

Land and the Sudanese transition to peace

by Domenico Polloni

Land policy issues are not fully addressed in the Comprehensive Peace Agreement. As IDPs return home, and lay claim to land and water use rights, disputes could threaten stability in south Sudan, the Three Areas, Darfur and eastern Sudan.

The wealth-sharing agreement signed between the GoS and the SPLM in January 2004¹ highlights the transitional nature of land tenure arrangements. By focusing on usage rights it explicitly avoids addressing the issue of land ownership. There is a risk that regulation of land rights and use by different levels of government may not be synchronised. The legal status of adjudication bodies, their hierarchy, internal functioning and referral procedures to the Constitutional Court remain unclear. Progress in incorporating customary norms and practices into legislation has been slower than expected.

The main instruments of land use management during the six-year interim period are Land Commissions - a national body, a Southern Sudan Land Commission and state commissions in the conflict-affected

areas of Southern Kordofan and Blue Nile. The commissions are required to coordinate their activities and set guidelines for the resolution of conflicts. Their functions may include - at their discretion - arbitration, consultation on land reform and customary land rights, appraisal of compensations and recording of land use practices.

There are uncertainties concerning the nature of the law upon which arbitration will be based: recognition of customary law; enforceability of awards on land; alternatives for redress in case a commission refuses to consider a claim; and possibilities for appeal. If the national and southern commissions fail to resolve a disagreement, the matter is to be referred to the Constitutional Court but it is unclear whether the Constitutional Court will base its decision upon statutory or custom-

ary legislation or equity principles. None of the commissions have been formed so far.

The international community will be asked to provide funding and expertise. International best practices should be followed in the fields of arbitration, mediation and conciliation and in avoiding conflict between customary and statutory norms. Collation and consolidation of all existing customary norms should be prioritised. Moves towards legal consolidation should be participatory, and legal information - and, if necessary, legal aid - should be made available for illiterate communities and women.

Reform in the North

Many studies have highlighted the need for reform of rural land tenure and administration in northern Sudan. This emerges all the more clearly as the ongoing conflict in Darfur is rooted in, though not limited to, conflict over land resources. While specific solutions may have to be provided for Darfur and eastern Sudan, the key common drawbacks of the current system throughout the country are:

- vulnerability of small farmers to the risk of being ousted from communal land by wealthier investors
- lack of clear policies for environmentally sustainable land use
- failure to consistently enforce nomadic land use rights - a constant source of tensions
- failure to adequately consult with local communities in matters of land use
- poor coordination and ineffective decentralisation of extension and

Arab nomads in North Darfur moving during rainy season, July 2005.



- marketing services
- extensive use of low-quality seeds, with greater exposure to disease and decreasing yields
- lack of statutory recognition of the rights to wild resources
- an agricultural credit structure heavily skewed against traditional small-scale farmers.

As outlined elsewhere in this issue², the status of land in and around Khartoum and some urban centres in the north where IDPs have build temporary housing is a significant source of concern. Forced removals, though in accordance with the law and carried out in the name of 'urban renewal', are inconsistent with international human rights standards. The major challenge is to ensure that local integration in the urban centres of the Nile Valley is a valid option for those war-displaced who may not wish to return to the South, the conflict-affected areas of central Sudan or the West. This implies accelerating urban planning, facilitating legal access to a residential plot, and investing in water and electricity services and possibly in government-subsidised low-cost housing. The need for urban dwellers to have access to peri-urban cropland for self-sufficiency should be factored in, possibly by developing green zones around the cities. The international community needs to start a much more sustained and consistent policy dialogue with the national and state governments concerned if any meaningful guidelines are to emerge.

Land policy in the South

In conformity with the general principle that 'land in the new Sudan belongs to the communities', the SPLM judiciary system relies primarily on customary legislation. This is characterised by absence of formal land registration, predominance of land use (as opposed to ownership) rights, vesting of power to allocate land in tribal chiefs, loss of land rights in the event of protracted non-use, virtual absence of land sales and possible coexistence of overlapping rights on the same territory. Customs need to be accepted as being legitimate legal solutions. It might be worth exploring to what extent customary land rights could be

converted into statutory land rights through appropriate registration. This could protect local communities from undue pressure by returnees or powerful outsiders, neutralise disputes arising from the overlap of different ethnic customs and restrict potential land speculation.

Most customary systems accepted by the SPLM as the basis for settling land disputes involve the arbitration of family disputes by chiefs or sub-chiefs and the remittance of the case to the higher executive chief or regional court when one of the parties does not agree with the outcome. Shortcomings of this system may include lack of clarity on the rules of arbitration, the non-binding nature of the award and the risk that the interested parties, especially if from different tribes, may fail to agree to initiate an arbitration case. Also, customary land law is unevenly documented – more richly in Dinka and Nuer land, much more sparsely in Equatoria. Finally, a common feature of traditional land management systems is their discrimination against women's rights to land.

The development of land-related policies seems to rest on unverified assumptions – that returns will be clear-cut (either to rural or to urban areas), that returnees will be content with what is available and that the process will be phased. They ignore the emerging tendency to form new town centres and the need to re-establish a sustainable balance between rural and urban populations. Rural households, particularly if they are pastoralists, need access to a variety of different soils and natural resources to make a living. Access to land in rural areas is therefore not just a question of having a plot for the construction of shelter, an adjacent garden and a field for crops. Non-farm use of land is as much a challenge in the South as in the North, particularly where insecurity has curtailed pastoralist movements and involved them in protracted disputes.

Land tenure in SPLM-held urban areas is a substantial challenge as it is here that the problems of returns may be felt most acutely. Urban areas are deemed to fall under the direct jurisdiction of the Government

of Southern Sudan but no statutory land legislation has yet been issued due to the protracted military occupation by the Sudan armed forces or by the SPLM. A growing number of transactions are being carried out on a shaky legal basis. As in the North, the need for urban dwellers to have access to peri-urban land for sustaining livelihoods should be factored into new urban planning in an effort to develop green zones around the cities, as is spontaneously happening around Juba. Whether returnees should be allocated in an ad hoc fashion to different neighbourhoods or be settled in new areas is an open question, raising fears of ghettoisation if the latter option is chosen. Other issues relate to unauthorised buildings, past transactions on non-owned land and military denial of access to land. In the former SPLM-controlled South the previous land administration has been utterly destroyed by war. Cases of lost or incomplete documentation, poor or absent surveying and lack of technical facilities are proportionally much more significant than in former GoS-held areas.

Conclusion

The challenges from land policy issues in Sudan seem almost insurmountable, yet many examples can be found of satisfactory solutions in a variety of post-conflict countries. After over two decades of civil war it is vital that the international community understand the importance of land issues in the Sudan and remain focused on policy dialogue and institutional support.

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1. www.reliefweb.int/rw/rwb.nsf/db900SID/SZIE-5ZJSKB?OpenDocument

2. See article pp38-39.