

THEMATIC BRIEF

ACCESS TO LAND AND TENURE

October 2021

© UNAMID | Albert Gonzalez Farran

KEY MESSAGES FOR POLICY AND PROGRAMMING

- **The Native Administration is a crucial local institution for resolving land conflicts and should be supported by the government and actors in Sudan** to scale up their mediation role in land disputes.
- **International actors should prioritize support to the establishment of the transitional justice institutions set out in the JPA:** the National Land Commission and the Darfur Land Commission. **Support is needed to develop clear mandates, institutional and administrative frameworks** in order to address the critical issue of unlawful land occupation in Darfur. **Pilots should furthermore be considered** to inform, foresee and tackle land arbitration problems before implementation across Darfur.
- To build lasting peace, the **Government and other actors in Sudan must also consider the rights to land of the 'secondary occupants'** in addition to the rights of the displaced population.
- Individual land registration has dominated action on land tenure reform in Sub-Saharan Africa, but **actors should explore alternatives to securing land tenure for the most disadvantaged groups.** Individual titling procedures have had minimal reach and will have a limited ability to reduce conflict in the short term.
- Secure tenure of agricultural land is key to progress towards a durable solution. **Actors should support efforts to improve conditions for agricultural land tenants and explore ways to make renting land more affordable and tenancies more secure.**
- Customary and statutory tenure arrangements should provide the same opportunities to community members irrespective of gender. **Sudan policymakers need to push for the recognition of women's rights to access and own land.**
- **The land needs and rights of the nomad Darfuri communities need to be recognized and clear provisions made by the Government,** as a key part of the peacebuilding and durable solutions process.

Access to land is key to the livelihoods of all communities in Darfur and access to agricultural land is one of the root causes of conflict and continues to be a conflict driver. Results from the eight studies in Darfur conducted under the Peacebuilding Fund (PBF) Sudan in 2020–2021 show that 81% of IDPs are not able to access their agricultural land in the place of origin. Resolution of land conflicts needs to be a key priority at the heart of durable solutions for IDPs. However, to strengthen the prospect of long-term peace, it is key to also consider the rights to land of the secondary occupants. Results show that the majority of IDPs are renting farmland in their place of displacement, hence making land rental more affordable and tenancies more secure will support IDPs and help all land tenants. The customary land management system does not grant women and most nomads rights to agricultural land, yet findings show that women cultivate land to the same extent as men, and significant proportions of nomad households are also increasingly relying on crop farming.

Securing housing, land and property rights is critical to durable solutions for displaced populations in Darfur, Sudan, as it addresses one of the root causes of the conflict. The Juba Peace Agreement (JPA) provides the right to seek restoration and compensation for any lost or seized housing, land or property (HLP) as a result of the conflict in Darfur and elsewhere in Sudan. The commitments in the JPA to restore the HLP rights for conflict displaced families

represent a critical political opportunity to resolve long-standing disputes that sit at the core of the conflict.¹ However, these provisions could also trigger the resurgence of violence in Darfur. This brief is part of a series of five short thematic documents that present key insights and messages drawing upon the eight durable solution and peacebuilding analysis studies carried out across Darfur by the Peacebuilding Fund (PBF) in 2020-2021.

Prepared by:

Land management in Darfur — an introduction

Land is central to people's livelihoods in Darfur and is governed by plural land tenure systems where modern statutory land ownership exists alongside traditional customary land rights. The customary Hakura system is the traditional way to manage land in Darfur. Importantly, the Juba Peace Agreement (JPA) recognizes the indigenous tribal land ownership and the Hakura customary rights to agricultural land and grazing that govern access to land and water for both farming and nomad communities in Darfur.²

Following the customary system, rights are not exclusive and land is 'owned' or belongs to a community. Land in Darfur is split into tribal homelands, which are named Dars. Generally, the homeland belongs to a major tribe, which gives this tribe monopoly over land but crucially also leadership and political representation and power.³ A tribal sheikh from the homeland tribe can assign a piece of land to a group of people, family or person. Permission is granted for a time period and in case the land allocated is not being used, then the sheikh may reallocate it to another person or group.⁴

Land conflict and arbitration in Darfur are addressing key conflict drivers

Competition over land is a key conflict driver. Land conflicts causes include: disputed ownership and boundaries between farmers, pastoralist grazing routes, and unlawful occupation (discussed in the next section). Boundary conflicts are common and occur between farmers, who expand cultivated areas into neighbouring farms during the planting season. Conflicts around grazing routes are seasonal and centre around violations of the talique date for when pastoralists can graze their animals. This is normally agreed between farmers and pastoralists with the help of local authorities to avoid crop losses and conflict.⁵ Violations of these agreements are often caused by a poor rainy season, which press pastoralists to move their herds much earlier in search of pasture and water. This, in turn, causes damage to crops before the harvest. Farmers are also known to deny pastoralists passage or expand their farms into dedicated animal corridors.⁶

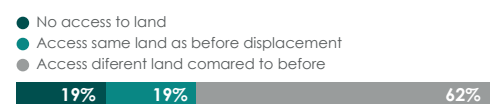
Findings show that conflict resolution committees exist at the local level in all surveyed localities; some with wider mandates, such as the Peaceful Coexistence and Reconciliation Committee, and others that manage

competing demands and conflict linked to specific natural resources, including the Harvest Protection Committee and the Water Committee. The **Native Administration is highlighted as a key local conflict resolution institution**. While the Native Administration and the local committees can successfully mediate and resolve many of the conflicts linked to disputed ownership, grazing routes and boundaries, results consistently highlight that they need to be supported.⁷ Findings show that less than one-fifth of the households reach out to the Native Administration when they have a security incidents or conflict.⁸ **The Government and development actors in Sudan need to fund and further capacitate the Native Administration to scale up their mediation role in land disputes, especially in 'hot spot' areas.**

Land occupation is a key obstacle for durable solutions

Results show that a majority of IDPs (81%) are not accessing their former land. For most IDPs, the reason is that the land is unlawfully occupied by other tribal groups. Incidents of disputed ownership of agricultural land are also reported — but to a smaller extent. In these cases, the local sheikhs have reassigned the land rights to different users in the IDP's absence.

Access to land among IDPs



The land conflicts faced by IDPs are mainly inter-communal rather than between individuals, and many respondents view these conflicts as the most difficult to resolve and with the potential to spark large-scale tribal unrest. The issue of unlawful occupation presents a particular challenge as land was often offered to the 'new settlers' by the previous regime.⁹ The Native Administration and the local committees have previously not been tasked with resolving issues of this magnitude and political significance, but have rather focused on boundary disputes between farmers and conflicts related to migratory routes. Results show that the Native Administration and the local committees cannot on their own solve these overarching tribal conflicts. **These issues are regarded as the responsibility of the Government and, hence, it is critical to join up local-level conflict resolution mechanisms with solutions at the state and national levels.**

The Government, development and peacebuilding actors must prioritize support to the establishment of the

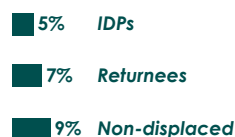
transitional justice institutions set out in the JPA to deal with land arbitration — the National Land Commission and Darfur Land Commission — and ensure they are capable of addressing both the scale and complexity of the HLP issues in Darfur. As a starting point, specific support is needed to develop clear mandates, institutional and administrative frameworks for the two commissions. Pilots should furthermore be considered to inform, foresee and tackle land arbitration problems before implementation across Darfur.

The JPA specifies that 'all victims of Darfur have a right to seek restoration of property or compensation for their lost or seized property resulting from the conflict in Darfur'.¹⁰ Restoration of housing, land and property is central to achieving durable solutions for IDPs, but currently neither the National Land Commission nor the Darfur Land Commission are operating. There is little mention in the agreement of the rights of the 'secondary occupants' or new settlers occupying land. The JPA merely states that basic services should be provided in areas of resettlement for those who inhabited the lands of others illegally.¹¹ These 'secondary occupants' are at risk of becoming displaced if a return process is implemented, which could thus trigger further conflict.¹² **The HLP rights of 'secondary occupants' need to be included in the durable solutions process, otherwise the JPA's aim of addressing these long-standing disputes and building lasting peace may instead contribute to the resurgence of violence in Darfur.**¹³

Critical limitations of official land titling

Secure access to agricultural land is key in the context of Darfur, where crop farming is the most important source of livelihood. Results show that a very small minority of IDPs, returnees and non-displaced households hold an official land registration certificate proving ownership of agricultural land. The vast majority claim customary land rights.¹⁴

Households who hold official land registration



Land registration involves high transaction costs, and cumbersome and lengthy administrative procedures that entail dealing with both the Native Administration as well as the statutory courts and administrative offices, often located far from the registrant's location. This is challenging for any vulnerable community member but specifically for women, who tend to have less education

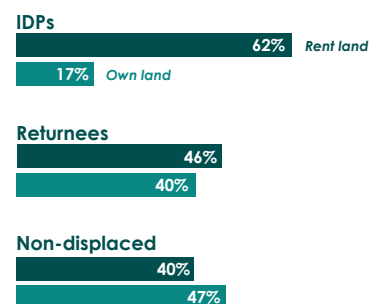
and fewer financial resources.

While individual land registration has dominated action on land tenure reform in Sub-Saharan Africa, actors in Sudan should explore alternatives to individual land titling.¹⁵ The process of individual land registration is a challenge for disadvantaged groups and, furthermore, will have a limited ability to provide secure tenure and reduce conflict over land in the short term.

Secure tenure for farmers

Lack of secure tenure is an issue for a significant number of farmers in Darfur. Under the customary tenure system, a sheikh can issue rights to land on a temporary basis. Findings show that a majority of IDPs do not own the land they currently cultivate but instead rely on renting farmland. Across all eight localities, 62% of IDPs are renting compared to 40% among non-displaced and 46% among returnees.

Households that rent or own their agricultural land (remaining population accesses land under other arrangements)

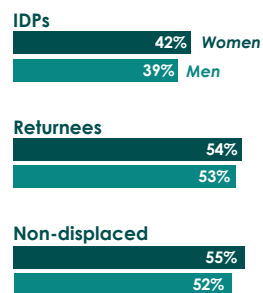


In some areas of Darfur, renting agricultural land is as common as land ownership. This is the case in Assalaya, Sheiria and Yassin where 80% of IDPs are renting agricultural land and so is 60% of the non-displaced population. Findings indicate that tenancy security is lacking but also that rental fees can be high, which place a considerable burden on the households that rent agricultural land. **Actors should consider ways to improve conditions for agricultural land tenants, and explore ways to make renting land more affordable and tenancies more secure.** In Assalaya, Yassin and Sheiria localities in East Darfur, renting agricultural land has been reported to cost a quarter or more of harvested crops,¹⁶ while results from Gereida locality (South Darfur) suggest that renting farmland involves a standard fee of 10% of the harvest.

Limited land rights for women

Findings show that **a third of all households surveyed are female-headed and that equal proportions of men and women work in crop agriculture**. While they cultivate land belonging to their husband or other male family members, women cannot themselves own land because Darfur's customary Hakura system does not grant women land rights.¹⁷

Proportions of working age women and men working in agriculture (for profit or own-use)



Against this background, it is especially important that both customary and statutory tenure arrangements provide the same opportunities to community members irrespective of gender. As a minimum, women-headed households and widows should be considered as heads of household in the customary system with a right to access land, and the Government should discourage any customary practices that discriminate against women's rights to own land and support their inheritance rights. UN-Habitat stresses the need for religious leaders to raise awareness of women's equal rights to land and on making the Native Administration aware of and adhere to the rights of women to land under Islamic law.¹⁸ **Partaking in land governance is also key, and actors in this field must develop and implement effective approaches to ensure that women can effectively participate in local land governance.**

Limited land rights for nomads

Most nomad communities, according to the Hakura system, do not have access to land. Instead, pastoralists have transient rights including access to water for animals and humans plus access to grazing land and livestock routes.¹⁹ In fact, under the Hakura system not all groups have a Dar: tribes are categorized as land-holding and non-land holding. Sheikhs belonging to a tribe that does not have a homeland are known as 'sheikh of the people' and have no authority over land.²⁰ The Dar is about more than access to land: a tribal homeland is traditionally linked to political participation and comes with formal leadership positions in local and regional state institutions, from which nomadic pastoralists and smaller tribes were excluded. In this way, the Hakura system itself is an obstacle to accessing land for some population groups. Some Darfur experts argue that it was this inability of the indigenous Hakura system to allow for full participation by nomadic pastoralists, which aggravated divisions between sedentary farmers and nomads and thus was a major factor in the development of the conflict.²¹

Findings indicate that the livelihoods of many nomads are changing, with many households either permanently settling or practising a semi-nomadic way of life.²² 39% of the nomad households report that crop farming is their main livelihood source and this proportion is even higher in Jebel Moon and Um Dukhun (50%).²³ Given this growing importance of access to land, **Darfuri nomad communities' housing, land and property (HLP) needs and rights should be recognized by the Government and considered as part of the peacebuilding and durable solutions process.**

ABOUT

This analysis builds on eight studies that took place across Darfur in 2020–2021 under the UN Peacebuilding Fund (PBF). All displacement and conflict affected communities — IDPs, neighbouring non-displaced residents, nomads, IDP returnees and also return refugees — were included in the analysis in the targeted localities of Tawila, Assalaya, Yassin, Sheiria, Gereida, Jebel Moon plus Nertiti and Um Dukhun. The large-scale sample-based survey was combined with extensive in-depth qualitative data, which together form the evidence-base for the insights and recommendations presented here.

The studies were led by UNHCR and the other PBF agencies (UNDP, UNICEF, IOM, UN-Habitat and FAO), with technical guidance from the Durable Solutions Working Group in Sudan (DSWG). IOM collected the survey data and the Sudanese Development Initiative (SUDIA) undertook the qualitative area-level data collection. JIPS led the design of methodology and tools and conducted the analysis and reporting. All locality reports and thematic briefs can be found on the [below web platform](#).



Suggested citation: Peacebuilding Fund (PBF) Sudan, DSWG Sudan, UNHCR, JIPS (2021). Thematic Brief: Access to Land and Tenure.

Brief preparation: Therese Bjorn Mason (independent consultant to JIPS), Margharita Lundkvist-Houndoumadi (JIPS). Special thanks to Khadra Elmi (UNHCR/DSWG) for strategic guidance and detailed review, Corina Demottaz (JIPS) for the editorial review, and VisualLab for the design. The team is also grateful to the Durable Solutions Working Group in Sudan for their insights and feedback provided through several consultations.

JIPS' technical support was made possible through funding provided from the Peacebuilding Fund (PBF) Sudan as well as the United States Government through their Bureau of Population, Refugees and Migration (PRM). The contents are the responsibility of the profiling partners and do not necessarily reflect the views of PBF or PRM.

© All rights reserved. The copyright for this material lies with exercise partners. It may be reproduced for educational purposes and elements of this brief may be quoted in other publications, provided exercise partners are acknowledged as per the above-mentioned suggested citation.

NOTES

- Land rights in Darfur are widely regarded as a central feature and one of the root causes of the conflict. Flint, J., and de Waal, A., Darfur. A New History of a Long War; Sulliman, O. The Darfur Conflict: Geography or Institutions?
- Customary law takes precedence if there is a conflict between Sudanese statutory law and customary law relating to land. Juba Agreement for Peace in Sudan between the Transitional Government of Sudan and the Parties to the Peace Process (2020), chapter 7.1
- Unruh, J. (2016) Indigenous land rights and conflict in Darfur: the case of the Fur tribe in Tidwell, A. and Zellen, B. (eds) 2016 Land, Indigenous Peoples and Conflict.
- UN-Habitat (2020) Darfur Land Administration Assessment: Analysis and Recommendations.
- The *talique* date is referred to as a customary institution that has 'evolved through local practices of local communities, their leadership, and formal government structures. Osman, A.M.K., Young, H. Houser, R.F., and Coates, J. C. (2013) Agricultural Change, Land, and Violence in Protracted Political Crisis: An Examination of Darfur.
- Young, H. et al. (2019) Lessons for Taadoud II: Improving Natural Resource Management.
- Capacity development of the Native Administration is also a key priority set out in the UN-Habitat's recommendations in 2020. UN-Habitat (2020) Darfur Land Administration Assessment: Analysis and Recommendations.
- For further discussion on the Native Administration, see Thematic Brief: Strengthening the Rule of Law and Conflict Resolution Mechanisms. Peacebuilding Fund (PBF) Sudan, DSWG Sudan, UNHCR, JIPS (2021).
- It is well documented, that 'ethnic groups with historical grievances against those ethnic groups constituting the rebel movements or with strong interests in gaining access to land and other resources became the mainstay of the government's militia force.' The Bashir government in Khartoum provided incentives including payment, green light to loot and promises of access to land and administrative power. https://www.hrw.org/legacy/features/darfur/fiveyearson/report4.html#_ftn9
- This right to restitution is not only awarded to individuals but also to communities that have a collective right to pursue restitution for communal property, villages, farms and traditional land. Juba Agreement for Peace in Sudan between the Transitional Government of Sudan and the Parties to the Peace Process (2020), chapter 4.11.3.
- This task is allocated to the Reconstruction and Development Commission. Juba Peace Agreement, chapter 2.18.
- HLP Sub-sector, UN Sudan (24 June, 2021). Briefing note: HLP in the Republic of Sudan.
- HLP Sub-sector, UN Sudan (24 June, 2021). Briefing note: HLP in the Republic of Sudan.
- A recent UN-Habitat report assesses that only 1% of agricultural land in Darfur is officially registered and owners hold a land registration certificate. UN-Habitat (2020) Darfur Land Administration Assessment: Analysis and Recommendations.
- On the limitations of land registration, see also: Philippine Sutz (2021) Why simple solutions won't secure African women's land rights, iied Briefing; Abdul-Jalil, M. and Unruh, J. (2013) Land Rights under Stress in Darfur: A Volatile Dynamic of the Conflict. In War and Society Vol 32; Satti, Sulieman, Young, Radday (2020) Natural Resources Management: Local Perspective from North and Central Darfur.
- Consultation with UN thematic experts.
- FDGs with Women community representatives in Um Dukhun, Nertiti, Jebel Moon, Gereida, Tawila, Assalaya, Yassin and Sheiria.
- UN-Habitat (2020) Darfur Land Administration Assessment: Analysis and Recommendations.
- Unruh, J. (2016) Indigenous land rights and conflict in Darfur: the case of the Fur tribe in Tidwell, A. and Zellen, B. (eds) 2016 Land, Indigenous Peoples and Conflict.
- East Darfur, key informant—Native Administration.
- Abdul-Jalil, M. and Unruh, J. (2013) Land Rights under Stress in Darfur: A Volatile Dynamic of the Conflict. In War and Society Vol 32, no. 2 p. 156-181
- The PBF studies captured nomads in the localities of Jebel Moon, Um Dukhun and Gereida.
- For further discussion on the changing livelihoods of nomads see Thematic Brief: Nomads – Shifting Livelihoods and Marginalization. Peacebuilding Fund (PBF) Sudan, DSWG Sudan, UNHCR, JIPS (2021).