

The land question: Sudan's peace nemesis

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HPG Working Paper

December 2007



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1. Background

Competition over land and natural resources has long been a source of tension between different groups in Sudan. In colonial times, confrontation mainly took place over land access, especially among pastoralists and between pastoralists and farmers. The British administration accepted customary rules over land, though the title to land was vested in the government. The Native Administration was delegated to arbitrate between different groups. After independence the colonial system of natural resource management was abolished and tribal leaders were replaced by predominantly northern administrators. New laws concerning land tenure were developed on the principle, introduced by the British, that unregistered land is assumed to be owned by the government unless the contrary is proven. Legislation introduced in the 1970s and 1980s (particularly the Unregistered Land Act of 1970 and the Civil Transaction Act of 1984) further strengthened the privileges of the state and allowed elites close to government to acquire land at the expense of rural people. Expropriations were common particularly in Southern Kordofan (namely in the Nuba Mountains area), where illiterate farmers and pastoralists saw their land assimilated into mechanised farming schemes or simply registered in someone else's name. These land grabs led to massive displacement and was a main reason why, in the late 1980s, people in Southern Kordofan joined the Sudan People's Liberation Movement (SPLM) insurgency. Similar displacements occurred in the 1990s, particularly in oil concession areas such as Unity State. Land issues were also at the heart of the conflicts in eastern Sudan and Darfur.

Land is a central issue for both rural and urban communities in Sudan. It is not just a means of livelihood and basic survival, but also has profound cultural and socio-political dimensions. Local level conflict over access to natural resources, often in a context of environmental degradation, have always characterised the

interaction of different groups in Sudan. However, issues of governance and administration, both at the local and national levels, have precipitated these conflicts and magnified their impact to a national scale. Agricultural expansion in particular remains a key dynamic in sparking group conflict, mainly by disrupting pastoral movement, to which both drought and insecurity have contributed. The impoverishment of pastoralists has made them willing to be used as militia in the wider conflict.

There is no unified legal framework of land tenure across Sudan. In the north, despite the fact that official land law has been transformed under successive governments, legislation is essentially founded on colonial land laws. In the south, the SPLM and later the judicial systems of the government of Southern Sudan (GoSS) have been largely based on customary legislation, especially when regulating access to land and dealing with land-related problems. During the civil war the SPLM rejected statutory law in its areas of control (De Wit, 2004: 10). The Power Sharing Protocol of the Comprehensive Peace Agreement¹ (CPA) enshrines parallel legal systems in northern and southern Sudan, but the situation in the contested areas (Southern Kordofan and Blue Nile) remains unclear, as also in Darfur.

Given its complexity, for expediency's sake the problem of land ownership was deferred by the CPA to the post-agreement phase. The CPA does not per se address issues regarding the ownership of land and natural resources, but establishes a process to resolve this question through the establishment of a National Land Commission and a Southern Sudan Land Commission. Similarly, the Darfur Peace Agreement (DPA) has delegated the resolution of land issues to a future Darfur Land Commission (DLC). However, the National Land Commission is one of the few national-level bodies yet to be established within the CPA process, creating fresh problems in the post-conflict phase.

¹ The Comprehensive Peace Agreement, signed in January 2005, formally ended the 21-year war between the government of Sudan and the Sudan People's Liberation Movement/Army (SPLM/A).

2. Key actors and institutions

According to the CPA, the Government of National Unity (GNU) is required to establish a National Land Commission (NLC). The commission is mandated to arbitrate on land claims between contending parties, enforce the law, assess appropriate land compensation and advise the government on land reform policies and recognition of customary land rights or law. The NLC was to be established after the approval of the Interim National Constitution and the enactment of a National Land Commission Act. A Commission Preparatory Team was established in 2005 to prepare a draft of the NLC Act. However, fundamentally diverging views between the former ruling party, the National Congress Party, and the SPLM prevented progress. After further delays, the task of drafting the enabling legislation for the NLC returned to the National Constitution Review Commission (NCRC), which appointed a Senior Legal Expert to produce a draft act. The act was submitted to a wide range of stakeholders for discussion and revision at a high-level workshop in Khartoum in late February 2007. No significant progress has been made since.

The Southern Sudan Land Commission (SSLC) was established through a presidential decree; however, a draft bill giving the SSLC a legislative basis and clarifying its mandate has yet to be passed into law. The NLC and the SSLC are required to coordinate their activities and set guidelines for the resolution of disputes. There are however uncertainties concerning the nature of the law upon which arbitration will be based. According to the CPA, if the NLC and SSLC fail to resolve a disagreement, the matter is to be referred to the Constitutional Court, but it is unclear whether the Court will base its decision upon statutory or customary legislation or equity principles. Meanwhile, State Land Commissions in Southern Kordofan and Blue Nile have not been established, and the decision of the Abyei Boundary Commission² has not been accepted by the National Congress Party.

A satisfactory reform of land policy, management and administration is particularly urgent for returning IDPs and refugees, residents in rural areas with no codified title to land (especially those who have communal customary land rights, like pastoralists), IDPs residing in urban areas and women. A detailed description of the main problems affecting each of these categories is provided in section 3 below. Such reform is all the

more important given the predatory tendencies of elements of the military, especially SPLA soldiers in Southern Sudan. Returning soldiers are said to be occupying (temporarily) abandoned urban plots in key Southern Sudanese towns such as Juba and Yei without the consent of the owner; these plots are normally not vacated when absentee owners return. The military, which is close to the new Southern Sudan administration, is also accused of building on plots it does not own and illegally selling plots in urban areas. Many boast that they take precedence in ownership of land over those who fled the war, since they were the ones who fought to get the land back (De Wit, 2004: 22). Others benefiting from a special relationship with the new authorities include private sector investors and speculators, both in the north and the south. Prevailing conditions in rural areas, especially in Southern Sudan and in the transitional areas, and the current legal vacuum favour opportunistic land grabbing and speculative activities. Meanwhile, pro-government militia have illegally occupied land in Darfur. Secondary occupation has taken place in western and south-western Darfur, where nomadic Arab groups like the Mahariya, the Missirya, the Salmat and the Beni Halba have occupied or are using for grazing land originally inhabited by non-Arab sedentary groups such as the Masalit and the Fur (Intersos, 2006).

The Native Administration and local tribal chiefs, who were customarily entrusted with the management of rights to land ownership and use, especially in rural areas, have been losing the capacity to control land alienation. In the north many, especially more radicalised youth, consider the Native Administration as elitist, undemocratic, highly politicised and gender-blind, and feel that it should undergo profound restructuring if it wants to genuinely represent communities and mediate disputes over land. In the south, war has greatly reduced the power and status of tribal chiefs,

² The Abyei protocol envisaged the establishment of the Abyei Boundary Commission, composed of five representatives each from the Sudanese government (National Congress Party) and the SPLM, as well as five international experts. The experts would have the final decision if the parties could not reach an agreement. The mandate of the Commission was to determine the exact boundary of the area of Abyei, based on historical records and community testimonies. As the two sides could not agree the final decision fell to the international experts, but has been rejected by the National Congress Party.

particularly as military tribunals have been operating in place of customary courts (Akechak Jok *et al.*, 2004: 53).

National and international NGOs are playing an important role in documenting customary land traditions and examining key land issues of relevance to returning IDPs and refugees. Oxfam, SOS Sahel and ACORD have been working with UNDP to document customary communal land rights and traditional land management systems in North Darfur, Northern Kordofan and the Sobat Valley. In Southern Sudan, the Norwegian Refugee Council has carried out studies on land and property issues relevant to the return of IDPs and refugees, in collaboration with UNHCR and FAO. In Darfur, Intersos has been monitoring and mapping secondary land occupation in a number of districts in the south-west. Amongst national organisations, the South Sudan Secretariat of Legal and Constitutional Affairs, with the support of World Vision International, has conducted research on customary laws in Southern Sudan aimed at analysing and recording different tribal systems. It is however unclear to what extent the array of studies on land has found any practical application.

Since 2002, UNDP has focused on reform of land legislation, particularly aimed at the recognition of customary law, in collaboration with NGOs working with communities at the state levels to recognise and register land practice. UNHCR has

supported the preparation of studies on land and property in Southern Sudan and Darfur. The FAO Sudan Land Programme has provided technical support to the Government of National Unity (GNU) and its designated committees for the establishment of the National and Southern Sudan Land Commissions. In the south, FAO has been working in close collaboration with UNHCR and NRC on land and return issues and has been providing technical support to the SSLC. The agency has also advised the Darfur Joint Assessment Mission³ (D-JAM) on land issues. It is apparent from background research for this briefing that UN agencies (particularly UN-Habitat, UNDP and FAO) are split along specific agendas and interests (e.g. urban planning for UN-Habitat), especially in Southern Sudan (SRSG briefing note prepared by the FAO Sudan Land Programme, 02/10/2006).

The most important donor in this area is USAID. USAID focuses on sensitisation and community-based negotiation on agreed customary boundaries and access rights, while at the same time establishing the institutional mechanisms for legal recognition, registration and administration of land holdings. Key project areas are Southern Kordofan, Blue Nile and Southern Sudan, with plans to expand work to Eastern Sudan. Other donor governments, particularly Denmark, Italy and the Netherlands, are playing an important role in supporting the establishment of the National Land Commission.

³ Following the signing of the Darfur Peace Agreement (DPA) in 2006 between the GNU and the Sudan Liberation Movement (SLM), the parties undertook a process of identification of key early recovery and long-term reconstruction and development needs for Darfur. This process, known as the Darfur Joint Assessment Mission (D-JAM), was led by the parties with support from international organisations, particularly the United Nations and the World Bank.

3. Key problems and risks

A number of problems require urgent attention to ensure that land issues do not seriously undermine progress towards durable peace in the country. The absence of an overall framework to deal with land issues with the necessary urgency is apparent. This framework includes a coherent land policy, adequate legislation, functioning institutions, law enforcement capacity and supporting services. Land access issues and resulting disputes require urgent action.

The commercialisation of land (not expropriation) is gathering pace in both the registered and unregistered sectors. In the registered sector, poor subsistence farmers are being pushed to sell their title without full awareness of the implications of doing so. In the unregistered domain, land grabbing – by officials affiliated to the NCP or the SPLM, the military, private investors, land speculators, religious groups and urban residents – is increasing. On the eve of the CPA, both the former government in Khartoum and the SPLM have been issuing new long-term land leases over community lands to privileged citizens and foreigners without any local consultation and without the genuine consent of the customary landowners (De Wit, 2004: 30).

The process of land alienation is symptomatic of a lack of attention to the importance of land and property problems in the context of IDPs and refugee return, both by the GNU and the GoSS. New expropriations or the recuperation of old land leases and concessions, legally or otherwise, may cause a new wave of displacement, or may jeopardise the chances of people returning to their areas of origin. In Equatoria, for instance, there is major private-sector interest in acquiring vast areas of land for coffee estates, exploiting rich timber resources and investing in new teak plantations (De Wit, *ibid.*: 45). Attempts to develop new mechanised schemes on smallholder farmers' or grazing land in Southern Kordofan and Eastern Sudan have also been observed. Private sector pressure on the return and resettlement process is a matter of growing concern.

Further displacement may also result as returning IDPs and refugees find their land occupied by other, often more influential, parties. In some cases the GNU and the GoSS have discussed the possibility of resettlement in demarcated areas for returning citizens whose land is no longer available. Previous resettlement experiences in

Sudan and elsewhere have proven largely unsuccessful, especially when aimed at rural people. People are generally allocated a single plot of limited size, when they need access to a large area to sustain their livelihoods. Compensation through customary land restitution mechanisms has been discussed as a solution to disputes during the return process, but there are no mechanisms at present to make this a legitimate and legal alternative. Likewise, there is no legislative framework to regulate monetary and in-kind compensation.

The lack of functionality of the land administration both at the central and local levels is a key part of the problem. Survey departments are in shambles, important data and records have been lost and there is no reliable information on which to base new land allocations and transfers or secure tenure rights. There is a risk that cadastral and land registry data may disappear in areas where local authorities are complicit in land speculation. Customary land management still works on a localised basis, between neighbours or members of the same family, but when larger areas and groups or outsiders are involved the customary system is largely ineffective. There is an ongoing debate in Sudan about the importance of legalising customary land rights. This debate should be accompanied by the necessary caveats. Customary tenure, especially when communal, does not mean that everybody in the group has equal access to land. There is a hierarchy of rights available to different groups, defined by rules of descent and ethnicity. Customary land rights and management also traditionally discriminate against women. Some ideas to support the restructuring of customary land administration are offered in the recommendations section below.

Land issues are of paramount importance in the resolution of the Darfur crisis. The inability of Darfur's land ownership and land management systems to cope with the demand for agricultural land and pasture has been one of the key elements of the conflict. Most pastoralist groups in Darfur do not own land on the basis of the *hakura* landholding system (the prevailing land tenure management system in the region, dating back to pre-colonial times). Several Arab camel pastoralist groups, especially in North Darfur, were not assigned any land, though access to land and water along transhumant routes was generally accepted through customary practices. The

breakdown of cooperative relations with settled farmers, particularly after devastating droughts in the 1970s and 1980s, left many pastoralists impoverished and deprived them of a sustainable livelihood base. When the conflict broke out in Darfur, landless Arab groups saw an opportunity to expand their access to land and water. Secondary occupation of land by Arab pastoralists has been recorded in southern and south-western Darfur.

Land is also a critical issue for Eastern Sudan, where the loss of traditionally owned land to mechanised agricultural schemes has undermined the sustainability of the pastoralist livelihoods of the predominant group in the region, the Beja, and pushed many to settle in urban slums, particularly in Port Sudan. The alienation of land has been a key determinant of the recent conflict which ended with the signing of the Eastern Sudan Peace Agreement. The success of this fragile and volatile agreement is to a large extent predicated on the capacity of the central and state governments to satisfactorily address the issue of pastoralists' rights to land and water in the region.

In Southern Kordofan the arrival of returnees has exacerbated long-running tensions between different land users. Four main types of land conflict prevail at present. These clashes have generated a high level of casualties over the last two years (Pantuliano, Buchanan-Smith and Murphy, 2007):

- 1) *Conflict between pastoralists and farmers*, ranging from low-level tensions to incidents of violent confrontation. This conflict was at the heart of the war in Southern Kordofan and is resurfacing.
- 2) *Conflict amongst agro-pastoralist communities, exacerbated by return*. Although not widespread, this is serious in some locations where more powerful groups are seen to be expanding their land holdings at the expense of others.
- 3) *Conflict between farmers and traders*. Farmers are clashing with traders who are exploiting natural resources such as timber, gum arabic and palm trees.
- 4) *Conflict between returnees and labourers (sharecroppers) on mechanised farms*.

Land issues are not limited to rural areas. The status of urban land tenure in and around cities in the north where IDPs have built temporary housing, including Khartoum, is also a significant source of concern. Forced removals, though in accordance with the law, are inconsistent with international human rights standards. At present there appear to be no adequate strategies in place to integrate IDPs who may not wish to return to their home areas. Appropriate strategies would include accelerating urban planning processes, facilitating legal access to a residential plot and investing in water and electricity services, and possibly in government-subsidised low-cost housing. Instead, urban plots occupied by IDPs are being forcibly vacated to make land available to private investors.

4. Possible scenarios

If the status quo pertains, land and property problems will continue to arise as the rate of return grows in the south and in the transitional areas and unregulated investment continues in urban and rural centres. Most displaced people will return to their areas of origin, where they hold customary rights to land, but if this land is occupied or has been given away to investors land and property disputes will arise. In urban areas arbitrary occupation of non-owned plots and commercialisation of land currently occupied by IDPs, especially in the north, will also result in a growing number of disputes. In Darfur the ongoing secondary occupation of land will further complicate efforts at a durable resolution of the conflict. The atrocities committed by some pastoralist groups during the conflict will make it more difficult to generate trust around a possible land settlement which would guarantee the rights to land and natural resources of all communities in the region. Similar dynamics are already at play in Southern Kordofan. Given the lack of an appropriate legal framework and the weaknesses of the administrative system, it is reasonable to expect that land disputes throughout the country will remain largely unaddressed unless there is a considerable effort to tackle underlying problems. This will cause increasing dissatisfaction and tension, which could lead to new or renewed conflict in areas where access to land is key to people's livelihoods and survival.

In the worst-case scenario any one of a number of actual or brewing land disputes could rapidly degenerate into violent clashes, especially in areas where land rights are derived from individual membership in a wider group. In these cases, individual disputes related to access to z resources automatically become group conflicts. The history of Sudan also shows that land conflicts are ripe for political manipulation, as unresolved land disputes have consistently underscored wider conflict. Land issues could therefore once again become an easy way to foment unrest.

This is a risk which should not be underestimated given the fragility of the CPA and the proven difficulty of reaching a durable settlement in Darfur. There are reasons to be particularly concerned about growing tension in the transitional areas, where land issues have been a dominant feature of conflict in the past.

A best-case scenario could also be envisaged, in which appropriate legislative, judicial and

administrative reforms are made which ensure greater respect for the rights of legitimate land owners and users, both in rural and urban areas, and make possible adequate settlement of existing and future disputes through restitution or appropriate levels of compensation. However, given the current situation in the country, it would be unrealistic to expect such dramatic change in the short term unless there is a coordinated and sustained effort by the UN, NGOs and donor governments to provide the necessary technical expertise and resources to facilitate this reform process at all levels. The willingness of the GNU and the GoSS to promote such reform will clearly be a critical factor.

The three generalised scenarios presented above are oversimplifications: land issues present different problems in different parts of the country, and moves towards one scenario or another will be predicated on the specific dimensions of the land question in each given area. Regions and locations which should be monitored with particular attention include Southern Kordofan (Nuba Mountains), Blue Nile, Abyei, Darfur, Equatoria, Upper Nile, Eastern Sudan, Khartoum, Juba and Yei.

MAIN RECOMMENDATIONS

1. Immediate measures need to be introduced to halt current abuses and prevent increased tension linked to land issues. These include:
 - i) the immediate freezing of long-term land lease allocation and concessions until there is greater clarity on land tenure rights and existing claims;
 - ii) streamlined and coordinated documentation of customary land tenure and analysis of how to integrate practical and workable customs into statutory law, building on the wealth of studies which have already been carried out;
 - iii) urgent reorganisation and safeguarding of existing cadastral records;
 - iv) monitoring of land disputes originating from return processes as well as ongoing secondary occupation in Darfur, to address future disputes;
 - v) resolution of the dispute around the Abyei Border Commission's findings; and
 - vi) public awareness campaigns on land rights and related issues.

2. Urgent establishment of the National Land Commission and the Southern Kordofan, Blue Nile and (once conditions allow) Darfur land commissions and strengthening of the Southern Sudan Land Commission. In particular, the NLC and the SSLC should oversee a process of land reform aimed at curbing the alienation of unregistered land. Key issues to incorporate in a land reform policy include:
 - i) recognition of customary rights, including communal tenure for pastoralists;
 - ii) development of standardised and publicised procedures for property transfers and leaseholds;
 - iii) improved expropriation procedures to limit the wanton takeover of lands for 'public purpose';
 - iv) codification of compensation mechanisms and procedures;
 - v) elimination of laws which discriminate against women;
 - vi) regularisation of the situation of urban squatters (enabling their occupation to be recognised as legal);
 - vii) restructuring of national and foreign investors' access to land in ways that are fairer to local populations;
 - viii) procedures to deal with lost documentation (e.g. through systematic use of reliable oral and testified evidence through social networks); and
 - ix) restructuring of land administration at the central, state and local levels, including defining the exact role of tribal chiefs and native administrators.

The commissions should also be called upon to arbitrate disputes about past registrations and oversee adequate compensation for confiscated land, where this cannot be returned. The commissions can in theory arbitrate land claims only between willing parties, but it is important to develop mechanisms to ensure that the objections of one of the parties do not obstruct the whole process.

3. The registration of rural land is of paramount importance to secure the rights of local people. This should be facilitated through appropriate awareness campaigns which take into account the limited levels of literacy of rural people. Recognition of customary rights should be underpinned with participatory design and opportunities to develop locally distinct systems built on modernised customary land administration institutions,

which should be community-based rather than simply grounded in tradition. This implies that communities should be guided to determine which traditions should and should not still apply (e.g. in reference to women's rights) and traditional land administrators should operate in more inclusive and democratic ways, e.g. with the support of elected land committees. Civil society organisations could be supported to play a facilitative role in this process. Legal support over land rights could also be envisaged, particularly for women, pastoralists, the disabled and orphans.

4. The reform of land tenure legislation, administration and management is a complex, long-term process, which needs to be addressed as an immediate priority by all relevant national actors, both at the local and central government levels, with appropriate and sustained technical support and expertise from international actors. Addressing land issues is a major task underpinning the entire recovery process. It also provides a unique opportunity to influence a change in governance in Sudan through the development of a system which is fairer to the poorest and most disenfranchised communities. The complexity of the process means that it can only be achieved through the implementation of complementary and mutually supportive initiatives in different parts of the country. It is therefore extremely important that the array of interventions being promoted by UN agencies, NGOs and donors, with different government bodies in different parts of the country, be harmonised.

Dialogue and coordination are urgently required to develop a coherent and balanced support effort which builds on the different roles and capacities of relevant national and international actors. To this end, it is important to ensure that policy-makers in the north and the south are aware of the issues at stake, and that donors are persuaded of the importance of coordinated action, even though some are promoting region-specific priorities. It is incumbent on the UN system to clarify leadership roles around land issues and assign a clear mandate to one agency to lead a country-wide strategy, in collaboration with relevant government departments. This leadership role will ideally be assumed by the land commissions once they have become active, but in the meantime it is essential to avoid isolated and ad hoc responses.

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