



# Darfur Relief and Documentation Centre

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## **Darfur: A Declaration of Principles on Political Negotiations is a Step in the Right Direction**

The Darfur Relief and Documentation Centre (DRDC), welcomes the convening of the Fifth Round of the Inter-Sudanese Peace Talks on Darfur between the government of Sudan (GoS), the Sudan Liberation Movement/Army (SLM/A) and the Justice and Equality Movement (JEM) which has been taking place in Abuja (Nigeria) under the auspices of the African Union (AU) since 10<sup>th</sup> June 2005. This round of negotiations cannot be considered an end in itself but rather the beginning of a long-term process of viable negotiations and action to end the ongoing humanitarian crisis and regain peace and security in the region. This round of talks could lay the foundation upon which serious and substantial negotiations for a political solution to end the human rights and humanitarian crisis. The crisis has engulfed the region since February 2003 and durable peace and human development programmes must be worked out without delay.

The adoption of an acceptable Declaration of Principles (DoP) on political negotiations to end the conflict in Darfur - with the informed consent of all parties to the conflict – would be the first concrete step in the right direction. The Declaration of Principles should take into account the concerns of the victims of the conflict especially the internally displaced persons (IDPs) and refugees. It should also take into account the relevant resolutions and recommendations for a negotiated and peaceful resolution of the conflict that have been put forward by the regional and international community. This would be the basis for a meaningful political process to address the root causes of the conflict in the region and help generate a just and lasting solution to end the ongoing human tragedy. In this regard, lessons are to be drawn from the successful experience of the mediation efforts of the Inter-governmental Authority on Development (IGAD) as well as the cardinal role played by the Friends of IGAD in extending a helping hand to the GoS and the Sudan People's Liberation Movement/Army (SPLM/A) in the process that ended with the signing of the Comprehensive Peace Agreement in Nairobi, Kenya, on 9<sup>th</sup> January 2005. DRDC rejoiced that these efforts finally enabled the GoS and the SPLM/A to reach an internationally-acclaimed agreement thus ending one of Africa's longest internal armed conflicts in Southern Sudan. In this respect, DRDC strongly recommends that the modalities which led to the success of the IGAD process be replicated in the present situation in the meantime taking into account the special characteristics and nature of the conflict in Darfur.

The final political arrangement is subject to a mutual agreement between the warring factions in Darfur. However, DRDC wishes to present its views on certain issues that need to be considered at this stage of the negotiations and comprehensively addressed during the political dialogue. These issues are mainly in the area of the promotion and protection of human rights and fundamental freedoms and the respect of international humanitarian law. DRDC's suggestions and recommendations are presented in this Briefing Paper as preliminary observations raised with the view to help the negotiating parties successfully end their present work, commit themselves to the inclusion of human rights and humanitarian law concepts in their future negotiations and clearly undertake their implementation.

## Issues of DRDC Concern

DRDC is concerned that the previous arrangements for an end to violence in Darfur have not generated the desired results and that destruction and massive violations of human rights have continued in the region. In fact, the warring factions in Darfur scrapped the well-publicized Abuja Protocols of 9<sup>th</sup> November 2004 only one week after their enactment. In practice, the Abuja Protocols of 9<sup>th</sup> November 2004 do not exist any more. The N'djamena Humanitarian Ceasefire Agreement of 8<sup>th</sup> April 2004 has been violated repeatedly and purposefully by all parties to the conflict. As a direct result of the failure to respect this arrangement the number of the conflict victims has increased threefold since the signing of the N'djamena agreement. The vicious cycle of pacts signed and then violated in Darfur needs to end. This requires serious handling of the negotiations, strong support from the regional and international community and, most importantly, commitment and political will on the part of the warring factions to enforce the texts of agreements reached.

DRDC believes that any efforts to end the human rights and humanitarian crisis in Darfur entail binding commitments in word and deed to respect international humanitarian law and to protect and promote human rights and fundamental freedoms in conformity with Sudan's legal obligations under regional and international human rights treaties. Sudan is a member State of the African Union (AU) and the United Nations Organisation (UN). Consequently it is legally bound to respect its obligations under the AU Constitutive Act and the UN Charter. It is of paramount importance that the agreements reached by the parties to the Darfur conflict be consistent with all the relevant provisions in the numerous measures regarding the situation in the region, which were adopted by the AU policy-making organs as well as those by the competent UN bodies.

These measures include – but are not necessarily limited to – the two Decisions of the AU Assembly of Heads of State and Government, five Communiqués of the AU Peace and Security Council and the two Resolutions adopted by the African Commission on Human and Peoples' Rights on the situation in Darfur. The relevant provisions of four Resolutions adopted by the UN Security Council and other UN organs on the situation in Darfur should also be clearly reflected in any DoP and any political agreements that may eventually be reached. All these measures aim at reaching a peaceful, negotiated resolution of the conflict. DRDC, therefore, believes that the inclusion of the provisions of these measures in the final agreements and clear and unambiguous commitment to their implementation represent an additional guarantee for the success of the Abuja process and for an effective implementation of the eventual agreements. Such a commitment also represents a further inducement to generate the necessary regional and international political and material support to ensure that a lasting and just peace for the people of Darfur and Sudan can be reached and that the sad experience of Darfur will not rear its head again in the region or other parts of the country.

In particular DRDC refers to the provisions of the following measures:

1. Decisions Assembly/AU/Dec.54(III)<sup>1</sup> and Assembly/AU/Dec.68 (IV)<sup>2</sup> adopted at the 3<sup>rd</sup> and 4<sup>th</sup> Ordinary Sessions of the AU Assembly of Heads of State and Government held in Addis Ababa, (6<sup>th</sup> – 8<sup>th</sup> July 2004) and Abuja, (30<sup>th</sup> – 31<sup>st</sup> January 2005) respectively.
2. Communiqués PSC/AHG/Comm. (X)<sup>3</sup> and PSC/AHG/Comm. (XXIII)<sup>4</sup> adopted by the AU Peace and Security Council held at the level of Heads of State and Government at the Solemn Launching of the Tenth Meeting, Addis Ababa, on 25<sup>th</sup> May 2004 and the 23<sup>rd</sup> Meeting, Libreville, Gabon, on 10 January 2005.

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<sup>1</sup> <http://www.africa-union.org/DARFUR/homedar.htm>

<sup>2</sup> <http://www.africa-union.org/DARFUR/homedar.htm>

<sup>3</sup> [http://www.africa-union.org/News\\_Events/Communiqués/25%20mayCommunique%20\\_10th\\_.pdf](http://www.africa-union.org/News_Events/Communiqués/25%20mayCommunique%20_10th_.pdf)

<sup>4</sup> [http://www.africa-union.org/News\\_Events/Communiqués/PSC%20Communique%2023rd%20Meeting%2010jan05.pdf](http://www.africa-union.org/News_Events/Communiqués/PSC%20Communique%2023rd%20Meeting%2010jan05.pdf)

3. Communiqués PSC/PR/Comm.(V)<sup>5</sup>, PSC/PR/Comm.(XIII)<sup>6</sup>, PSC/PR/Comm.(XVI)<sup>7</sup>, PSC/PR/Comm.(XVII)<sup>8</sup> and PSC/PR/Comm.2(XXV111)<sup>9</sup> adopted by the AU Peace and Security Council at their 5<sup>th</sup> Meeting on 13 April 2004, 13<sup>th</sup> Meeting on 27<sup>th</sup> July 2004, 16<sup>th</sup> Meeting on 17<sup>th</sup> September 2004, 17<sup>th</sup> Meeting on 20<sup>th</sup> October 2004 and 26<sup>th</sup> Meeting on 28<sup>th</sup> April 2005 respectively.
4. Resolution ACHPR/Res. 68 - (XXXV) 04, dated 4<sup>th</sup> June 2004<sup>10</sup> on the situation in the Darfur region of Sudan and Resolution ACHPR/Res.74 (XXXVII) 05, on the human rights situation in Darfur, Sudan, dated 11<sup>th</sup> May 2005<sup>11</sup> which were adopted by the African Commission on Human and Peoples' Rights at its 35<sup>th</sup> and 37<sup>th</sup> Ordinary Sessions, Banjul, The Gambia.
5. Resolutions 1556/2004 of 30<sup>th</sup> July 2004<sup>12</sup>, 1590/2005 dated 24<sup>th</sup> March 2005<sup>13</sup>, 1591/2005 dated 29<sup>th</sup> March 2005<sup>14</sup> and 1593/2005 dated 31<sup>st</sup> March 2005<sup>15</sup> which were adopted by the UN Security Council on the situation in Sudan, Darfur, respectively.
6. Resolution E/CN.4/RES/2005/82<sup>16</sup> on the situation of human rights in Sudan adopted by the 61<sup>st</sup> session of the UN Commission on Human Rights on 21<sup>st</sup> April 2005.

DRDC considers it equally important that the negotiating parties take into consideration the relevant recommendations reached by the Mission of the Office of the UN High Commissioner for Human Rights sent to the Darfur region in April 2004<sup>17</sup> as well as the Report of the International Commission of Inquiry on Darfur<sup>18</sup> of 25<sup>th</sup> January 2005. These reports have documented, in the most authoritative manner, the serious nature of the humanitarian and human rights crisis in Darfur, proposed action to ease the situation and stressed the urgent need that all efforts be made to ensure that the conflict comes to an immediate halt.

### Areas for Immediate Action

Based on the provisions of the afore-mentioned documents, three major issues of an urgent nature should be the subject of clear and unambiguous commitment and action at this round of negotiations:-

1. **Protecting civilian populations in the Darfur region;**
2. **Creating conditions conducive to the return of internally displaced persons (IDPs) and refugees to their original areas in the 3 States that constitute the greater Darfur region; and**
3. **Combating impunity by arresting and holding accountable all persons accused of planning, supporting, committing, abetting or condoning the commission of atrocities in Darfur. This is to be done in full cooperation and coordination with the International Criminal Court (ICC) throughout the period of the ICC's discharge of its mandate under UN Security Council Resolution 1593/2005.**

<sup>5</sup> [http://www.africa-union.org/News\\_Events/Communiqués/13%20AprilCommuniqué%20\\_Eng.pdf](http://www.africa-union.org/News_Events/Communiqués/13%20AprilCommuniqué%20_Eng.pdf)

<sup>6</sup> <http://www.africa-union.org/psc/23rd/Communique.pdf>

<sup>7</sup> [http://www.africa-union.org/News\\_Events/Communiqués/17%20Sept%20Communiqué.pdf](http://www.africa-union.org/News_Events/Communiqués/17%20Sept%20Communiqué.pdf)

<sup>8</sup> [http://www.africa-union.org/News\\_Events/Communiqués/Communiqué%20\\_Eng%2020%20oct%202004.pdf](http://www.africa-union.org/News_Events/Communiqués/Communiqué%20_Eng%2020%20oct%202004.pdf)

<sup>9</sup> [http://www.iss.co.za/AF/RegOrg/unity\\_to\\_union/pdfs/centorg/PSC/2005/28rep.pdf](http://www.iss.co.za/AF/RegOrg/unity_to_union/pdfs/centorg/PSC/2005/28rep.pdf)

<sup>10</sup> [http://www.achpr.org/english/doc\\_target/documentation.html?../resolutions/resolution73\\_en.html](http://www.achpr.org/english/doc_target/documentation.html?../resolutions/resolution73_en.html)

<sup>11</sup> [http://www.achpr.org/english/resolutions/resolution79\\_en.html](http://www.achpr.org/english/resolutions/resolution79_en.html)

<sup>12</sup> <http://daccessdds.un.org/doc/UNDOC/GEN/N04/446/02/PDF/N0444602.pdf?OpenElement>

<sup>13</sup> <http://daccessdds.un.org/doc/UNDOC/GEN/N05/284/08/PDF/N0528408.pdf?OpenElement>

<sup>14</sup> <http://daccessdds.un.org/doc/UNDOC/GEN/N05/287/89/PDF/N0528789.pdf?OpenElement>

<sup>15</sup> <http://daccessdds.un.org/doc/UNDOC/GEN/N05/292/73/PDF/N0529273.pdf?OpenElement>

<sup>16</sup> [http://ap.ohchr.org/documents/E/CHR/resolutions/E-CN\\_4-RES-2005-82.doc](http://ap.ohchr.org/documents/E/CHR/resolutions/E-CN_4-RES-2005-82.doc)

<sup>17</sup> <http://daccessdds.un.org/doc/UNDOC/GEN/G04/142/21/PDF/G0414221.pdf?OpenElement>

<sup>18</sup> <http://www.ohchr.org/english/docs/darfurreport.doc>

## **Protecting Civilian Populations**

Violence, destruction of life and livelihood, and other heinous atrocities targeted mainly against women and children continue to take place in Darfur. Therefore, the protection and safety of civilian populations in Darfur is a fundamental principle that needs to be agreed upon and effectively addressed by the conflicting parties as an issue of top priority on their agenda. DRDC strongly believes that the issue of protection and safety of the people in Darfur, especially civilians affected by the armed conflict, should be considered as a precondition for a political settlement. The main dimensions of this protection scheme include the following:

- a. A comprehensive cease-fire agreement under a combined regional and international supervision. An independent monitoring team of foreign military observers is to oversee compliance of the warring parties with the provisions of the ceasefire agreement and report to the AU Commission and the UN Security Council.
- b. The deployment of an adequate and resourceful military force in Darfur with a clear peace-keeping mandate to protect civilian populations. This force should be composed of at least 50,000 troops including national, regional and international military forces.
- c. The disarmament and dismantling of the *Janjaweed* militias and other paramilitary groups that are known for targeting civilian populations in the region and the apprehension of their leaders and field commanders.

## **Creating Conditions Conducive to the Return of IDPs and Refugees**

The armed conflict in Darfur has uprooted at least two million individuals from their original homes. They currently live as IDPs inside Sudan or as refugees across the international borders. Resettlement of such a massive number of vulnerable, impoverished and traumatised people requires complicated work and tremendous efforts. To effectively resettle these persons a massive and resourceful multi-disciplinary campaign is required. In this regard, DRDC recommends the establishment of a panel of experts to prepare plans for a joint repatriation mechanism with regional and international components. Such a mechanism should be able to assess the situation of IDPs and refugees, determine their needs and resettlement requirements and assist them in their efforts to return to, and rebuild, their original areas of residence. It should also be empowered to propose and implement alternative solutions to the groups of peoples that have moved due to the armed conflict and resettled in areas hitherto inhabited by other groups.

## **Protection of Humanitarian Relief Organisations and Workers**

Securing reasonable conditions for smooth functioning of humanitarian relief organisations is indispensable for the return of IDPs and refugees to their areas of origin. DRDC is concerned that despite previous pledges by the warring factions to allow free and unhindered access to the needy people in Darfur, humanitarian organisations and relief workers continue to face serious difficulties including murder, torture, aggressions, abductions, arrests, intimidation and threats. There is an urgent need for a code of conduct on the part of the warring factions to meet their international legal obligations *vis a vis* humanitarian organisations and relief workers and a renewed commitment in word and deed that these groups be allowed to work freely in the region. Concrete measures need to be agreed upon to ensure that humanitarian relief organisations, as well as their staff and properties, are protected by the antagonist parties in the respective areas where such organisations operate. The warring factions should commit themselves to lifting any road-blocks or other hindrances on the access routes used by relief organisations and commercial vehicles for the delivery of life-saving relief material, especially the routes that lead to the areas under the *de facto* control of the insurgent movements.

## Combating Impunity and Compensating the Victims

Intolerable crimes in regional and international human rights and humanitarian law including war crimes and crimes against humanity are being committed in Darfur in a massive and systematic manner. They are being selectively perpetrated against defenceless civilian populations of specific ethnic groups of the region. These crimes are abhorrent to the Islamic faith and all other canons of civilized life. The brutal manner and gross injustice with which the crimes were committed have left deep scars in the consciousness of the victims. These atrocities are documented in the ceaseless reports of murder, rape of women and girls, aggressions against relief workers, destruction of properties, burning of abandoned villages and the continuing flow of IDPs and refugees towards the feeding centres.

The negative effects of the destruction campaign and massive violations of human rights in Darfur cannot be mitigated unless equitable justice is done, and seen to be done, for the innocent victims of the conflict. At present there is no guarantee that such crimes will not be committed in the future. Under the circumstances, the question of effective and just accountability for the perpetrators of atrocities in Darfur should not only be considered as a means to do justice to the victims but also as deterrent for the commission of such crimes in the future. DRDC is of the opinion that unwillingness and inability of the government of Sudan to prosecute individuals responsible for the commission of crimes in Darfur, carry out justice for the victims as well as the inaction on the part of the international community to forcefully intervene and save the lives of the victims in the region – have all encouraged war crimes suspects to continue their campaign of destruction with total impunity. Prosecuting the perpetrators of the crimes committed in Darfur is, therefore, in the best interest of the people of the region and of peace and stability in the Sudan and Africa.

It is to be noted that combating the impunity with which crimes were committed in Darfur has been a prime concern for regional and international bodies alike. They have expressed their determination to do so on numberless occasions. Emphasis on the importance of accountability for the perpetrators of crimes committed in Darfur was echoed in numerous measures adopted by the AU Assembly of Heads of State and Government as well as the AU Peace and Security Council. These measures include Communiqué PSC/PR/Comm.(XIII) adopted by the Peace and Security Council at its 13th Meeting on 27th July 2004. In reality, this Communiqué was the first major measure adopted by an AU policy-making organ on the situation in Darfur and which made a clear link between accountability, neutralizing and disarming the Janjaweed and the return of peace and security in Darfur. In paragraph 11 of this Communiqué, the Peace and Security Council requested the Commission to submit to it a “ ... *comprehensive assessment of the situation in Darfur, including the steps taken to disarm and neutralize the Janjaweed militia, to facilitate the delivery of humanitarian assistance, to bring to justice the perpetrators of human rights violations, as well as the violations of the ceasefire and the status of the political dialogue.*”

Furthermore, there are a number of international measures on Darfur that need to be taken into account when addressing the crisis in the region notably the series of resolutions adopted by the UN Security Council in late March 2005. The parties to the Darfur conflict can demonstrate genuine commitment to combating impunity by accepting full cooperation with the ICC Prosecutor in the discharge of his mandate under the terms of UN Security Council Resolution 1593/2005, which referred the situation in Darfur to the ICC. By adhering to Resolution 1593/2005 the parties to the conflict in Darfur would also fulfil and respect Sudan's obligations as a State member of the UN. It is to be remembered that referral of the situation in Darfur to the ICC is based on the Security Council's competence under Chapter VII of the UN Charter, as the world body entrusted with maintaining and preserving international peace and security. Accordingly, Resolution 1593/2005 is legally binding and enforceable upon all member States of the UN. As such the exercise of the ICC's jurisdiction over the situation in Darfur becomes an integral part of the Security Council enforcement mechanisms to maintain international peace and security. This should impel the negotiating parties to commit themselves to implement this resolution and for the mediators to persuade them in this direction.

## **Compensating the Victims**

Equally important is the question of satisfactory and adequate reparations for the collective damage done to the people of the region and financial compensations for individual victims and their descendants for their unbearable human and material losses. DRDC believes that the issues of accountability of the perpetrators of atrocities in Darfur and adequate reparations for the damage done are among the important principles that should be addressed and agreed upon in the forthcoming political negotiations between the GoS on the one hand and the SLM/A and JEM on the other hand.

As an integral part of the accountability process, DRDC recommends the speedy establishment of a joint Compensation Commission with national, regional and international components and support in order to satisfactorily address the grievances of the victims of the crisis in Darfur, repair the damage done to the region and compensate the victims for their human and material loss. Such a Compensation Commission should be empowered to come up with suitable plans to effect an adequate and satisfactory reparations scheme to be introduced within an overall Affirmative Action Programme protected by the power of law. A Special Affirmative Action Programme should be introduced for the benefit of women, girls and children victims of atrocities in Darfur.

## **National Reconciliation**

The people of Darfur with their different ethnic groups have no other option but to live together in the region and to accommodate each other. They are the only real guarantee for lasting peace and tranquillity in the region. The high moral values of tolerance and peaceful co-existence between the different inhabitants of the region should be inculcated in the coming generations. These values need to be restored and preserved in the region's collective memory through a genuine and democratic process of social reconciliation, remorse and commitment to the non-repetition of this tragic experience. The modality for such a reconciliation programme should be freely decided upon with the consent and knowledge of the victims and concerned people without interference from other parties for ulterior motives.

In light of the massive crimes committed in the region and the growing tendency towards revenge among some groups of victim for the injustice they suffered, the process of national reconciliation can only succeed if it is to be introduced as a complementary measure to the dispensation of equitable justice. True justice can only be achieved through an independent judicial process that holds the perpetrators of atrocities in Darfur responsible for their acts without delay. National reconciliation can better achieve its objectives if it is to be introduced within the context of an overall nation-rebuilding plan, which is supported by comprehensive sustainable development strategy and a vigorous campaign for the eradication of social injustice and inequality among all the people of the country without distinction on any ground as to ethnic or cultural heritage. Special sustainable development projects tailored to meet the needs of the people of Darfur and which mitigate the negative effects of natural calamities in the region should be accorded priority. DRDC recommends that the negotiating parties agree upon the establishment of an independent Reconciliation Commission whose members should be selected through a democratic and transparent process. The Commission should be prepared to start its work when life returns to normal and peace is regained in the region. Once again, DRDC wishes to emphasize that such a Reconciliation Commission should conduct its work as a measure complementary to an independent judicial process that adequately prosecutes and brings to justice all individuals accused of committing crimes in Darfur and which compensates the victims for their losses.