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Land Rights under Stress in Darfur: A Volatile Dynamic of the Conflict

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Abstract

The aggravation of land rights over time in Darfur was a primary factor in the initiation of the conflict, and has emerged as a particularly difficult set of issues in the search for viable peace. While the prospect of being able to keep land acquired in course of the conflict was a primary factor in recruitment for the *Janjaweed*, it came on the heels of a set of changes in the environment, land use and population patterns, institutions, law and governance that produced a highly unwieldy and volatile land rights scenario. This article explores the role of land tenure in Darfur conflict, examining the aggravation of rights, custom and law over time, and then focusing on two of the primary war-related tenure problems currently facing Darfur—use of land rights as tools of belligerence, and the land dispossession – secondary occupation problem.

Keywords

Land rights, tenure, Sudan, Darfur, conflict, Africa

Introduction

Land rights in Darfur operate as a central feature of the ongoing conflict. Widely regarded as one of the root causes of the war, land rights for the different groups involved are highly complex, emotive, contentious, and volatile.¹ As one of its most acute manifestations, Arab pastoralists of northern Darfur with longstanding grievances regarding their perceived lack of land and political participation (the two inseparable in Darfur) saw an opportunity to gain access to land, and so were easily recruited into the *Janjaweed*. Interestingly Arab pastoralist groups from the south who already had longstanding and secure claims to land attempted to stay neutral in the conflict. The primary war-related land tenure issue in the Darfur conflict, which has driven many other aspects of the war including perceptions of ‘genocide’, is how the Arab pastoralist militias (*Janjaweed*) have gone about operationalizing the prospect that they would be able to keep the lands they were able to ‘liberate’ during the course of the conflict. Instead of pursuing and engaging the rebel militias² in order to obtain such lands, the *Janjaweed* and its constituencies went directly to the land itself and conducted scorched earth campaigns against the civilian

¹ e.g. Flint, J., and de Waal, A., *Darfur. A New History of a Long War*. (London & New York: Zed Books and the International African Institute, 2008); Abdul-Jalil, M., Land tenure, land use and inter-ethnic conflict in Darfur, in *Understanding the Crisis in Darfur: Listening to Sudanese Voices*, ed. By A. Ahmed and L. Manger, (Bergen, Norway: University of Bergen, 2007); Suiliman, O. *The Darfur Conflict: Geography or Institutions?* (New York: Routledge Press, 2011); Concordis., *Land use and tenure: a key to sustainable peace in Darfur*. (Cambridge: Concordis Papers, 2007).

² Initially the Sudan Liberation Army (SLA), and the Justice and Equality Movement (JEM) but now splintered into several configurations.

agriculturalist population, emptying the countryside, and seizing the land.³ This is not what Khartoum had expected when recruiting Arab pastoralists for its counterinsurgency efforts, to the degree that government soldiers often needed to accompany the *Janjaweed* to achieve military objectives; which also eventually came to include attacks on rebel sympathizing civilian settlements.⁴ The massive dislocation, loss of life, and occupation of lands that resulted from the *Janjaweed's* approach to the conflict, and the subsequent responses by rebel militias, led to a massive escalation of the overall conflict and the emergence of extremely difficult dilemmas in the socio-political landscape which are proving difficult to engage in a sustainable peace process. However the problem of land rights in Darfur did not emerge suddenly. The aggravation of a number of land use and tenure patterns over time, together with a progressive reduction in the adaptive capacity of customary institutions and the increasing intrusion of statutory law unsuited to tenurial reality in Darfur, led to a highly unwieldy and volatile land rights scenario, which was easily manipulated for various political agendas as part of the current conflict. The result is the use of land rights as a tool of belligerence, and a highly problematic dilemma of dislocation and secondary occupation which the two peace accords, the international community, government, and the various constituencies involved in the conflict are finding difficult to resolve.

Yet the role of land rights in the Darfur conflict remains largely unexamined in the academic literature. While land rights are widely acknowledged to be an important factor in the cause and conduct of many wars, this occurs under a very wide variety of scenarios, such that there is no one type of relationship between land rights and armed conflict.⁵ Understanding for a particular case, exactly how land rights intersect with armed conflict is of fundamental importance to its resolution and recovery. Thus the central research questions here are, what is the precise functioning of land rights in the Darfur conflict, how have these come about and become so volatile, and what are the latent opportunities for using land rights in peacebuilding? With regard to the latter, questions are paramount, 1) can the categories of 'internally displaced persons' and 'secondary occupants' be unpacked and elaborated so as to more deeply explore their utility for peacebuilding? Beginning with a brief description of the primary land tenure features in Darfur and how these historically came about, this article analyses the processes and

³ Flint and De Waal 2008; Flint J., *Beyond the Janjaweed: understanding the militias of Darfur*. The Small Arms Survey, (Geneva: Graduate Institute of International and Development Studies, 2009); Jesse, N.G., and Williams, K.P., *Ethnic Conflict: A Systematic Approach to Cases of Conflict*. (Washington DC: Congressional Quarterly, 2010); O'Fahey, R., *The Darfur Sultanate: A History*. New York: Columbia University Press, 2008), p 136; Olsson, O., and Siba, E., Ethnic cleansing or resource struggle in Darfur? An empirical analysis. Working papers in Economics No 417, (University of Gothenburg, 2010); Olsson, O., 'After Janjaweed? Socioeconomic impacts of the conflict in Darfur.' *World Bank Economic Review* 24 (2010) (3), 386-411, notes the correlation between secondary occupation of emptied lands, and good soils, proximity to water, and distance from administrative centers in a sample of 512 villages in southwest Darfur, indicating empirically that obtaining good lands far from a monitoring capacity was a primary pattern in the conflict.

⁴ Flint and De Waal 2008.

⁵ For example, see: S. Cohen, *The Politics of Planting: Israeli-Palestinian Competition for Control of Land in the Jerusalem Periphery*, University of Chicago Press, 1993; J. Clover, Land reform in Angola; establishing the ground rules, in: C. Huggins, J. Clover (Eds), *From the Ground Up; Land Rights, Conflict and Peace in Sub-Saharan Africa*. African Centre for Technology Studies and the Institute for Security Studies, 2005; J. Unruh, Land rights in postwar Liberia: the volatile part of the peace process, *Land Use Policy* 26 (2009) 425-433; L. Wiley, Land rights in crisis: restoring tenure security in Afghanistan, Afghanistan Research and Evaluation Unit, Kabul. 2003.

patterns involved in the acute aggravation of land rights which have played a significant role in the cause of the conflict and how it has been conducted. The article then analyses the current set of war-related land rights issues (different than pre-war land issues) in the context of how they are used as tools of belligerence, and the internal displacement - secondary occupation problem.

Methods

Research was conducted in Darfur and Khartoum in December of 2009, and comprised individual and group interviews totaling 196 people. The authors met with a wide variety of people and organizations, including government officials at various levels in ministries and departments in Khartoum, Nyala in South Darfur, and El Fasher in North Darfur; as well as representatives of the Native Administrations of North and South Darfur, internally displaced persons (IDPs), and officials of the UN and other international organizations. The authors also met with the Darfur Lawyers Association, the Darfur Land Commission, representatives of the tribal Shura Councils, the Darfur Peace and Reconciliation Council, the Darfur – Darfur Dialogue Committee, academics and prominent individuals and leaders of various tribal groups in Khartoum, North and South Darfur. These included Paramount Chiefs, local NGOs and local tribal elders and religious leaders among others. In addition the relevant Sudanese laws, peace accords, and the academic, donor, and NGO literature were reviewed, as well as the position statements and pronouncements of the armed factions. Additional information on the methods is presented in Annex 1.

Salient features of land tenure in Darfur

Land rights and territorial groups

Land in Darfur is divided up into tribal homelands known as *Dar*. As a general rule the *Dar* belongs to (or more specifically is named after or associated with) a major tribe or clan, but in practice its residents reflect a wide range of ethnic backgrounds. Such a tribe initially obtained such rights as a result of earlier occupation dating from the pre-Sultanate period. During the Sultanate period the sultan merely recognized the fact of land occupation and control, and reconfirmed the position of the group's leader. The main advantage of this arrangement for the major tribe that it gave it a monopoly over the land - political nexus as well as leadership and revenue collection. Thus Darfur is known historically as the *Dar* or homeland of the *Fur* tribe in recognition of its historical role in establishing a thriving state. Thus while the *Fur* tribe did not occupy the entirety of what is today called Darfur (Figure 1) the naming of the region as associated with the *Fur* follows a long history of state formation by the tribe⁶ even though other tribes and *Dars* are included within Darfur (Figure 2).

When Darfur was annexed to Sudan in 1916 the colonial authorities changed very little of the land administration system. The tribal homeland policy of indirect rule adopted by the British in Darfur favored the larger tribes in that their leaders were confirmed as Paramount Chiefs (otherwise known as *Nazir*, *Shartay*, or *Sultan*) to be responsible for managing large areas of land as well as the people within a given boundary.⁷ This minimized the colonial oversight that

⁶ O'Fahey, R., and Abu Salim, M., *Land in Dar Fur: Charters and Documents from the Dar Fur Sultanate*. (Cambridge: Cambridge University Press, 1983).

⁷ Abdul-Jalil, M., Azzain, A., and Yousuf, A., Future prospects for native administration and local governance in Darfur. in *War in Darfur and the Search for Peace*, ed. By A. De Waal, (Boston, MA: Global Equity Initiative, Harvard University, 2007).

would have been needed to interact with many smaller tribes. It also meant that small tribal groupings and their chiefs came under the administration of the larger tribal chiefdoms with or without their consent (Figure 2). Thus many of the smaller tribes have struggled for their own tribal identity and land for some time. Currently the claim for independent *Dars* by the smaller tribes is linked to their desire for their own ‘Native Administration’ operating within broader customary law. Such an administration includes formal leadership positions in local and regional state institutions, including local councils and state advisory bodies. The claim for separate *Dars* by minority tribes was and is usually resisted by the majority tribes because it would lead to the fragmentation of the overall *Dar* and a diffusion of authority away from the larger tribes. This has been a major source of tribal conflict in the region, illustrated by the *Ma’alyia – Rizeigat* conflict in 1968.⁸

While all *Dars* are connected to a specific group, a parallel issue of critical importance to the current conflict, is that not all groups have *Dars*. This is particularly the case for the camel Arab pastoralist (*abbala*) groups of northern Darfur and adjoining areas of the Sahara, such as the northern *Rizeigat* who have historically roamed regions of the Sahara to the north of Darfur and who migrated into Darfur seasonally.⁹ This lack of *Dars* among some groups was partially because the granting of tribal *Dars* in the Sultanate era also favored the larger sedentary tribes as British colonial policy did, but also because in the past such permanent claims to land were not an important issue for Arab pastoralists, who instead depended on transient rights of land access.¹⁰

The hierarchical authority system for land administration in Darfur involves Paramount Chiefs, who represent the highest authority in the Native Administration system, and who perform their duties through a medium level leadership (*Omda*) and the latter through the lower level leadership of a village headman (*Sheikh*). The Paramount Chief was and continues to be responsible for allocating land for settlement and cultivation. Any disputes regarding access to land rights or natural resources would first be processed through the village *Sheik* who then passes the dispute up through the Native Administration if he fails to resolve it. Thus the Native Administration provided a system of local governance which managed the use of land and natural resources and facilitated various groups to live in relative peace and stability. Native administrators were entrusted with the role of implementing customary rules regarding land rights and resource allocation, and regulating the grazing activities of different tribes and outsiders so as to avert conflicts between farmers and pastoralists. This included the enforcement of boundaries that demarcated grazing and farming areas, regulation of the seasonal movement of pastoralists in terms of timing and routes from their dry season grazing areas to wet season grazing areas (Figure 3), containment and resolution of tribal disputes in the grazing areas, and

⁸ Abdul-Jalil et al 2007.

⁹ Mohammed, A.A., ‘The Rezaigat camel nomads of Darfur region of western Sudan: from co-operation to confrontation.’ *Nomadic Peoples*, 8 (2004) (2), 230-241.

¹⁰ Abdul-Jalil, M., Nomad-sedentary relations and the question of land rights in Darfur: from complementarity to conflict. in *Nomad-Sedentary Relations and Failing State Institutions in Kordofan and Darfur*. ed. By R. Rottenburg, (Halle, Germany: Halle-Wittenberg University, 2008); Babiker, M., Resource competition and conflict: herder/farmer or pastoralism/agriculture? in *African Pastoralism: Conflict, Institutions and Government*, ed. By M.A. Mohamed Salih, T. Dietz, and A.G. Mohamed Ahmed, (London: Pluto Press, 2001), pp. 135–144.

the opening and closing of water points.¹¹ It was unfortunate then that the Sudanese government dissolved the Native Administration in 1971, creating a precarious institutional vacuum.¹²

The hakura customary tenure system

In the 18th century a system of land grants called *hakura* emerged under the *Fur* Sultanate, and was solidified and expanded into most areas of the of what is now Darfur.¹³ Essentially *hakura* are forms of land grants or titles belonging to chiefly families or court appointees. A *hakura* exists as a document describing the grant, including to whom it was granted, how it came about, and a precise boundary description, and had the Sultan's seal above the text (Figure 4). But *hakura* also refers to the land in question itself.¹⁴ The *hakura* granted by the *Fur* sultans were of two types; an administrative *hakura*, which gave limited rights of taxation over people occupying a certain territory, and a more exclusive *hakura* of privilege that gave the title holder all rights for taxes and religious dues within the area covered by the *hakura*. The first type was usually granted to tribal leaders and later came to be known as '*Dar*'. The *hakura* of privilege (which was relatively smaller) rewarded individuals for services rendered to the state and had limited administrative implications. Both types of estates were managed through stewards acting on behalf of the title-holder. Thus the term *hakura* came to refer to grants of privilege, and these reside within *Dar*.¹⁵

Today however *hakura* is taken to mean by some as 'tribal land ownership' meaning that the *hakura* has become attached to the area originally occupied by a tribal group. But in actuality the tribe of the original *hakura* owner (*hakura* being hereditary) gathered to the *hakura* and came to occupy and consolidate itself in the territory. In this context the rights of the *hakura* owner were more akin to a feudal jurisdiction, with rights to collect taxes of various kinds, as opposed to a form of freehold.¹⁶ Currently there is considerable confusion over the term and character of *hakura*. Some see it as synonymous with *Dar*, others view it as a land tenure system belonging to the *Fur* only, and others see it as simply a land management system that can be changed or replaced. *Hakura* as a system or entitlement is important to Darfur's current conflict, and will be elaborated upon further below.

At the village and household level within the *hakura* system, customary rights over land were seldom exclusive, hence there was no real 'ownership' of land in the Western legal sense. The basic principle was that there existed a form of land access whereby every adult male in the village was entitled to a piece of land on which to build a hut and establish an enclosure for animals, in addition to access to farmland outside the village. However there were communal rights that overrode individual user rights on such land. These included access to water for humans and animals; access to livestock routes (for agricultural, transhumant and nomadic animal movements); access to grazing and hunting areas; and the gathering of fodder, wild foods,

¹¹ Abdul-Jalil, M., and Ludeking, G., Situational analysis of land tenure issues: problems and implications for the Darfur Early Recovery Plan. D-JAM Track 1, Peace and Security Cluster, Khartoum, 2007.

¹² Abdul-Jalil, M., Intertribal conflicts in Darfur: scarcity of resources or crises of governance? in *Environment and Conflict in Africa: Reflections from Darfur*, ed. By M. Laroy, (Addis Ababa: University for Peace, Africa Programme, 2009).

¹³ Flint and De Waal 2008.

¹⁴ O'Fahey and Abu Salim 1983.

¹⁵ Abdul-Jalil 2009; O'Fahey and Abu Salim 1983.

¹⁶ Flint and De Waal 2008.

firewood, and building materials; as well as access to ceremonial and ritual sites.¹⁷ Although these rights were in principle enjoyed by all, more localized sets of normative rules defined how access and claim in reality occurred. For example, rain-fed farmland (*talique*) had a specific set of rights because it is put under use for only part of the year and left fallow after harvest. There was a Darfur-wide custom with local variations that stipulated unfettered access to *talique* after harvest so that livestock belonging to pastoralists could graze on the remains of harvested crops. Accordingly, the farmer would not allow his own animals to graze while denying access to animals belonging to others. Management of *talique* was communal and access to it was decided by the local Native Administrators concerned.

As a general rule the *hakura* system allowed movement, temporary use, and settlement of newcomers both as individuals and groups, provided that they adhered to local customary rules. Farming, grazing, hunting and forest use were included in such arrangements. Nomadic groups participated cooperatively in the past because such arrangements facilitated their migratory herding system. Grazing rights for nomadic groups were generally not denied and were granted under a variety of situations and conditions depending on the location and status of unharvested crops. Agriculturalist newcomers from outside the *Dar* who wished to farm were usually accommodated within uncultivated waste-land or fallow-land areas, according to local customary norms. If the newcomer was an individual or few families, they would join an existing village and come under the administrative jurisdiction of its *Sheik*. However, if the number of the newcomers was large enough to constitute a separate village--such as in the case of the large *Zaghawa* migrations following the mid-1980's drought from their original areas in the northwest, they were allowed to have their own village and *Sheik* who would be accountable to the *Omda* of the area.¹⁸ In such a case the *Sheik* would not have jurisdiction over land and so was called '*Sheikh Anfar*' (*Sheik* of people) as opposed to the more powerful and prestigious office of '*Sheikh Al-Ard*' (*Sheik* of the land) which was open only to natives of the *Dar*.¹⁹

Statutory tenure

Most land laws in Sudan that are relevant to Darfur were initially derived to serve areas in and around towns and on development schemes along the Nile valley, and not intended for the wider rural areas of the country. Nevertheless such laws were passed as national legislation applicable to the entire country. In practice for much of the history of this legislation²⁰ the government did not interfere in the administration of customary rights in many rural areas of the country, and these laws caused little initial concern or problems for the inhabitants of Darfur. However they came to be applied to Darfur when it became advantageous for those from outside the region and/or those not belonging to the customary *hakura* tenure system to do so. Most notable in this regard is the 1970 Unregistered Land Act, which stipulated that all land not registered with the

¹⁷ Abdul-Jalil, M., The dynamics of customary land tenure and natural resource management in Darfur. *Land Reform, Settlement and Cooperatives*, 2 (2006) 8-23.

¹⁸ Abdul-Jalil, M., Nomad-sedentary relations and the question of land rights in Darfur: from complementarity to conflict. in *Nomad-Sedentary Relations and Failing State Institutions in Kordofan and Darfur*, ed. By R. Rottenburg, (Halle, Germany: Halle-Wittenberg University, 2008).

¹⁹ Abdul-Jilal 2006.

²⁰ Runger, M., *Land Law & Land Use Control in Western Sudan: The Case of Southern Darfur*. (London: Ithaca Press, 1987); Gordon, C. Recent developments in the land law of the Sudan: a legislative analysis. *Journal of African Law*, 30 (1986) (2), 143-174.

government by the date of its enactment, became by default government land. The role of statutory land law in the aggravation of tenure in Darfur is elaborated further below.

The aggravation of land tenure in Darfur

In the decades preceding the current conflict a number of processes contributed to the aggravation of land tenure in Darfur into the volatile question it is today. This section describes the most significant of these, and how they interacted to produce a primary contributor to the war.

Population increase and movement

Darfur's population has multiplied nearly five times since the early 1970s (from 1,350,000 to 6,480,000) according to the 1973 and 2003 censuses. While natural population increase is partially responsible for this, large, multiple waves of in-migration have contributed significantly to the overall population increase. Darfur has experienced two types of migration that directly affected land rights and land use patterns. The first resulted from a decade of droughts (mid 1970s to mid 1980s) which triggered internal migration from northern Darfur to southern areas. The displaced sought refuge in the eastern *goz*²¹ to the south of El-Fasher in North Darfur as well as in *goz* areas in South Darfur (Figure 5). Historically South Darfur was less cultivated because most of its inhabitants were cattle pastoralists. But with the Sahelian droughts large numbers of people began to settle on land in the South which was previously unclaimed for agricultural use, but within areas claimed and used by local cattle pastoralists (Figure 5). These areas eventually became saturated with new inhabitants, sparking numerous conflicts with the native pastoralists. The second type of migration involved pastoralists from Chad who crossed into Darfur to seek permanent settlement, along with *Zaghawa* agropastoralists and traders from eastern Chad and northwest Darfur (Figure 2) seeking agricultural land and trading opportunities. These in-migrations were facilitated by broad tribal areas that crossed international and Darfur borders, making the influx difficult to quantify or monitor, however they are widely regarded to have been quite large. As an illustration of the magnitude of these migrations, a large swath of land in the southern part of North Darfur is now labeled the 'agro-migrant livelihood zone' by the UN (Figure 5).

The population increase and migrations over time meant that more farmland had to be secured for the new arrivals. And while the customary land tenure system in Darfur was by and large able to manage this, it brought with it certain tensions. One result was a large decrease in available grazing land and in the practice of fallowing. Both led to significant constraints in land access by natives, and resulted in tensions with migrants.

Changes in cultivation and livestock patterns

The gradual expansion of both farming and herding activities in Darfur over the past decades has put significant pressure on tenure systems and patterns, and on the agreements and arrangements about land between groups which supported these. This was particularly problematic between groups from different production systems seeking access to the same land, but most acutely between agriculturalists and pastoralists.²²

²¹ *Goz* are areas of stabilized sand dunes that are preferred for agriculture.

²² e.g. Mohammed 2004.

Improvements in transportation infrastructure and vehicles over time led to greater access to the lucrative cash crop export market for Darfur's agriculturalists. This contributed to the increased cultivation of water-intensive cash crops which in turn resulted in previously uncultivated areas being claimed and farmed by individuals.²³ Often these were areas that were vitally important and heavily used for seasonal pastoral grazing and watering under group-based transient rights of access. Oil seed production on the eastern *goz*, and fruit and vegetable cultivation along wadi beds using wells and water spreading techniques, meant that important dry season grazing and watering areas were put out of traditional pastoralist use.²⁴

In addition, a number of large-scale mechanized agricultural projects, which required large tracts of land with statutory ownership arrangements, were introduced in south and west Darfur (mainly in *Um Ajaj*, in southwest South Darfur) prior to the war.²⁵ The government acquired this land using the highly controversial Unregistered Land Act of 1970. With this Act the government was able to distribute large plots of farmland to urban merchant elites from outside the region (primarily from central and riverine Sudan). This process caused considerable animosity among many native to Darfur, and undermined the ability and authority of customary tenure structures.

In the decades prior to the war the increasing importance of cash in order to purchase food and consumer goods turned some land into a commodity even though the legal status of such land was not clear. Those who were not able to cultivate their land year-around, found they could sell or lease it as individuals on a cash or share-cropping basis. This appeared to occur without engaging any customary process or practice that transferred land rights from *hakura*-based holdings to individual holdings. This was a relatively new phenomenon for Darfur, which did not exist prior to the 1970s except in very limited occasions involving outsiders who wanted to establish gardens on land near small towns. But the practice has since grown considerably over time, and has spread to a number of areas, angering those who adhere to *hakura* tenure and its authorities and structures. Currently, in areas where land purchase is now common, there is a good deal of resistance by some to going back to the old ways of *hakura* land tenure. Such that those who try to invoke the *hakura* system in order to evict others or solve problems, are severely resisted.

While there were several important changes in herding patterns that took place in the years prior to the war, they all occurred in the context of the significant rangeland constriction, overgrazing and deterioration in the semi-desert and *goz* zones which, in combination with the droughts of the 1970s and 1980s resulted in a pronounced reduction in the number of livestock such areas could sustain.²⁶ At the same time, grazing rights to agricultural land after harvest became increasingly difficult to exercise, and nomad migratory routes and rest locations became subjected to farmland conversion. Although this was against customary land tenure practices, it

²³ Abdul-Jilal 2006; Abdul-Jalil, M. and Umbadda, S., problems and prospects of horticulture in a subsistence economy: the case of Wadi Kutum. in *Perspectives on Development in the Sudan*, ed. By P. Wel and A.G.M. Ahmed, (The Hague: Institute of Social Studies, 1986), pp. 339–372.

²⁴ Abdul-Jilal 2006.

²⁵ Abdul-Jilal 2006.

²⁶ Fadul, A., Natural resources management for sustainable peace in Darfur. Paper presented at a Workshop organized by U.N. University for Peace & University of Khartoum Peace Research Centre on Environmental Degradation and Conflict in Darfur, December 15–16, Khartoum, Sudan, (2004); Ibrahim, F.N., *Ecological Imbalance in the Republic of the Sudan – with Special Reference to Desertification in Darfur*. (Bayreuth: University of Bayreuth, Bayreuther Geowissenschaftliche Arbeiten, 6, 1984).

progressively became more frequent and widespread.²⁷ Out of eleven nomadic migratory routes in existence in the 1950s, only three of these were functioning prior to the current conflict.²⁸ Such a reduction, even with any new routes, has meant that nomads increasingly needed to cross farmers' lands as they sought to move north or south in the course of their seasonal migrations, resulting in additional tension and conflict. The animosity generated has become such that the problem of blocking routes has become a permanent item on the agenda of tribal reconciliation for the last two decades in attempts at resolving inter-ethnic disputes in Darfur.²⁹ In spite of this reduction however livestock numbers increased, particularly with the beginning of meat and live animal export to the Arab Gulf countries and greater investments in animal health over the past decades. As well, sedentary farmers also increased their livestock holdings to augment incomes, to the extent that they occasionally competed with pastoralists. Some farmers even became transhumant pastoralists. And, because the expanding livestock export markets favored sheep, many nomadic pastoralists in northern Darfur (along with some farmers) began to concentrate more on sheep and less on camels, altering migratory routes and patterns to adapt to sheep grazing and compromising the drought resistance of their herds.³⁰

These changes in cultivation and herding patterns placed significant stress on the flexibility of customary tenure (traditionally one of its strengths), and hence its ability to manage relationships in a stable manner between agriculturalists and pastoralists and their attendant ethnic groups and clans.³¹ But with a long history of flexibility, adaptation, and stable management of tenurial relations which enabled the *hakura* customary tenure system to deal with such stresses in the past, why was it less able to manage these in the years immediately preceding the war? The primary reason was likely a concurrent change in the institutional aspects of both formal and customary tenure in Darfur.

Legal and institutional land tenure change

Change in the statutory land law

In a significant change in the state's approach to land tenure, the government of Jafar Numeiri enacted the 1970 Unregistered Land Act, bringing into government ownership all land not registered by that data, and in 1971 abolished official recognition of the customary-based Native Administration. The Act paved the way for subsequent developments to take place regarding land tenure in Darfur which have since contributed significantly to the current conflict. Most importantly, migrants from northern Darfur who settled further south, began to claim land rights under the Act, ignoring the *hakura* approach to guest accommodation for migrants. Instead they argued that such land now belonged to the government, and so could be given to them by the government. Such claims would have been impossible in the past when newcomers were expected to remain as 'guests' of the host tribe and abide by local customary rules regarding land

²⁷ Fadul, 2004.

²⁸ UNDP, *Transhumance routes in North Darfur*. Produced for UNDP Project: Reduction of Natural Resource-Based Conflict among Pastoralists and Farmers, Research on Roots of Conflict and Traditional Conflict Transformation Mechanisms, 2002.

²⁹ Abdul-Jalil 2008.

³⁰ Fadul, A., Natural resources management for sustainable peace in Darfur. in. *Environmental Degradation as a Cause of Conflict in Darfur*, Conference Proceedings, University for Peace, Khartoum, 2006; El-Amin, K.A.. *Drought, adjustments in economic activities, changes in land use and land tenure forms in Darfur, Sudan*. DSRC Monograph Series (42), Khartoum: University of Khartoum Press, 1999.

³¹ Abdul Jalil 2008.

rights. An additional strain on the *hakura* system was the pressure from some political and development quarters to legally demarcate lands so as to provide clarity of boundaries and ownership, under the assumption that greater clarity would reduce conflict over land. But such demarcation has been actively resisted by the *hakura*-holding population. While not rejecting the principle of demarcation itself (the original *hakura* granting documents contained precise demarcation descriptions), the problem had more to do with the very limited trust of government institutions to fairly engage in demarcation. As a result *hakura* landholders would rather reject government demarcation efforts as opposed to being disadvantaged by them.

The institutional vacuum created by the lack of a viable Native Administration had a direct effect on land dispute resolution, particularly between tribes and between pastoralist vs. agriculturalist groups. As the large-scale southward movement of pastoral groups during the droughts of the 1970s started to move into the *Jebel Mara* area (Figure 2), the result was widespread land conflict with the local sedentary groups. These conflicts became acute and unresolvable in the absence of the Native Administration's dispute resolution mechanisms, and the inability of the government to replace these with viable, legitimate dispute resolution mechanisms based on statutory law. Aggravating this situation further, the Unregistered Land Act asserted government ownership over lands already claimed by the *hakura* system, allowing outsiders to gain control over significantly large areas without engaging the *hakura* system. The law's interaction with the *hakura* system facilitated confrontation between the *Fur*, the *Zaghawa*, Arab pastoralists, and government.

The hakura system: stress and resistance

The issue of *Dar* and which groups have or do not have *Dars*, became increasingly critical with the growing pressures on land resources. The *hakura* land system, while historically serving certain groups well, has proved to be exclusionary in certain ways for those not native to a *Dar* that practices the system. This exclusion is partial, but significant. While the system does allow 'outsiders' to enjoy land access, and pursue production systems, their representation in the political system is usually limited to the low-ranking '*Sheik* of the people'. The problem with this partial participation in the *hakura* system is that control over land and political participation are inseparable in Darfur. Such that full political participation is kept away from communities of migrants who are outsiders to the *hakura* system, such as the *Zaghawa* and Arab pastoralists--whose communities and in many cases wealth (*Zaghawa*) have grown considerably over the years. Eventually the communities of newcomers and their descendents began to demand their own Native Administration, Paramount Chief, and their own *hakura*, or to claim land under statutory or Islamic law—all of which meant that land would need to be taken away from native *hakura* land-holders. In response many agriculturalists then began to no longer allow nomadic 'guests' to enter onto their land as they did in the past, for fear that they or their clansmen would claim the land and drive out the local agriculturalists. As well many farmers began to keep their farms enclosed and prohibited livestock entry long after the beginning of the *talique* fallow season. This process occurred at approximately the same time as a renewed effort took place among a number of minority tribes located within larger *Dars* to separate so as to have their own *Nazirs* and *Dars*, with again a reaction by the larger tribes to prevent this. While these trends were problematic enough, when the Government intervened in the division of *Dars*, this made the '*Dar*' issue explosive. For example, the decision by the governor of West Darfur state to divide *Dar Masalit* (Figure 2, inset map) into 13 emirates in 1995 meant the demotion of the

authority of the *Masalit* leadership, and led to a widespread insecurity resulting in a devastating ethnic conflict.³²

Conflict related land Tenure

While the functioning of land tenure during armed conflict can take various forms, there is virtually always a set of land rights issues that emerge due to the war itself and the way it is conducted.³³ In Darfur this is manifested in land issues being used as a tool in the conduct of the war, and in the enormity and complexity of the IDP – secondary occupant dilemma. This section examines these aspects of Darfur’s conflict-related land tenure, with greater emphasis given to the IDP – secondary occupant problem.

Land issues as tools of war

All sides in the war were and are able to use land rights issues and maneuvers as tools of belligerence. The rebels were able to use the recent history of land acquisition by government and other interests as a rallying point to further their argument that the sedentary tribes and the *hakura* tenure system were under threat. As the war progressed, and distinctions between insiders and outsiders to the *hakura* system hardened, and the system was used to deny land access to pastoralists and others who might previously have been allowed onto lands as guests, and in some cases evicted those already with access. As well, the rebels and their constituencies denied pastoralists their transient rights of land access to migration routes and fallow and post-harvest fields. The UN-OCHA in Darfur notes that different relationships of specific groups to the *hakura* system is one of the major stumbling blocks to the peace process.³⁴

For its part government was quite adept at using certain land rights issues as tools of belligerence in the war. Most notable was the purported indication to the Arab pastoralist groups of North Darfur that they would be able to keep lands they ‘liberated’ from the agriculturalist tribes. Whether indeed offered by the government or not, the prospect of gaining lands operated as a primary recruitment and operational tool for Arab pastoralists joining the *Janjaweed*. In addition, when government forces realized in 2003 that they could not effectively engage the rebels in desert warfare, one tool was to begin to robustly communicate to the non-*Zaghawa* agriculturalist population that the *Zaghawa* (who originally comprised the bulk of the SLA) wanted to take their land, and so should be chased off of the land they occupied in *Dars* in which they had been accepted as guests for long periods of time. Thus the government sought to encourage use of the *hakura* system to evict populations that were constituencies to the rebels. Some of the *Zaghawa* however indicated that the waves of *Zaghawa* migration, their land access, and status as guests seemed to occur peacefully prior to the war. A different land rights issue perceived by some IDPs to be a tool in the conflict, is the government’s efforts at land demarcation. For IDPs demarcation is seen as quite volatile. Some indicated that because lands in their view are not regarded as property (commodities) in the Western sense, but are instead a form of homeland, engaging in demarcation and registration would make them property, allow the government to locate them, and make matters worse. Others indicate that demarcation of

³² Flint and De Waal 2008.

³³ e.g. Unruh, J.D.. Local land tenure in the peace process. *Peace Review* 14, (2002) 337-342; Unruh, J.D., Toward sustainable livelihoods after war: reconstituting rural land tenure systems. *Natural Resources Forum*, 32, (2008) 103-115.

³⁴ also Abdul Jalil 2008.

lands would solidify false claims by secondary occupants who have displaced the IDPs. An additional land issue also seen to be an act of belligerence is the reported selling of IDP land by government officials, with IDP leaders indicating that they intend to respond if the practice continues.³⁵

For the *Janjaweed*, the Arab pastoralist acute desire for land, and access to the administrative and power structures that go with it were manifested in direct attacks on agricultural areas so as to take lands, and was a primary way the *Janjaweed* operated militarily. In addition, the original *hakura* granting documents themselves (Figure 4), held by important families have become a target for destruction by the *Janjaweed*, in an attempt to reduce the customary legal basis for *hakura* claims. As O’Fahey³⁶ notes, referring to these documents, “today they are weapons of war”. In this context a primary narrative is that many Arab pastoralists of the north justify their participation in the current conflict as part of a 250 year-old quest for land that was provided to others but denied to them. This narrative, used as a tool, while not well aligned with actual history, is so acute that “hakura has become a battle-cry of the *Janjaweed*”.³⁷ Land rights as a tool in the war has also been used in other ways. In one example, an *Omda* of the *Awlad Mansour* clan of the *Mahariya* tribe who was a *Janjaweed* leader in south Darfur, threatened the government with defection of his 1,500 armed fighters to the rebel movement unless the government provided the tribe with a *Nazirate* as one of three demands.³⁸

The IDP - secondary occupant dilemma

A dilemma for government

The enormity of the numbers of IDPs in Darfur, and their impact on towns, local resources, and local to international politics, coupled with the ongoing international community vocalness about their plight, has put great pressure on the government in Khartoum to resolve its ‘IDP problem’. As a result Khartoum is pressing for IDP return to areas of origin and camp closure so as to be rid of the political problem and international pressures. As noted previously however, the *Janjaweed* and their constituencies, including a segment of Arab foreigners from Chad and elsewhere, are under the impression that they can keep IDP land that they currently occupy. In West Darfur this process is known among IDPs as ‘displacement and replacement’, meaning a perceived intentional purpose to have these secondary occupants remain permanently on lands they have emptied during the war. Olsson³⁹ examines empirically the enormity of the dislocation – secondary occupant problem in just one area of Darfur. The following three sections describe in some detail the war-affected land tenure issues of this dilemma.

Secondary occupation

Secondary occupation of many lands in Darfur is widely viewed as a primary obstacle to any peace process.⁴⁰ With secondary occupants viewed as a single category by the international

³⁵ Radio Dabanga (RD), *W. Darfur displaced refuse fees in offer of housing plots* [online]. Radio Dabanga, Available from: <http://www.radiodabanga.org/> [Accessed 9 January 2012].

³⁶ O’Fahey, R., *The Darfur Sultanate: A History*. (New York: Columbia University Press, 2008), 136.

³⁷ O’Fahey 2008:136.

³⁸ Flint and De Waal 2008:260.

³⁹ Olsson 2010.

⁴⁰ (e.g., Egemi, O., *Land tenure issues in Darfur*. UN Habitat, Nairobi, 2009; Flint and De Waal 2008; Abdul-Jalil and Ludeking 2007; Olsson 2010; RD, 2011; UNHCR., *The occupation and burning of abandoned villages in West Darfur*. Geneina Sub Office, Geneina, Sudan, (2005).

community, government, the two peace accords and the wide variety of reports on Darfur,⁴¹ the relevant actors struggle to find a way forward and the problem remains daunting. However this research has found that not all secondary occupants are the same in their relationship to, 1) the land they occupy, 2) the war, 3) the government, and 4) the affected dislocated population. Instead there are categories of secondary occupants whose origin, behavior, intentions, expectations, objectives and understandings can be quite different, although the magnitude of each category is unknown with any precision. But because there are a number of categories, and their relationships can be distinct, a single approach toward all secondary occupants in a peace process should be viewed with caution. Alternatively, the realization that there exist categories of secondary occupants, can provide an opportunity for a possible way forward. This section examines this aspect of secondary occupation by disaggregating secondary occupants into various categories.

Certainly nomadic pastoralists that have come to occupy dispossessed farmlands are a primary category of secondary occupant. While particular groups or individuals may or may not have themselves violently taken the land they occupy, as a primary constituency to the *Janjaweed* militias, nomadic pastoralists from the north benefit from lands emptied of their original occupants as part of the category who believes they can keep 'liberated lands'. But such pastoralists themselves comprise different types of secondary occupants depending on their own situation. While some have livestock and seek to graze on IDP lands before moving on, other pastoralists with herds are unable to move to other grazing locations because migration routes and other avenues of movement have been closed by rebel groups, farmers, and insecurity. Still other pastoralists will have few or no animals due to drought, impoverishment, disease and the war, and will be occupying IDP lands in an attempt to live off of what's available, or extract as much as possible from their current position as secondary occupants by seeking to engage IDPs in client relationships for farming. As an example, in southwest North Darfur in the border area with West Darfur in the proximity of *Kabkabiya* (Figure 2), and on a limited scale in South Darfur east of *Jebel Marra* (Figure 2), there exist different forms of a 'protection racket' between secondary occupants and IDPs who had returned or desired to return to their rural lands. In this situation returnee IDP farmers were forced to pay secondary occupants or a warlord to leave them in peace on their own land. Variations of this arrangement exists, including IDPs paying rent to secondary occupants to farm their own land, and male IDPs not being able to come and go between the IDP camps and their land without paying secondary occupants. For Arab pastoralists that have engaged in violent dislocation of the original occupants, and/or forcibly keep IDPs from returning to their lands, these can range from *Janjaweed* fighters seeking to obtain and keep quality lands for themselves, to pastoralists who forcibly dislocate farming communities but who are not regular militia combatants, and who then settle on such lands with the intention of keeping them.

Pastoralist secondary occupants can also be disaggregated by the degree to which they actually believe they will be able to permanently keep the lands they occupy--and their resulting decision-making. While all secondary occupants know they are on someone else's land, they vary between being absolutely certain they will be able to keep such lands, to somewhat doubtful that

⁴¹ (e.g., Darfur Peace Agreement (DPA),. Darfur Peace Agreement, Abuja, Nigeria, 2005; Draft Darfur Peace Document (DDPD),. *Draft Darfur Peace Document*, Doha, Qatar, 2011; Jaspars, S., and O'Callaghan, S., *Challenging choices: protection and livelihoods in Darfur: a review of the Danish Refugee Council's programme in West Darfur*. HPG Working Paper, December, Danish Refugee Council, 2008; Olsson 2010; Egemi 2009.

this will be the case, to fairly certain that they will not be able to retain lands. This variation can parallel differences in knowledge of, or comprehension of the direction of the broader conflict and the activities and impact of various local to international actors (NGOs, local to national government, UNAMID⁴², foreign governments, international media), or differences in positions of power, connections, wealth, or type of information networks in which they are embedded. What is important is that decision-making, plans, modes of interaction with IDPs, forms of exploitation of the land, and physical changes made to the land will vary with the belief that they will in reality be able to permanently keep the lands they occupy. This belief operates along a continuum of tenure security to tenure insecurity, and as such is subject to purposeful change just as tenure security is in other settings.⁴³ As an example, for those secondary occupants unsure about the permanence of their claims, they may attempt to interact with the original IDP landowners in a way that solidifies claims. Demands of rent from IDPs are one way to do this, in that rent can serve as a form of acknowledgement that the secondary occupant is the owner. However many IDPs are aware of this aspect of paying rent to farm their own land, and instead refuse and prefer to instead return to IDP camps to wait for the day that secondary occupants depart or are removed from their lands. However some IDPs do end up paying such rent.

Other secondary occupants believe that the longer they reside on lands the more ‘legal’ their occupation and ownership becomes. Still others indicate that they don’t expect many IDPs to return to their areas of origin, with this supported by the existence of government and donor programs to move IDPs to urban plots or model villages,⁴⁴ along with statements by NGO’s and some in the international community that significant percentages of IDPs will not return to home areas. The existence of such programs and statements serve to augment the tenure security of secondary occupants, and can contribute to their arguments of permanent claim. But just as there are a variety of ways to enhance tenure security for a population via the actions of individuals, tribal leaders, local to national government, and the international community, so there are ways of purposefully engaging in the reverse, seeking to encourage notions of tenure insecurity among a population of secondary occupants; and the conclusions section of this paper provides an example.

Still a different type of secondary occupant are those known to the original inhabitants. In South Darfur IDPs indicate that some of the secondary occupants on their lands are the individuals that normally moved through the area as part of annual pastoralist migrations, and that these individuals are more acceptable as secondary occupants under the current circumstances because they already have a relationship with them. For this reason they are expected to vacate when the original owners return, possibly with their good relationship intact. Yet another category of secondary occupants are agriculturalist IDPs occupying other IDPs’ land. In such a case both the original IDPs and the secondary occupants can be on the same side in the conflict. As a result their interaction would presumably be quite different than if Arab

⁴² African Union/United Nations Hybrid operation in Darfur.

⁴³ Delville, P. L.. When farmers use ‘pieces of paper’ to record their land transactions in Francophone rural Africa: insights into the dynamics of institutional innovation. in *Securing land rights in Africa*, ed By T.A. Benjaminsen, and C. Lund, (London: CASS Publishing, 2003); Bruce, J.W., and Migot-Adholla, S.E.. *Searching for Land Tenure Security in Africa*. (Dubuque, Iowa: The World Bank and Kendall/Hunt Publishing Co., 1994); Unruh, J.D., Land tenure and the ‘evidence landscape’ in developing countries. *Annals of the Association of American Geographers*, 96 (2006) 754-772.

⁴⁴In the case of ‘model villages’ (for 2000 families at the time of the research) these are to be located in all three Darfur states and funded by donors based in the Arab Gulf states.

pastoralists or *Janjaweed* fighters were the secondary occupants. Such a situation can be problematic however because sometimes such purported agriculturalist IDPs as secondary occupants, are in reality constituencies to the *Janjaweed* militias who pretend to be IDPs so as to get acceptance and aid from the international community.

Foreigners exist as a separate category of secondary occupant. While the presence of foreigners from Chad, Niger, Burkina Faso, and elsewhere has always been fairly common as pastoralists and traders in Darfur, what is new is their militarization and their willingness to take up the prospect that they can keep lands they are able to occupy. These secondary occupants--which can include combatants, migrants, invited settlers, and destitute nomads--generate perhaps the most hardened attitudes among IDPs in terms of resolving the problem of secondary occupation. The IDPs interviewed indicated that there can be no accommodation for such secondary occupants, and that "the government brought them, so the government must take them away". And indeed there is a broad notion among IDPs that the government has played a role in bringing or inviting certain groups of foreigners into Darfur. As well there are claims by IDPs that many such foreign secondary occupants have been issued new Sudanese ID cards, enabling them to vote, and presumably enhancing claims to land. Complicating the role of foreigners in West Darfur are Arab groups from Chad which have close kinship ties with Sudanese nomadic groups (e.g. the *Mahameid*, *Mahariya*, *Salamat*, *Shattiya*, *Awlad Zeid*, *Awlad Rashid*, *Awlad Tako*), thus facilitating their entry into and movement around Darfur.

Opportunists comprise an additional type of secondary occupant. In Nyala IDPs reported that in a number of cases such occupants are not just pastoralists, but also *Zaghawa* agropastoralists who occupy *Fur* lands that have been emptied due to the war. In other cases *Zaghawa* have apparently bought land from pastoralist secondary occupants (presumably knowing the transaction is in bad faith). While the *Zaghawa* are aligned with the *Fur* and other sedentary agriculturalists against the *Janjaweed* and the government in the broader conflict, they nonetheless have their own tensions over land with the *Fur*, which has come to complicate the conflict. This type of secondary occupant (and tension with the *Fur*) is linked to the difficulty the *Zaghawa* have had in the past in gaining land access as equals under the *hakura* system and their pursuit of alternatives. Whether they would be easier or more difficult to encourage to vacate occupied land and property, or would be more open to an economic relationship with returning IDPs compared with Arab pastoralist secondary occupants, remains to be seen.

The prospect of IDP return and government action

While the government does not have a clear policy on IDP returns for all of Darfur, broadly it is pursuing a set of options designed to discourage ongoing IDP presence in camps. As a result, primarily only humanitarian aid is allowed into the camps, and for the most part government does not allow permanent structures to be built in camps—although the approach is more relaxed in the large camps surrounding Nyala in South Darfur than it is in and around El Fasher in the north. Some IDPs are being encouraged to go to model villages, 'village centers', or to resettle on plots in urban and peri-urban areas. To facilitate this, the government will reportedly not provide resettlement assistance to IDPs who intend to return to some rural locations of origin. In this approach aspects of IDP return in some areas is to be organized in a certain way--toward model and centralized villages in the vicinity of their home areas, or urban residential plots.

One approach by various interests to managing the significant international pressure with regard to IDP returns, is to 'stage' ceremonies marking IDP - government agreements for returns. Such agreements and ceremonies are easily faked in Darfur. This goes on to such an extent that there are local contractors in El Fashir that organize 'show' IDP rallies celebrating an agreement for return to home areas. For this, the contractor picks up IDPs from a nearby camp and pays them to participate in the rally. Banners are printed by the contractor displaying, "*we are going home to [location]*", which together with several vehicles equipped with loud speakers, the chanting and singing hired IDPs then parade through town. After the rally the contractor returns the IDPs back to the camp. This is done for visiting dignitaries, foreign donors, and occasionally the international media. As well, various low-level agreements between militias can also be staged, complete with representatives from the different militias participating in signing ceremonies and photographs.

Making the overall return issue more problematic, is the notion among a segment of IDPs that 'it's up to the government to deal with secondary occupants', as opposed to being open to what might be innovative and viable interim solutions. For some, grievance is so high and their positions so entrenched, that there can be no compromise with secondary occupants. This form of thinking reflects perhaps a combination of the trauma of dislocation and a lack of understanding about what the government and the international community can realistically do. A segment of IDPs however are willing to interact with a certain category of secondary occupant, in often innovative, mutually beneficial arrangements given the circumstances, and these are perhaps more frequent than initially thought. In an example from Nyala, some IDPs indicated that they had successfully initiated talks with secondary occupants regarding use and rent of their land. In this case the secondary occupants would continue to occupy and farm the land, and pay a form of rent to the IDPs for the duration of the conflict. A second example is that of pre-existing relations between IDPs and individual members of Arab pastoralist groups who now occupy their land. Subsequent to the onset of the conflict and dislocation of agriculturalists, some pastoralists endeavored to end up on the land of the displaced agriculturalists whom they know. In other cases livestock belonging to IDPs have ended up in the hands of known pastoralists. Private communication between the parties then facilitates the agricultural harvest and/or livestock either being sold in the local market, with a portion of the money going to the IDP owner, or the pastoralist continuing to take care of the animals and/or the land for the IDP. In a specific case, a pastoralist from an Arab group took over an orchard belonging to a displaced farmer whom he knew. The pastoralist would bring produce from the orchard to market to sell, giving a portion of the money to the IDP farmer. Both parties appear to engage in the arrangement because they are interested in a potential post-conflict situation of mutual benefit, and the current avoidance of problems resulting from either the IDP attempting to reacquire land while the conflict is still underway, or the known secondary occupant departing and an unknown occupant taking over the land with the prospect of permanent claims or an exploitive or abusive arrangement emerging. As it stands, the IDP in question stays dislocated and resident in a camp or elsewhere, and the secondary occupant remains on the land for the duration of the conflict. Needless to say such interaction between IDPs and Arab pastoralists is usually carried with a good deal of discretion, so as to avoid possible repercussions from one's own group. The IDPs mentioned that it can sometimes be difficult to pursue discussions with secondary occupants due to a variety of perceptions held by both IDPs and secondary occupants with regard to what true

motives are, who is or was to blame for what, and a general environment of animosity, fear and retribution.

The mixed livelihood approach

Regardless of the intentions of government and the international community toward IDP return, the fieldwork found that most IDPs intend to pursue something of a mixed livelihood approach after the war. While some IDPs will be quick to attempt to return to their lands, many will simply wait until they are convinced that the conflict is actually over. Given the inability of the two peace agreements to be inclusive and broadly effective, together with ongoing insecurity, new displacements, and mixed messages from the government and the international community, this 'wait and see' effect will likely be pronounced in Darfur. Others will opt not to return at all, preferring instead to pursue urban or peri-urban livelihood options, or combine these with a 'wait and see' approach. O'Fahey and Tubiana⁴⁵ indicate that it is unlikely that the majority of IDPs will go back to areas of origin. For most IDPs however, postwar livelihoods will be a mix of options. As in other conflicts among populations with extended kin networks and tribal and lineage affiliations, war and dislocation forces a diversification of livelihood strategies not experienced prior to conflict and dislocation.⁴⁶ As a result IDP return to lands and properties commonly occurs only with some family members, to pursue some rural activities while other family members remain in camps, or move to urban or peri-urban areas to engage in a variety of income generating activities. Family members who do return to rural lands will likely come and go, given the timing of the agricultural calendar, the degree of tenure security and personal security, and the presence of other economic opportunities. In part this is due to the lack of and damage to livelihood assets in areas of origin--houses, food, water sources and facilities, seeds, plows and other tools, livestock, economic trees, fuelwood, poor field condition, etc.—with such damage in Darfur quite pronounced.⁴⁷ The rebuilding and recovery of IDP livelihood assets lost or damaged in rural areas will take a significant amount of time,⁴⁸ as will connecting those assets to a production system that itself will take time to recover to the degree that it can allow for sufficient livelihood and food security. Until this rebuilding and recovery occurs, IDPs will pursue a mixed set of options until they can transition to exclusively farming activities—for those that do elect to return to farming. This was the case for the IDPs spoken to in the camps around Nyala and El Fasher. Many intend to regain control and use of rural lands incrementally over time, while concurrently seeking to gain tenure security for urban or peri-urban residences that would allow the pursuit of economic, health, and educational opportunities. Such a mixed livelihood approach engages the reality in rural areas of origin--security which will improve over time, and the need to rebuild and reacquire over years the household, economic, and agricultural assets necessary for reintegration into rural livelihoods.

⁴⁵ O'Fahey, R., and Tubiana, J., *Darfur: historical and contemporary aspects*. (Bergen: Centre For Middle Eastern and Islamic Studies, University of Bergen, 2006).

⁴⁶ Basok, T., *The troubled road to repatriation in Central America: lessons learned by refugees in exile*. *Refuge*, 13 (1994); Unruh, J.D., *Land tenure and legal pluralism in the peace process*. *Peace and Change: A Journal of Peace Research*, 28 (2003) 352-376.

⁴⁷ Vanrooyen, M., Leaning, J., Johnson, K., Hirschfeld, K., Tuller, D., Levine, A., and Hefferman, J., *Employment of a livelihood analysis to define genocide in the Darfur region of Sudan*. *Journal of Genocide Research* 10 (2008) (3), 343-358.

⁴⁸ Buchanan-Smith, M. and Jaspars, S., *Conflict, camps and coercion: the continuing livelihood crises in Darfur*. A Report to World Food Programme, Sudan, June, 2006.

Such a mixed IDP livelihood approach is difficult for the international community to engage with however, because they see return and reintegration to areas, lands and properties of origin to be accomplished with a single category of people, and with a degree of completeness similar to what was the case prior to conflict. In Nyala however some IDPs have already made the transition to securely held urban properties, and there seems to be a willingness on the part of some officials in the local government to support this with residential construction. In El Fasher in North Darfur however, local government appears quite against the idea of any permanent settlement by IDPs in urban areas.

Similarly, pastoralists who are no longer able or willing to return to a purely pastoralist lifestyle subsequent to the war, can also be expected to pursue a mixed livelihood approach. The impoverization and herd loss experienced by many pastoralists due to the conflict, drought, pasture exclusion and degradation, and closing of migration routes, means that considerable time will be needed to recover herds of sufficient size and composition in order to re-engage in a pastoralist livelihood. As well, the necessary pasture and rangeland carrying capacity would need to recover, and importantly the transient land access rights which facilitate nomadic and transhumant pastoralism would need to be reacquired (i.e., renegotiated). An additional related challenge will be the substantial repair and improvement in relations with sedentary agriculturalist communities. Seasonal north-south pastoralist migrations depend on adequate relations at a minimum, as herds must pass through areas occupied and farmed by agriculturalist groups.⁴⁹ This will be a particularly difficult challenge given that pastoralists and agriculturalists are attached to opposed sides in the conflict.

Conclusion

As fundamental as land rights are to the cause and conduct of the conflict in Darfur, a future end to the war will see land rights issues surge to the fore to complicate peacebuilding and recovery as they pervasively have in other conflicts.⁵⁰ Dealing with the land rights problems resulting from the magnitude of violence, dislocation and secondary occupation in Darfur will be a large-scale and disorderly endeavor, involving considerable uncontrollable variation in the success with which conventional return and restitution processes can be carried out. While attempts at planning and implementation of organized return and restitution of lands and properties are laudable, this research has shown that the nature of secondary occupation in Darfur is currently well beyond the ability of such a programmatic approach to handle alone. What is also needed is an approach that seeks to manage certain population-wide aspects of the tumultuous socio-political ambiguity currently ongoing in the domain of IDP – secondary occupant land rights (in

⁴⁹ Abdul Jalil 2008; Kuznar, L. A. and Sedlmeyer, R.. Conflictive violence in Darfur: an agent-based model of pastoral nomad/sedentary peasant interaction. *Mathematical Anthropology and Cultural Theory*, 1 (2005) (4) www.mathematicalanthropology.org.

⁵⁰ (e.g., Wiley, L., *Land rights in crisis: restoring tenure security in Afghanistan*, (Kabul: Afghanistan Research and Evaluation Unit, 2003); Unruh 2003; Bailliet, C., Property restitution in Guatemala: a transnational dilemma. in *Returning Home: Housing and Property Restitution Rights of Refugees and Displaced Persons*, ed. By S. Leckie, (Ardsley, NY: Transnational Publishers, 2003); Andre, C., Custom, contracts and cadastres in north-west Rwanda. in *Securing Land Rights in Africa*, ed. By T.A. Benjaminsen, and C. Lund, (London: CASS Publishing, 2003); Olsson 2010.

the variation in which they occur), in order to help facilitate the more programmatic approaches. The paragraphs that follow are intended to attend to some of the approaches for doing this.

One of the more important findings of this study is the potential utility of tenure insecurity. Promoting tenure insecurity among a secondary occupant population is something the international community used in Bosnia,⁵¹ and could consider for Darfur. In the Bosnia case the international community recognized and took advantage of the understanding by secondary occupants that they were on someone else's land, and the overall ambiguity as to what the end of the war would in reality bring in terms of their own circumstances. They did this by speaking strongly and with one voice regarding the unacceptable nature of secondary occupation. This had the effect of enhancing doubt and tenure insecurity in the minds and the subsequent decision-making of the secondary occupant population and played a positive role in land and property restitution efforts.⁵² A great deal of research, practitioner, and policy work has been done on how tenure security and insecurity works, and this should be examined for its utility in this regard.⁵³

The findings of this research also highlights that the international community and government should recognize and facilitate the mixed livelihood approach that will be pursued by most IDPs and pastoralists, instead of discouraging it and trying to force heavily programmatic approaches of return and reintegration exclusively. Return and reintegration into familiar livelihoods is a process much longer than the timeframe of UN exercises in organized return and provision of assistance, and can make the mistaken assumption (at times out of political necessity) that lives and livelihoods are not changed by prolonged conflict.

An additional finding is that interaction between IDPs and certain categories of secondary occupants that can move toward private agreements regarding return and restitution should be encouraged. The current existence of such interaction begs the question as to how many other examples exist, and in what forms, and what has facilitated these. The research found that many secondary occupants are thinking of possible post-conflict scenarios for themselves and how to position themselves favorably; and an encouragement of tenure insecurity among this group could increase their number.

Still another finding is that different approaches should be considered for different categories of secondary occupant. Some categories will be easier to remove from IDP land than others, and approaches to remove some will not likely work with others, with possibly unknown and potentially volatile outcomes. Categories of secondary occupant should be better defined, their numbers quantified and their approximate locations established.

⁵¹ Toal, G., Dahlgren, C., *Bosnia Remade: Ethnic Cleansing and its Reversal*. (Oxford UK: Oxford University Press, 2011).

⁵² Williams, R., pers. comm. Formerly with the Organization for Security and Co-operation in Europe – Mission to Bosnia and Herzegovina, working on property restitution for displaced persons, 2010.

⁵³ (e.g., Bruce and Migot-Adholla 1994; Friedman, J., Jimenez, E., Mayo, S., The demand for tenure security in developing countries, *Journal of Development Economics* 29 (1988) (2), 185-198.

The effects of land rights on armed conflict, as well as the reverse, are becoming increasingly well known.⁵⁴ Also known are the ways in which land rights become aggravated, and used to cause and perpetuate armed conflict, and the Darfur case is an example of this.⁵⁵ What is also emerging however, are effective ways of using important aspects of land tenure in peacebuilding.⁵⁶ To date these have not been explored sufficiently in Darfur, as evidenced by the content of the two peace accords and the capacity to implement them. One of the most important aspects of doing this is gaining an understanding of the trajectory of land rights change in the periods prior to and during the war—a topic this paper aspires to contribute to.

Annex 1.

Interviewees were selected based on three methods. The first was to seek out people who held specific positions for key informant interviews. This included leadership positions of different tribes, government officials, and the Native Administrations of North and South Darfur, officials of the UN and other donors. The second method was to get at representatives of certain organizations, committees and groups that were relevant to the study. For this approach usually several members of the organization were interviewed at once in a group meeting. This was the case for the Darfur Lawyers Association, the Darfur Land Commission, representatives of the tribal Shura Councils, the Darfur Peace and Reconciliation Council, and the Darfur – Darfur Dialogue Committee, and IDP groups. The third approach was to seek out certain categories of people, such as IDPs, who were not in leadership positions or representatives of groups, but rather individuals among the broader population affected by the war. For this approach the authors went to locations where the category of people were living, in order to hold group interviews. In some cases such group interviews were facilitated by local leadership, in other cases the groups being interviewed were self selected, comprised of people who chose to join the discussion as they observed them to be underway because they were in the area.

The questions posed in the three approaches all had to do with the land rights aspect of Darfur and the conflict, but were configured differently for the different positions of leadership, organization representatives, and individuals within categories. For example, those in leadership positions were asked about the broad processes and patterns involving land rights in the period before and during the war. They spoke about group dynamics and the history of these, policies, laws, and customary ways, and the position of their constituencies with regard to land and the conflict. The representatives of organizations were asked about the composition and activities of

⁵⁴ Cohen, S., *The Politics of Planting: Israeli-Palestinian Competition for Control of Land in the Jerusalem Periphery*,” *Geography Research Paper No. 236*. (Chicago: University of Chicago Press, 1993); Leckie, S., *Housing, Land and Property Rights and the Quest for Peace: Guidance for Peace Mediators*. Displacement Solutions, on behalf of the US Institute of Peace, Washington D.C., 2008; UNSG (United Nations Secretary-General),. *Report of the Secretary-General on peacebuilding in the immediate aftermath of conflict*. A/63/881-S/2009/304. June 11, 2009. New York: United Nations; Brottem, L., Unruh, J., *Territorial tensions: rainforest conservation, post-conflict recovery and land tenure*. *Annals of the Association of American Geographers*, 99 (2009) 995-1002; Andre, C., *Custom, contracts and cadastres in north-west Rwanda*. in *Securing Land Rights in Africa*, ed. By T.A. Benjaminsen, and C. Lund, (London: CASS Publishing, 2003).

⁵⁵ Abdul-Jalil 2009; Abdul-Jalil 2008.

⁵⁶ Bruch, C., Jensen, D., Nakayama, M., Unruh, J., Gruby, R., and Wolfarth, R., *Post-conflict peacebuilding and natural resources*. *Yearbook of International Environmental Law*. 19 (2009) 58-96.

their organization in the period prior to and during the conflict. They were also asked about the position of their organization with regard to land and other important aspects and issues in the war, and how they saw the conflict evolving and ultimately being resolved. For the IDPs and other categories of interviewees, they were asked about their own personal experience in years prior to and during the conflict, and were encouraged to speak generally. Follow-up questions involved the land aspect of their experience, and what their opinion was with regard to how the war should end, and what would be their preference with regard to the other segments of the population that had different roles in the conflict.

Information gathered for the study was qualitatively analyzed as a case study.⁵⁷ As such the aim was to gain in-depth understanding of the reasons that govern behavior. Congruence and disagreement regarding specific events, processes and patterns were looked for in the information gathered and as these related to the academic, donor, and Sudanese literature (government and non-governmental), including Sudanese laws.

Figures.



Figure 1. Area initially occupied by the Fur Tribe in Darfur. Shamal Darfur (North Darfur), Gharb Darfur (West Darfur), Janub Darfur (South Darfur). Source: CIA World Factbook maps.

⁵⁷ Marshall, Catherine & Rossman, Gretchen B. (1998). *Designing Qualitative Research*. Thousand Oaks, CA: Sage.



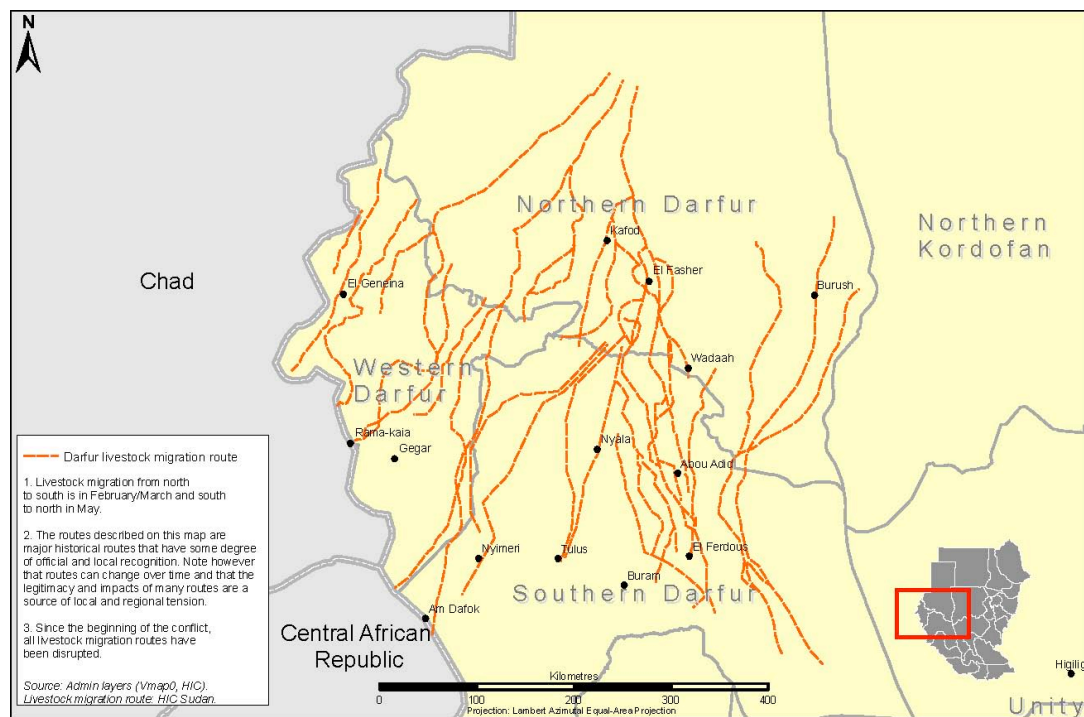
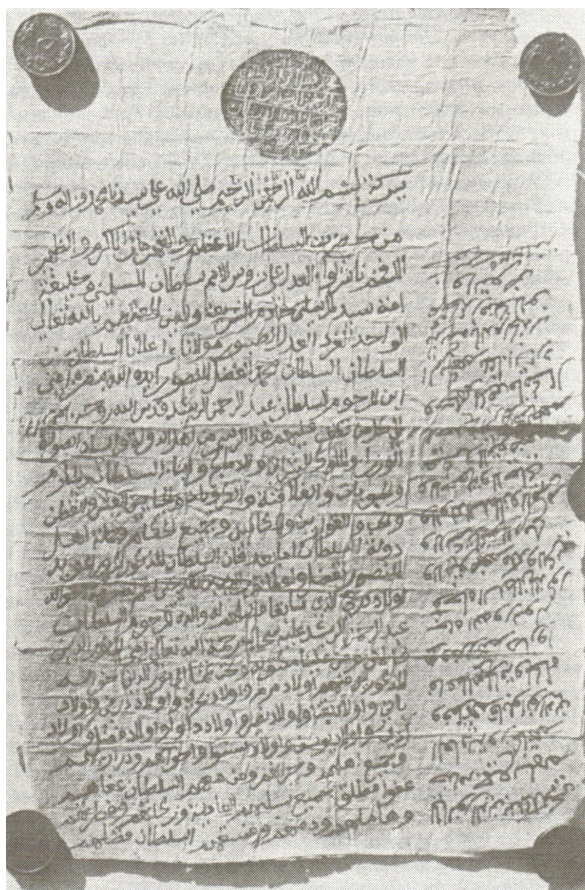


Figure 3. Livestock migration routes in Darfur. Source: Habitat International Coalition, Sudan, <http://www.hic-net.org/mission.php>



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Figure 4. Hakura deeds document. Source: O'Fahey R, and Abu Salim M (1983) Land in Dar Fur: Charters and Related documents from the Dar Fur Sultanate. Cambridge University Press, Cambridge.

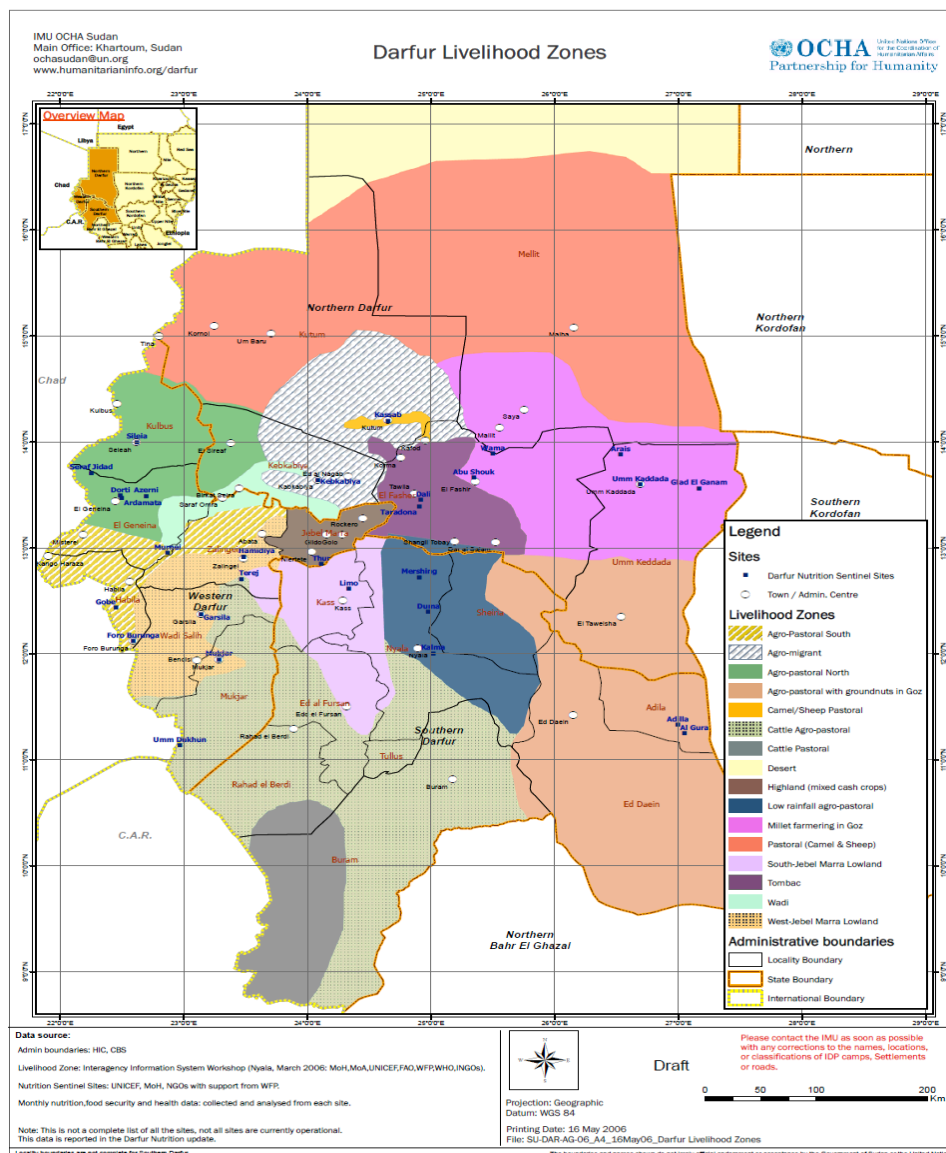


Figure 5. Livelihood zones of Darfur. Source: UN OCHA.