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Introduction

Land policies are of fundamental importance to the wellbeing of and the economic opportunities open to rural people, good governance, and peaceful coexistence. Therefore, land policy and analysis of specific interventions relating to land have increasingly come up on the urgent agenda of academic and research institutions, international donors and civil society organisations (Bruce and Migot-Adholla, 1994; Lane and Moorehead, 1995; Toulmin and Quan eds., 2000; Benjaminsen and Lund eds., 2002; Cotula, 2002; DFID, 2002; World Bank, 2003; ACTS/CISDL/UNDP, 2003; ECA, 2004; Rugadya, 2005; Babiker, 2005). However, critics maintain that discussions on land policies are often characterised by preconceived notions and ideological viewpoints rather than by careful analysis of the reality on the ground (Bates, 1984; Booth, 1985; Leach and Mearns, 1996; Babiker, 1998). This in turn has limited the scope for land legislation reform and by implications undermined the potential contribution of land policies to peace-building. As a result, the research findings have remained largely academic and not always been disseminated in a format comprehendible to policymakers and other key stakeholders.

Increasing scarcity of land in the presence of high rates of population growth, possibly along with a historical legacy of discrimination and highly unequal land access, implies that many past and contemporary conflicts have their roots in struggles over land (Cousins, 1996; Babiker, 1998, 2001, 2002, 2005; Egemi *et al.*, 2003). This suggests a special role for land policy in conflict prevention in settings such as North Kordofan. An ability to deal with land claims by different stakeholders, to use land as part of a strategy to provide economic opportunities, and to resolve conflicts and overlapping claims to land in a legitimate manner will greatly increase the scope for conflict prevention and peace-building. Failure to put in place the necessary mechanisms can keep conflicts bubbling, either openly or under the surface, with high social and economic costs (UNDP, 2003; Polloni, 2006). In such situations, the multiplication of the conflicts can result in generalised insecurity of land tenure that in the process jeopardises the broader rule of law.

Although empirical evidence is limited, even comparatively "minor" conflicts over land can significantly reduce productivity and, as it is likely to affect various stakeholders disproportionately, equity. Such conflicts are more likely in the present situation of North Kordofan characterised as it were by rapid population growth and an increasingly dwindling natural resource base (Ibrahim,

[1] This first paper sets the scene by presenting the some key issues in a preliminary fashion. In this way, it provides a benchmark for subsequent research, while placing it within the broader debate on decentralised management of natural resources in the Sudan. It does not attempt to provide a comprehensive analysis of the situation in North Kordofan. However, many of these issues will be considered in detail in the upcoming phases of the research.

1978, 1979, 1987; Babiker, 1987, 1988). In this case, existing institutions must have the authority and legitimacy to re-interpret rules and thereby prevent relatively minor conflicts from evolving into large-scale confrontations. Instead of opening up parallel channels for conflict resolution, something that has often contributed to increasing rather than reducing the incidence of land-related conflict, it may be preferable, if not desirable to build on informal institutions that have social legitimacy and can deal with conflicts at low cost (Egeme *et al.*, 2003).

Throughout history, the more powerful have used policy processes and legal systems to enable or ratify their grabbing of valuable common resources[2]. In colonial Africa, for instance, the law was used to dismantle customary land tenure systems based on common property and to expropriate land and other natural resources (Arrighi, 1973; Leys, 1975). Despite these interventions, customary systems have proved very resilient, and are still widely applied in rural areas. However, as for policy frameworks, the commons do not seem to have been a priority for policymakers. This is in stark contrast to the importance of the commons for the livelihoods of many people, especially in rural areas (McCay and Acheson 1988; Berkes, 1989; Bromlea and Cernea, 1989; Ostrom, 1990; Arnold, 1998; Hesse and Trench, 2000; Cousins, 2000).

For the purposes of this paper, the "commons" are very broadly defined as natural resources that are owned, managed and/or used collectively by several users, either simultaneously or successively; irrespective of the nature of the resource (whether "common pool" or not) and of the property regime formally applicable to it (i.e. even if legally owned by the state). In the case of North Kordofan, this includes, among other things, farmland, pastureland, forestland, and water and wildlife resources. Within this context, land rights and tenure are key: a) because land itself may be held or used in common (e.g. grazing lands); and b) because, even if it is not, rights over land and rights over the "common" natural resources located on it (e.g. forestry) are closely linked. In practice, rather than a dichotomy between common and private/state property, many systems of commons management entail a blend of different property regimes, including elements of common, private and state property (Cleaver, 2002; Bejaminsen and Lund, 2002).

The focus of this paper is on the policy and legislative challenges raised by the commons in an era where many vocal actors see privatisation as the only way forward (Cotula *et al.*, eds., 2005). Such challenges are examined at different levels – local (e.g. local agreements for the shared management of natural resources) and national (government policies, legislation). Can policy and legal frameworks help secure the commons against resource grabbing by elites? If so, how can they best do it? How can they ensure equitable participation in benefits by and within local communities? What are the linkages between policy/legislative frameworks and local practice?

Conflicts over Land

Until recently, it was rare in North Kordofan to have conflicts of any significance pertaining to competition over natural resources. Up to the 1980s, competition over natural resources in the southern part of North Kordofan rarely escalated to the level of violent conflict. It commonly involved sedentary cultivators and pastoralists, and almost invariably pertained to incidents where herds trespassed onto cultivated land (Babiker, 2002).

[2] Common property resources are public goods which are used simultaneously or sequentially by different users because of difficulties in claiming or enforcing exclusive rights, or because they are so sparse or uncertain that it is not worth doing so. In contrast to open access resources, common property resources are governed by institutions who claim ownership and management rights over the resources in question on behalf of a known group. These rights include, in particular, the right to deny access to those who do not belong to the community, and to regulate the exploitation of the resource by members. Common property systems generally include all community based or customary resource management systems.

However, pastoral competition and conflict is more common and frequent in the northern and north-western parts of North Kordofan. The pastoralists (notably the Kababish, Kawahla and Shanabla) keep both camels and sheep, and undertake long range nomadic movements. During the rainy season they spread wide to make use of distant pastures and *wadis,* reaching as far north as the outskirts of Dongola along the Nile in Northern State.

A grazing area of particular significance is the Gizu[3], a common grazing territory divided by international boundaries between Sudan, Libya and Chad. It is an area of considerable tribal intermingling, frequented by pastoral nomads from three countries. The Sudan part of Gizu is in North Darfur State, and the pastoralists of North Kordofan come into contact with those from North Darfur, notably Meidoub, Zaghawa and Northern Rizaigat camel pastoralists.

In the context of both drought and administrative chaos in the 1970s, conflicts among pastoralists in the north-western corner of the country started to escalate. A 'nomadic settlement scheme' in Jiraih el Sarha gave impetus to conflict between Kababish and Kawahla: the former claiming that the land is theirs while the Kawahla (chiefly family in particular) benefited from the scheme (Khogali, 1987). The scheme helped Kawahla to keep their livestock through the spells of drought periods, while the livestock in the rest of Dar Kababish were wiped out. The area also witnessed a bloodier conflict over a rich grazing area between one section of Kababish (A'ttawiya) and the Meidoub of North Darfur. Conflict reached an unprecedented scale, with each group invading and 'colonising' the (government-owned and run) watering point of the other (i. e. Khytaimaya and Malha wells).

Of late, however, sedentary cultivators, particularly the *dar* owners, seem to have wilfully instigated a proliferation of trespassing incidents through the manipulation of 'customary tenure' norms. Farmers can gain considerable sums through fines to pastoralists who allow their animals onto fields within the pastoral areas, irrespective of the value of the crop itself, and small, isolated fields surrounded by pasture have become known as "trap fields" that render vast tracts of pasture effectively unusable by herders. Furthermore, it is likely that a tenure commission, once established in the zone, would support claims by farmers to land cultivated by them unless some form of pastoral rights is recognised, so the incentive for farmers to continue this practice is strong (Babiker, 2002; UNDP, 2003).

The Legislative Assembly of North Kordofan State has issued an act to sanction pastoral routes and *makharif* (rainy season grazing grounds), but this Act is believed to be generally ineffective. A major problem in the Act is its limited geographical coverage, as it pertains mainly to El-Obeid and its vicinity – excluding the 'blazing' pastoral areas to the north and northwest. Another deficiency in the Act is the failure to demarcate a grazing line beyond which large-scale agricultural investment is to be banned. However, the latter drawback has been subsequently addressed by the *Regulation of Use of Agricultural Machinery in North Kordofan State Act 2002*, which banned the use of agricultural machinery north of lat. 13° N. However, in practice the latter Act seems not to have constituted enough deterrence for the *gerdud*, hard clay soil, north of lat. 13° N to be ploughed by tractors, a process that is environmentally unsustainable and destructive. The North Kordofan State Government has partly been responsible for this development, as it tended to grant urban-based groups licences to establish mechanised farming schemes (250 feddan in size) on *gerdud* soils, which may be spoiled by the use of disc harrow ploughs. The grants started to become larger

[3] Harrison (1955: Part II, p. 4) has highlighted the importance of Gizu: 'Only about one year in two is there sufficient rainfall to give a "gizzu" [which] is best only where shower have been heaviest. Yet there is a time lag of about three months between the end of the rains, in August, and the springing up of the "gizzu" in November...The "gizzu" grazing then lasts and grows green from November to February…The "Gizzu" grazing is the best grazing enjoyed by camels and sheep, better than any other grazing anywhere at any time, better than rains grazing in higher rainfall areas. In a year with good "gizzu" the female camels are said to all give calves, while in a year without "gizzu" only half of them do so. Some Kababish travel 500 miles to the "gizzu", the longest seasonal migration of any Sudan tribe' (see Asad, 1970; 1976).

and larger in area, a situation that began to alarm both sedentary cultivators and pastoralists. Currently there is much debate and controversy in North Kordofan revolving around two such allocations: the Jandail Plantation and the Shanabla 'nomadic settlement scheme' (Egemi *et al.*, 2003).

Jandail is a plantation with an area of 38,000 feddans granted to the Malaysian-African Agricultural Company under the *Encouragement of Investment Act 1990*. There is ambiguity regarding the authority that granted the area and whether it is federal or state. There are also rumours concerning "handsomely rewarded collaboration" on the part of local sheikhs. The Company seemingly has ambitious plans to plant acacia in the soft clay, ultimately enhancing the already dwindling exports of gum Arabic from Sudan. The plantation area is largely a forest that encompasses village farmland, important pastoral routes (*masarat*), as well as vital wet season gazing ground (*makharif*).

Sedentary cultivators and pastoralists alike look upon Jandail as an infringement to their customary usufruct rights. When concession was granted, little regard was given to the customary rights of the pastoralists and cultivators inhabiting the area and to the adverse socio-economic impact such a concession would have on their productive and living conditions. The use of the vast tracts of land stretching from Kazgil to Rahad for the planting of Acacia trees has robbed the pastoralists of their traditional migration routes as well as of two of their most important wet grazing areas (Mugshasha and el-Ghannama *makhrafs*), and has restricted the food gathering and hunting activities of the local communities. Some even point to a 'conspiracy' and 'hidden agenda' behind the grant, as acacia is not normally planted on, or even suited for clay soil. The 'natural' site for such trees is said to be sandy soil. They thus doubt the stated 'developmental objectives' of the plantation, and tend to think that it might be a form of land speculation or else an attempt to lay claim over an area rumoured to be rich in mineral resources. The Company tried to pacify the local population by making token donations for social and community services, notably the building of village mosques.

The second allocation was to the Amir of Shanabla nomadic pastoralists, a group that traditionally had no territorial land rights in the area, except with the consent of leaders of the local land-owning groups. The politically motivated allocation was ostensibly aimed at the resettlement of the nomads, whose traditional grazing areas to the north suffered environmental deterioration. The settlement is said to facilitate the spread of basic education. There is evidence, however, that the Amir of Shanabla wanted the settlement primarily for cultivation. Subsequently, the area became a court case issue, as it falls in two different *omodiyas* and former *nazirates.* Again, there are speculations about the 'rewarded' role of Gawama'a Amir in approving the grant of a land part of which is not under his mandate.

A further important issue is that government few years ago had announced the creation of two new Emirates within the Bedeiriya traditional homeland: Shiweihat and Bergo. The two are 'landless minority groups' formerly 'affiliated' with the Bedeiriya tribal confederacy. Their access to natural resources continues to be subject to the consent of Bedairiya sheikhs. The Bedairiya fear that the creation of these Emirates may be a prelude to a re-demarcation and re-division of their 'homeland'. The Shuwaihat now have their Amir, but no appointment has yet been effected for the Bergo, who seemingly lost leverage when the Bergo State Wali was dismissed in the aftermath of the split of the ruling 'National Congress Party'.

The concern of the *dar* owners over the continuity of their (usufruct) rights is re-enforced by the observed increasing settlement of 'outsiders' in the area. The civil war in South Kordofan has forced numbers of Hawazma pastoralists to settle permanently in Dar Bedeiriya and Dar Gawama'a. Most of the Hawazma settlements, however, seem to have been established in accordance with local traditions, including the consent of village sheikhs to whom dues are paid. Some other settlers,

however, do not seem to abide by local traditions. They rather validate their settlement by access to state authorities and, in apparent defiance to local customs, tend to have their own *omdas.*

There is currently a latent conflict over a settlement established by a group of Zaghawa from Darfur. The concerned Gawama'a *omda* sought the protection of the rights of the *dar* owners and ordered the Zaghawa to demolish their settlement. The latter, however, filed a court case against the *omda*, who was accused of violating their rights as Sudanese citizens to live in any part of the country. The court, apparently aware of the abolition of the colonial principle of *dar* adjudicated that the Zaghawa as Sudanese did have a right to establish their settlement. This case seems to be particularly important in two respects. Firstly, it was handled in a strictly legal style that apparently failed to see the 'ethnic' ramifications for the future of inter-group relations in the area. Secondly, and perhaps even more significant, the case constitutes a precedent entrenching the abolition of the principle of *dar,* thereby exacerbating the sense of insecurity among the local populations concerning the continuity of their customary land tenure systems.

Two important issues are raised be the above cases. First, the cases point to the fact that conflicts over resources in North Kordofan involve a number of actors and interested parties including the Federal Government, the State Government, national and foreign investors, local residents, and Abbala and Baggara pastoralists. Secondly, the cases represent good examples of the insecurity of the usufruct rights of both sedentary cultivators and pastoralists. A formidable challenge in North Kordofan is therefore to institutionalise a legal system of land tenure that is not readily amenable to manipulation by state political appointees. Basic to this challenge is to clearly stipulate and guarantee the customary rights of both the local sedentary cultivators and the visiting pastoralists.

Legal Status of Customary Tenure

Following independence, the customary laws governing pastoral areas were progressively being ignored by the state. Land which was not cultivated, had no infrastructure, and was "uninhabited", was considered "vacant" and became state-owned property. In contrast, land legislation under colonial rule recognised prevalent local customs as one of the major sources of legal rights in Sudan. One of the most important features of the customary land tenure system is the right exercised by the native traditional leadership in the allotment of land and the settlement of disputes over land. Accordingly, an outsider has no right to settle in a land area even if it is unoccupied, unless he is permitted to do so by the native authorities.

The customary land tenure system has its advantages and disadvantages. One of its advantages is that it is a system which is well understood by all involved and where native authority administering the "customs" relating to land and interests in it inhabit the same area and can easily be contacted as opposed to dealing with the land registries which are located far away in the provincial headquarters and some of the district headquarters. The most important disadvantage is the embodiment of judicial and executive authority in a single individual (a village headman), which makes him a person of considerable powers in the allocation of tribal land rights and the settlement of tribal disputes over land.

As a preparatory step for the replacement of the "traditional forms of rule in 1971", the Unregistered Land Act (ULA) of 1970 abolished authority vested in native administration with respect to land allocation. Nevertheless, it has not been possible to apply the Act in many remote areas where the rural people continued to maintain their allegiance to the leaders of native administration thereby making it deficient to administer these territories without the consent of

tribal authority as observed by the newly constituted officials of local government administration in the different regions of Sudan.

There is no substitute in the short run for the continuity of the native systems and administration authorities over the acquisition and utilization of pastoral and agricultural lands. Nevertheless, many native administrators have to be subjected to controls including the possibility of the right of appeal to prevent misuse (or exploitation) of the system. Any change with respect to the land law will require careful and effective monitoring at the local level.

Pastoralists in Sudan have great difficulty in establishing their claims to land. The nomadic pastoralists are not settled in one place, but have been forced to be on the move all the time by the uneven distribution and seasonal incidence of the annual rainfall. Custom among the pastoralists presumes the possibility to use large tracks of land held communally for the grazing of the livestock herds. Colonial rule had attempted to regulate the use of land by specifying the time during which the pastoralists can move in a manner essentially conducive to the reduction of conflicts between pastoralists and cultivators over land and water rights as well as to the prevention of animal encroachment on crops prior to harvest. Land laws during both the colonial and post-colonial periods have not recognized any pastoralists' rights to land other than usufruct rights, and even those were most generally not observed.

The concept of *dar* or tribal homeland is one of the most important constituents of customary land law, and it is intimately related to the principle of native administration. A tribe has its own means of assuming control or ownership over a particular tract of land, both inclusive of the restricted use of such a tract of land by other pastoralists. However, such a restriction is usually not carried to extremes and well beyond the limit of excluding the others from the rights of the use (cultivation, grazing and water) given that a negotiated settlement is arrived at between the two parties regarding the exercise of that right by strangers subject to their complete recognition of the fact that the fundamental rights to the land lie with the original owners of the *dar* (the tribe from which the name of the area derives).

The promulgation of the Unregistered Land Act of 1970 coupled with the abolition of the rights exercised by the native administration in 1971 demolished the legal basis on which the *dar* concept is founded. Theoretically, it was possible for any pastoralist to graze his animals in unoccupied land, and for any cultivator to acquire and cultivate any plot of land through land clearing. Recently, cultivation has expanded enormously, frequently in areas that are ecologically unsuited to cropping. This has been the most significant factor in the ecological deterioration of North Kordofan.

The encroachment of both rain fed mechanized farming and "traditional" agriculture into areas formerly used exclusively for grazing have threatened the livelihood of the pastoralists and as a consequence led to their continuing displacement and the reduction of their socio-political stability as well as the productivity of their animals. It also causes escalation in land use conflicts and disruption in the previous balance between the resource base and its economic utilization.

Attempts for Reform

The Government of North Kordofan state has managed to issue legislation that directly or indirectly are meant to protect the interest of the pastoralists. Such legislation includes the *Livestock Corridors Act of 1998*, the *Protection of Natural Rangelands in North Kordofan State Act of 1999*, and the *Regulation of Use of Agricultural Machinery in North Kordofan State Act of 2002*. The implementation and enforcement of these Acts has been entrusted to special committees composed

of the relevant government technical and security departments, native authorities, and representatives of the pastoralists and farmers.

However, pastoral land use to the north of the region was legally protected under a decree that defined a legal border to the north of which mechanised farming was prohibited. The law, too restrictive and over-simplistic, was never respected. During the 1980s and 1990s, not only did the pastoral areas south of the border gradually disappear, but cultivation encroached into the northern pastoral zone, uncontested by the administration. In North Kordofan the northern border for mechanised agriculture defined in law corresponded more or less with lat. 13º N. A considerable *gerdud* land area south of this border was also available to livestock. These pockets of land were generally considered marginal and not suitable for manual cultivation, and provided vital holding grounds for livestock as they moved to the south during the early dry season while crops were being harvested and again at the beginning of the rainy season as herds moved north when fields were being planted and pasture was not yet available in the drier areas.

Moreover, reopening pastoral routes without availing temporary grazing areas within reasonable reach seems pointless, as it would only imply a journey without destination. Pastoral routes are not merely roads that herds hoof it between the wet season rangelands (*makharif*) and the dry season grazing grounds (*madamir* or *masaif*), and it is unrealistic to expect pastoralists to be on the move all the time. The entire social life of pastoral communities is in fact carried out along these routes. On the routes they cook and eat, sleep and rest, pray and play and get involved in major social events, including feasts, weddings, childbirth, and funerals. The reopening of routes should thus be accompanied by measures to avail sufficiently wide corridors on which the herds fall back while pastoralists carry on with their social life.

The viability of routes and corridors is in their provision of both passage and temporary grazing for herds. Longer term grazing, however, requires vast tracts of pastureland to keep herds away from the farming areas, at least until after harvest. Availing the latter may be achieved by rehabilitating the range in distant areas, particularly through water development projects. New and innovative planning approaches to pastoral development thus have to be adopted, not least to dispense with the bias in the former planning models based on the ideal of sedentary farming communities.

A basic task in pastoral development strategies is to address and rectify the vexing question of pastoral resource tenure, particularly with respect to land. Grazing areas have to be clearly demarcated and grazing lines, beyond which large scale agriculture is prohibited, have to be stipulated and strictly enforced. Current legislation treats grazing land in passive terms, mainly as a residual category. The proposed, but thus far not ratified bill submitted by the Range and Pasture Administration is a positive step towards defining and demarcating the rangelands. The proposed act not only separates the respective domains of farming and herding (inclusive of pastoral routes and corridors within farming areas), but also impedes the tendency of the National Forests Corporation to annex vast tracts of the best grazing areas to declare them ‘reserved forests’. Clearly, the demarcated pastoral domain is likely to comprise mainly the marginal lands. Unless effective efforts towards pasture rehabilitation and water development are exerted, the demarcation would be pointless and futile, as pastoralists would turn their herds to more favourable grazing in the farming domain.

Backed by effective local administration, the different pastoral communities are capable of agreeing among themselves on norms regulating entry of one group to the homeland of another. Such norms may also be codified and sanctioned by state or local level legislation. This argument stems from the recognition that nothing can be more detrimental than the ‘boxing in’ of pastoralists and their herds within rigidly defined routes, corridors or even homelands. Such rigidities would severely

constrain the capacity of pastoralists to cope with the inherently unstable environmental conditions, particularly the stress from localized spells of drought.

Challenges to Tenure Reform

Many studies have highlighted the need for reform of rural land tenure and administration in Sudan. This emerges all the more clearly as the ongoing conflicts in Sudan are rooted in, though not limited to, conflicts over land resources. The key common drawbacks of the current system are: vulnerability of small farmers and pastoralists to the risk of being ousted from communal land by wealthier investors; lack of clear policies for environmentally sound land use; failure to consistently enforce pastoral land use rights – a constant source of tensions; and failure to adequately consult with local communities in matters of land use.

North Kordofan presents particular challenges in the field of decentralised natural resource management, the most critical one being the identification of management systems that are sustainable and equitable in the face of great spatial and temporal variation. Periodic drought is a normal and inherent feature of North Kordofan and although it is unpredictable it is also inevitable. This demands non-prescriptive management systems of extreme flexibility to deal with an ever-changing resource base. The following are some key challenges that policymakers and legislators face in attempting to do so.

The first challenge concerns recognising the value of the commons. On the one hand, this entails taking fully into account the importance of common resources for local livelihoods and other goods. The economic benefits stemming from the commons are notoriously underestimated due to their often non-monetarised nature. As a result, short-term economic gains from individualisation tend to outweigh the less visible but not less important potential benefits of maintaining resources in common (e.g. equitable access, local peace, cultural identity, etc). While some call for "proper" economic valuation of the commons, so as to make a convincing case with policymakers and legislators, it must be remembered that the social, cultural and environmental importance of the commons may be very difficult to translate into monetary value.

On the other hand, acknowledging the value of the commons entails recognising the validity of local systems for resource access, management and use. Very often, the "tragedy of the commons"-arguments has been used to undermine local management systems and claim control over natural resources. Similarly, where protection of land rights is conditional upon "productive land use", common use is often not recognised as fulfilling this requirement. This has been used by government services, for instance to justify the conversion of common pastures to other uses which are considered more productive for national and local economies (e.g. irrigated farming, commercial ranching).

A second challenge is how to grant secure tenure to local communities. The extent to which the policy/legislative framework grants secure access and user rights to local communities which depend on the commons is a crucial variable. Even where customary systems seem to work well without any legal backing, they may be undermined when "outsiders" come in. This raises a series of issues, such as:

- *Who are the "communities"?* Local users are rarely homogeneous groups and tend to be differentiated on the basis of income, power, gender, age, professional groupings (e.g. farmers, herders), etc. The case of North Kordofan demonstrates how "local communities" may include very different actors with very different bargaining power (commercial farmers, landowners, gum producers, pastoralists). Also, membership of user groups may

be fluid and include non-resident users (e.g. transhumant pastoralists). This creates challenges in identifying the right holders and in establishing checks and balances at the community level to prevent elite capture.

- *What rights should be secured?* Key rights to be protected concern access, management and use. Recognising local tenure systems may present challenges, especially where the national legal system is based on "imported" legal traditions. As for the object of these rights, this includes not only land and other "tangible" natural resources, but also "intangible" goods such as indigenous knowledge and genetic resources.
- *How can greater tenure security be provided?* Recognising customary rights and building on local practice are key, as they enable one to go beyond the chaotic superposition of different tenure regimes (statutory, customary or combinations of both). While some called for a codification of customary law, others advocate more flexible ways of recognising customary rights and integrating them in the formal legal framework.

A third challenge is how to reconcile competing resource uses. Because of their very nature, the commons are characterised by multiple users and/or uses, either simultaneously or sequentially. This requires institutional arrangements to regulate the interaction between these different, and possibly competing, uses, and to solve disputes peacefully when they arise. An example is provided by various legislations recently adopted in North Kordofan with a view to reconciling different land uses coexisting over the same territory, namely pastoralism and agriculture, particularly on allowing and regulating herd mobility.

A fourth challenge is how to create an enabling framework for partnerships between local communities and the private sector. In some cases local communities may benefit from partnerships with private sector entities. However, in order for this to happen, policy and legislation should provide an enabling framework for negotiations between communities and private sector operators. This includes establishing mechanisms to ensure community consultation and benefit sharing with regard to revenues generated by the private entity through its use of the resources.

A final challenge is how to make policy processes and legal systems more accessible.
Where the policy and legislative framework is not accessible to local people, it may be manipulated by elites to legitimise their grabbing of common resources. Greater "access" to the policy and legislative framework concerns the formulation of policies and laws (public participation in the formulation process, use of clear and accessible language, etc.), and their implementation (activities to raise legal awareness; access to courts; etc.). Making the policy and legislative framework more accessible also entails bridging the gap between policy and practice.

Opportunities for Tenure Reform

Sudan is undergoing profound institutional, economic and political changes, which offer promising opportunities for effective community based natural resource management systems. Following the signing of the CPA in January 2005, the review of the Constitution and the formation of the Government of National Unity (GoNU) combined to add force to national and international calls for decentralisation. This would require a revision of many laws regulating natural resource management and land tenure and restructuring of local government to support a more holistic and community level approach to development in rural areas. National codes governing forests and wildlife, long denounced for their repressive nature, inadequacy or ambiguity, have to be replaced by new laws governing natural resource management. Land laws should also undergo review and a new pastoral charter should be developed with the objective of clarifying pastoral resource use and management and reducing conflict between pastoral and agricultural land uses.

International and regional conventions are providing broad policy frameworks within which devolved management of resources can take place. The federal government is expected to reform past legislation and pass new laws in order to implement policies that will allow a far greater involvement of communities in the management of natural resources. The decentralisation process should be envisaged as a means of increasing efficiency, improving equity and participation and ensuring greater responsiveness of government to local populations.

However, government interest in devolved management is not entirely driven by an ideological commitment to local participation. Global trends towards greater democratisation and the empowerment of civil society are resulting in governments having 'to toe the line' if they are to continue to benefit from development aid assistance. In an era of structural adjustment reforms, it is also cheaper for them to devolve management responsibilities to local communities. This is particularly true for the management of natural resources that are of relatively low commercial value.

Constitutional developments in the Sudan have sought to create a single legal system in which statutory formal law is paramount. In the real world of most Sudanese livelihoods, however, customary law has proved to be obstinate. Customary law, hardly acknowledged in post-colonial legislation, often continues to dominate real life – especially in the rural areas. Only recently, with the signing of the CPA, did the Interim Constitution formally recognise the integral role and equivalent status of customary law within legal framework.

However, land policy issues are not fully addressed in the Comprehensive Peace Agreement. By focusing on usage rights, the CPA 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 arbitration 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. 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. None of the commissions have been formed so far.

In conformity with the general principle that land in the "New Sudan" belongs to the communities, the SPLM judiciary system recognises custom as providing legitimate legal principles. Thus 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 powerful outsiders, neutralise disputes arising from the overlap of different ethnic customs and restrict potential land speculation.

Perhaps the most disturbing trend is that processes towards reform are hampered by lack of goodwill and political will. The much-proclaimed promises in the CPA and the subsequent Interim Constitution to provide better legal protection for customary land rights in Sudan have been deliberately ignored. Commitment to local level empowerment in land decision-making is quite frequently curtailed by a government unwilling to really surrender the extent of authority initially promised.

The GoNU and state governments are constitutionally required to pass new legislation to devolve the responsibility for managing natural resources to local communities, but despite growing awareness of the vital role of the commons in local livelihood systems, there is still some resistance to transferring full management of their use to the communities that depend upon them. Some policymakers are doubtful as to whether these areas can be properly managed by community-based organisations, and it is still believed in some quarters that privatisation or state control are the only means of preventing the degradation of resources that are customarily held in common.

Conclusion

By reference to the case of North Kordofan, this paper attempted to investigate and inform ways in which common property resources (e.g. community forests, rangeland, water) can be managed in equitable, sustainable and peaceful ways by the many people who rely on them for their livelihoods. Of particular concern is how to ensure mobile groups such as transhumant herders who depend on periodic access to these resources can play an active role in the management of sylvo-pastoral resources.

In theory, North Kordofan offers a favourable institutional climate for decentralised natural resource management. The changes described above should focus on participation by the rural actors concerned, allowing them responsibility and recognising the local rights to manage and define their own land. The reforms should take an approach whereby the new laws provide a framework that allows some latitude for locally appropriate interpretation and adoption. The process of review should include a process of consultation with resource users at local, regional and national levels.

On an institutional level, the government is no longer the only actor in natural resource management. Other actors include, in particular, decentralised local councils, professional or technical experts, and, to some extent, community institutions and resource users. Legally, the new rules should distinguish between land belonging to the state and the collective and private individuals, and also recognise the rights and responsibilities to manage each part respectively, sharing these roles between the state and local collectives on the one hand and community level institutions on the other.

The case of North Kordofan demonstrates beyond doubt that the challenges posed by land policy issues in Sudan seem almost insurmountable; yet satisfactory solutions can be found if the political will and commitment are forthcoming. After over two decades of civil war it is vital that the importance of land issues for peace-building in the Sudan should be taken seriously and should be one of the main focuses of policy dialogue and legal reform.

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