

Darfur Joint Assessment Mission (DJAM) 2012

PEACE AND SECURITY TWG

Situational Analysis

Introduction

The Situational Analysis of the Peace and Security Group was developed over the course of a number of months, drawing initially on a desk review of literature, and then supplemented through a set of consultations in each of the 5 States of Darfur. The consultations included discussions with community members, relevant local Government officials, as well as bilateral meetings with Darfur Regional Authority Commissions, including the Ceasefire Commission and Darfur Security Arrangements Commission, Voluntary Return and Resettlement Commission, and National Commissions' State and National Offices, including the DDR Commission, Land Commission, Reconciliation Desk of the SDDRC, etc, as well as relevant UNAMID Units and other UN Agencies.

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Background

Peace and security in Darfur are not only key thematic issues but are also inextricably intertwined with the ability of other TWGs to reach their goals and objectives. While the issues covered in the P&S TWG are critical as individual issues, they also each have explicit linkages with other TWGs and therefore must be considered alongside other TWGs strategy and proposed interventions.

The exclusion and/or marginalization politically, socially and economically of certain ethnic and political groups in Darfur has fuelled the emergence of rebel movements. The multiplicity of armed groups and shifting allegiances, fractured along political, ethnic and regional lines have resulted in a complex political and security environment. Significant challenges in achieving community security, protection of civilians, human rights, rule of law and access to justice remain despite the signing of the Doha Document for Peace in Darfur (DDPD).

While the DDPD provides an important opportunity for increased stability in Darfur, it is not comprehensive and inclusive of the dominant armed groups and factions. Grievances by armed groups against the Government have trickled over to community level conflicts and insecurity caused both by armed rebel movements and the Government. Bandits have also taken advantage of the insecurity and frequently attack and loot communities.

Significant insecurity persists from the ongoing conflict between the Government of Sudan Armed Forces and SPLM-N, JEM, SLA Minnawi, SLA Abdul-Wahid and other groups as well as the recent formation of the SRF¹. In 2011 there were 44 clashes recorded by the United Nations African Hybrid Mission in Darfur (UNAMID) between different armed group factions and 55 clashes in the first 9 months of 2012 showing an increasing trajectory. 18 clashes between Government of Sudan Armed Forces and factions were documented in 2011, compared with 22 in the first 9 months of 2012.²

Additional sources of insecurity include banditry and inter-tribal and resource-based conflicts exacerbated by the wide spread proliferation of small arms and light weapons and the high presence of ex-combatants. Movements of nomadic Arab tribes, which also include ex-combatants belonging to the Popular Defence Forces (PDF), also contribute to seasonal conflict in Darfur. This is compounded by “at risk youth”, predominately young males with no viable economic livelihood opportunities. The gun has emboldened young disenfranchised men who also want to be part of the decision making process. Generations have grown up in conflict and young men have often been raised in an environment that promotes militarized and violent forms of masculinities.

The proliferation of small arms and light weapons has been a major contributor to instability in Darfur. SALW and ammunition caches have increased dramatically over recent years, with not only armed groups carrying weapons, but also nomadic groups, and communities, as a mechanism for protection.

Weapons caches’ specific number are not available for Darfur, however, a recent report by the Small Arms Survey cited that the continued flow of weapons into Darfur despite international sanctions designed to prohibit this supply³. Primarily listed were four different vectors for small arms reaching Darfur from 2005-2011: (1) arms originating in the stockpiles of the Chadian Armed Forces (officially or unofficially provided through Chadian army officers to JEM and other rebel groups

¹ The Sudan Revolutionary Front (SRF) is comprised of: Justice and Equality Movement (JEM), Sudan Liberation Movement Army – Abdul Wahed (SLM-AW/SLA-AW, Sudan Liberation Movement Army – Minni Minnawi (SLM-MMSLA-MM, and Sudan People’s Liberation Movement/Army – Northern Sector (SPLM-N/SPLA-N)

² Figures provided by UNAMID JMAC

³ UNSC 1550, 1591, 1945

moving between eastern Chad and western Darfur); 2) arms originating in Libyan government stockpiles, particularly supplied to JEM and SLA-MM, reportedly via Libyan security officials; (3) the SAF domestic supply chain, furnishing weapons to SAF forces in Darfur and also reaching non-state armed actors on all sides through direct supply, theft, and battlefield capture. A final vector has been claimed by JEM to be receiving weapons from Eritrea, though it has been unverifiable. Since the fall of Gadafi and political change in Chad, the first two vectors of small arms flow has significantly decreased but the third remains.

Banditry and looting have also become widespread in Darfur and represent a critical threat to peace and security, particularly at the community level. During 2011 899 incidents were documented by UNAMID and 920 incidents in the first 9 months of 2012. Armed bandits have capitalized on the lack of security, justice and readily available weapons.

One of the most critical challenges in Darfur is how to re-establish the control of small arms and light weapons while concurrently building a sense of trust and confidence between the population and the authorities, as well as between and within the communities. The control of illegal SALW can only be addressed in the overall context of improving security and restoration of the rule of law in Darfur, including effective border control.

The conflict has also introduced and further exacerbated a number of risk factors for the spread of HIV/AIDS. According to the MDG report for the DJAM in 2006, HIV rates in neighbouring countries to Darfur, particularly Central African Republic and Chad, are quite high. When combined with presence of foreign combatants, movement across the borders and the fact that rape associated with the conflict has been widely reported, the risk of HIV contraction by victims and family members is recognized as a serious threat to human security⁴

While not the principal cause of conflict in Darfur, the increasing pressure on limited resources in the face of weak governance has been a key driver of tensions between different groups at the community level. Additionally conflict over natural resources and battles over resources are fought along tribal lines which have in some cases been capitalized on by rebel groups and/or Government. Competition over natural resources and land has been exacerbated by rapid population growth and drought.⁵ Disputes over access to land, water points and grazing grounds also created a rift between nomadic and farming communities. Many agricultural communities have been internally displaced and have taken shelter in IDP camps. Land rights and demarcation of nomadic corridors are virtually absent in most places in Darfur, which in turns fuels local conflicts over resources. These disputes often turn violent on account of availability of small arms. Evidence also suggests that lands of displaced people have been illegally occupied, which discourages return of the IDPs.

Parties to DDPD and the Government of Sudan have assured that the ownership rights of lands will be restored to the rightful owners, particularly to many IDP's who have either voluntarily or forcibly had to vacate their lands due to the conflict. This has often taken on an ethnic and tribal dimension. However, land issues in Darfur are not confined only to ethnicity but also to ecology. Over time desertification has engulfed more of northern Darfur (and climate change theory predicts that this will intensify in such sub-Saharan regions). This has squeezed the land use leading to installation of fences which has artificially altered and cut off the normal nomadic migration patterns, and exacerbated tensions and conflicts between nomads and pastoralist farmers. Part of this increasingly tense and conflict-ridden situation emanates from the way land was historically granted where farmers held a form of title, and many of the nomadic herders held no title.

⁴ MDG Report DJAM 2006

⁵ Tearfund, 2007 as quoted in: Bromwich, B. Analyzing Resource Constraints as One Dimension of the Conflict in Darfur.

This coupled with unorganised and distrusted security sector, which is primarily comprised of one or two ethnic groups, often seen to be supporting the marginalization of certain ethnic groups, and a fragile or non-existent traditional dispute resolution mechanisms, make the area highly vulnerable to insecurity and violence. Compounding this there is a clear division between customary law and state law, which causes particularly challenges or grievances by communities against the security sector.

Certain sections of the security sector, including the Border Guards, is viewed highly negatively by communities, due to their nearly singular ethnic composition, lack of professionalism, inclusion of children as guards, and attacks perceived by community members. Police stations are few and far between, particularly in areas of high insecurity. Where in existence, police stations are often staffed by poorly paid individuals, who do not have comprehensive training and who are perceived by the community to not respect local or customary laws.

The Sudan Armed Forces is also seen as a representative of one or two ethnic groups, not as representative of the people, and there to protect them. Additionally the poor representation of women in the security sector, high levels of violence against women and lack of training on handling cases of violence against women has led to a poor response to attacks, access to justice, and restitution for victims. The DDPD recognises the fact that streamlining security sector and building trust of communities over such institutions is critical in stabilising peace and security in the area.

Another critical issue which has the potential to compromise peace and security in Darfur is **Compensation**. As part of the DPA, provisions for the establishment of Property Claims Committees were included as well as provisions regarding the need to compensate displaced persons whose property or livelihoods were adversely affected. The DPA also recognized the inalienable rights of war-affected individuals to have their grievances addressed and receive compensation through a Compensation Commission⁶. This has of course raised expectations in the period from the DPA to the DDPD, though little progress has been made in addressing such issues. If not handled properly this has the potential to further fuel tensions.

With the impending resettlement of IDPs and Refugees from camps, land issues, as well as access lack of potable water in remote areas may be a trigger for insecurity. A report by UNHABITAT notes that if all estimated 400,000 families currently displaced in Darfur return to their places of origin and reconstruct destroyed homes using traditional building practices, with wood, they will need to find and cut an estimated 16 million mature trees. In light of the ongoing documented deforestation, as well as existing competition over limited natural resources, this would be an environmental, social and economic disaster that could also undermine peace and stability in the region.⁷

Additionally, building thousands of wells or water points across Darfur will be time consuming and costly. Those who resided in camps have been able to receive much better medical assistance than are available in rural areas throughout Darfur. In addition there is inequitable access to services by nomadic communities which is often fractured along political and ethnic lines and has fuelled grievances both between tribes (principally nomads and pastoralists) and with the Government of

⁶ The Commission was established by Presidential Decree and is set up to address claims from Darfur people who have suffered harm, including physical or mental injury, emotional suffering or human and economic losses in connection with the conflict. The Commission is mandated to work closely with the Property Claims Committees in order to address these issues.

⁷ UNHABITAT Darfur Early Recovery, Stabilized Soil Blocks for Sustainable Urban Growth Report.

Sudan. The lack of basic medical services, and in particularly maternal health services, is also a threat to human security.

Identifying and addressing root and immediate causes and triggers of conflict are of paramount importance in designing a peace and security strategy in Darfur. Interventions should be holistic, encompassing socio-economic and political elements to address these causes and provide sustainability and peace. National reconciliation measures are also an essential element of peace and security.

1. Disarmament, Demobilization and Reintegration (DDR)

The DDPD outlines final security arrangements that include a comprehensive Disarmament, Demobilization and Reintegration (DDR) programme for male and female ex-combatants and special needs groups⁸ as well as for a civilian arms control programme. In support of the DDPD, UN Security Council Resolution 2063, included provisions requesting the UN African Mission in Darfur (UNAMID) to support the implementation of the DDPD by working closely with the UN Country Team on DDR, as well as building the capacity of the police, justice and correction sectors.⁹

In order to implement the provisions of the DDPD, a Ceasefire Committee (CFC), comprised of Government of Sudan and LJM representatives, supported by UNAMID, oversees the monitoring and verification. As outlined in the DDPD this should have taken place not more than 90 days from the signing, however, it only began after 234 days following signing and has not been fully endorsed by either GoS or LJM.

Once CFC completes its work, the Darfur Security Arrangements Implementation Committee (DSAIC) will be responsible for deciding which combatants join the security institutions (through SSR process) and which will be referred for DDR. Women are registered and referred first, and Children are immediately disarmed and referred to Sudanese Red Crescent and International Committee of the Red Cross (ICRC), who works with UNICEF, on a Family reunification programme and a rehabilitation programme (school or vocational training). Disabled are automatically referred to the DDR programme.

The CFC will be collecting long range weapons from LJM and other armed groups once they have been verified and are ready for cantonment. DSAIC will oversee collection of hand weapons once it completes selection of which combatants will be referred for DDR and which will join the security sector.

The DDPD delegates the task of DDR to the Sudan DDR Commission, but calls for the review of representation to ensure the people of Darfur are included. The Sudan DDR Commission has offices in 3 states of Darfur (North, South and West) and Central and Eastern are covered by the offices in South and West respectively. The DDR Commission has an organized structure and has received significant support in capacity development from UNDP, UNAMID and other UN Country Team. The SDDRC is fully operational, however, there is a centralized decision making power with SDDRC in Khartoum, often meaning the SDDRC offices in Darfur do not have independent ability to oversee

⁸ These include Women and Children Associated with the Armed Forces and Groups and Elderly Combatants

⁹ UNSC 2063 text. In conjunction with this a request was made for the development of an Integrated Strategy Framework with the UN system wide support for the DDPD, taking into account the DJAM.

work. There are also gaps in technical staff included Gender, Management Information Systems and project management, however, secondments to the SDDRC from UNDP are planned to supplement capacity gaps.

The SDDRC with UNDP and UNAMID have focused on preparatory work for DDR in Darfur, including public information and sensitization campaigns, and building a culture of peace working with Hakamas, youth, and community leaders. The SDDRC staff in Darfur has demonstrated a keen interest in trainings and capacity building opportunities as well as an improvement in skills with interest and commitment to working with implementing partners for DDR preparatory projects.

The target groups for the DDR programme will include (a) combatants of the armed movements' signatory to the DPA (DOC) and DDPD, (b) combatants of the armed groups with bilateral agreements with the state governments (c) personnel of the Sudan Armed Forces and Popular Defense Forces by way of discharge from service, in consonance with the principle of corresponding reduction in strength of the Armed Forces. There are also provisions in the DDPD for addressing foreign combatants.

Special needs groups such as people with disability, Children Associated with Armed Forces and Groups¹⁰, Women Associated with Armed Forces and Groups (WAAFG) will be targeted at the community level. The target also includes certain vulnerable or at risk communities who will be identified by systematic and scientific mapping of conflict analysis including Crisis Recovery Mapping and Analysis (CRMA) and UNAMID's JMAC unit.

As a result of recent data collected by CRMA in Darfur, desk review of assessments with local authorities and consultations with national and international agencies in Darfur suggest an urgent need to implement community safety, civilian arms control and social cohesion restoration initiatives alongside a comprehensive Disarmament, Demobilization and Reintegration programme in order to support broader peace and security in Darfur. These would include community arms control programs as responses to civilian weapons holdings. As neither the DPA or the DDPD was not a comprehensive agreement, many armed groups including JEM, SLA/AW and SLA/MM, were not part of the agreement, which poses significant challenges related to DDR initiatives in Darfur..

2. Security Sector Reform

The DDPD does not go into as much detail regarding broader Security Sector Reform as the DPA does. However, it does generally highlight that all Sudanese including Darfuri people shall be fairly represented in the Immigration, Border Guards, Police, Prisons and Wildlife authorities. It also calls for the rectification of imbalances that exist including the representation of the people of Darfur at the senior levels of SAF and in the future intake of people into military academies as well as gender balance.

This includes the integration of male and female ex-combatants into the Sudan Armed Forces (SAF) and Sudan National Police Force (SNPF) with the remaining caseload going through DDR. The Darfur Security Arrangement Implementation Committee (DSAIC) is to make recommendations and support the implementation of this process with the Darfur Regional Authority. It also states that the

¹⁰ Children Associated with the Armed Forces and Groups will be dealt with separately from adults through a special programme with UNICEF and the Sudan DDR Commission

Integration Technical Committee should be established in order to oversee this process. This process has still not begun yet as verification by CFC has not been finalized and therefore the commencement of identification of those who meet criteria to enter the security sector and are referred for national training and those who do not (and will be referred to DDR) has not taken place.

The DSAIC was formed in 2012, headquartered in El Fasher with sub offices in South and West Darfur states. The Commission is comprised of a highbred of Government of Sudan and Signatories to the DDPD (LJM). While DSAIC was active following the DPA and oversaw integration into SAF, under the DDPD period (from formation in 2012) currently they are in preliminary, preparatory phases for the implementation of the security arrangements. This includes, opening state offices (Completed), establishing technical joint committees and sensitizing them on the process, identify collection points and camps for LJM, working with Sudanese and Qatar Red Crescent to support essential needs such as water points, agree with Ministry of Defense on gradually formalizing the existing Border Guards Forces and stopping additional recruitment and initiating future plans with respect to SALW and border control with Chad. DSAIC also supports strategic partnerships with Native Administration and their hierarchies to support and consult on security issues. They also work to build partnerships with SAF, Civil Society, NISS, Intelligence, Police and Community Policing structures

Article 9 of the DDPD also highlights the need for the Sudan Armed Forces SAF to be regular, professional representative, and non-partisan. The Security Arrangements section also refers to the need for an inclusive National Sudan Armed Forces and other security institutions which are capable of maintaining and defending sovereignty and territorial integrity of the country. Following the DPA security provisions implementation, approximately 20% of Combatants were to be referred to the Security Sector while the remaining caseload was to be provided with comprehensive reintegration support. However, this is not yet completed and DDPD provisions also highlight need to take into consideration the fair representation of all tribes and ethnicities in the Security Seector and ensure downsizing of armed forces.

One of the most important issues for security in Darfur includes strengthening control of border areas. Proper control of border areas will limit the trafficking of illegal SALW from neighboring countries, as well as prevent foreign militias and armed groups from crossing into Darfur and causing insecurity which may jeopardize the peace process.

In January 2010 Chad and Sudan signed the pact on Improving Border Security Arrangements. This included establishing military check points along the border which has had a positive impact on overall peace and security in Darfur by limiting the random mobility of armed forces between Chad and Sudan and construction of random army camps as well as interception of weapons across the border. In May 2011, Sudan signed a declaration on the tripartite partnership between Sudan, Chad and Central African Republic for peace and development. Included in this document were provisions for activating the establishment of the tripartite joint forces in order to protect the borders between the three countries and trilateral coordination between the Ministries of Interior to control across border smuggling, infiltration, over-fishing and fight against organized and cross-border crimes.

Additionally, as part of the recent Regional Conference on the Control of Small Arms and Light Weapons with Sudan, Democratic Republic of Congo, Libya, Chad, and Central Africa Republic established the commitment and need to work on the regional dimensions of arms control. The Ministry of Interior and the Sudan DDR Commission have jointly drafted a Small Arms and Light Weapons (SALW) control National Action Plan focusing on issues such as small arms proliferation,

cross-border smuggling of illicit arms, and armed conflict among ex-combatants, ethnic groups, inter-communities and nomad farmers, and means of control of SALW. While the draft document is being refined to meet international standards once it is endorsed by the Sudanese parliament this action plan will serve as a basis for strategic and comprehensive national policy on SALW control in Sudan and be the basis for subsequent programme interventions.

3. Reconciliation

Unaddressed grievances by community members for both conflict between tribes or those who have grievances towards the Government, fuel the cyclical nature of conflict in Darfur and is a significant potential source of future instability. Therefore reconciliation is seen as a critical process for peace and security.

The need for reconciliation is principally seen through two types: reconciliation between tribes and reconciliation between certain tribes, such as Fur, Zagawa and Masalit, and the Government of Sudan. For the former, supporting local conflict resolution mechanisms that can both address past inter and intra-community grievances as well as new conflicts which may arise will be a critical component to supporting longer term peace and security in Darfur.

The Government of Sudan has a Peace and Reconciliation desk housed within the Sudan DDR Commission which initiates some activities, as well as programmes initiated from other branches of the Government. The Truth and Reconciliation Commission, as mandated by the DDPD has been established but is not fully staffed and operational. Consequently there is a lack of a coordinated and comprehensive approach to reconciliation in Darfur.

Predominately Government-led Reconciliation Conferences have not been effective in putting an end to conflict thus a number of community elites have also tried to take on a mediating role.¹¹ Complaints of government interference in local affairs and of manipulation of structures and processes are common. In many cases Native Administration has become highly politicized and therefore not objective in its adjudication of conflict.

Acknowledging the role of local conflict resolution mechanisms and building their capacity can both address past grievances between communities and among them as well as mitigating new conflicts which may arise regarding land, resources, nomadic corridors or in the process of return and reintegration of IDPs, Refugees, Ex-combatants, and Women Associated with the Armed Forces and Groups will be a critical component to supporting longer term peace and security in Darfur.

Although traditional mechanisms are still widely used at the grassroots level they are not effective as before due to impact of the protracted conflict. Efforts to strengthen community and traditional conflict resolution mechanisms as well as build a coherent network of mechanisms linked to a broader framework will be necessary. In recent years, a number of independent institutions have sprung up which can be mobilized to support a more comprehensive approach.

For reconciliation processes between the Government of Sudan and tribes with grievances, a specific mechanism will need to be developed which is agreeable to both Native Administration and GoS. In general community and Government consultations reveal a need to sequence Reconciliation before

¹¹ See for example Ahfad in relation to Nyala in 1990, and interviews for DJAM for more recent efforts

Compensation. Results of local conflict resolution mechanisms may in fact identify community level projects which can be funded through or established by the Compensation process.

In the time period between the DPA and the DDPD the climate had not yet been seen as ready for genuine reconciliation, however, with the signing of the DDPD, and in the absence of a Comprehensive Peace Agreement for Darfur, it's important to start strengthening such systems to empower communities to find solutions to their most pressing issues that may compromise peace and security at the community level.

Compensation

Compensation as outlined in the DDPD and DPA includes two types: one for restitution of property (ie. land) and one for compensation for IDPs/Refugees/victims of conflict where it pertains to loss of life, injury, etc. The DPA includes provisions stating that displaced persons have the right to restitution of their property, whether they choose to return to their places of origin, or not, or to be compensated¹² adequately for the loss of their property in accordance with international principles. While police worked on documenting claims of compensation following the DPA, much of the documentation has now gone missing, while victims still are waiting for the outcome of such claims. If not handled appropriately this could become a cause for further insecurity.

The DDPD included an article to establish the Voluntary Return and Resettlement Commission, comprised of: a Voluntary Return Committee (VRC), a property claims and Restitution Committee (PCRC) and a Compensation Fund/ Jabr Al-Darar (JAF). The Property Claims and Restitution Committee (PCRC) was established to ensure that property, land and houses are restituted to IDP's and Refugees. The Committee had similar duties as to the Commission established under the DPA, including receiving and resolving property restitution claims from individuals communities and institutions in order to ensure IDPs and Refugees have housing land and property which was arbitrarily or unlawfully deprived of, prepare documentation on property and land restitution, determining submission of claims to ensure procedures are transparent and benefit all affected persons including women, children and orphans. They are also responsible for arbitration on the entitlement of persons or groups in relation to traditional and historical rights including just compensation where restitution is not possible, settlement of all land and property related disputes requiring local settlement.

The Commission has established the time period for restitution of claims to be from 2003 until 10 years following the DDPD signing. However, it has flexibility to operate whenever there is conflict thus if conflict continues the Commission will continue processing claims. While 2003 is the official date of conflict commencement in Darfur, should there be claims made from 2002 or earlier, the Commission will also process these.

Compensation will be provided for loss of assets such as burning of villages or houses, killings, lands, rape and other bodily injuries. For a victim to claim, they must make a testimonial claim to the Native Administration or the National Police. Once the claim is register legal advisors, hired by the DRA, conduct an investigation, then an injury assessment takes places, after which compensation will be provided. For rape cases, they are compensated the same as killing, which is to receive complete *Dias* paid directly to the victim.

¹² Compensation may only take place where it's factually proven that restitution is not possible

The PCRC should disburse compensation, however, they have not to date provided any compensation due to the fact that compensation will only commence after IDPs and Refugees return to their villages. When this commences, the Commission will focus first on settling claims that were made as a result of the Abuja DPA entitlements.

In the case of IDPs or Refugees wanting to return to land of origin which is occupied by groups, these issues fall into the discussion around land in the following section and are cross referenced in the Return Reintegration and Urban Planning Thematic area. This section will focus therefore on the second type of compensation.

The Compensation/ *Jabr al Darar* fund was established for the settlement of compensation for loss and / or damage suffered by IDPs, Refugees and other victims of the conflict. Damage includes economic loss, loss of life, physical or mental injury and emotional suffering, including psychosocial and violence against women. While these provisions were established, little specifications on what compensation would entail was included. According to Commission staff \$500,000 of the Fund was said to be delivered to the Ministry of Finance of the Darfur Regional Authority, however, funds have not been transferred to the Commission.

Compensation is seen through two types of implementation: individual and community level. For individual level, options for compensation principally focus on two areas: mobile compensation in the form of livestock, given its traditional role in Darfur as a way to hold currency, or offering in kind compensation such as agricultural tools, seeds or tractors or urban plots of land, given many war affected individuals/IDPs/Refugees would like to stay in urban areas (as well as maintain land in places of origin) due to the benefits it can provide to their children.

As part of consultations in Darfur, some individuals have expressed concern over receiving mobile compensation (livestock), due to the fact that it would make them a target for other armed groups. Should an option of restitution through livestock be considered, attention must be paid to the types of livestock and relationship to the environment, health and other factors. For example the provision of goats would negatively impact the environmental goals of reforestation, whereas provision of sheep would not.

Given the problems associated with mobile compensation, the most viable opportunity would be in kind compensation in the form of urban plots of land which would include minimum timelines for occupation of land and construction of houses prior to receiving a deed to the land to ensure maximum investment and minimize turnover. This model has been tested under a UNHABITAT project in Nyala (now expanding to Geneina) which offers IDP's the opportunity to have land and full local citizenship (meaning access to social services of that area), in exchange for giving up camp rights (including provision of food, water, education, etc).

The land is donated by the State Ministry of Physical Planning and Public Utilities and the legal fees have been waived by the Governor¹³. Selected training institutions in Darfur have been trained in building houses through eco bricks which are in turn taught to IDPs to support them in constructing eco friendly homes. To participate in the project, individuals must reside on the land and cannot sell it for approximately 10 years. Overall there has been great success in the project as IDP's note that

¹³ UNHABITAT project document

there is greater potential for building a life in the longer term and female IDP's note security is better outside the camp. If such model for compensation is utilized then it will be necessary to consider land holding rights under the current laws particularly with respect to the ability of women to hold property deeds.

Additionally when considering the appropriate modalities for compensation it will be important to keep in mind the two different types of IDP's, including those who fled the conflict with nothing, and lost all possessions, and those who knew conflict was coming to their area, and therefore packed their possessions and brought them to camps. Both will likely still have lost property however, many of those who left early did not lose livestock and other material possessions.

4. Land issues

Control over the use of **land** and its resources (traditionally water and grazing, but more recently also oil and mineral wealth) is one of the **key drivers of the conflict**. Land in Darfur is both a means of livelihood and a source of identity. Disputes over land have been there for centuries but have become far more acute in recent years. The Peace and Security Thematic Working Group report looks in detail at complexity of land tenure patterns and land allocation and land management systems.

Both camel and cattle breeders traditionally practice **transhumance**. The system is based on the belief that farmers and pastoralists have equal rights to benefit from the available natural resources, and on communal ownership and usage of grazing land. Specific, demarcated and legitimated transhumance routes (*marahil*,) were followed through the system has come under increasing strain over the last few decades.

The war has caused the majority of the settled farmer population to seek refuge in IDP camps. There is evidence of a variety of predatory practices, including demands for 'protection money' and accusations of rural land occupation and of predatory grazing, but the combination of complex patterns of land usage and lack of access makes these things difficult to verify.

It is generally expected that between 20-30% of the IDPs will try to resettle in **urban areas** even when the conditions for a safe and dignified return have been established. It is therefore crucial that assistance is provided to state planning ministries and municipal administrations to ensure that sufficient plots, services and infrastructure are available to absorb this sudden rural-urban migration.

The DPA included a provision that all displaced persons who were arbitrarily or unlawfully deprived of land should have their rights restored to them. A **Land Commission** was established and assigned functions including: arbitration of disputes over contending parties on rights to land, make recommendations on the land reform policies to Government including land use or traditional/historical rights to land, establish and maintain records of existing and historical land use, conduct research on land tenure, and make recommendations on land rights or compensation.

During the DPA period the land commission appointed some staff and began capacity development of them, established liaison offices in North, South and West Darfur, conducted a study to document customary land tenure practices, and started a land-use survey project to develop dynamic satellite based land-use maps. With the signing of the DDPD, a new Commissioner was appointed and the headquarters is located in South Darfur. The change of leadership and lack of clarity on future work

has meant that little progress has been made on achieving these provisions, though expectations were raised in the period between the DPA and the DDPD.

By and large IDP's cannot return to land due to lack of security and occupiers on their land. While displaced persons have resided in camps, in many circumstances other individuals have now occupied their land. Some of those individuals are foreign nomadic groups (many which are armed), some of which have been conferred Sudanese citizenship by the Government of Sudan, further complicating who has the **right to land** if both individuals are citizens of Sudan. In some cases when farmers (IDPs) have returned to land they have been scared away or asked to pay protection fees by armed Arab youth under the guise of "Rehabilitation of the Social Fabric," such as in Kebkabiya.

IDP's numbers have not decreased despite official announcement of voluntary returns by the Government of Sudan and UN agencies. Additionally while some returns have taken place, new IDP's have arrived at camps particularly in North Darfur as a result of the recent violence against the Zaghawa east of Nyala and South of El Fasher since 2011. Specific estimates of numbers are unclear however the Returns Thematic Working Group goes into detail regarding IDP issues.

All observers of the crises in Darfur agree that the issue of land is central to most **inter-communal conflicts** in the region. The search for **access to land and natural resources** on which all rural Darfuris depend for their livelihoods and will continue to do so for the next foreseeable future, and the resulting group contacts and confrontations remain beyond any doubt one of the root causes of the present conflict. Particularly, conflicts between Arab nomads and pastoralists over grazing land and water have been a source of intense clashes with nomads' rights to resource use often not recognized. These dynamics have often been exacerbated by or played upon by armed groups and militias, widening the ethnic and tribal divide, fracturing the social fabric.

In order to properly support peaceful coexistence between such sedentary and nomadic communities, there must be a focus on 1) **supporting preventative measures to mitigate conflicts** that also take into account nomadic right and use of natural resources, these may include grazing conferences where areas are agreed upon in advance and 2) **establishing or re-establishing nomadic corridors** (*Murheels or marahils*) and supporting **access to water resources** along these corridors 3) supporting and enhancing **local conflict resolution mechanism regarding use of land** so that if and when a conflict arises, there is already an agreement by tribe elders to work through the conflict resolution mechanism to find a solution.

The most important layers that compose the land question are:

- a. Environmental: highlighting the increasing competition of human and animal (or rather between different groups of people) over a shrinking and degrading resource base;
- b. Organizational: where the accent is on the lost interface between the community management institutions and the public sector;
- c. Political: stressing the political exploitation of the link between land and identification in a social group

Please note additional background information on land issues can be found in Annex 1

Key problems

Key issues with the potential to compromise peace and security in Darfur include:

- Widespread insecurity at a personal, community and political level
- Specific security and protection needs for women and girls are poorly addressed
- Lack of inclusive political settlement
- Raised expectations regarding compensation from the DPA which have not been implemented, and current provisions regarding compensation in the DDPD not well clarified
- Increasing conflict over land and other natural resources as well as the armed Nomadic groups;
- Ethnic and gender marginalization, polarization of the conflicts among different groups, breakdown of dispute resolution mechanisms and the lack of social services leading to an increase in competition over limited resources by different ethnic groups

5. Priorities

- **Establishing security**, however this is inextricably linked with:
- Finding a mechanism for managing the pressure on **urban areas**. If this is not in place prior to the return, there is a danger of new conflicts erupting as returnees clash with new residents over limited space and facilities.
- **Dispute resolution**, as without this no one will lay down arms. In the longer term this will also require progress in tackling the **root causes** of the conflict, and those who are not signatories to the DDPD, without which there will be a resumption of violence.
- Supporting **Disarmament Demobilisation and Reintegration** of male and female ex-combatants through comprehensive community based, alongside
- **Security Sector Reform**, including the integration of male and female ex-combatants into the Sudan Armed Forces (SAF) and Sudan National Police Force (SNPF)
- **Community Small Arms Control projects** as a response to civilian arms possession
- **Compensation** for loss of land, livelihoods, and loved ones as outlined in the DPA and the DDPD;
- Resolution of the **land and linked natural resource issues**
- Ensuring consultations and a gender perspective in all DDR, SSR, Compensation, Land and Reconciliation processes
- Supporting **community-led reconciliation mechanisms** designed to promote social cohesion
- **Restoring trust in public institutions.**

6. Absorption and Implementation Constraints

The key implementation constraint will be **physical security** in terms of access to communities where programme interventions must take place. The extent to which this improves will be the extent to which it is possible to implement a recovery programme. Beyond this, as in all post-conflict scenarios, recovery efforts will be hampered by limited absorption and implementation capacity. Recovery will require a substantially scaled-up input in terms of funding, equipment and technical assistance, and the proposed interventions will need to be implemented in a phased manner. One of the major constraints relates to the number of suitably qualified staff – national and international – able and willing to work in Darfur. This is particularly true in some sensitive and highly skilled areas, such as reconciliation, and in particular technical areas, such as land rights. Other issues concern the lack of predictability and certainty concerning government or counterpart funding and the difficulties of maintaining smooth disbursements at regional and field level. Poor transportation and communication

infrastructure will also slow down early recovery activities. Government procedures for entry visas, travel permits of international staff and the importation of goods will also require easing.

7. Thematic Working Group Goals and Objectives

Goal: Improved security for all people in Darfur, sustained progress towards lasting peace.

Objectives

1. To restore the balance in communal relations
2. Start the process of addressing all major land issues, allowing IDPs and refugees to return in safety to their own lands and begin recovering their livelihoods
3. To reduce the number of SALW in Darfur, and to bring under control those remaining.¹⁴
4. To achieve progress in DDR processes as outlined in the DPA and DDPD, including integration into Security Sector institutions, as well as provision of comprehensive community based reintegration for those disarmed and demobilized as well as other vulnerable groups in receiving communities
5. Opportunities are provided to young people that offer an alternative lifestyle and livelihood based on a culture of peace rather than that of the gun.
6. Establish clear and transparent processes for compensation claims to be assessed and disbursement in accordance with the provisions outlined in the DPA and DDPD.

8. Programme Strategy

While programme strategy was articulated by thematic working group, it is important to recognize that the conflict in Darfur has multiple causes. Accordingly, it is important to address recovery in an integrated manner in order to address the root causes. The Peace and Security Report gives detailed programme strategies and proposed interventions, the following is just a guide to broad areas of intervention. As part of every intervention, strategic linkages with other TWGs, particularly Rule of Law, Governance, Basic Services, Private Sector, Agriculture, Returns and Reintegration and Livelihoods will be critical to ensure a coordinated and coherent approach.

8.1 Disarmament, Demobilization and Reintegration

The overall objective of the Darfur DDR programme is to contribute to creating an enabling environment for human security and to foster social cohesion and reconciliation between communities and ex-combatants specifically in all war affected areas. The programme specific objectives will cover the broad categories of activities outlined below;

1. The disarmament and demobilization of the male and female ex-combatants¹⁵ from the armed factions of the parties to the conflict with special attention toward women associated with armed forces and groups and ex-combatants with disabilities.
2. Sensitizing the communities for peaceful coexistence with coherent community based reintegration of male and female ex-combatants and community members and to ensure

¹⁴ By control is meant an agreed regulation of their use, the exact regulations agreed upon may vary from area to area and between nomadic groups and sedentary ones

¹⁵ Male and female ex-combatants

that ex-combatants do not re-enter the cycle of combat.

3. The improvement of legislation process and control of proliferation of small arms and pursuing peaceful co-existence and community violence reduction activities, in a bid to foster social cohesion and reconciliation, confidence building and to reduce threats to human security amongst the communities.

A priority will be supporting the Government of Sudan in the provision of reintegration support for LJM, verified male and female ex-combatants from other factions, and those not fit or interested in the integration into the National Security Institutions,¹⁶.

Demobilization will include cantonment provisions and support from relevant UNAMID sections, including DDR and HIV/AIDS. Community based reintegration will entail providing both targeted support to the ex-combatants and selected vulnerable groups as well as community wide interventions that brings benefits to the host communities. The approach will build on global best practices as well as from lessons learned from the CPA areas and East Sudan. The approach is a hybrid of reintegration and community security. It provides opportunities for communities to identify community related problems and address them through hard and soft interventions.

The exact numbers of combatants and associated groups belonging to each group is unknown at this stage. Estimates based on information compiled from the DSAIC Integration Plan and as deduced from reliable information are 35,000 DDR participants, which includes DDPD group, SAF and PDF, and bilateral agreements with factions.¹⁷ This number would be broken up into a phased approach, with 15,000 being targeted for 2013 and 20,000 being targeted for 2014.

A priority for this track must also be the **demobilization of all child soldiers** and appropriate reintegration or reunification assistance as required. As outlined in the DDPD, this will also include the repatriation of foreign armed combatants.

As part of the DDR programme and as established by Presidential decree, Community Security and Arms Control initiatives will be implemented alongside DDR processes to ensure that the gains made through DDR are not jeopardized. Community Safety, Civilian Arms Control, and Peaceful Coexistence Project interventions will complement DDR through a combination of community level small arms control projects, as well as the delivery of targeted 'hard component' (predominately infrastructure related projects) in target communities. The 'soft component' would complement this through the establishment of, and capacity building support to, a Community Peace and Development Committee. The committee would be supported with trainings on conflict resolution and peacebuilding as well as reconciliation skills, and broader support for community members in terms of awareness raising, civic education and other skill building activities.

These interventions will be strategically linked to the on-going UNAMID-Civil Affairs reconciliatory activities as well as the UNAMID/DDR Community Labour Intensive Projects (CLIPs) which aim to empower "at risk youth" and other vulnerable community members to develop alternative livelihoods

¹⁶ The Sudan DDR Commission and the Ministry of Interior are responsible for Disarmament activities, whereas the United Nations will support the SDDRC in the demobilization and reintegration phases

¹⁷ These figures are to be used for planning purposes

through working on intensive public works projects, income generating activities and skills training components aimed at reducing violence at the community level.

Additionally, as part of the follow up from the recent Regional Conference on the Control of Small Arms and Light Weapons with Sudan, Democratic Republic of Congo, Libya, Chad, and Central Africa Republic targeted Small Arms Control and Management projects with the Ministry of Interior and the Sudan DDR Commission will be implemented based on the finalization of the Small Arms and Light Weapons (SALW) control National Action Plan

8.2 Young People

Harnessing young people's energy for peace, giving them alternatives to the gun, and finding ways to bring them together across tribal and ethnic boundaries in order to break down the polarisation that has developed over the course of the conflict will be central to building peace and facilitating recovery in Darfur. Youth and vulnerable women will be prioritized in the Community Based Reintegration and Security programmes as well as specific programmes to directly target youth.

Many youth that grew up in camps may also chose to stay in urban areas as the rural life may not provide as many opportunities for them and they have become accustomed to urban settings. This has implications on many levels, including the need for education, skills training and new livelihoods in an urban setting. They also have the potential to be spoilers to the peace process should they not be engaged in meaningful employment and skill building opportunities.

8.3 Reconciliation

The strategy for achieving reconciliation will work at three levels:

- Diffusion of immediate tension and agreement to avoid conflict
- Ensuring that the agreements made are implemented
- Addressing underlying causes and supporting broader social cohesion restoration

Addressing underlying causes is an enormous task but the task for any reconciliation process will be to *identify* the root causes of any given dispute and ensure that the appropriate programming is in place. This will require an integrated approach working with Native Administrations¹⁸, *Judia*,¹⁹ and *Dimlig*²⁰. Additional consideration should be paid to how these work with the government-run reconciliation conferences, which have had little sustainable success.

¹⁸ Native administration in essence is a tribal organization. In conflict resolution, tribal administrations work in two levels. At the lower levels of Omdas and Shiekhs they usually concentrate their roles as mediators among the sections of their tribe. At the upper level of tribal chiefs the major role is to keep good relationships with other tribes. On this regard they concentrate their role of mediation and reconciliation with other tribes.

¹⁹ *Judia* is a grass root system of recondition in local communities. Wise and respected men often take the responsibilities of ago-between the conflicting parties. This is usually a voluntary activity blessed and appreciated by the community

²⁰ *Dimlig* is an old native institution in Darfur, used among the non Arab sedentary tribes. It is widely and effectively used in North and West Darfur local communities. In South Darfur, *Dimlig* institution confined to the Magdumia tribes while excluding the Bagarra Arabs. This mechanism is not recognized by the government authorities since they depend on native administration

The establishment of mechanisms for reconciliation needs to start from the grassroots. A network of voluntary peace committees from the community level should be established (building on what already may exist) and linked to a central mechanism at the Locality level. Each locality level mechanism should then be linked to the State level and ultimately the national level.

Peace Committees including community elders will need capacity building on effective management of such issues including conflict resolution mechanisms and approaches to addressing issues. Women and youth also need to be fully involved as actors in this process. In order to achieve this capacity building for both are required as well as with village leaders on the importance of their active and meaningful participation in reconciliation mechanisms. An important part of building peace will also be support to mechanisms that encourage the integration of ethnic groups.

Additionally, cultivating a culture of peace is part of supporting social cohesion restoration and mitigation of potential for conflict. Community based projects that target hot spots or areas of potential conflict, mutually benefitting different opposing or marginalized groups will be high beneficial as a mechanism to support broader reconciliation. Such projects will be covered through DDR and Community Security and Arms Control projects as well as through other key thematic areas including Returns and Reintegration.

8.4 Compensation

Immediate priorities for compensation must be identified as little progress has been made in this area since the DPA. This a review of the activities and progress of the Voluntary Return and Resettlement Commission and the Property Claims and Restitution Councils as well as the status of past claims submitted and progress towards addressing such claims. Additionally the terms of reference for the Property Claims and Restitution Committee (PCRC), as outlined by the DDPD, should be reviewed in light of the above two institutions previously established under the DPA to assess the best way to proceed with transparency and accountability to initiatives started earlier.

The development of a transparent claims procedure should be established. Additionally, the exact modalities and options for compensation would need to be established, based on a factual assessment on the ground. Such options should take into consideration the concerns of the target group in relation to livestock, land, and the best opportunities for sustainability of compensation so that restitution is not immediately sold off for cash.

As the DDPD and the DPA specified the need to ensure women and vulnerable groups are fully eligible and engaged in the process, it will be important to ensure a transparent and clearly articulated awareness campaign to advise individuals on the new procedures, eligibility, claim submission, and adjudication on claims through appropriate institutions. Most likely special outreach units will need to be established in order to reach women and other vulnerable groups who may not have the same access to information or who may be discouraged from reporting.

Finally with respect to the Compensation Fund itself, clear mechanisms for administration and oversight of the Fund must e established and agreed to include who will represent the board of the Fund. As the Fund is seen to be a joint cost-sharing initiative between the Government of Sudan and the international community, it must be urgently established if GoS has the necessary funds to support compensation, given the financial situation in the country. Additional, donor interest must be

assessed in order to clarify the Fund size and how to prioritize claims according to what the budget will be.

8.5 Land

Different strategies are needed for dealing with urban and rural land issues, as one comes under formal law and the other is still largely dealt with through customary law. The strategy also recognises that there will be no solution to land issues without also securing livelihood issue. An integrated approach to programming is required. This integrated approach will need close links to strategies for supporting livelihoods, both for sedentary and pastoralist groups. It will prove impossible to resolve all the disputes over **rural land** if they are all dealt with as individual cases. Ensuring negotiated settlements to such disputes will be critical.

Strategy for Land administration and dispute resolution

The following proposed strategy to respond to the current lack of participatory, efficient and legitimate land administration in Darfur aim at promoting the recognition of customary rights, enabling communities to act as land managers, negotiating mobility, and effectively resolving land disputes. The DDPD provides for the creation of a Darfur Land Commission for law and policy development and arbitration of claims. The DLC is therefore a suitable platform through which to promote the following proposals.

1. Recognition and legalization of customary land rights.

There is no doubt that recognizing and legalizing customary land rights constitutes a major step forward in securing access to land and natural resources for rural populations in Darfur. Customary rights over land and natural resources continue to be the legitimate backbone of land management for all Darfuris, including pastoralists. The DDPD does not leave doubts about this when it states under article 188 that “tribal land ownership rights, historical rights to land, traditional or customary livestock routes, and access to water shall be recognized and protected”. The only way to achieve this is to register these rights and put them on an equal footing of prescribed rights by the state. By doing so the state may only interfere when it has a strong reason for it to do so.

The registration of historic or customary rights over land (including access to natural resources and livestock routes) cannot be considered in isolation of a number of processes, such as rural development, wealth sharing, local administration, conflict resolution and prevention. The registration of rights is not a socio-technical survey or cadastral exercise, but a process that, along the road, will need to deal with issues of substance, which may have a significant impact on the daily life of millions of Darfuris and not at least on future state affairs.

The registration of rights over land and natural resources should support a development vision that is based on mobility, resource sharing, renewing synergies between different systems. This model should thus avoid at all costs cutting off population groups from using, on a negotiated basis, resources that are “held” by other groups. This calls for an “open border” rural development model, which can be realized by considering a package of land tenure reform measures.

At the end of the day the registration of customary land rights is not likely to be the same as tracing back old hakura charters, identifying the boundaries where other hakura holders had rights, survey

and register these. On the other hand it should be clearly acknowledged that one of the most salient characteristics of the hakura system is its flexibility. In a fragile marginal environment like that of North Darfur it would have been impossible to accommodate the large numbers of population in the areas south of El-Fasher and east of Nyala without the help of national and international actors. Yet the 1970s and 1980s witnessed a large exodus from Dar Zaghawa to these areas where they settled voluntarily according to customary tenure system (hakura) principles. If all land is registered, such flexibility would no longer operate. Therefore it is important that registration is achieved slowly and in stages starting with the most intensely used lands, especially in peri-urban areas while leaving other areas under the open customary system. This entails introducing a zonation system in order to classify land according to its usage and potential.

The following steps are needed to initiate a process of community land registration:

- Research and consultation
- Methodology development
- Pilot registration projects
- Political debate
- Consolidation of approach
- Law reform
- Customary land registration programme
- Strengthening and capacity building of land holding institutions (local right holders)
- Capacity building of service providers (survey department, universities, others)

2. Administration of customary land rights

Until recently, land and natural resources use were administered by local customary leaders (native administrators). Since independence this capacity has been partially replaced by different forms of the State apparatus, but it was never successful in promoting a legitimate and efficient type of management. The synergies that existed between different land use and production systems are being replaced by polarization of land use, eventually resulting in isolated patches of development and others of hardship and conflict.

The community as a land manager implies that the self-defined community is responsible for administering the land in its territories while remaining a politically neutral body. The administration of the territory (e.g. allocating land for certain families or uses or collecting fees for the maintenance of water holes) can be undertaken through working on the practical day-to-day issues of managing the territory and creating a body of community members to organize meetings, document of customary rights, collect fees, set regulations, promote environmental sustainability and facilitate community discussion and planning on land management. Since native administration personnel have been historically associated with this function their role in any future land management modalities could not be overemphasized. Any such body, however, needs to ensure an equitable representation of the community's groups (e.g. customary leaders, youth, women, elderly, and minorities) and should be elected through a democratic process. Considering the high number of returning women-headed households to Darfur, it is essential that the community land management body represents the interests of this group.

This association of community members will provide a space for dialogue on managing their territory's land and natural resources. At the same time, regrouping the community to discuss these issues in a pragmatic and technical way will help transform the conflict by building community trust.

The representative body will interact with neighboring bodies and local land administrations to foster the complementarities of land uses and not confrontations. The representative body will also act as a focal point for outsiders who wish to use or invest in the territories natural resources. Several activities must be conducted to ensure that the community takes on the role of land manager:

- Awareness raising on the community's role in land administration
- Training for community representatives on best practices for land administration
- Extension services for the communities
- Financing for community land management bodies

3. A better management of mobility through participatory land use development

As some form of mobility will continue to be an essential element for the livelihoods of most of the Darfur groups, a better management of it would certainly contribute to the conflict transformation process. Some reduction of mobility can be envisaged by promoting a number of “new” production systems, such as peri-urban agricultural activities around major towns. The possible impact of these systems on the overall population of Darfur is probably small. Traditional coping mechanisms under reduced mobility such as adapting herd composition (substitute livestock by small stock) and size (decreasing herd size) have their merit and opportunities to promote these should be encouraged. The sedentarisation of nomads has been often been on the government agenda on a number of occasions, yet it remains unrealistic and problematic. Nevertheless the idea deserves to be revisited not on the basis of offering “nomad sedentarisation projects” but rather by promoting an alternative lifestyle that militates against high mobility.

Imposing control on mobility is another option, and is sometimes addressed as part of the rehabilitation of stock routes. It goes hand in hand with putting into place infrastructure such as watering points, improved pasture in concentration areas, and availability of veterinary services along the routes. Some NGOs and civil groups are involved in the monitoring of migratory routes, and encourage the formation of local patrolling teams. It is not clear whether this approach may be successfully replicated in areas of high tensions and dispute. The major challenge however is to create an enabling environment for supporting highly mobile systems in such a way that there is some form of agreed consensus on the use of space among different land user groups in time. This environment cannot be imposed on Darfuris but should be developed by themselves as part of a full inclusive negotiation process.

The process can take the form of some sort of participatory land use development process, which seems to have existed in earlier times when there was less stress on the natural resource base. The different steps of such a process include:

- Identification of stakeholders
- Stakeholder analysis, sensitization and capacity building
- Building negotiation platforms
- Community asset mapping
- Consensual territorial pact negotiation
- Development of a conflict transformation portfolio (reconciliations)
- Implementation of portfolio

4. Strategy for Dispute resolution for land and natural resources

The institution responsible for the resolution of conflicts over land and natural resources has been already identified as a “Darfur Land Commission”. The Land Commission, in its adjudicating function, may apply statutory law, customary law, and principles of justice and equity. This entails that the Commission will have to make the best use of both the statutory legal framework and the assets of customary rules and regulations in devising its proceedings, particularly mechanisms for inquiry and adjudication.

The statutory law has the advantage of being enforceable against everybody, given its binding nature. However, litigation in courts is a long, expensive, and technically complex process, which requires time, money and the qualified assistance of an attorney. It is therefore necessary to seek a new forum of adjudication which combines the quality of judicial or quasi-judicial proceedings with the simplicity and expediency which are essential in the current situation.

As for what refers to the customary laws when dealing with conflicts, an aspect is crucial for conflict transformation and promotion of sustainable peace: the conflict resolution process brings on the stage the whole history of the disputants (individuals, families, clan or entire tribes) and the solution is sought in a compensation perspective whereby all gains and concessions made in the past are brought into the equation of the conflict and weighed in assessing the case in question. To achieve sustainable peace, traditional conflict resolution entails three main objectives:

- a. Pay damages to or compensate the victim;
- b. Prevent a repeat of the incident through reconciliation process; and
- c. Arrive at a win-win situation whereby both parties are responsible for implementing a final settlement.

Given the wide range of cases expected to arise (regarding a plot or a whole territory; involving individuals or a whole community; concerning rural or urban land; relating to rights of historic occupation or forced eviction) all existing mechanisms have to be taken advantage of, from local customary conferences to ordinary courts. The Land Commission is endowed with the power of devising an hybrid system intermingling tradition with “the force of law”, but this *ad hoc* form of adjudication has to work in parallel with the statutory and the customary legal systems, not necessarily replace them. The added value of the Land Commission can be, on one hand, to turn customarily reached agreements into legally enforceable decisions, and on the other hand to receive and scan claims, and hand over to courts those which cannot avoid formal litigation.

To support the development of such an integrated system for resolution of disputes over land and natural resources it is required to:

- Promote the establishment of and provide technical assistance to the Darfur Land Commission (DLC).
- Perform an analysis of the procedural statutory laws and identification of suitable proceedings that match the requirements of adjudication on rights of historic occupation/use and restitution of lost land and property.
- Promote the use of traditional conflict resolution mechanisms, mainstreaming the holistic approach of conflict as a part of a history of relationships between different groups.
- Conduct research on customary laws and practices, taking stock of rights of occupation and use, land use and management rules, mechanisms for inclusion and exclusion of other users.

Annex 1: Land Issues

Main characteristics of land tenure in Darfur

Customary land tenure in rural Darfur generally shares certain characteristic features that justify the establishment of an overall land administration policy; and the Land Commission stipulated in the DPA & DDPD could proactively facilitate the drafting of such policy. This does not mean that local particularities do not exist within the five Darfur states - the fact that Darfur is endowed with a variety of ecological zones makes any assumption about strict uniformity invalid – but the main land tenure characteristics can be summarised as follows:

1. Land is not formally registered according to the provisions of statutory law.
2. User rights predominate. Such right tends to be inclusive rather than exclusive.
3. Rights lapse if land is not used for a certain period (three years in the goz). Involuntary absenteeism does not count in this case.
4. Communal rights exist and are often overlapping
5. One individual or family may be using a piece of land but other members of his or her family also have rights to the land, so that a person cannot be said to have an individual title to land.
6. Land remains within the clan or tribe and can rarely, if ever, be sold to outsiders, although outsiders can have user rights.
7. The political solidarity of a tribe is organically related to its power to control/manage the territory designated as its homeland (*dar*).
8. A native authority chief has the power to allocate land and to adjudicate disputes. Such powers are usually exercised in consultation with elders in the community, although it is understood that potential economic gains sometimes can cause leaders to follow their own personal interests and allow outsiders to settle on communal land for a fee without consulting their community first.
9. Women generally have restricted land rights; mostly they can only obtain land use rights through their husbands, fathers, brothers, and even sons. The custom in most areas is that land is allocated to a family and the “man” is considered the representative of his family in such situations; as such, women have access to land but only as a member of a family. There are, however, exceptions.

Hakura as a core of customary land tenure system

Land tenure arrangements in Darfur find their origin in local norms and customs that have been adapting themselves to regional and local dynamics. These rules regulating access, holding and transfer of land and natural resources use and management are legitimate to a wide majority of local people. This body of rules represents the locus of what is known as the “Hakura” system. Only recently a layer of statutory (prescribed) rules are overlaying these customary rules, not in a complementary and streamlined fashion, but as substituting and overruling. The latter are legal for the state, but not legitimate to the people. They do not always translate local needs in legal terms; on the contrary they tend to negatively interfere with local arrangements. Hakura rights were user rights, rights to manage, to allocate land to members of the social group, but they were rights that could be withdrawn by the Sultan if certain conditions (e.g. loyalty) were not respected. Hakura rights were documented in the form of Charters, confirming the authority of a chief over his people and his right to manage the land that falls within the territory of the tribe. Usually such charters also describe the boundaries of the estate being granted.

Hakura rights are hence conditionally inclusive. The spirit of hakura implies that everybody, if they respect its rules and institutions, may have access to land or other natural resources. The system includes provisions for outsiders passing by, for groups crossing a given territory seasonally, and for groups searching for temporary or more permanent accommodation. Internally, the hakura represents a full system with a hierarchy of rights (and correspondent obligations), ranging from the allocation of a specific plot for cultivation or pasture to the access to common territory. Moreover, secondary rights attached to someone else's primary rights exist, such as rights to water and trees on another's land.

Hakura forms a basis for conflict transformation and re-establishing livelihoods. Since the Comprehensive Peace Agreement, any institutional step in its implementation (e.g. Interim National Constitution, State Constitutions) has underlined the importance of historic and traditional rights over land in the peace building and post-conflict recovery process in Sudan. Both DPA and DDPD recognized this. Hakura is recognized as a legitimate system for land administration for all Darfuris. Discussion during the DJAM Workshop made it clear that almost all Darfuri traditional leaders, representing both sedentary farmers and nomadic pastoralists, agree on the legitimacy of historic land rights. The leaders see the reinstatement of the hakura system as one of the pillars for the resolution of the Darfur crisis.

Customary versus statutory land tenure systems

Before displacement, rural communities have co-existed during centuries under complex land tenure systems evolving along with customary practices and laws. Statutory legal frameworks from 1970 and 1984 have partially affected customary land tenure systems, although it is recognized that communities have a right over land they occupy while the ownership remains theoretically with the Government.

The current land tenure systems under customary law in Darfur are highly complex. Changes resulting from migration and resettlement, increased population density, environmental degradation, droughts, etc. have affected the systems in recent years resulting in various conflicts. The enactment of the above mentioned statutory laws have added to the complexity of the tenure situation. Thus, it is no longer possible to talk about either a single or homogeneous land tenure system in the whole of Darfur. Resolution of disputes over land, housing and property therefore will require a variety of dispute resolution mechanisms, principles and strategies relating to the underpinning customary or statutory systems under which such occupation occur.

Overall situation after the war

It is estimated that approximately 2.5 million persons have been displaced from their places of origin within the three states. These are mostly displaced to the approximately 100 camps. Others are squatting around urban boundaries or living with host families in towns.

Expected return pattern affecting land and property

Although it is Government announced policy that all IDPs should return to their villages, it is generally expected that between 20-30% of the IDPs will try to resettle in urban areas. When the conditions for a safe and dignified return have been established, the remaining large proportion of IDPs is expected to return to their places of origin in rural areas. It is therefore crucial that assistance is provided to state planning ministries and municipal administrations to ensure that sufficient plots,

services and infrastructure are available to absorb this sudden rural-urban migration. However it is important to guard against the misunderstanding of the intentions of those who declared their preference to stay in urban centres because many of them could actually say so in order to obtain an urban plot while they intend to keep access to their rural land because they know that it is based on communal rights that are inalienable. As a matter of fact most urban dwellers in Sudanese cities do keep rights of access to rural land on basis of membership in extended families or local communities.

Estimation of the potential number of land and property claims and disputes

Land and property occupation and the ensuing disputes is a core problem in the Darfur conflict. However there is limited factual data on the expected number of returns, let alone the number of claims and disputes, although there are emerging trends. The total number might only be established after IDPs return to their places of origin, as occupations have continued during the displacement. It is rather safe to assume that the majority are going back. In many cases, current occupants might choose to leave upon the return of the land owners and restitution will not be an issue. In cases of disputes, these will be managed by the native courts. It is uncertain if the “property claims committees” incorporated in the DDPD will be established and what role they will be given in relation to property restitution under customary law.

However, even though reconstitution and strengthening of the native courts and administrations is a key recovery priority, it is doubtful that these, in a timely manner, will be able to manage the expected increased of rural land and property claims. There is clearly a need to prioritize the establishing of temporary mechanisms under the customary system to deal with the extraordinary case load. This should be a priority despite the increasing role of formal land acts and the diminishing role of the customary administration.

Rights of IDPs to land and property restitution

A fundamental condition for durable peace and sustainable recovery is the restoration of trust through fair and transparent land and property restitution. Although there is no international convention on the protection of IDP rights, it is universally recognized that IDPs have a right to land, housing and property restitution, a right, which is also reiterated in the DDPD as one of the main principles. This includes the right to be compensated adequately for the loss of their property, in accordance with international principles.

The DJA, therefore, should support and facilitate returning IDPs and recipient communities in asserting their rights to repossessing occupied land and property whether in rural or urban areas, despite the difference in restitution mechanisms.

Aggregating land, housing and property occupations in accordance with customary or statutory law

Although it is generally expected that people’s historic rights to land and property will be respected, it is by the same token envisaged that there will be a number of claims and disputes over occupied land and property. As these will require different types of dispute resolution mechanisms it might be useful to disaggregate them in to the following main categories of land occupation:

- Property and land occupation in rural areas (customary law)

- Property occupation adjacent to but outside urban boundaries (customary law)
- Property occupation of allocated plots in urban areas (statutory law)
- Land occupation of un-allocated land within urban boundaries (statutory law)
- IDP camps occupying private rural farming land (customary law)

Some of these can be further divided according to the cause of the problems, e.g. migration due to drought, resettlements, and cross-border migration, temporary and permanent land occupation by nomads, etc.

Mechanisms for land and property restitution outlined in the peace documents

Although the DPA and DDPD do not discuss causes and the needs for specific restitution mechanisms, it does stress that Property Claims Committees (PCC) shall be established as impartial institutions to mediate or adjudicate in situations where land and property has been permanently or temporarily occupied. It does not, however indicate how the different type of disputes should be managed and also not what the mandate of the PCCs will be in relation to the customary administration and courts. Likewise, it is also unclear what the relation of the PCCs will be vis-à-vis the statutory courts in the states.

The land and property resolution task is further complicated because individuals and tribes hold several types of rights to land under the customary system. For instance, certain communal rights override individual user's rights, e.g. for access to water sources, roads, animal routes, gathering of firewood, etc. In other words, the issues transcend that of restoring individual or community land and property rights and need to embrace the right to meet basic needs for both household and livelihood purposes. It is therefore advisable to prepare and distribute a set of coherent guidelines that these committees and the customary courts can use for the mediation and adjudication to promote equal rights for all in accordance with the local customary systems and thus mitigate new conflicts.

Darfur Land Commission (DLC)

According to the DPA, the land commissions are independent institutions that shall perform land dispute arbitration, recommend land policy reform, determine land use, conduct research on land tenure and recommend property restitution instruments. As such they have been given an important role in restoring land and property rights and related compensation measures by providing policy advice on land reform and restitution mechanisms. While membership, appointments, terms and conditions shall be regulated by law, there is limited direction given on the envisaged content and principles of policies on land administration, land use and restitution mechanisms.

It is envisaged that external assistance programmes should be made available to promote the inclusion of international standards and procedures in the undertakings of the commissions and support the impartiality of these.

Land and property occupations and existing dispute mechanisms in rural areas

Occupation of individual land and property occurs across all three states. Individuals, communities or the military have occupied land and property belonging to families, communities or clans now displaced by conflict. IDP camps have been established on private farmland, which in most cases should be considered only as temporary occupations. The different types of land and property

occupation in rural areas include international migration (from Chad), migration and resettlement (drought), blockage of livestock routes and conflicts over grazing rights, predatory grazing, destructive tree cutting and more.

It is clear, therefore that restitution and compensation mechanisms will differ in accordance with the particular situation and location. Some cases can be resolved by the customary courts, while others require the intervention by temporary ad-hoc mechanisms or in special cases the land commissions. People can appeal the native court's land and property dispute rulings to the civil courts.

If the customary administration and courts will continue as the first port of call for land and property disputes, two key questions are relevant to the current situation in Dafur:

- 1) Do the native courts have sufficient capacity and integrity to resolve these disputes or are additional land and property mechanisms needed?
- 2) To what degree will the conflict between customary and statutory legal systems require external interventions?

A major condition for restoring rights to land and property is the verification and acknowledgement of such rights. Here the native administration plays a crucial role in rural areas, as the local Sheikhs are responsible for the land administration and allocation. Local communities are cooperating with these as they manage and protect the land. Without the native administration, "title holders" will be powerless in enforcing any customary obligation on land users (water collection, trespassing, etc.).

However, the native administration is severely constrained by both the diminishing role ascribed to it by the Government over the years as well as by the impact of the conflict that has disrupted social relations upon which the traditional/customary processes are dependent. Virtually all the native courts are currently defunct. Therefore, there exists a major need to support the reconstruction and strengthening of the native administration and courts in order that it can effectively address land and property disputes in the future. These will, however only work effectively if they are not undermined by political forces.

A number of other concerns are related to the effective restoration of the native land administration system. Its administration and courts rarely register and record land allocation. Generally, decisions are oral and susceptible to misinterpretation and exploitation with a few exceptions. The native courts lack enforcement mechanisms vis-à-vis non-members of the communities. Decisions are also based on individual assessments and evidence, and thus not necessarily applied consistently across the three states, which ultimately can lead to claims of discriminatory restitution practices by returning IDPs.

Another aspect which complicates property restitution procedures under customary law is the different rights of title holders, members of clans, etc. Each of these have different rights they would seek to have restored in addition to that of repossessing the land and property they left when displaced, in order to sustain livelihood practices.

Therefore, any revitalization and strengthening of the native administration and courts will as a priority need to address issues, such as restoration of leaders, records and verification mechanisms, administration, courts, procedures, credibility, impartiality etc. In line with this and with a view to strengthen the native land management system to mitigate new conflicts, effort should be made to set

up “simple and transparent land registration systems” that can be managed within the customary system.

It is critical to note that enforcement of land and property restitution decisions in the past often has resulted in (forced) evictions of occupiers if peaceful settlements could not be reached. It is highly recommended that repossession of land and property is associated with resettlement options and incentives for newcomers to prevent new conflicts. Such options and incentives can be locally brokered between leaders but, in many cases, will require external technical and financial support, to provide for instance water sources, etc. to make the settlement on alternative land possible and feasible.

Land and property occupations and dispute mechanisms in urban areas

The illegal occupation of land and property in urban areas can be divided into two types of occupation. The first being occupation of urban plots, which have been formally allocated to lease holders for a period of 20-40 years against a set fee and who currently are absent from the land due to the conflict. The second relates to occupation of urban land, which has not yet been surveyed, demarcated and allocated as part of a detailed statutory urban plan.

A third type of occupation related to the above is when land at the urban fringes is being illegally occupied by IDPs or other rural-urban migrants. Although the issue of occupation of rural land outside urban boundaries by default is an issue for customary law, it has an urban dimension, as the occupiers mostly have chosen this land adjacent to the towns in order to benefit from urban services and often have the intension of settling in the urban areas after the conflict is settled. They can either be resettled within the urban boundaries or the urban boundaries can be changed to include these areas after consultations with the land owners and due compensation is agreed upon.

A fourth type of “occupation” occurs when plot owners allow family members or others to temporarily or permanently settle on within the plot. This is often not in accordance with the detailed urban plan or urban settlement plans and results mostly in unhealthy overcrowding and increased pressure on already malfunctioning and scarce urban services. The resolution of this issue is mostly administrative and cases rarely end in the civil courts. It raises, however, the issue of insufficient availability of urban plots affordable to low-income plot seekers.

Establishing the necessary and impartial capacity for resolving urban land and property disputes is crucial for a voluntary and durable return processes. A fundamental condition for a sustainable recovery is the trust in the public institutions and the effective application of law and order. Experiences from return situations in other countries with internal conflicts show that IDPs are unlikely to return until such trust is established. This includes that effective and impartial resolution mechanisms are in place.

However, the land and property issue goes beyond that of restoring land and property rights. Future economic activities of returning IDPs are crucial for the necessary economic regeneration. IDPs or affected communities are unlikely to make even small economic investments until land and property disputes have been resolved and property records restored. The same applies to inward economic investments, which are crucial for restarting the stalled economies.

Land and property ownership in urban areas is almost 100% recorded in the registrar's offices under the ministries of justice. The individual plots are included in the urban settlement plans and allocation done according to needs based on social surveys undertaken by the land departments. Any formal change of ownership as well as extension of leases must be registered to be considered valid. IDPs returning to their plots and property, which have been illegally occupied, have a formal right to restitution or proper compensation through an impartial and formal legal institution. Restitution of illegally occupied land and property in urban areas therefore is dealt with by the formal statutory civil courts in the state cities or through mediation and voluntary settlement.

As there is no reliable information or credible projections of how many displaced persons or families will claim occupied property in urban areas, it is difficult to determine the extend to which property claims will burden the civil courts and administration in the state cities. However, the formal legal institutions (civil court system) have been seriously disrupted in all three states and thus have limited capacity to also deal with land and property disputes. Therefore, people are likely to have limited recourse to justice through these institutions during the recovery period unless the system capacity is swiftly restored preferably before the return of IDP. As a complete restoration is unlikely in the short-term, it is advisable to establish ad-hoc "claims committees" to manage the envisaged extra case load of land and property claims in urban areas to relieve the civil courts and give them time to restore necessary capacities and resume functions in due course.

If the number of urban land and property claims is higher than anticipated, it would probably be necessary to establish ad-hoc mechanisms in each state, such as specific "urban claims commissions" to manage land and property claims with a legal mandate to issue rulings. These should function as complementary to the civil courts. In both cases, it is recommended to seek international assistance to ensure impartiality and transparency. This should incorporate the building or strengthening of sufficient legal and administrative capacity for both the preparation of cases and for the courts or commissions to perform a coherent and high standard legal adjudication.

Finally, it is advisable to set-up counselling facilities for IDPs, which without delay can advice IDPs on their rights, especially women's rights, documentation and verification needs, claims procedures and timing.

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