Land and peace processes in Sudan

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The last two decades have seen an unprecedented preoccupation with the issue of land tenure in sub-Saharan Africa, which is widely recognized as one of the structural factors contributing to poverty and violence. As elsewhere, land in Sudan is not just a means of survival or material gain but has profound cultural, social and political dimensions. Its political implications are acute enough to that the peace processes in Sudan have not dared address the question of land in any depth, deferring much of the work to the post-agreement phase. One of the principal root causes of conflict has therefore been sacrificed to political expediency, remaining unresolved in order not to jeopardize the immediate cessation of hostilities.

Land in the CPA

Since the colonial period, successive laws and decrees have undermined the land rights of rural communities, small farmers and pastoralists. The most notable was the 1970 Unregistered Land Act (see article by Mona Ayoub), in which unregistered land was to go to the state and could not be acquired through long-standing use, which encouraged the patronage of land by the government as a means to secure political power.

It is encouraging that the Comprehensive Peace Agreement (CPA) of January 2005 and Interim National Constitution (INC) provide an impetus for a more socially-informed land tenure policy and appropriate changes to legislation. Specifically, the CPA calls for the incorporation of customary laws and the establishment of four Land Commissions (a national commission, one for southern Sudan and for each of Southern Kordofan and Blue Nile states) to arbitrate claims, offer compensation and recommend land reform policies.

However, the CPA, despite insisting that it is not intended to address “ownership of land and subterranean natural resources” in any part of Sudan, seems implicitly to recognize existing land tenure procedures as a de facto situation, and neither signatory to the agreement (the ruling National Congress Party and the Sudan People’s Liberation Movement/Army) seems keen to establish the Land Commissions, probably to protect their own interests in land, especially with regard to oil.

Beyond the questions of political will and land ownership, there are numerous other problems with the provisions:

• The commissions are mandated to make recommendations; these are not binding on either party or on government policy
• The CPA does not provide for the representation of pastoralists and farmers, the majority of direct land users, in the commissions

A returned Sudanese woman works the land in Paluer, western Upper Nile, April 2004.

Source: Reuters/Radu Sigheti
• It is unclear how claims to rights are to be submitted, resubmitted, legitimated or contested, whether such claims are to be made on an individual or collective basis, and, if collectively, who will represent communities and with what basis of legality or legitimacy.
• Neither the CPA nor the INC clarifies explicitly whether the two Land Commissions will be central or decentralized.
• While the CPA recognizes customary rights, the relationship between the Native Administration and the main administrative body, the local Executive Council, addresses the issue of land.
• Indigenous and emergent structures are repeatedly accused of weakness and of undemocratic and discriminatory structures (e.g. their exclusion of women).
• Each state has the right to develop and manage its natural resources but does not have the institutional arrangements for inclusive, just and equitable use and management of land and natural resources.
• In Abyei, despite a local development mechanism for dealing with land (the Abyei Resettlement, Construction and Development Fund) and recognition in the CPA of the historical rights of Misseriya cattle herders to their traditional grazing resources, neither the Protocol on the Resolution of Conflict in Abyei nor the main administrative body, the local Executive Council, addresses the issue of land.
• There is extremely limited public awareness about the CPA in general and the Land Commissions in particular.

Problems in the DPA

Like the CPA, the Darfur Peace Agreement (DPA) of May 2006 establishes a Land Commission, which also faces enormous challenges. Firstly, while the DPA recognizes the rights associated with hawakeer (the lands of a particular clan or tribal group), it does not address the conflicts that arise between those with a hakura and those without (the colonial authorities did not allocate hawakeer to the small camel-herding tribes of Northern Darfur, for example). An overall land settlement in Darfur will need to balance the rights of those without hawakeer, taking into account the impact of the current conflict, which has torn the social fabric and broken the historical relationships through which rights of access to land and resources were maintained and secured.

Secondly, there has been a conspicuous shift in social structures in Darfur. Indigenous tribal leaders have struggled to maintain their legitimacy and power in the face of an emerging structure dominated by younger political radicals who contest the leadership of tribal chiefs and accuse them of politicizing the conflict and manipulating their own people. This raises deep concerns about the appropriate institutional arrangements for managing resources and local-level conflict. The DPA does little to reconcile the competing claims of the indigenous and emergent structures.

Thirdly, the Darfur Pastoral Routes Demarcation Committee, established by presidential Decree in late 2005 (before the signing of the DPA), has completed its assigned tasks, but the committee’s recommendations are highly contested. The farmers, many of whom are now in IDP camps, have expressed publicly that they do not recognize the committee or its outcomes on the grounds that they were not consulted nor were their views represented. They see it instead as a conspiracy by the centre to allocate their lands to ‘Arab’ pastoralists. Fourthly, the atrocities committed by the janjaweed, perceived collectively as camel-herders, have created a universally negative perception of pastoralists, although the camel-herders themselves appear ready to derail any land settlement that does not take into account their historical rights of access to land and natural resources.

Conclusion

The increase in population, large-scale population movements and climate change have combined to heighten demand and competition for land and other natural resources across Sudan. Traditional approaches to land tenure and natural resource governance have broken down, but instead of taking the opportunity to address past injustices and provide a secure tenure situation for rural communities, the CPA and DPA have failed to resolve the competition that is at the heart of current conflicts.

If there is to be any chance of sustainable peace, there must be a substantial change in the legal, judicial and political frameworks governing land administration. The roles of the state, the native administration system and newly-emerging political forces must be clarified so that comprehensive and integrated systems and structures can be rendered more democratic and inclusive, and a resource management system introduced that suits the complex realities of the Sudanese environment. Unfortunately, the CPA and DPA do not sufficiently reform the relationship between the state and society, without which there will not be significant improvement in access to land and public resources.