Id.* at 2.

95. *Id.* at 3.

96. NEW SECURITY REALITY, *supra* note 26, at 13; HUMAN RIGHTS WATCH, DARFUR 2007: CHAOS BY DESIGN 23 (2007), <http://hrw.org/reports/2007/sudan0907webtext.pdf> [hereinafter Chaos by Design].

one supports Abdel Wahid (SLA/AW) and the other supports Minni Minawi (SLA/MM).⁹⁷ This split within the movement makes achieving peace in Darfur more difficult.⁹⁸

2. *The Justice and Equality Movement*

The origins of the JEM can be traced back to 1993.⁹⁹ At that time seven members of the National Islamic Front (NIF), including the JEM's current chairman Dr. Khalil Ibrahim, formed a secret cell aimed at reforming the NIF from within.¹⁰⁰ The first step for this new cell was to educate the Sudanese about the imbalances in Sudan.¹⁰¹ The result was the "Black Book," which chronicled the incidents of political and economic marginalization by the Government of Sudan.¹⁰²

Like the SLA/M, the JEM supports creating a unified Sudan.¹⁰³ However, the JEM does not demand a secular government.¹⁰⁴ Even though the members of the JEM are predominantly from the Zaghawa tribe, the JEM has built a broad tribal base by reaching out to all other marginalized tribes.¹⁰⁵

97. FRAGILE PEACE AGREEMENT, *supra* note 25, at 1. There are several other groups that have split away from the SLA/M. NEW SECURITY REALITY, *supra* note 26, at 13. There is another SLA/M faction led by one of Abdel Wahid's former associates, Ahmed Abdelshaafie. *Id.* After the signing of the DPA, nineteen commanders of the SLA/M broke away and formed the G-19, which eventually broke apart to form the now largely dissolved National Redemption Front and the SLA/Unity. CHAOS BY DESIGN, *supra* note 96, at 23; NEW SECURITY REALITY, *supra* note 26, at 13.

98. *See* CHAOS BY DESIGN, *supra* note 96, at 19 (explaining that achieving peace becomes more difficult as the number of actors increases).

99. FLINT & DE WAAL, *supra* note 20, at 92.

100. *Id.* This cell eventually realized that reformation from within was impossible and formed the JEM. *Id.* at 93.

101. *Id.* at 93.

102. *Id.*

103. *Id.*

104. *Id.* at 93–94. The JEM maintains that Islamic law should not be forced on non-Muslims. *Id.* at 94. However, members of the JEM also believe that non-Muslims should "not oppose Muslims' attempts to apply the laws of their religion for themselves." *Id.* (quoting SudanJem.com, *Resolving the Issue of Religion and the State*, <http://www.sudanjem.com/en/index.php> (last visited Oct. 17, 2008)).

105. FLINT & DE WAAL, *supra* note 20, at 94. While the JEM and the SLA/M have members from the Zaghawa tribe, the two groups recruit from different sects within the

The JEM, which seemed less prone to the disunity plaguing the SLA/M,¹⁰⁶ has recently experienced increased divisiveness and breakaway attempts by top commanders.¹⁰⁷ The JEM has had a few commanders defect because they disagreed with Khalil Ibrahim's leadership.¹⁰⁸ For example, Idris Azraq defected in 2006 and formed the Darfur Independence Front.¹⁰⁹ In addition, another group of commanders defected in 2007 and formed the JEM-Eastern Command.¹¹⁰ However, the most substantial split happened in October 2007 when two former JEM leaders, who were dismissed by Khalil Ibrahim, formed the JEM-Collective Leadership (JEM-CL).¹¹¹

E. The Government of Sudan and the Janjaweed

The Sudanese government responded to the rebel attacks by arming Arabized militias, known as the Janjaweed,¹¹² to put down the rebellion.¹¹³ The Government of Sudan and the Janjaweed used a "scorched earth" policy to quiet the rebellion.¹¹⁴ The goal of this policy is to target areas viewed as a

Zaghawa tribe. *See id.* at 89. The JEM consists of mainly Zaghawa Kobe, who are primarily located in Chad. *Id.* On the other hand, the SLA/M recruits mainly Zaghawa Tuer, who primarily live in Sudan. *Id.*

106. NEW SECURITY REALITY, *supra* note 26, at 13. In the past the JEM had only suffered from two breakaway attempts. UNIFYING DARFUR'S REBELS, *supra* note 84, at 7–8. First, in 2004, the military chief of staff defected, taking several top officers with him to form the National Movement for Reform and Development. *Id.* And then in 2005, Mohamed Salih Harba defected after he attempted to remove Khalil Ibrahim as chairman. *Id.* at 8.

107. *See* FLINT & DE WAAL, *supra* note 20, at 94–95 (describing a few of the breakaway attempts by the JEM's leaders.).

108. NEW SECURITY REALITY, *supra* note 26, at 13–14.

109. *Id.* at 14.

110. *Id.*

111. *Id.* While Khalil Ibrahim boycotted the 2007 peace talks in Libya, the leaders of the JEM-CL did not. *Id.*

112. The word Janjaweed means "ruffians" or "outlaws". FLINT & DE WAAL, *supra* note 20, at 38, 55. The word is also related to "the Arabic words *jim* (the letter 'G,' referring to the G3 rifle), *jinn* (devil) and *jawad* (horse)." *Id.* at 55. The word Janjaweed is also commonly spelled "Janjawiid". *See id.*

113. A RESOURCE FOR DIVESTMENT, *supra* note 29, at 3.

114. *Id.*

potential base for the JEM and SLA/M and burn the villages in those areas to the ground and displace or kill their residents.¹¹⁵ Most survivors of these attacks have similar stories.¹¹⁶

A typical attack starts before day break when air assaults drop crude bombs on villages, killing the people while they are still in bed.¹¹⁷ Amid the ensuing chaos, government troops in military vehicles and Janjaweed forces on horseback commence ground attacks on the villages.¹¹⁸ They utterly destroy the villages by burning the homes and the crops and looting any livestock and other goods.¹¹⁹ They kill the men and throw the dead bodies into the drinking water.¹²⁰

They rape the women¹²¹ and abduct or kill the children.¹²² As they ravage the village, they yell racial slurs at the villagers who are trying desperately to stay alive.¹²³ Anyone lucky enough to escape the attack is driven into the desert to search for refuge.¹²⁴

As a result of the attacks, 90% of the African villages in Darfur have been destroyed.¹²⁵ The destruction and brutality has caused many Darfurians to abandon their homes.¹²⁶ Indeed, over 200,000 Darfurians currently reside in refugee camps in

115. *Id.*

116. *See, e.g.,* CHEADLE & PRENDERGAST, *supra* note 2, at 76.

117. *Id.*; DOCUMENTING ATROCITIES IN DARFUR, *supra* note 72.

118. CHEADLE & PRENDERGAST, *supra* note 2, at 76; DOCUMENTING ATROCITIES IN DARFUR, *supra* note 72.

119. CHEADLE & PRENDERGAST, *supra* note 2, at 76; A RESOURCE FOR DIVESTMENT, *supra* note 29, at 3; *Commission of Inquiry*, *supra* note 17, at 64.

120. CHEADLE & PRENDERGAST, *supra* note 2, at 76. The Sudanese army and the Janjaweed poison the water with dead bodies in order to prevent people from returning to the village. *Id.* When John Prendergast and Samantha Power went to look for these wells they found that the attackers attempted to conceal their acts by filling in the wells with sand. *Id.* at 5.

121. DOCUMENTING ATROCITIES IN DARFUR, *supra* note 72. It has also been reported that after raping the women the attackers often tell them that they will give birth to Arab children. CHEADLE & PRENDERGAST, *supra* note 2, at 76.

122. A RESOURCE FOR DIVESTMENT, *supra* note 29, at 3–4; *Commission of Inquiry*, *supra* note 17, at 64.

123. CHEADLE & PRENDERGAST, *supra* note 2, at 76.

124. *See id.* at 79–80.

125. A RESOURCE FOR DIVESTMENT, *supra* note 29, at 4.

126. *Commission of Inquiry*, *supra* note 17, at 3.

Chad.¹²⁷ In addition to these refugees, there are 1.65 million people in Internally Displaced Peoples' (IDP) Camps within Darfur.¹²⁸ Unfortunately, even these IDP camps have become targets for the Janjaweed.¹²⁹

While the Government of Sudan argues that its only activities in the region are conducted on the basis of military imperatives, the U.N. Commission found that government attacks were "deliberately and indiscriminately directed against civilians."¹³⁰ Furthermore, the Human Rights Watch cites "incontrovertible proof" that the Government of Sudan is behind the attacks on civilians in Darfur.¹³¹ For instance, the Human Rights Watch obtained documents that prove that Khartoum has been supporting the Janjaweed through recruitment, armament, and ensuring impunity.¹³² In December of 2005, the Human Rights Watch concluded, "[t]he Sudanese government at the highest levels is responsible for widespread and systematic abuses in Darfur."¹³³

127. *Id.*

128. A RESOURCE FOR DIVESTMENT, *supra* note 29, at 4.

129. CHAOS BY DESIGN, *supra* note 96, at 40. There are several reports of rape in the IDP and refugee camps. *Id.* The Janjaweed attack women who are forced to leave the camps to collect firewood. CHEADLE & PRENDERGAST, *supra* note 2, at 81.

130. *Commission of Inquiry*, *supra* note 17, at 3.

131. Judy Alta, *Documents Link Khartoum to Jingaweit*, *Human Rights Watch Says*, U.S. DEP'T OF STATE, July 19, 2004, <http://www.america.gov/st/washfile-english/2004/July/20040719181605atiayduj0.1401178.html>.

132. *Id.*

133. ENTRENCHING IMPUNITY, *supra* note 16, at 1.

III. THE DARFUR PEACE AGREEMENT

With the assistance of the African Union, the Government of Sudan and Darfur rebel groups entered into peace negotiations in 2006.¹³⁴ The result of several months of negotiations and three days of intensive talks was the DPA.¹³⁵ The DPA was signed on May 5, 2006, by the Government of Sudan and Minni Minawi, the leader of the SLA/M.¹³⁶

Two other rebel groups, the JEM and the SLA/M faction of Abdel Wahid, refused to sign the agreement.¹³⁷ Abdel Wahid did not sign the agreement because he believes more direct SLA/M participation is required for the effective implementation of security arrangements.¹³⁸ Further, Abdel Wahid believes that the DPA does not provide enough political representation or adequately provide for a victim's relief fund.¹³⁹ The JEM refused to sign the DPA because they believe the agreement's protocols on power and wealth sharing do not adequately address root causes of the conflict.¹⁴⁰

Thereafter, the DPA was endorsed by the United Nations with the adoption of U.N. Resolution 1679.¹⁴¹ The United Nations insisted that the parties to the agreement respect the commitments they made and implement the agreement

134. FRAGILE PEACE AGREEMENT, *supra* note 25, at 1.

135. Glenn Kessler, *Darfur Peace Accord A Battle of Its Own: Rebels Balked, Bickers in Grueling Talks*, WASH. POST, May 9, 2006, at A18. Robert Zoellick, the U.S. Deputy Secretary of State helped push the Government of Sudan and the Darfur rebel groups to an agreement by reading aloud a letter from President Bush pledging to strongly support implementation of the deal and make sure that anyone who broke it would be held accountable. Lydia Polgreen & Joel Brinkley, *Largest Faction of Darfur Rebels Signs Peace Pact*, N.Y. TIMES, May, 6, 2006, at A1.

136. FRAGILE PEACE AGREEMENT, *supra* note 25, at 1.

137. Polgreen & Brinkley, *supra* note 135. After the SLA/AW and the JEM refused to sign the DPA, four former commanders of the SLA/AW and JEM left and signed the Declaration of Commitment (DoC). REVITALISING THE PEACE PROCESS, *supra* note 50, at 4 n.20. By signing the DoC, these former commanders are pledging their commitment to the DPA, but they are not given full DPA rights. *Id.* In addition, a former commander under Abdel Wahid signed a protocol with the government in November 2006 committing to the DPA. *Id.*

138. FRAGILE PEACE AGREEMENT, *supra* note 25, at 1.

139. *Id.*

140. *Id.*

141. S.C. Res. 1679, U.N. Doc. S/RES/1679 (May 16, 2006).

immediately.¹⁴² The United Nations also urged those parties that had refused to sign the agreement to reconsider and not to obstruct the implementation of the agreement in any way.¹⁴³ The DPA contains three protocols on power sharing, wealth sharing, and security arrangements, plus a provision for the Darfur-Darfur Dialogue and Consultation (DDD-C).¹⁴⁴

A. The Power Sharing Protocol

The imbalance of power is one of the root causes of the conflict in Darfur¹⁴⁵ and the Sudan as a whole.¹⁴⁶ The purpose of the Power Sharing Protocol is to redress the years of political marginalization experienced by the people of Darfur.¹⁴⁷ The DPA serves four primary purposes in allocating power. First, the DPA adopts democratic processes that allow the people to choose their leaders in free and fair elections to be held by July 2009.¹⁴⁸ In addition, the DPA endorses the adoption of affirmative action plans in favor of Darfurians to ensure that they are fairly and equally represented at all levels of government.¹⁴⁹

142. *Id.* ¶ 1.

143. *Id.*

144. Darfur Peace Agreement, *supra* note 23, pmb1.

145. See FRAGILE PEACE AGREEMENT, *supra* note 25, at 7. Historically, Darfur has been politically marginalized from the center of government in Khartoum. NEW SECURITY REALITY, *supra* note 26, at 7 n.47.

146. Political marginalization by the government in the North is also what led to the civil wars with the South in 1955 and 1983. See First Civil War, *supra* note 39; Second Civil War, *supra* note 48.

147. Patrick Johnson, *Negotiated Settlements and Government Strategy in Civil War: Evidence from Darfur*, 9 CIVIL WAR 359, 360 (2007); see also NEW SECURITY REALITY, *supra* note 26, at 7 n.47.

148. Darfur Peace Agreement, *supra* note 23, art. 1.

149. Darfur Peace Agreement, *supra* note 23, art. 2. There are two levels of government, national and state, and they both consist of three branches: executive, legislative, and the judiciary. *Id.* arts. 5–6. The DPA also includes a provision for equal representation in the national civil service and the armed forces. *Id.* arts. 11–12.

Second, the DPA gives the rebel groups of Darfur the fourth highest position in the Government of Sudan, the Senior Assistant to the President and Chairperson of the Transitional Darfur Regional Authority (TDRA).¹⁵⁰

The DPA mandates that the Government of Sudan establish the TDRA within thirty days of signing the agreement.¹⁵¹ Further, the TDRA is responsible for the implementation of the peace agreement and for enhancing cooperation between the three Darfur states.¹⁵²

Third, the DPA gives the rebel movements more power within the region of Darfur during the period before the elections.¹⁵³ The SLA/M and the JEM get to pick nominees for the governorship of one of the three Darfur states and two deputy governorships for the remaining Darfur states.¹⁵⁴ In addition, the SLA/M and JEM are allocated 21 seats in each state legislature and they nominate the Deputy Speakers of the states' legislative assemblies.¹⁵⁵

Finally, the DPA provides for a referendum on the status of Darfur by 2010.¹⁵⁶ In the referendum, the people of Darfur must decide whether to create a unitary Darfur region with a single government or retain the status quo of the three Darfur states.¹⁵⁷

Due to the fact that political marginalization is one of the root causes of the conflict,¹⁵⁸ the Power Sharing Protocol is arguably one of the most important aspects of achieving

150. *Id.* art. 8. The Senior Assistant to the President and the Chairperson of the TDRA is selected by the President from lists of possible candidates provided by the SLA/M and the JEM. *Id.*

151. REVITALISING THE PEACE PROCESS, *supra* note 50, at 3.

152. Darfur Peace Agreement, *supra* note 23, art. 6. Some of the TDRA's responsibilities include: "facilitating the return of refugees and internally displaced persons, coordinating the restoration of security, and promoting peace and reconciliation throughout Darfur." *Id.*

153. *See id.* art. 16.

154. *Id.* art. 16.

155. *Id.*

156. *Id.* art. 6.

157. *Id.*

158. *See* FRAGILE PEACE AGREEMENT, *supra* note 25, at 7; NEW SECURITY REALITY, *supra* note 26, at 7 n.47.

peace.¹⁵⁹ However, the DPA did not give the rebel movements the political power they wanted.¹⁶⁰ For instance, during negotiations, the rebel movements asked that Darfur be represented at the national level by a vice president.¹⁶¹ However, the government would not allow this because it would “upset the delicate balance” established between the ruling party of the government, the NCP, and the SPLA/M in the CPA.¹⁶² As a compromise, the positions of Senior Assistant to the President and the Chairperson of the TDRA were created.¹⁶³ Nevertheless, this compromise did not give the rebel movements the kind of power in the executive branch that they wanted.¹⁶⁴ The TDRA was finally launched in April of 2007¹⁶⁵ and unsurprisingly Minni Minawi was appointed to the position of Senior Assistant to the President and thus Chair of the TDRA.¹⁶⁶ Unfortunately, the TDRA has been very ineffective since its inception and has only met one time.¹⁶⁷

159. The recent escalation in fighting and the emergence of new players in the conflict in Darfur reiterate the need to deal with root causes of the conflict, including power sharing, in order to achieve peace. *NEW SECURITY REALITY*, *supra* note 26, at 7.

160. *See* *FRAGILE PEACE AGREEMENT*, *supra* note 25, at 7–9 (describing the compromises that were made about power sharing in the DPA).

161. *Id.* at 7.

162. *Id.* The presidency consists of the President, Omar Hasan Ahmad al-Bashir; the First Vice President, a southerner from the SPLA/M, and the Second Vice President, who represents the north and is a member of the NCP. *Id.* at 7 n.39. Neither the SPLA/M nor the NCP were willing to give up their positions as First and Second Vice Presidents. *Id.* at 7.

163. *FRAGILE PEACE AGREEMENT*, *supra* note 25, at 7.

164. *See id.* The Senior Assistant to the President makes recommendations to the president but those recommendations are not binding. *Id.*

165. *REVITALISING THE PEACE PROCESS*, *supra* note 50, at 4–5. The TDRA was launched days after the government bombed the SLA/M unification conference for the third time. *Id.* at 5. According to the International Crisis Group, “[w]ith little popular support for the agreement, and no reason to expect the NCP [the ruling party of the Government of Sudan] to transfer significant power to the new governing body, this should be seen as a ploy by the NCP to keep the rebels divided.” *Id.*

166. *NEW SECURITY REALITY*, *supra* note 26, at 12. Due to increasing tensions and fractionalization within the SLA/MM, Minni Minawi has “completely neglect[ed] his role as Senior Assistant to the President and chairman of the Transitional Darfur Regional Authority (TDRA).” *Id.*

167. *NEW SECURITY REALITY*, *supra* note 26, at 12. After the signing of the DPA other rebel groups have joined in the DPA through the Declaration of Commitment (DoC) or special protocols. *Id.* These new signatories to the DPA received political

The timeline for implementation of the DPA was ambitious.¹⁶⁸ As a result, until February 2007, only four positions had been filled.¹⁶⁹ According to the International Crisis Group, “[s]ince [February 2007], roughly 80 per cent of the positions have been filled”¹⁷⁰ The filling of these positions led to “controversy between the SLA/MM, the signatories of the [Declaration of Commitment (DoC)] and the government”¹⁷¹ Due to the fact that only the SLA/MM signed the DPA, Minni Minawi has argued that DoC signatories do not have the same rights to positions.¹⁷² “The DoC signatories and Minni Minawi originally agreed on a joint list of nominees,” but that fell apart when the DoC signatories “demanded and got extra positions.”¹⁷³ With the SLA/MM and the DoC signatories competing for positions, little room is left for nonsignatories to gain power.¹⁷⁴

Furthermore, during negotiations the rebels pushed for political representation for Darfur—at both the federal and state levels of government—proportionate with the region’s population but further augmented by affirmative action to make up for the history of marginalization.¹⁷⁵ In an effort to meet the rebels’ request, the DPA states that “[r]elevant precedents and

positions and became members of the TDRA. *Id.* But there is little coordination between the signatory groups which partly accounts for the ineffectiveness of the TDRA. *Id.*

168. REVITALISING THE PEACE PROCESS, *supra* note 50, at 3. This problem occurs throughout the DPA, not just in the protocol on power sharing. *See id.* at 3–4. For instance, the commissions for power and wealth sharing were to be established within 30 days of signature, the government’s plan for the disarmament of the Janjaweed was to be submitted within 37 days of signature, and the commission responsible for assessing implementation of the DPA was to be established within three months of signature. *Id.*

169. *Id.* at 4. The positions filled before February 2007 were the “[S]pecial [A]ssistant to the [P]resident (Minni Minawi), one state minister, one Khartoum state ministerial position, and one TDRA commissioner post.” *Id.*

170. *Id.*

171. *Id.* The DoC was signed by four former commanders of the SLA/AW and the JEM, after the SLA/AW and the JEM refused to sign the DPA. *Id.* at 4 n.20. By signing the DoC these former commanders pledged their commitment to the DPA. *Id.*

172. *Id.* at 4. The SLA/MM argues that the NCP should either create more positions or get rid of the DoC appointees. *Id.*

173. *Id.* at 4–5.

174. *Id.* at 4.

175. FRAGILE PEACE AGREEMENT, *supra* note 25, at 8.

population size, where appropriate, shall be used in determining the representation of Darfurians at all levels.”¹⁷⁶ On the national level, Darfurians will continue to hold three Cabinet Minister posts and three State Minister posts, and they will gain one Presidential Advisor, one Cabinet Minister, two State Ministers, twelve National Assembly seats, and one Commission Chairmanship.¹⁷⁷

Under the DPA, the rebels gain more power inside the region of Darfur than they have on the national level.¹⁷⁸ Inside Darfur, the rebels are given one of three Governor positions, two Deputy Governor positions in two of the states, two Ministerial positions and one senior Advisor in each of the three states, and 21 seats in each of the three 66 member state legislatures.¹⁷⁹

However, the power given to the rebels is actually not as great as it may appear. First, the rebels were only given the power to nominate candidates for senior positions.¹⁸⁰ This allows the presidency to retain considerable power in choosing who actually holds those positions.¹⁸¹ Second, due to the fractionalization within the rebel groups, the Power Sharing Protocol of the DPA will increase tensions among and within the groups as they compete for nominations.¹⁸² This competition and fractionalization works in the government’s favor and will ensure that the ruling party, the NCP, remains in control.¹⁸³ Finally, what power the DPA does give is provided to only the

176. Darfur Peace Agreement, *supra* note 23, art. 2.

177. *Id.* art. 8. The rebels are given only twelve of the 450 seats in the National Assembly and they must split those among three factions. REVITALISING THE PEACE PROCESS, *supra* note 50, at 27. The reason why they were given so few seats is that neither the NCP nor the SPLA/M was willing to give up any of their seats so they had to get them from the CPA’s allocation to the northern opposition, which only has 14% of the seats. *Id.*; FRAGILE PEACE AGREEMENT, *supra* note 25, at 7.

178. See FRAGILE PEACE AGREEMENT, *supra* note 25, at 9.

179. Darfur Peace Agreement, *supra* note 23, art. 16; FRAGILE PEACE AGREEMENT, *supra* note 25, at 9.

180. FRAGILE PEACE AGREEMENT, *supra* note 25, at 9.

181. *Id.*

182. *Id.*

183. *Id.*; See REVITALISING THE PEACE PROCESS, *supra* note 50, at 8 (describing the NCP’s strategy in Darfur of stimulating conflict in order to remain in power).

three rebel factions (SLA/AW, SLA/MM, and JEM).¹⁸⁴ In reality, this power is monopolized by the SLA/MM because they are the only rebel signatory.¹⁸⁵

As a result, the DPA leaves out many Darfurians, including nonsignatory rebel groups, refugees, internally displaced persons, and Arab tribes living in Darfur.¹⁸⁶

B. The Wealth Sharing Protocol

Overall, the Wealth Sharing Protocol attempts to establish the equitable distribution of wealth throughout the Sudan, with special attention given to war-affected areas.¹⁸⁷ The Wealth Sharing Protocol focuses on three main areas of concern: (1) the reconstruction of war-affected areas; (2) the restoration of land rights; and (3) the resettlement and compensation of war-affected persons.¹⁸⁸ The Comprehensive Peace Agreement created the Fiscal and Financial Allocation and Monitoring Commission (FFAMC) to accomplish the task of fiscal equalization.¹⁸⁹ Additionally, the DPA “proposes to enhance Darfur’s representation” in the FFAMC.¹⁹⁰ The FFAMC is responsible for (1) ensuring that the needs of Darfur receive equal attention as those of other states and (2) authorizing structured transfers to the states from the National Revenue Fund.¹⁹¹

To achieve reconstruction, the DPA established the Darfur Reconstruction and Development Fund (DRDF).¹⁹² The DPA requires the government of Sudan to donate \$300 million to the fund as seed money and then donate \$200 million a year for two

184. *See generally* REVITALISING THE PEACE PROCESS, *supra* note 50.

185. *Id.* at 8.

186. *See, e.g., id.* at 9–15 (describing the many diverse oppositional groups such as the JEM, various and evolving rebel factions of the SLA, several important political parties, and the Arabs and Arab tribes that are not represented).

187. Darfur Peace Agreement, *supra* note 23, art. 17.

188. *See id.* art. 21.

189. *See id.* art. 18.

190. FRAGILE PEACE AGREEMENT, *supra* note 25, at 10.

191. Darfur Peace Agreement, *supra* note 23, art. 18.

192. *Id.* art. 19.

years.¹⁹³ The DPA established the Joint Assessment Mission (JAM) to determine the reconstruction and development needs of Darfur.¹⁹⁴

In addition to reconstruction, the DPA seeks to restore land rights to war-affected persons.¹⁹⁵ Land commissions were created on a state and national level to restore and protect “[t]ribal land ownership rights[,] . . . historical rights to land, traditional or customary livestock routes, and access to water. . . .”¹⁹⁶

Finally, the DPA established two commissions to resettle and compensate war-affected persons.¹⁹⁷ The Darfur Rehabilitation and Resettlement Commission (DRRC) is responsible for assisting refugees and internally displaced persons return home.¹⁹⁸ The Compensation Commission is in charge of handling claims by people of Darfur who have suffered harm and awarding them compensation.¹⁹⁹

“Compensation” was the most contentious issue between the government and the rebels during the negotiations of the DPA.²⁰⁰ The rebels argued that reconstruction funding and compensation for individual losses were different and that the government should provide both.²⁰¹ On the other hand, the government believed that reconstruction funding encompassed compensation.²⁰² The DPA finally settled on the Compensation

193. *Id.*

194. *Id.* art. 17. The parties to the DPA are to recruit expertise and financial resources from the international community to participate in the JAM. *Id.*

195. *Id.* art. 20.

196. *Id.*

197. *Id.* art. 21.

198. *Id.* Specifically the DRRC is responsible for ensuring that the rights of returnees are protected and that their needs are met. *Id.*

199. *Id.*

200. FRAGILE PEACE AGREEMENT, *supra* note 25, at 9. It was this issue that proved to be a deal breaker for Abdel Wahid. *Id.* at 1.

201. *Id.* at 9.

202. *Id.* “Both the NCP and the SPLA/M were opposed to direct compensation” *Id.* The NCP saw compensation as admitting responsibility for the conflict in Darfur and the SPLA/M opposed compensation because southerners did not get compensation for their individual losses. *Id.*

Commission and the government donation of \$30 million to a compensation fund.²⁰³ However, many believe this amount should have been higher.²⁰⁴

One of the major flaws of the Wealth Sharing Protocol is that it depends heavily on government action, yet the government does not have a good track record of meeting its obligations.²⁰⁵ There are four bodies responsible for overseeing the wealth sharing provisions: the Darfur Commissions for (1) Rehabilitation and Resettlement; (2) Reconstruction and Development; (3) Land; and (4) Compensation.²⁰⁶ All four of these bodies depend on presidential action, and as a result few of the goals of the Wealth Sharing Protocol have been accomplished.²⁰⁷

For instance, as of April 2007 the government had not yet made its \$300 million contribution to the Darfur Reconstruction and Development Fund.²⁰⁸ The lack of funding has prevented reconstruction activities from even beginning.²⁰⁹ Furthermore, although the JAM was started in July 2006, increased violence has prevented it from carrying out its assessments.²¹⁰

203. Darfur Peace Agreement, *supra* note 23, art. 21.

204. FRAGILE PEACE AGREEMENT, *supra* note 25, at 10. There is speculation that property losses alone will be significantly higher than \$30 million. *Id.* The International Crisis Group suggests that the international community, assisted by the A.U., should form a team for assessing a realistic amount and press the government for additional funds. *Id.*

205. *Id.* For example, the Government of Sudan has broken its promise to disarm the Janjaweed six times. REVITALISING THE PEACE PROCESS, *supra* note 50, at 27 n.176.

206. FRAGILE PEACE AGREEMENT, *supra* note 25, at 10.

207. *Id.*

208. REVITALISING THE PEACE PROCESS, *supra* note 50, at 5. In addition to the \$300 million in initial startup money, the government was supposed to contribute \$200 million in 2007, but this money has not yet been made available by the central government. *Id.* at 5 n.25. Despite that, after the establishment of the TDRA, the government did release the first \$5 million of the \$30 million for the compensation fund. *Id.* at 5.

209. *Id.*

210. *Id.* The JAM is sponsored by the U.N. and the World Bank. *Id.*

As previously noted, land disputes are one of the causes of the recent escalation of violence in Darfur.²¹¹ A sustainable peace will require a long-term solution for land issues, including how to handle the historical land ownership rights called “hawakeer.”²¹² The Darfur Land Commission (DLC) has “started to develop a framework to handle land issues,” but its effectiveness has been “severely weakened” by SLA/MM commanders filling the commission with people from their tribe.²¹³ As a result the DLC’s independence has been compromised.²¹⁴ If this continues, land disputes will continue to be a problem.²¹⁵

One of the most notable things missing from the DPA is a mechanism for justice and accountability. Beyond compensation the DPA does not provide for any sort of justice for the victims of Darfur.²¹⁶ There will not be peace unless there is a system equipped to punish human rights abusers and war criminals.²¹⁷ By punishing the Janjaweed, the government would be removing the people’s incentive to seek retribution.²¹⁸ This in turn would give the government more legitimacy and lead to peace.²¹⁹

211. NEW SECURITY REALITY, *supra* note 26, at 2. Fighting has increased among Arab tribes due to disputes over land and opportunistic tribes taking advantage of the conflict to force others off their land. *Id.* at 3.

212. *Id.* at 4. “Hawakeer has been an historical land ownership system in Darfur since it was a sultanate” and the parties agreed in the DPA to restore these rights. *Id.* at 4 n.19.

213. *Id.*

214. *Id.*

215. *Id.*

216. *Id.* at 26. During the DPA negotiations, the A.U. mediators purposefully left this issue up to the International Criminal Court (ICC). *Id.* The ICC has issued two indictments but the government is refusing to cooperate in the investigation and it has refused to comply with the arrest warrants. *Id.* International pressure and action by the Security Council is needed to make the government cooperate with the ICC. *Id.*

217. See Anita Fröhlich, *Reconciling Peace with Justice: A Cooperative Division of Labor*, 30 SUFFOLK TRANSNAT’L L. REV. 271, 278 (explaining that peace and justice are intertwined and punishing human rights violators will lead to peace).

218. See *id.* at 279.

219. *Id.* at 278–79. “Justice can lead to peace in various ways. By prosecuting human rights abusers, a new government demonstrates its intent to distinguish itself from past regimes In addition, by holding perpetrators accountable, a state fulfills

C. *The Security Arrangements*

The security arrangements provide for a comprehensive ceasefire within 72 hours of signing the DPA.²²⁰ There are four organizations that are responsible for maintaining the ceasefire: (1) African Union Mission in Sudan (AMIS), (2) Ceasefire Commission, (3) Joint Commission, and (4) The Joint Humanitarian Facilitation and Monitoring Unit.²²¹ In order to protect IDP camps, the Ceasefire Commission is in charge of establishing demilitarized zones, into which no forces or armed groups are allowed.²²²

The security arrangements are to be carried out in six phases.²²³ The first phase is military disengagement.²²⁴ During this phase, the parties are limited to their areas of control and buffer zones are created to separate the parties in the areas of the most intense conflict.²²⁵ In phase two, redeployment zones are designated for the parties to gather and limit their forces and weaponry.²²⁶ Phase three involves limited arms control by forcing the parties to keep their weapons in their designated areas for AMIS to inspect.²²⁷

The last three phases involve the final security arrangements for Darfur.²²⁸ The final security arrangements in Darfur are to be overseen by the Darfur Security Arrangements Implementation Commission (DSAIC).²²⁹ The DSAIC must develop an Integration of Former Combatants Plan²³⁰ that will

its moral obligation towards the victims and their families . . . [who will] no longer seek justice and retribution on their own." *Id.*

220. Darfur Peace Agreement, *supra* note 23, art. 23.

221. *Id.* art. 25.

222. *Id.* art. 26.

223. *See generally id.* arts. 22–30 (discussing the various steps of the security arrangements). AMIS is responsible for verifying the completion of all the phases. *Id.* art. 27.

224. *Id.*

225. *Id.*

226. *Id.*

227. *Id.*

228. *See id.* arts. 29–30.

229. *Id.* art. 29. The DSAIC is created by the TDRA. *Id.*

230. *Id.* As of April 2007, the DSAIC had not yet been established. REVITALISING THE PEACE PROCESS, *supra* note 50, at 5.

integrate 4,000 former combatants into the Sudan Armed Forces (SAF) and 1,000 former combatants into the Sudanese National Police Force and other security institutions.²³¹ After the creation of the integration plan, phase four will begin, which includes the assembly of the movements for disarmament and demobilization and the completion of the disarmament of the Janjaweed.²³² Phase five provides for the integration of former combatants into the SAF and other government security institutions and the reform of selected security institutions.²³³ Also, phase five begins the disarmament, demobilization, and social and economic reintegration of the movements.²³⁴ Finally, phase six (1) completes the social and economic reintegration of former combatants who wish to return to civilian life and (2) completes the reform of the security institutions.²³⁵

After the signing of the DPA, the violence in Darfur increased.²³⁶ The security situation in Darfur has deteriorated significantly due to the rebel groups and the government actively pursuing a military strategy.²³⁷ This violence has been exacerbated by the nonsignatory rebels taking assistance from neighboring Chad to fight back against the government.²³⁸

To add to the chaos, intertribal violence in Darfur has also escalated.²³⁹ Tensions between the Arab tribes increased as they began using the weapons they received from the government

231. Darfur Peace Agreement, *supra* note 23, art. 29.

232. *Id.* art. 30.

233. *Id.*

234. *Id.* Disarmament and demobilization will be conducted by the movements themselves with the help of AMIS. *Id.* art. 29.

235. *Id.* art. 30. The DSAIC is responsible for creating a reintegration plan and the government of Sudan must provide financial and logistical support for former combatants to successfully reintegrate. *Id.* art. 29.

236. REVITALISING THE PEACE PROCESS, *supra* note 50, at 1; NEW SECURITY REALITY, *supra* note 26, at 1.

237. REVITALISING THE PEACE PROCESS, *supra* note 50, at 3. Instead of disarming the Janjaweed, the government has strengthened them and made them a central part of their military strategy against rebel attacks. *Id.*

238. *Id.* There is an uneasy tension between Sudan and neighboring Chad, as the governments of both countries provide support to rebel groups in the other country. NEW SECURITY REALITY, *supra* note 26, at 17–18.

239. REVITALISING THE PEACE PROCESS, *supra* note 50, at 3.

against each other to solve disputes over land and pasture.²⁴⁰ More troubling, IDP camps and humanitarian workers have also been targets of the violence, which led to the evacuation of over 400 humanitarian workers in December 2006.²⁴¹

The security arrangements outlined in the DPA failed for several reasons: (1) it made the parties responsible for disarming themselves,²⁴² (2) there are virtually no consequences for violating the ceasefire,²⁴³ (3) the IDP camps are not adequately protected,²⁴⁴ and (4) it left AMIS, which was already stretched too far, in charge of overseeing everything.²⁴⁵

Under the DPA the parties are to disarm themselves.²⁴⁶ However, this is a responsibility usually given to peacekeepers.²⁴⁷ The DPA authorized AMIS to supervise and confirm the disarmament and redeployment of the militias.²⁴⁸ According to the International Crisis Group, “[t]his requires robust monitoring, but AMIS has too few troops[,] with too little mobility and firepower and inadequate intelligence capabilities, to do it properly.”²⁴⁹

240. *Id.*

241. *Id.*

242. Darfur Peace Agreement, *supra* note 23, arts. 27, 29.

243. *See id.* art. 25 (listing the only repercussions for ceasefire violations as publicizing the violations and recommending prosecution or other “appropriate action”).

244. *See id.* art. 26 (citing measures to be taken to protect IDP camps).

245. *See, e.g., id.* arts. 22–30 (describing the various responsibilities of AMIS).

246. FRAGILE PEACE AGREEMENT, *supra* note 25, at 4; Darfur Peace Agreement, *supra* note 23, arts. 27, 29.

247. FRAGILE PEACE AGREEMENT, *supra* note 25, at 4.

248. *Id.* AMIS forces consist of about 7,000 troops. INT’L CRISIS GROUP, AFRICA REPORT NO. 105, TO SAVE DARFUR i (2006), http://www.crisisgroup.org/library/documents/africa/horn_of_africa/105_to_save_darfur.pdf [hereinafter TO SAVE DARFUR]. AMIS is responsible for keeping peace in an area the size of Texas. CHEADLE & PRENDERGAST, *supra* note 2, at 27. To put this in perspective, in 2004 there were 5,350 sworn officers in the Houston Police Department. Press Release, City of Houston, Mayor Bill White Announces Police Chief Nominee (Feb., 27, 2004), <http://www.houstontx.gov/mayor/press/20040227.html>.

249. FRAGILE PEACE AGREEMENT, *supra* note 25, at 4. At the signing of the DPA, AMIS officials openly admitted that AMIS did not have the capabilities at that time to fulfill their obligations under the DPA. *Id.* In spite of that knowledge, the DPA does not address the possibility of a U.N. takeover over peacekeeping operations. *Id.* It has been suggested that any references to the A.U. in the DPA can simply be replaced with U.N. *Id.*

The DPA failed to establish a realistic disarmament plan.²⁵⁰ Under the DPA, the government must completely disarm the Janjaweed by October 2006.²⁵¹ The disarmament of the Janjaweed must be verified by AMIS before the other rebel groups even begin to assemble and disarm their fighters.²⁵² Therefore, the rebel groups are under no obligation to disarm unless and until the government disarms their militias.²⁵³ However, the government cannot be trusted to disarm their own militias because they have made and broken this very same promise on five prior occasions.²⁵⁴ In addition, the government has no incentive to comply with the agreement.²⁵⁵ In fact, the government wants Darfur to be divided and in chaos so they can retain power in the 2009 elections.²⁵⁶

In order to achieve peace, ceasefire violators have to be held accountable for their actions.²⁵⁷ And yet, the DPA does not adequately provide for the punishment of ceasefire violations. Under the DPA the Joint Commission can take one or more of the following actions against ceasefire violators: (1) publicize the name of the party that committed the violation, (2) recommend the violators be prosecuted through the appropriate national or international disciplinary procedures, (3) recommend

250. See REVITALISING THE PEACE PROCESS, *supra* note 50, at 27.

251. FRAGILE PEACE AGREEMENT, *supra* note 25, at 5; Darfur Peace Agreement, *supra* note 23, art. 27.

252. FRAGILE PEACE AGREEMENT, *supra* note 25, at 5; Darfur Peace Agreement, *supra* note 23, art. 29.

253. FRAGILE PEACE AGREEMENT, *supra* note 25, at 5.

254. REVITALISING THE PEACE PROCESS, *supra* note 50, at 27. The six agreements the government of Sudan promised to neutralize or disarm the Janjaweed are: (1) the N'Djamena ceasefire of April 8, 2004; (2) the N'Djamena agreement of April 25, 2004; (3) the July 3, 2004 communiqué signed with the U.N.; (4) the August 5, 2004 Plan of Action signed with the U.N.; (5) the November 9, 2004 Protocol on Security Arrangements signed at the A.U. led Abuja talks; and (6) the DPA. *Id.* at 27 n.176.

255. See *generally id.* at 27 (explaining that the international community needs to pressure the government to disarm the Janjaweed).

256. *Id.* The Government of Sudan cannot be relied upon to punish ceasefire violators because it does not benefit from punishing the Janjaweed. See ENTRENCHING IMPUNITY, *supra* note 16, at 1–2.

257. See Fröhlich, *supra* note 217, at 277–78.

appropriate action in cases of grave violations, and/or (4) make further recommendation on punitive action to the A.U. for its consideration.²⁵⁸

Additionally, the DPA contains several detailed provisions regarding the protection of IDP camps.²⁵⁹ As previously noted, since the signing of the DPA, violence in the IDP camps has increased.²⁶⁰ The IDP camps have become overcrowded and the humanitarian agencies are “overstretched and under attack.”²⁶¹ The camps are becoming increasingly militarized with the government and rebel groups providing weapons and training.²⁶² Therefore, peacekeeping forces need to reprioritize and protect the IDP camps.²⁶³ These camps need to be demilitarized by ending the proliferation of arms into the camps.²⁶⁴ Further, humanitarian access routes must be protected in order for the people in the camps to get the aid they need.²⁶⁵

One of the goals of the agreement is the safe and voluntary return of refugees and IDPs to their homes.²⁶⁶ Yet, the DPA offers few guarantees to these people as they return to their

258. Darfur Peace Agreement, *supra* note 23, art. 25.

259. FRAGILE PEACE AGREEMENT, *supra* note 25, at 5; *see* Darfur Peace Agreement, *supra* note 23, art. 26 (defining demilitarized zones and laying out a plan for the protection of these zones).

260. *See* NEW SECURITY REALITY, *supra* note 26, at 6–7.

261. *Id.* at 6. In spite of the buffer zones to protect humanitarian workers, in late September 2007 rebel forces raided an African Union peacekeeping base in Darfur, killing at least ten peacekeeping soldiers. Jeffrey Gettleman, *Darfur Rebels Kill 10 in Peace Force*, N.Y. TIMES, Oct. 1, 2007, at A1.

262. NEW SECURITY REALITY, *supra* note 26, at 6. The government response to the increasing problems in the IDP camps has been to clear them out. *Id.* at 7. If they no longer exist then they will not gain world attention. *Id.* They have not been able to convince IDPs that it is safe for them to return home, so they have been forcing IDPs out of at least one camp. *Id.*

263. *Id.* According to the DPA, internal security of the IDP camps is to be provided by AMIS civilian police. Darfur Peace Agreement, *supra* note 23, art. 26.

264. *See* NEW SECURITY REALITY, *supra* note 26, at 7.

265. *Id.* Since the DPA, the total number of IDPs has risen to 2.2 million. *Id.* at 6. Humanitarian agencies have reported a rise in the malnutrition rates, and the aid agencies are “overstretched and under attack.” *Id.*

266. *See* FRAGILE PEACE AGREEMENT, *supra* note 25, at 5.

villages.²⁶⁷ As a result, the Government of Sudan has been unsuccessful at convincing refugees and IDPs to return home.²⁶⁸ In order to return home, IDPs and refugees must often travel far distances from the “squalid camps” to their destroyed villages.²⁶⁹ This is no small task considering that numerous armed groups are waiting to attack anyone who leaves the relative security of the camps.²⁷⁰ Indeed, many people have not been willing to return home without assurance that it is safe to do so.²⁷¹ In order to provide this reassurance, peacekeeping forces must provide international oversight and security.²⁷²

On July 31, 2007, the U.N. took over peacekeeping operations in Darfur.²⁷³ The U.N. authorized the immediate deployment of light and heavy support packages to AMIS and the creation of a U.N. and A.U. hybrid peacekeeping force called UNAMID (United Nations-African Union Mission in Darfur).²⁷⁴ UNAMID’s mandate consists of the following: (1) “[t]o support and monitor the implementation of the [DPA] and subsequent agreements;” (2) “[t]o monitor, investigate, report, and assist the parties in resolving violations of the [DPA] and subsequent complementary agreements through the Ceasefire Commission and the Joint Commission;” (3) “[t]o monitor, verify, and promote efforts to disarm the Janjaweed and other militias;” and (4) to help humanitarian assistance “gain full access to people in need.”²⁷⁵

267. *Id.*; see Darfur Peace Agreement, *supra* note 23, art. 25. (providing minimal protections).

268. See NEW SECURITY REALITY, *supra* note 26, at 7 (explaining that government efforts to empty the camps have failed as a result of mistrust).

269. See FRAGILE PEACE AGREEMENT, *supra* note 25, at 5.

270. *Id.*

271. NEW SECURITY REALITY, *supra* note 26, at 7.

272. See FRAGILE PEACE AGREEMENT, *supra* note 25, at 5 (explaining that people will be discouraged from returning home if it is left up to the government alone, with no international oversight, to police and provide security for them).

273. S.C. Res. 1769, ¶ 15, U.N. Doc. S/RES/1769 (July 31, 2007).

274. *Id.* ¶¶ 1–2, 4.

275. The Secretary–General, *Report of the Secretary-General and the Chairperson of the African Union Commission on the Hybrid Operation in Darfur*, ¶¶ 54–55, delivered to the President of the Security Council, U.N. Doc. S/2007/307Rev.1 (June 5, 2007).

In order to achieve these goals, the U.N. Security Council authorized UNAMID to take necessary action under Chapter VII of the U.N. Charter.²⁷⁶ Chapter VII of the U.N. Charter allows the U.N. Security Council to authorize “such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security.”²⁷⁷ UNAMID incorporates AMIS personnel and consists of a military component of up to 19,555 military personnel and a civilian component of up to 6,432.²⁷⁸ UNAMID became fully operational on December 31, 2007.²⁷⁹

D. The Darfur-Darfur Dialogue and Consultation

The DPA provides for the creation of the Darfur-Darfur Dialogue and Consultation (DDD-C).²⁸⁰ This is a conference that is responsible for mobilizing support for the DPA and implementing the agreement.²⁸¹ The vision of the DDD-C was to provide a more inclusive opportunity for parts of Darfur society, especially those not at the peace negotiations, to address political, socioeconomic, and other issues beyond the scope of those negotiations and to mobilize support for the DPA.²⁸²

During negotiations, the A.U. mediation team recognized that the rebel groups present were not sufficiently representative of Darfur and that the success of the DPA depended on it being accepted by all of Darfur.²⁸³ This led to a

276. S.C. Res. 1769, *supra* note 273, ¶ 15. U.N. peacekeeping missions with Chapter VII authority, like UNAMID, have become increasingly more forceful, straying from the U.N.’s original position that Chapter VII authority entails something less than forceful. James Sloan, *The Use of Offensive Force in U.N. Peacekeeping: A Cycle of Boom and Bust?*, 30 HASTINGS INT’L & COMP. L. REV. 385, 385 (2007).

277. U.N. Charter art. 42.

278. S.C. Res. 1769, *supra* note 273, ¶ 2.

279. *Id.* ¶ 5(c). As of August 31, 2008, UNAMID’s strength totaled 10,337 uniformed personnel, supported by 439 international civilian personnel and 984 local civilian staff and 204 United Nations volunteers. United Nations, Darfur—UNAMID—Facts and Figures, <http://www.un.org/Depts/dpko/missions/unamid/facts.html> (last visited Oct. 17, 2008).

280. Darfur Peace Agreement, *supra* note 23, art. 310.

281. *Id.*

282. See FRAGILE PEACE AGREEMENT, *supra* note 25, at 10.

283. REVITALISING THE PEACE PROCESS, *supra* note 50, at 24.

two phase strategy; the DDD-C was part of the second phase.²⁸⁴ The first stage required the warring parties to sign the DPA.²⁸⁵ The second stage involved gaining support for the DPA from other constituencies (nonsignatories) and dealing with some of the root causes of the conflict such as land ownership and grazing rights.²⁸⁶

However, due to the fact that only one rebel faction signed the DPA²⁸⁷ and that the DPA is not widely accepted by the greater Darfur society, the DDD-C cannot enhance DPA implementation.²⁸⁸ To push the DPA on the people of Darfur through the DDD-C would only make things worse.²⁸⁹ Having a dialogue like the DDD-C could help Darfur find a durable solution, but many people are skeptical of the DDD-C and see it as being forced on them by the government.²⁹⁰ Instead, what is needed is a dialogue before peace talks resume to formulate realistic solutions to the conflict's root causes that can then be incorporated into a peace agreement.²⁹¹

IV. BRINGING PEACE TO DARFUR

In order to end the genocide in Darfur it is important not to repeat the mistakes made during the creation of the DPA. In an effort to reach a more popular and functioning agreement, peace talks began again in Libya on October 27, 2007.²⁹² These talks are the last phase of a three phase plan enacted by the A.U.-U.N. mediation team in June 2007 to bring peace to Darfur.²⁹³ Phase one began in June 2007 and focused on uniting all ongoing peace initiatives.²⁹⁴ In spite of little progress, the A.U.-

284. *Id.*

285. *Id.*

286. *Id.*

287. FRAGILE PEACE AGREEMENT, *supra* note 25, at 1.

288. REVITALISING THE PEACE PROCESS, *supra* note 50, at 24.

289. *Id.*

290. *See id.* (explaining that the DDD-C only makes recommendations and therefore is not likely to enhance implementation of the DPA).

291. *Id.*

292. *See* NEW SECURITY REALITY, *supra* note 26, at 21.

293. *Id.*

294. *Id.*

U.N. declared this phase closed in July 2007.²⁹⁵ The second phase involved pre-negotiations, which entailed several failed attempts to get the rebel groups to unify their positions.²⁹⁶ Phase three involves formal peace negotiations.²⁹⁷

These negotiations are currently in recess and all the parties to the mediation should use this time to make sure that the mistakes of the DPA are not repeated.²⁹⁸ There are three main issues that should be addressed in these new talks to ensure that past mistakes are not repeated. First, the negotiations need to be as inclusive as possible and adequately address core issues. Second, a mechanism must be created to hold human rights violators accountable and to provide their victims with justice. Finally, UNAMID must be included in all steps of the negotiations to formulate a realistic role for it to play.

A. Increased Representation at the Negotiations and Addressing Core Issues

As the violence on the ground escalates and the parties become more fractionalized, it becomes more important to have a popular peace agreement. The DPA failed to recognize that there were a large number of voices left out of the negotiations.²⁹⁹

In order to reach an agreement that addresses core issues and is supported by the people of Darfur, the negotiations must include a large number of groups, not just the government of Sudan and the rebels.³⁰⁰

295. *Id.*

296. *Id.*

297. *Id.*

298. *Id.* In June 2008, Djibril Yipènè Bassolé of Burkina Faso was appointed Joint African Union-United Nations Chief Mediator for Darfur by United Nations Secretary-General Ban Ki-Moon and the African Union Chairperson. Press Release, Secretary-General, African Union Commission Chair, Appoint Joint AU-UN Chief Mediator For Darfur, Djibril Yipènè Bassolé of Burk. Faso, U.N. Doc. SG/A/1143 (June 30, 2008), <http://www.un.org/News/Press/docs/2008/sga1143.doc.htm>. Bassolé will conduct the mediation efforts on a fulltime basis from El Fasher. *Id.*

299. REVITALISING THE PEACE PROCESS, *supra* note 50, at 22.

300. *Id.*

The A.U.-U.N. mediation team should use the current delay to broaden the participation in the talks.³⁰¹ Indeed, the A.U.-U.N. mediation team established a mechanism to give a voice to the many Darfur constituencies in the talks.³⁰² It is important that this mechanism becomes a legitimate way to incorporate civil society and tribal leaders into the negotiations.³⁰³

During the delay, the A.U.-U.N. mediation team should also focus on nominating additional representatives to come to the talks when they resume and establishing common positions on all of the conflict's root causes.³⁰⁴ The more time spent on building common platforms before the actual negotiations and the more inclusive the negotiations are, the more likely it is that comprehensive solutions will be produced to solve the conflict's root causes and a popular settlement will be achieved.³⁰⁵ Creating common platforms and comprehensive solutions is going to take time and patience. This is going to be especially hard to achieve because as the situation on the ground in Darfur deteriorates, pressure grows within the international community to achieve peace.³⁰⁶ However, the international community must be patient and not rush another unpopular settlement.

301. NEW SECURITY REALITY, *supra* note 26, at 24.

302. *Id.* at 21. This mechanism includes broad consultation with constituencies in Darfur and incorporating their voices into the peace talks by inviting delegates to the negotiations. *Id.* However, only a small number of the delegates actually attended the negotiations and their role in the talks is still unclear. *Id.* at 21 n.146.

303. *Id.* at 24.

304. NEW SECURITY REALITY, *supra* note 26, at 25.

305. *Id.* The DPA can learn from the CPA. The success of the CPA was due to factors missing from the DPA: (1) the CPA was viewed as a "good agreement", (2) it addressed "key demands", and (3) it "set aside a few positions in the national, southern and state governments" for constituencies that were not part of the negotiations. REVITALISING THE PEACE PROCESS, *supra* note 50, at 24. Very few Darfurians see the DPA as a good deal. *Id.* It provided only a small power sharing deal for three rebel groups leaving the ruling party, the NCP, still in charge of local government. *Id.* Moreover, the DDD-C, which was designed to help Darfur find solutions to some of the root causes of the conflict, could only make nonbinding recommendations. *Id.*

306. See NEW SECURITY REALITY, *supra* note 26, at 24 (explaining that pressure for settlement grew even as "the situation on the ground deteriorated.").

B. Mechanism for Justice and Accountability

The new agreement must establish mechanisms for “justice and accountability.”³⁰⁷ This issue, like so many other core issues, was avoided during the 2006 negotiations of the Darfur Peace Agreement.³⁰⁸ As a result, the ICC was left to bring justice to Darfur.³⁰⁹ However, this has not been a comprehensive solution.³¹⁰ The ICC has only issued indictments against two individuals.³¹¹ In spite of urging by the U.N. Security Council, the Government of Sudan has refused to comply with the warrants.³¹² According to the International Crisis Group, “[t]he Court is a powerful tool that can force the regime and others to answer for conscience-shocking atrocities and think twice before committing them again.”³¹³

While the international community should not give up on pressuring the government to cooperate with the ICC, there must be additional mechanisms put in place to bring justice and

307. *Id.* at 26.

308. *See id.* (explaining that dealing with accountability was purposefully avoided because AU mediators did not want to deal with the issue).

309. *Id.*

310. *Id.*

311. NEW SECURITY REALITY, *supra* note 26, at 26. The ICC issued arrest warrants for the former State Minister for the Interior Ahmed Haroun and Janjaweed/militia commander Ali Koysheb. *Id.* On July 14, 2008, an application was presented to the ICC for an arrest warrant for Sudanese President al-Bashir for genocide, crimes against humanity, and war crimes. Press Release, Int’l Criminal Court, ICC Prosecutor Presents Case Against Sudanese President, Hassan Ahmad Al Bashir, for Genocide, Crimes Against Humanity and War Crimes in Darfur, ICC-OTP-20080714-PR341-ENG (July 14, 2008), <http://www.icc-cpi.int/press/pressreleases/406.html>. The application submitted to the ICC is under review by the Pre-Trial Chamber I. *Id.* The Pre-Trial Chamber is not expected to make a decision regarding an indictment for al-Bashir before January 2009. Louis Charbonneau, *New Sudan Indictment Could Ruin North-South Peace: U.N.*, REUTERS, Nov. 5, 2008, <http://www.reuters.com/article/worldNews/idUSTRE4A4AC920081105>. Many worry that an ICC indictment of al-Bashir poses major risks for the fragile peace and security environment in Sudan. *Id.* Indeed, the AU called for the UN to suspend the ICC indictment of al-Bashir for fear that it would “not only destabilize the country, but also undermine efforts to resolve the ongoing humanitarian crisis in Darfur.” Peter Clotey, *African Union Demands Security Council Suspend ICC indictment of Bashir*, VOANEWS.COM, July 22, 2008, <http://www.voanews.com/english/Africa/2008-07-22-voa2.cfm>.

312. NEW SECURITY REALITY, *supra* note 26, at 26.

313. *Id.*

accountability to Darfur and address the grievances of all the victims of the conflict.³¹⁴ During the peace negotiations the parties should consider adding a provision that obligates the government to investigate and prosecute human rights violations.³¹⁵ In order for this to work there has to be international oversight and consequences imposed for noncompliance.³¹⁶ The peace talks should consider establishing a truth commission, independent of the judiciary, to investigate crimes.³¹⁷ Information gathered by the truth commission can then be used to prosecute human rights abusers at trials that take place in Darfur.³¹⁸ Combining criminal trials with truth commissions can be the most effective way to provide the victims of human rights abuses with justice.³¹⁹ Truth commissions investigate human rights violations in a particular country

314. *Id.*

315. *See* Fröhlich, *supra* note 217, at 279 (explaining that while there is no clear obligation, treaty provisions may create a duty to investigate and prosecute human rights violations).

316. *See id.* at 281, 283–85 (explaining that in order to provide an efficient and fair system for bringing justice to a state where large scale human rights violation occurred, the international community must be involved in the internal judicial proceedings of that state).

317. *Id.* at 302.

318. *See id.* at 286 (“The goal of the international community should therefore be to promote and assist the prosecution of former perpetrators by courts in the state where violations . . . occurred.”).

319. Anna Triponel, *Can the Iraqi Special Tribunal Further Reconciliation in Iraq?*, 15 *CARDOZO J. INT’L & COMP. L.*, 277, 278 (2007). For instance, truth commissions were successfully combined with criminal trials in both Argentina and Rwanda. *Id.* at 309, 311–12. In Argentina, the National Commission on Disappeared Persons (CONADEP) was established to investigate the unexplained disappearance of thousands of people that occurred during the “dirty war” from 1976 to 1979. TruthCommission.org, Argentina: The National Commission on Disappeared Persons, http://www.truthcommission.org/commission.php?cid=0&case_x=0&lang=en (last visited Oct. 17, 2008). The information collected by CONADEP was then given to the courts to prosecute the offenders. *Id.* In Rwanda, truth commissions were used because they could be organized quickly and the information and documentation collected was then used at international and domestic trials of human rights abusers. U.S. INST. OF PEACE, SPECIAL REPORT NO. 13, RWANDA: ACCOUNTABILITY FOR WAR CRIMES AND GENOCIDE (1995), <http://www.usip.org/pubs/specialreports/early/rwanda1.html>.

during a certain time period.³²⁰ Truth commissions provide an official forum for victims and perpetrators alike to give evidence of past human rights violations.³²¹ Providing justice will make the people of Darfur more likely to support the peace agreement and, hopefully, will force the Government of Sudan to lift the veil of impunity that has existed for so long.³²²

C. A Realistic Role for UNAMID

In order to achieve a truly sustainable peace agreement, UNAMID must be actively involved in all of the negotiations.³²³ They are needed throughout the process to “contribute their expertise and UNAMID perspective to the negotiation of security arrangements and other provisions requiring UNAMID involvement.”³²⁴ Further, UNAMID’s involvement is needed in order to adjust “deployments more rapidly and efficiently to the agreement’s requirements.”³²⁵

While under its mandate UNAMID is authorized under Chapter VII “to take . . . necessary action”³²⁶ to protect civilians, there are also some restrictions that the government of Sudan could easily exploit.³²⁷ For instance, UNAMID is authorized to monitor the Security Council’s arms embargo on the region, but they are not allowed to seize weapons that are in Darfur in

320. United States Institute of Peace, Truth Commissions Digital Collection, <http://www.usip.org/library/truth.html> [hereinafter Institute of Peace] (last visited Oct. 17, 2008). In cases of gross human rights violations, there are frequently too many violations to prosecute traditionally. Kimberly Hanlon, *Peace or Justice: Now that Peace is Being Negotiated in Uganda, Will the ICC Still Pursue Justice?*, 14 TULSA J. COMP. & INT’L L. 295, 328 (2007). In these instances truth commissions can help bring peace to the victims of these crimes by “recording a credible history and dispelling false denials” by the perpetrators. *Id.*

321. Institute of Peace, *supra* note 320.

322. *See generally* Fröhlich, *supra* note 217, at 279 (explaining that by prosecuting perpetrators the state fulfills a moral obligation to the victims and the victims gain a renewed trust in the state); ENTRENCHING IMPUNITY, *supra* note 16, 1–2 (explaining that the impunity of government officials has “fueled continuing abuses against the civilian population.”).

323. NEW SECURITY REALITY, *supra* note 26, at 26.

324. *Id.*

325. *Id.*

326. S.C. Res. 1769, *supra* note 273, ¶ 15.

327. NEW SECURITY REALITY, *supra* note 26, at 23.

violation of that embargo.³²⁸ Further, there are no consequences for noncompliance if the government or any other actor fails to cooperate.³²⁹ And as mentioned before, the Government of Sudan is not likely to comply unless forced to do so.³³⁰

V. CONCLUSION

As the Darfur Peace Agreement of 2006 demonstrates, achieving peace is not going to be easy. The solution is complicated and must account for all the issues that gave rise to the conflict in the first place.³³¹ The genocide in Darfur arose from years of political marginalization and competition for scarce resources.³³² The DPA sought to deal with the problems by reaching an agreement between the Government of Sudan and the main rebel groups of Darfur.³³³ However, instead of achieving peace, the period after the DPA saw increased violence³³⁴ and intensive fractionalization of the parties involved.³³⁵

This continuous fractionalization highlights the importance of inclusiveness during any future peace negotiations. Peace in Darfur will only be achieved by giving a voice to every movement, tribe, and civilian affected by the conflict.³³⁶ Only when everyone is heard can solutions be reached regarding political power, the distribution of wealth, and security. After reaching comprehensive solutions to the problems that have plagued the Sudan throughout history, the focus can shift to bringing justice to the victims. The world can no longer afford to

328. *Id.*

329. *Id.*

330. *Id.* at 26 (“Sudan’s stance on this issue is consistent with its overall strategy of extending the state of unrest in Darfur as long as possible . . .”).

331. Ban Ki-moon, *supra* note 1.

332. See DOCUMENTING ATROCITIES IN DARFUR, *supra* note 72.

333. FRAGILE PEACE AGREEMENT, *supra* note 25, at 1.

334. REVITALISING THE PEACE PROCESS, *supra* note 50, at 1.

335. NEW SECURITY REALITY, *supra* note 26, at 13.

336. REVITALISING THE PEACE PROCESS, *supra* note 50, at 22.

let the Government of Sudan get away with these grave atrocities. But there is hope for the future. With the help of a revived peacekeeping force and vivid negotiations, peace in Darfur can be achieved.

*Katherine Pounds Taber**

* J.D., University of Houston Law Center, expected May 2009; B.A. in Letters, University of Oklahoma, 2005. The Author would like to thank her husband, Todd Taber, for his inspiration and understanding during the writing of this Comment. She would also like to thank her family, specifically her parents Robert and Linda Pounds, for their constant encouragement and support. Finally, this Comment is dedicated to the author's brothers, Andrew and Austin Pounds, for teaching her true strength. This Comment received the 2008 Gardere Wynn Sewell Writing Award for an Outstanding Comment on a Topic of International Law.

2008]

BRINGING PEACE TO DARFUR

211

VI. APPENDIX

A. Glossary of Acronyms

AMIS	African Union Mission in Sudan
A.U.	African Union
CPA	Comprehensive Peace Agreement
DDD-C	Darfur-Darfur Dialogue and Consultation
DLC	Darfur Land Commission
DoC	Declaration of Commitment
DPA	Darfur Peace Agreement
DRDF	Darfur Reconstruction and Development Fund
DRRC	Darfur Rehabilitation and Resettlement Commission
DSAIC	Darfur Security Arrangements Implementation Commission
FFAMC	Fiscal and Financial Allocation and Monitoring Commission
ICC	International Criminal Court
IDP	Internally Displaced People
JAM	Joint Assessment Mission
JEM	Justice and Equality Movement
JEM-CL	JEM-Collective Leadership
NCP	National Congress Party
NIF	National Islamic Front
SAF	Sudan Armed Forces
SLA/AW	Sudan Liberation Army faction of Abdel Wahid
SLA/M	Sudan Liberation Army/Movement

212 *HOUSTON JOURNAL OF INTERNATIONAL LAW* [Vol. 31:1

SLA/MM	Sudan Liberation Army faction of Minni Minawi
SPLA/M	Southern People's Liberation Army/ Movement
TDRA	Transitional Darfur Regional Authority
U.N.	United Nations
UNAMID	United Nations - African Union Mission in Darfur