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LAND RIGHTS, NATURAL RESOURCES TENURE AND LAND REFORM

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Overview

Land rights are an essential human right in themselves, especially in a largely rural country like Sudan where the majority of the people gain their livelihoods from the land. In addition, violations of land and natural resources rights by successive governments have been instrumental in the outbreak of war, so a comprehensive and far-reaching settlement of these issues is essential if Sudan is to achieve peace.

Background to Sudan's land problems

Sudan is the largest country in Africa, covering almost one million square miles. This fact has often been used by government officials to justify a very regressive land policy, claiming 'that there is land enough for everyone.' But in fact, many parts of Sudan suffer from severe land problems.

Sudan has many problems of land ownership in common with other countries in Africa. It has customary systems of land tenure, for farmers and pastoralists, existing alongside 'modern' land law. Customary systems are varied, including the historic land charters of the Nubian, Funj and Fur states, the semi-feudal systems developed close to the Nile, especially in the areas dominated by the Mahdi and Mirghani families, and the unwritten land ownership traditions of communities such as the Nuba and Southern peoples. These traditions of law were left largely undisturbed by colonial and post-colonial governments, who instead introduced an entirely different level of land tenure, based on the right of the state to allocate land. While official land law has undergone transformations under successive governments--most recently with the adoption of Islamic law--it essentially remains founded on colonial land laws. These laws were introduced with the aim of confiscating large areas of land for commercial farming (notably cotton production) and regulating who was able to reside in towns (in order to guarantee the security of the colonial regime).

Land law is important, not merely as an element in natural justice. Sudanese citizens have a right to have a place for residence and for earning a livelihood. Good land law is essential for preventing conflict. It is also an important element in environmental policy.

This paper will argue that there is an urgent need to examine land tenure systems in Sudan with a view to reforming them. However, it also recognises that the variety of Sudanese land tenure systems is important and beneficial, reflecting the very varied

circumstances of land tenure in the country. There is no single land system that can work for all parts of Africa's largest country.

Ownership of natural resources in Sudan is further complicated by the politically sensitive issues of water and oil. The waters of the Nile are closely regulated by international treaty with Egypt. Control of water is an important issue at a local and national level: one of the issues that sparked the war in 1983 was the construction of the Jonglei Canal. Rights to oil are also very politically sensitive.

1. Rural Land Tenure

The most basic problem concerning rural land tenure is to be found in the principle, introduced by the British colonial power in 1898, that unregistered land is assumed to be owned by the government unless the contrary is proven. That principle was in fact valid in the Funj, Fur Sultanates, the Turkish and Mahdia States, and all of them have also allocated land for political reasons. The administrative limitations of those states, whoever, did not allow them to control the land in the scale reached after the Condominium Role.

When Sudan was re-conquered by Britain one hundred years ago, there were two types of ownership:

a) Communal or tribal ownership, namely land owned by the community at large. While this form of ownership had disappeared in the areas of former Funj and Dar Fur kingdoms, it was still existing in many rural areas, including virtually all of Southern Sudan and continued to exist even after the re-conquest.
b) Individual ownership and to other titles to land. Individual ownership was achieved either by the normal evolution process whereby communal ownership changed to individual or by grants made by the sovereign (Funj and Fur Sultanates and in the Mahdist state). This represented a small proportion of all the land in Sudan (chiefly along the Nile and a few locations in Dar Fur), but included much of the most fertile irrigable land.

While customary rules, including Islamic law, were accepted as governing land use, title to land was vested in the government. While the British adopted a policy of limiting land acquisition by merchants and non-Sudanese individuals, they confiscated huge areas of irrigable land in the Gezira and Blue Nile, the Tokar Delta on the Red Sea, and elsewhere, in order to establish cotton cultivation. This was done at the behest of the Lancashire textile industry that needed a secure and cheap supply of cotton. The main legal codification of the colonial government's land law was the Land Settlement and Registration Ordnance of 1925.

Since Independence, the state has remained ready to confiscate land, while wealthy and powerful individuals, usually with connection to government, have also made use of the colonial and post-colonial land laws to acquire large areas of land. Successive legislation on land, up to the 1990 amendment to the Civil Transactions Act, has not changed this fundamental aspect of Sudanese land law, but on the contrary strengthened the privileges of the state and those with access to it, at the expense of rural people. Section 4 of the Unregistered Land Act (1970) transferred to the Government in full ownership of unregistered lands, whether waste, forest, occupied or unoccupied, which had not been registered before the commencement of the Act on 6 April 1970. All such land is deemed to have been registered name of the Government, as if the Land Settlement and Registration Ordinance, 1925, has been duly complied with. Only when the government is satisfied that the application of the Act would cause grave unjustice, it can guarantee the rights of person or persons who have been enjoying undisputed use of the land for a long time.

The 1990 amendment, introduced by the current government in its first article confirmed that all non-registered land should be considered as if registered in the name of the State. The second provision stated that 'No court of law or any other authority, is concerned with considering any plea or petition or procedures regarding and subject relating to the ownership of State-owned land in accordance with the Act.'

<u>Customary land tenure in rural Sudan</u>

Customary land tenure in rural Sudan usually shares certain characteristics.

- Land is not formally registered.
- Use rights predominate.
- Rights lapse if land is not used for a certain period
- Overlapping rights: 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 the individual cannot be said to have individual title to land.
- Land remains within the clan or tribe and can rarely if ever be sold.
- A native authority chief has the power to allocate land, e.g. to newcomers, and to adjudicate disputes.
- Women have restricted land rights. Often they can only own land through their husbands or fathers and do not have full rights of inheritance. (Though such is the variety of traditional land tenure systems that any generalisation must be treated with caution.)

The colonial legislation made custom one of the major sources of Sudanese Land Law. Local and state courts were obliged to implement customary law if it fulfilled the following conditions: being reasonable, universal, certain, and compatible with public order, morality and law. However, this principle was not fully implemented due to the lack of efforts to document land customary law of the various parts of Sudan. But many customs of northern Sudan were recognised and became part of Sudanese land law. Examples include Haq al-Qusad and the Mirin. By contrast, the land customs of the Nuba of southern Kordofan and those of Southern Sudan were never recognised let alone implemented.

Customs used to be the second source of Sudanese law after legislation. Following the 1983 adoption Islamic law, recognition of customary law was restricted to those following and conforming with Sharia, the acts of Sahaba (the Prophet's disciples) and the Islamic Four Jurors Schools.

These customary land tenure systems, whether Islamic or non-Islamic or something in between, can be quite complex and sophisticated. It is important that they are recognised in law. This does not mean dispensing individual title deeds to every smallholder. There are intermediate options that can be considered, starting with recognising that land in use by cultivators cannot be alienated, and that the courts should recognise de facto possession over a period of years as amounting to ownership. This requires legislation and access to legal information and if necessary legal aid by small farmers.

One option for the transitional period is for a land commission to investigate the possibilities for land tenure reform, and report to Parliament. Research schemes should sponsored in order to document customary land tenure and to suggest some way of including the practical and workable customs in the law.

The position of women with regard to customary land rights requires attention. Women's low status under customary land law does not correspond to their important roles in production and land management. In many poor rural areas, men have migrated to the

towns or to central Sudan to search for work, leaving women as the principal farmers. But in many cases women cannot own land in their own right, or engage in land transactions, or inherit land. This is not only an injustice but also a major hindrance to the development of workable land tenure systems and to higher agricultural production.

The role of native authorities in land allocation.

One of the most significant elements in the customary land tenure system is the right of native authorities to allocate land and adjudicate disputes. This means that even when land is unused, it is not open for any outsider to come and settle without first making an agreement with the local native authorities. In an important sense, land ownership is vested in the community, through the person of the native authority.

This system had advantages and disadvantages. The principal advantages were that it was understood by all, and that the native authority officers lived locally and were accessible to all (in contrast to land registration offices). The main disadvantage is that, at a local level, executive and judicial power were vested in a single individual, who could become a local dictator. (Under the NIF, many sheikhs have become exactly this.)

The 1970 land act abolished the rights of native authorities to allocate land. This was a prelude to the 1971 abolition of native administration. However, in many rural areas, this act could not be enforced, as the new structures of rural government found that rural people retained their allegiance to the native authorities, so that rural areas could not be administered without their consent. In the 1980s and '90s, the native administration system has made a comeback as recent governments have recognised this reality. However, the NIF has used its money to corrupt many native administrators, and it has dismissed those it finds unsympathetic and replaced them with more pliable candidates. Native administrators are invariably men and are not often sympathetic to women's rights to land. Even where traditional pre-colonial land tenure systems acknowledged women's rights to land, the codification of customary land tenure under native administrators often saw the loss of these rights.

In the South, the post-1972 reconstruction of the administration recognised the roles of chiefs, so that the native administration system there was never even formally abolished. The SPLA has recognised the reality of traditional chiefs and accorded them some authority, the amount depending on local circumstances.

In the short term, there is no alternative to the maintenance of the system of native administration, and the powers of native authorities over land affairs. However, many of the current office holders will need to be removed. The wide ranging powers of native administration officers will also have to be subject to more checks and balances, including the possibility of appeal, to prevent abuse of the system. Any change in the legal status of women with regard to land tenure will require careful monitoring and enforcement at the level of native administrators.

Pastoral land tenure

Pastoralists in Sudan usually have the most difficult time establishing their claim to land. Pastoral nomads do not live in one place all the time, instead moving from place to place according to the season, and even according to whether it is a dry year or a wet year. Customary land law among pastoralists assumes that vast areas of land can be used by herds of animals. The colonial rulers tried to regulate this by determining when herders could move their animals to certain pastures, primarily to avoid conflicts between pastoralists and farmers

over land and water, and to avoid animals encroaching on farms before the end of the harvest. However, colonial and post-colonial law alike has recognised only land use rights for pastoralists, and often not even that.

An essential component of pastoral land law is the notion of '*dar'* or tribal homeland. This is closely bound up with the principle of native administration. A tribe has a measure of control or ownership over a particular area, which both restricts the access of other pastoralist tribes to the area (it does not prevent all access but it requires negotiation and the recognition of the prior rights of the dar 'owner'), and restricts cultivators' rights within the dar. Thus a dar allows a pastoral tribe some measure of security over access to 'its' pastures and water.

The 1970 land act and the 1971 abolition of native administration destroyed the legal basis for the notion of a dar. In theory, any pastoralist could take his animals to any 'empty' land, and any cultivator could register and cultivate any uncultivated land. This reinforced the marginal status of pastoralists, pushing them to the margins. One of the results was that commercial farms were established that used up the best pasture land or blocked the pastoralists migration routes. As commercial farmers were well able to defend their interests by hiring guards, this forced the herders to take their animals elsewhere. The victims of this policy were both the pastoralists themselves and smallholder farmers in local villages, who could not defend their farms against the herds. This was the cause of many local conflicts, for example in South Kordofan.

Pastoralists' rights to land need to be recognised. This involves several main issues:

- Consideration of whether the principle of the tribal *dar* should be maintained, and if so, in what guise.
- Legal recognition and protection of specific rights for pastoralists, such as migration routes and water access points.
- Legal recognition of rights short of full ownership for pastoralists. Pastoral use rights should be protected in law.

Rights to wild resources

Land that appears 'empty' or unused to the outsider can be a vital economic resource for rural people. Bush or forest land can provide the following:

- Grazing and browse for animals kept in the homestead.
- Gum Arabic, incense, honey and other marketable products.
- Firewood and charcoal.
- Building materials including wood and grass.
- Wild foods for use in times of famine and food shortage.
- Medicinal plants and herbs.
- Wild animals for hunting and trapping.

These resources can make the difference between an economically viable village and a non-viable one. Therefore, if a previously-untouched village loses its forest, even though it retains its farmland, it will suffer a serious loss.

Use rights and ownership of forest or bush land are not recognised in law. In fact, laws tend to restrict people's rights, for example to hunting and to cutting trees. (Most recent research in fact shows that deforestation by villages cutting trees for domestic consumption is negligible. Villagers tend to cut branches of live trees, that quickly grow back. The best

means of preserving tree cover is to allow private ownership of trees and give villagers an incentive to grow trees.)

Providing legal rights to bush or forest land is complex and probably not feasible. However, future land allocations for registered farms should recognise the economic losses caused by destruction of forest or bush areas and compensate local communities accordingly.

The land registration process and mechanised farming

When the land registration was brought to Sudan it was totally an alien system. At that time illiteracy was dominant in all parts of Sudan and people, even in the cities, did not even bother to register their marriages. Some of the local chiefs benefited from that ignorance and robbed substantial areas of land from the weak and the vulnerable simply by the registering it to their own names without the knowledge of the owners. They would declare their ownership after such time that a reversal of their land seizure were difficult if not impossible to enact.

After almost a century, the land registration process is still an alien sytem as far as rural people are concerned. The process requires literacy and a knowledge of the government bureaucracy. In practice it has often required personal acquaintance with government officials or a readiness to pay ‘sweeteners’. Until 1970, the rights of non-registered landowners were to some extent protected by a recognition of the native administration and its authority over land, but the 1970 land act foreclosed any more than use rights over unregistered land, and restricted the rights of native authorities. This made all unregistered land open to possible registration.

The registration process is seriously biased against women. Even in the relatively few cases where women have customary rights to land, women have extreme difficulty in having their rights recognised in the registration process. Usually, any woman’s share of land (for example in any government distribution) is allocated to her husband, who retains full rights to all the land should the two divorce.

There is an important difference between rainfed and irrigated land. Irrigated land requires considerable investment and maintenance, and is a long-term investment. Relatively speaking there are many fewer abuses and conflicts arising from irrigated land. Rainfed farms can be established much more quickly and require less investment and maintenance. Returns are quick and they are an attractive investment for entrepreneurs aiming to make a rapid profit. They can easily be expanded without authorisation. They often result in serious environmental degradation. For too long, Sudanese have subscribed to the illusion that mechanised farming is somehow ‘modern’ and efficient: it is neither of these things. In reality it is a highly destructive use of the land.

Most of the abuses and conflicts arise over rainfed commercial farms which have been registered without the involvement or consent of the local community.

To register a piece of land in one’s name, it is not necessary to reside on or near it, nor even to prove that it is not occupied. It is merely necessary to show that it has not already been registered by someone else. In theory, only capable farmers are permitted to register land, but in practice this extends to anyone who has minimum capital resources and is ready to hire a farm manager. As a result, many entrepreneurs have registered land which they have not even seen. This land may be farmed by local people or used by pastoralists. But once it has been registered, these people--who may have been using the land unchallenged for generations in the mistaken belief that this made their ownership secure--become ‘trespassers’ under law. The law is framed in a way that trespassing is a serious offence,

punishable by a fine or imprisonment. It is therefore an elementary matter to clear the registered land of previous occupants without any provision for compensation.

Between 1968 and 1986, the area of Sudan under mechanised farming expanded from under two million hectares to over eight million hectares. By the mid-1980s it was widely recognised that this was an economic, environmental and social disaster, which had contributed to the famine of 1984-85. In the post-famine recovery plans, the Ministries of Finance and Agriculture strongly recommended a switch away from commercial mechanised farming to supporting smallholders. But while state-owned farms stopped expanding, the number of private schemes continued to mushroom. Many of the private mechanised farms established in the late 1980s and the 1990s either were not registered, or expanded beyond their registered boundaries. These farms were effectively beyond the reach of law and regulation.

Some of the most egregious abuses against smallholder farmers have occurred in the Nuba Mountains, since the introduction of widespread mechanised farming in the 1970s. About one quarter of Sudan's mechanised farmland is in South Kordofan. There are many cases in which Nuba farmers were driven off their ancestral lands. Some were taken to court, when they refused to give up their land and were either lashed or imprisoned. In Fayo in 1981 the entire village was surrounded by a newly-established mechanised farm that took over almost all the villagers' land. In 1984 in the Mugenis scheme extension, near Rashad, eighty Nuba people who refused to hand over their land to a company formed by rich merchants and government ministers, were rounded up and taken to an emergency court in Kadugli. In 1995 a new agricultural corporation was formed in the Nuba Mountains and Nuba lands were put up for sale, and a loan from the bank was given to the buyers--who came almost entirely from central and northern Sudan. Another example of abuse of power is the Habila mechanised project. The lands were taken from the natives and the project ownership was given almost entirely to northern merchants and businessmen while the previous Nuba land owners had to become labourers on their own lands.

Similar processes were also in train in other parts of the country such as southern Blue Nile and northern Upper Nile. The fertile plains around Renk were systematically appropriated by absentee landlords who set up commercial farms, dispossessing the indigenous Shilluk and Dinka inhabitants. Only the war prevented the same process taking place across much wider swathes of Southern Sudan including much of Bahr el Ghazal and Equatoria.

Under the NIF regime, land registration has descended into land looting. The President's Office and other powerful instruments of the government have allocated land without any process at all to cronies of the regime, including foreigners such as Osama bin Laden. Huge areas of the Nuba Mountains, Southern Blue Nile, Eastern Region and the South have simply been expropriated by force. This has wholly disastrous social and environmental consequences. It is nothing short of land looting sanctioned by law, and should be stopped and reversed.

The land registration and occupation process needs reform. It should no longer be possible to register land 'unseen' or to register land that is already occupied by a farmer. Land necessary for pastoralist grazing or migration should not be allowed to be registered. If uncultivated land is registered for a commercial farm, then the value of use rights by villagers and pastoralists (as described above) should be recognised and compensated for. In addition, the abuses of the system in recent years should be reversed (see below).

An ideal way of dealing with this matter is to set up by law a settlement committee, in the manner of that created by the Settlement and Registration Ordinance, 1925, which facilitated the registration of rural land. Registering the lands in all parts of Sudan is

inevitable and it is also important to secure the rights of local people. One way to deal with problem of lack of literacy, is to create a committee from the educated people in the communities to help the locals registering their rights and to explain to whole issue to them. Civil society in deprived areas could also assist in playing that role.

The market in land

The commercialisation of land is proceeding apace in both the registered and unregistered sectors. In many areas even pasture is becoming privately owned, with grass enclosures being set up. This is probably inevitable, as supply and demand creates a market in any commodity that is scarce. Any attempt to take land out of the realm of market forces altogether is therefore doomed to failure. However, it is important that safeguards on the sale of land should be established to ensure that poor people in desperate circumstances are not forced to sell their land at rock-bottom prices, and become landless labourers.

The best means of ensuring this is to provide agricultural extension and marketing services to small farmers, so that they can obtain a fair price for their crops, and to provide credit, so that a poor farmer can mortgage his or her land rather than being forced to sell it. The experience in the far north of farmers co-operatives has played a successful role in overcoming the disadvantages of small ownership, in a very difficult conditions. It helped not only to sustain the agricultural production in those poor areas, but helped the local communities in obtaining food, cloth and medicines in a reasonable prices. These experience should be studied, developed. There is a great need to find ways in implementing in other areas of the country with consideration to the special nature of each area.

Land tenure under Islamic Law

Islamic Law has always been an important part of the so-called modern land tenure in Sudan, even during the colonial era. The right of "shufa'a" (a neighbour or co-inheritor's privileged option to purchase a plot of land when it is for sale) is an example. Islamic law as developed over the centuries by Islamic jurors, has a strong concept of individual ownership of land and clear rules concerning the transfer and inheritance of land. The rules of inheritance are particularly detailed. These rules often conflict with customary law (for example over inheritance by widows and daughters) Nevertheless, some elements of the Islamic Law are in theory of a socialist nature (The Hadith says, people are partners in three elements: water, grass and fire). Islamic Law, however, gives no sanction to the kinds of land looting that have occurred under the NIF regime.

As practiced in Sudan today, inheritance under Islamic Law discriminates against women in almost every respect. The religious basis for this wide-ranging denial of women's rights to land has however been questioned by some Islamic scholars.

In other respects, Islamic Law does not present special problems with regard to land. The most important thing to note is that land tenure under Islamic law does not contradict customary and other land law. It is not a part of the *sharia* that is compulsory: it can be adopted but can also be rejected if people so decide. It follows that an important agenda is to give customary land tenure the same level of authority in places where it is not derived from an Islamic background.

The special case of the Fellata

Since colonial days, Sudanese of West African origin (Fellata) have been discriminated against under Sudanese law. Many were denied citizenship and often they were treated as second-class citizens. One of the manifestations of this is the absence of any Fellata dar (homeland). While there are certain locations in Sudan dominated by the Fellata, including Mai Wurno in Blue Nile and Tullus in Darfur, these are much to small to provide for the population of more than one million Fellata, many of whom are pastoralists.

The NIF has used the Fellata issue in a skilful way to divide rural communities. By promising land and other rights to the Fellata it has secured important allies in many parts of the country, and at the same time antagonised many other groups, who fear that their land will be given to the Fellata. The NIF tactics are unscrupulous and dangerous. Nevertheless the Fellata issue is a genuine one and will not disappear. It will be important for a future Transitional Government to provide guarantees for the land rights of Fellata in various parts of Sudan, in ways that meet their needs but do not infringe the rights of other inhabitants.

Economic and environmental considerations

One of the common arguments forwarded by those who have acquired commercial farms under the current land law, is that poor farmers make poor use of the land: that they are inefficient and cause environmental degradation.

In fact, most research shows that small scale farmers use land more productively and in a more sustainable way than large-scale commercial farmers. Small farmers face many obstacles in terms of poor access to credit and necessary inputs, poor access to markets, etc, but they make good use of their limited resources and opportunities. Experience from elsewhere in Africa (e.g. Kenya, Zimbabwe) shows that if security of tenure, credit and agricultural extension, and above all marketing outlets are provided, then small farmers can be the most productive. Commercial mechanised farms are reliant on imported machinery and fuel, and often rely on overt or hidden subsidies that distort the national economy. This is not to argue that there is no room for commercial or mechanised farming, but rather to argue for a 'level playing field' between small and large farmers.

Mechanised farms are notorious for causing land degradation. Small farmers, provided they have security of tenure, have a much better record in environmental conservation. History tells us that when agriculture used to be in the hands of small farmers there was good production and agricultural stability in most parts of the country, particularly in areas along the Nile banks (using *shadouf* irrigation). What was produced was enough for the local population and the surplus was exported. This sort of agriculture was simple and cheap to run, because local materials were used either a bull or a camel to turn the *shadouf*. But today, farmers have to use pumps and fuels, which are expensive and sometimes not available. Also spare parts could be a problem. These factors have contributed to the collapse of agriculture in the Nile banks and people were forced to migrate from rural areas to the towns. This had, in fact, accelerated the economic decline of the whole country.

The ecological and social stress caused by large mechanised agriculture is well documented and can be held responsible for many conflicts between traditional farmers and owners of schemes, between farmers and pastoralists or generally precipitating conflicts among local people over scarce farm and grazing land. Obstructing animal routes can also lead to conflicts between the state as major backer or the scheme owners and small farmers and pastoralists.

2. Rural Land Redistribution

The current situation in many rural areas, especially Nuba Mountains, Southern Blue Nile and Northern Upper Nile, is that large tracts of land have been confiscated by commercial farmers with the support of the government. No accurate statistics exist for the extent of large-scale land confiscation, because many mechanised farms have been set up or expanded on an opportunistic basis without formal registration, and because some of the allocations have been made in secret.

In response, many people from rural communities have taken up arms because of the confiscation of their land: one of their priorities will be land redistribution or at least the reversal of recent land alienations.

The scale of land seizures during the NIF regime may be unprecedented, but the fact is not. Land seizures have occurred throughout this century, beginning in colonial times (and even before). There are important historical injustices that need to be redressed.

The question of land redistribution raises a number of very difficult questions.

- How should the legality of land acquisitions be determined? Some mechanised farms in Kordofan, Blue Nile and elsewhere have expanded beyond the registered area, or not been registered at all. These should obviously be closed down.
- The law should be changed so that it is possible to appeal against land registration on the basis of prior occupancy. This should apply to all land registered since the 1990 Civil Transactions Act. An ideal way of dealing with this matter is to set up by law a settlement committee (like those established under the 1925 law) and to allow people to present their proofs of ownership before it, after which the established titles should be registered with the relevant authorities.
- A trickier issue is farms allocated by 'legal' means, but which involve the arbitrary seizure of land from local people. One option would be to render void all large registrations of previously occupied land made since the NIF seized power.
- Ultimately, full registration of all farmland, including in areas where customary law still holds sway, is inevitable and will be the means to secure the rights of local people. One way to deal with problem of literacy, is to create a committee from the educated people in the communities to help the locals registering their rights and to explain to whole issue to them.

The reallocation of land currently under commercial farms will also raise the question of who should be the beneficiaries of a land redistribution? Because of the large scale population movements and the difficulties of determining exactly who was in possession of land before its confiscation, it will not always be easy to return land to its former owners. Instead, it may be necessary to establish rural committees to allocate the land to needy people and those who can establish a claim.

The question of land redistribution is sensitive and raises questions of legal principle. But this should not be a reason for shunning it. One of the implications of failing to address the issue is that the marginal people in the Nuba Mountains, Blue Nile and elsewhere will be extremely unhappy with the political dispensation during the transitional period. As a result they may continue fighting or may even decide to separate from Sudan.

Land redistribution is not simply a measure of reallocating ownership. It involves the following:

- Providing security of tenure for those who are in possession of unregistered land.

- Providing equal financial and market opportunities for small farmers as for large farmers, so that they can compete equally and encouraging the formation of co-operatives and facilitating its work.
- Providing access to the courts and legal aid to enable poor farmers to challenge larger farmers in the courts when necessary.
- Establishing effective local systems of land allocation that can provide land for all who are needy and have a legitimate claim.

3. Urban Land Tenure

Urban land tenure is just as sensitive as rural land ownership. Some among the elite in power seem to take the view that poor people not only have no right to own land in rural areas (on the spurious grounds that they are backward and cannot use the land) but also that they cannot come to the cities (because they are backward and belong in rural areas).

The most pressing problems of urban land tenure are

- The crisis of displaced people (which the current government has responded to with draconian measures of forced relocation).
- The short supply and high cost of accomodation for urban dwellers.

The NIF has tried to play off the latter group of urban dwellers against the former group of squatters and displaced, by removing the former by force and allocating the land to urban dwellers. This is neither just nor workable.

The campaign of 'urban renewal' in Khartoum and other major cities has involved major violations of human rights. A basic principle of law was abrogated in 1990 with the Amendment to the Civil Transactions Act that prohibited appeal against land adjudications made by the government, including striking off all cases currently before the courts. The demolitions and relocations have been carried out with undue force, leading to loss of life, destruction of property and enormous human distress. The new sites for the displaced have often lacked basic amenities and the displaced have been denied the rights to education, health care, clean water and other essentials, the right to work, and civil rights.

The problems facing displaced people and squatters, and the problems they have caused, cannot be solved in this manner. Many of the displaced have come to the cities because of the war, because of lack of economic opportunities in rural areas, or because of land alienation. Only when there is peace, some rehabilitation or development in rural areas, and the chance of acquiring farmland, will these people consider returning home in large numbers. But history shows that urbanisation is rarely if ever completely reversed: some of the displaced will stay in the towns and become resident.

The World Bank has repeatedly shown its interest in urban planning and renewal in Khartoum and other main cities of Sudan. However, along with other major donors, it has also set down basic conditions, which include that all relocation must be done on a voluntary basis and must be to properly-provisioned sites. The NIF government has repeatedly violated these conditions.

A Transitional Government should commit itself to the following conditions for urban renewal and relocation of populations:

- All relocations must be carried out on a strictly voluntary basis.
- The sites to which people are relocated must be at least as well provisioned as those that people are moved from.

- Relocation sites should have cheap public transport to sites of employment in the nearby towns and cities.
- All decisions about demolition and relocation should be open to challenge in the courts.
- The option of incremental improvement of squatter sites and displaced camps should be examined seriously. ‘Semi-planned’ areas can be upgraded by the selective provision of services and the registration of those in occupation of plots of land.

The foundation of urban renewal will be the provision of low cost housing, provided by both the public and private sector.

Successive governments’ policies on housing for city dwellers have always been based on simply allocating land for the needy with the assumption that the recipients can somehow build their own residences. This was given the name ‘housing plan.’ These housing plans have rarely been implemented in the way that was envisaged, partly because the high cost of construction means that the recipients of land allocation have not been able to build houses of the anticipated standard. Governments have also failed to construct the services required and maintain those that have been provided. Given the current state of government finances, which will not change substantially in the forseeable future, major urban construction projects to meet the demand for housing and services will require foreign assistance from international financiers such as the World Bank. Providing housing for poor people at a reasonable rent can also help solving the housing problem and it can bring down the high levels of rent prevailing in the private sector.

Meanwhile, much of the new housing will have to be provided by the private sector. This in turn requires a reform of rent laws. Sudanese rent law has swung between two extremes. The 1956 law was very restrictive on the landlord, and provided a strong economic disincentive for letting out property. The 1984 law, by contrast, made a rental agreement equal to any other ordinary contract, removing almost all security of tenure from the tenant. In theory, this should have been to the landlords’ advantage, but experience has shown that rents have remained high and a housing shortage has persisted. This is probably because insecurity of tenure and high rental have meant that many would-be tenants have preferred to be squatters. A new rent act that strikes a balance between the two extremes will be necessary.

Women’s rights to urban land are unjustly restricted. Government employees are entitled to land allocations in the cities--but if they are women, their allocation is awarded to their husbands. The husband retains full rights over any urban land owned by the household, so that if the couple divorce, the woman comes away with nothing. This is unacceptable and demands reform.

A final, much neglected aspect of urban land policy is the question of public spaces, specifically parks and other recreational facilities. Sudanese towns are planned with very few open spaces for use by the public. Children are forced to play their games in the streets or on waste ground, which is often polluted and unhealthy. The ugliness of urban public spaces encourages those who can afford it to retreat behind high walls and ignore their obligations to wider society.

4. Rights to Other Natural Resources

Some natural resources have come to play a central role in local and national politics, and access to and control over these resources needs careful planning and legislation. These resources include water and oil.

Water Resources

At a local level, access to water has been the cause of numerous local conflicts between communities and ethnic groups. This includes access to wells (seasonal and permanent) and rights to river water (including pastoralists' rights of access to rivers and reservoirs, and farmers' rights to water for irrigation). Means must be found of settling these conflicts and for providing for multiple use rights for water. The use of the Nile waters is an issue of national security and national development policy and is bound by the Nile waters agreement with other riperain states. For other waters, disputes can be settled within the same structures and processes that address rural land rights, the status of tribal *dars* and the role of native authorities.

The question of the Nile in Southern Sudan and specifically the Jonglei Canal is an important issue. In the 1970s and early '80s, this contributed to the outbreak of war. This happened both because of the political and economic disadvantages to Southerners from the plans, and because of the secretive way in which the plans were drawn up and the authoritarian manner in which they were implemented. To avoid the problems arising from this issue becoming a cause for misunderstanding and conflict, it is important that all future decisions on the Nile waters inside Sudan be taken in an open and democratic manner, so that all who are affected feel that they are part of a democratic and inclusive process of decision making.

Oil and mineral resources

The question of rights to oil and mineral resources is a political issue rather than a human rights one, but is important because of the history of disputes and their role in creating conflict. It has obvious ramifications for North-South relations. As in the case of the Nile waters, the human rights concern is primarily with the procedure whereby decisions are arrived at, rather than those decisions themselves. These procedures should be transparent, democratic and participatory.

Conclusions and Recommendations

Land tenure is a subject which is central to why Sudan is at war and is vulnerable to famine, mass displacement and environmental degradation. Because land tenure reform will challenge the entrenched privileges, not just of the NIF but also of the class of people who have ruled Sudan since independence, it is an extremely sensitive issue. But it cannot be avoided if there is to be a just and lasting peace in Sudan. Compromises will be necessary, and it will be important that not all the compromises are made by poor and marginal people from the rural areas.

Recommendations

1. Immediate suspension of new registration of rainfed commercial farms pending review.

2. Immediate suspension of all registrations made under 1991 amendment of Civil Transaction Act pending review. Repeal of the Civil Transaction Act. New legislation should made either in one code covering the civil code or by returning the civil laws prior to 1984, except the Unregistered Land of 1970.

3. Legal recognition of customary tenure and the justiciable nature of customary and usufructuary rights to land. This should be a statement of principle pending the outcome of the review process, below, and should also amount to an enforceable declaration that land confiscation of an arbitrary nature and without compensation is prohibited. Research schemes should sponsored in order to document customary land tenure and to suggest some way of including the practical and workable customs in the law.

4. Setting up of a land commission to investigate and make recommendations on:

(a) The incorporation of customary land law into land statutes;
(b) Review of post-1989 rural land registrations with a view to identifying which are legitimate and which not. In the case of contested ownership, the assumption should be that registrations are not legitimate; the onus of proof should be on the new 'owner';
(c) The redistribution of land seized illegitimately during the post-1989 period;
(d) A policy on pastoral land rights;
(e) Gender equality in land rights.

There is a need to enact a new Settlement and Registration Act. A committee for settlement should be established in areas were great injustice in land distribution had occurred and in areas were unregistered agricultural or residential land exists. People in the marginalised area should be helped by intellectuals from their communities to bring them cases before the settlement committee in order to register their rights.

5. Enacting a new rent restriction act that strikes a balance between the landlord's interest and the security of tenancy.

6. An immediate end to demolition of squatter settlements and displaced camps and a halt to forced relocation.

7. The adoption of a new policy on urban renewal, based upon the following:

(a) A strict condition of voluntariness for relocation;
(b) Upgrading of unplanned or semi-planned urban areas where appropriate, including awarding tenancy rights to squatters;
(c) A new rent act that provides for both the rights and interests of landlords and tenants;
(d) Encouragement of investment in low-cost housing. Providing secured tenancy for poor people in reasonable rent with help of international funding. Prioritisation of applicants should be based on though social research;
(e) Equal rights for women in allocation of housing land to government employees.

8. Decision-making on matters of key natural resources such as the Nile waters and oil reserves should be made in a transparent and democratic manner.

Appendix

Resolution 2, concerning land, passed by the Conference 'What Peace for the Nuba,' London, 20 May 1996:

> It is clear that the best custodians of the land are the indigenous people themselves, and not the elite groups who have gained control of the large areas of land through political favouritism. The Nuba farmers are forced to become dispossessed labourers on massive mechanised agricultural schemes, which is an abuse not only of human and economic rights, but also of the fertile land on which the country depends.
>
> The abuse of mechanised agriculture has only brought destruction to the fragile soils of South Kordofan. This has gone on too long, with international bodies working as accomplices with absentee landlords to the maximise profits while accelerating ecological devastation. The process is only adding fuel to the conflict, and must be halted. Instead, there must be respect for the knowledge of local farmers, whose techniques are most likely to maintain sustainable agricultural development.