

Land Tenure Conflict and Means of Resolution
Case Study for Southern Kordofan State

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مستخلص:

الأرض في السودان وبامتدادها عبر أقاليم إيكولوجية متعددة تمثل أهم موارد البلاد، لذلك من الضروري أن يتم التعامل معها وتحديد أفضل أنماط استخدامها على أسس علمية تضمن تحقيق رفاهية الأجيال الحالية والأجيال القادمة في التمتع بها. والفارق بين أمة تعد متقدمة وأخرى متخلفة إلا بفارق ما استطاعت الأولى أن تسخر مواردها الأرضية والبشرية لمصلحتها ومصحة شعوبها وعجزت الثانية بأن تحاربها في نفس المضمار. تهدف هذه الورقة إلى دراسة عامل حيازة الأرض باعتبارها العامل الرئيس المؤثر على استخدام الأرض طبقاً لقدورها الإنتاجية، وإبراز الصراعات الناتجة من أنماط الحيازة وذلك في ولاية جنوب كردفان، واقتراح بعض الحلول لكيفية التعامل مع هذه الصراعات. أوضحت الدراسة أن الأنماط الحالية لحيازة الأرض تقف عائقاً في طريق زيادة الإنتاج الزراعي والحيواني، بالإضافة إلى أنها تخلق الكثير من الصراعات بين قبائل الولاية. كما أن عدم وضوح العلاقة بين السلطات التي تقوم بالتصرف في الأراضي وتخصيص استخدامها على مستوى الحكومة الاتحادية والولاية، وفي غياب خريطة لاستخدام الأرض بالولاية.

سأهم في خلق هذه الصراعات. واقترحت الدراسة قيام جهاز واحد يكون مسئولاً عن منح وتخصيص وتسجيل الأراضي وفقاً لمعطيات خريطة استخدام الأرض بالولاية.

Introduction

Problems of land use involve both land and people. They involve physical, social and economic problems associated with each development option, and possible solutions for these problems. Present land use is not sustainable through much of the Sudan. Present land use is not sustainable through much of the Sudan. Escalating pressures on the land, and systems of land use characterized by low levels of technology low inputs and low outputs have created a vicious circle of degradation of land, water forest and wildlife resources. Recurrent crises of production, failing living standards, conflicts between landed and landless or ethnic groups may be triggered by drought, pestilence or some external cause. But the underlying force is increasing pressure on natural resources; degradation bringing about a permanent loss of productive capacity; leading to lack of margin in production system. One goal of development policy and land use planning is to break free from this cycle (Younis 1991).

Sudan's land tenure system falls into two distinct yet coexisting categories:

1- Customary land tenure and modern land tenure. Land policy in the country has tacitly land, at times, actively encouraged the gradual evolution of both systems into a unified, rationalized process which combines the merits of both. This phenomenon is evident in the enactment during the condominium era of numerous Sharia Law rules which were previously applied as part of custom of the land. This trend culminated in 1984 in the wholesales adoption of the Sharia Land tenure systems as the primary land tenure systems in the country. Between independence and 1984 the policy of government was to assert State ownership of land in ways that encouraged large private holdings and capital investment in land and resources.

2- The modern land tenure region is represented by the land registration system enacted by the Condominium Government. The system recognized individual ownership rights over urban and irrigated land. It allowed pre-existing traditional land rights in other areas to remain intact, leaving the regulation of the of their exercise largely to the local custom. Other legislation promulgated during the Condominium era codified certain Sharia and

Customary land tenure rules, such as pre-emption. Thus, the opportunities for the gradual incorporation of unregistered land occupied by natives into the land registration system was established by modern legislation.

In 1970, the government declared itself by decree to be registered owner of all unregistered land in the country, occupied and unoccupied. All such land was deemed to have been duly registered as the property of the government. The Act deprived occupiers of unregistered land of the possibility of becoming its registered owner. Occupation and usufruct rights may be enforced against other occupiers, but not against the government, which may evict at will occupiers of such land with discretion to pay compensation in exceptional cases (Ridgway, 1993).

In fact, the Civil Translation Act 1984 did not abolish the system of land registration enacted by the Condominium government, nor did it abolish the forms of titles to land that is recognized. Although in Islam, unoccupied land belongs to the person who develop it, the Act rules that land belongs to Allah and appointed the State as his deputy in which title to all land vests. In this way the 1984 Act conferred religious sanctity on the state ownership of unregistered land established by the 1970 religious sanctity on the State ownership of unregistered land established by the 1970 Act (Younis, 1993&1997).

This paper addresses the land tenure conflicts in the Southern Kordofan State and based on the results of a study conducted, means of resolution are recommended.

Results and Discussions:

Disputes over land resources have increased sharply in recent years. The volume of litigation has also increased and there is a steady rise in the number of criminal and civil cases on land resources. The official records indicate fluctuations in the number of cases instituted by individuals. Fig. (1) shows the results of a survey conducted in the District Court of Dilling Province of the volume of civil litigation over land resources, namely boundary disputes over agricultural land, ownership problems and conflicting interests between cultivators and livestock owners.

Most conflicts over land resources in the Province of Dilling and its surroundings are settled out of the formal judicial system, i.e. courts established in accordance with judiciary Act 1986, which may explain the low number of cases and the fluctuation in the number of litigations. The majority of these disputes are referred to the elders and wise men of the particular locality, and to the Sheikhs and Meiks.

The Sheikhs, Meiks and the elders will apply the norms and customs prevalent in their locality. If the cases is exceptionally complex to be solved by them, or it involves an act of dishonesty, the case will be referred to the court. Note that the volume of litigation increased noticeably during the Democratic Government period (1986-1989).

Conflict over land resources that involve two or more tribes are usually settled by joint efforts from leaders of conflicting tribes, sitting together with Government officials who act as mediators between the two parties. The task of such a conference is to reconcile the two conflicting tribes and to reach an amicable solution through determination of the rights and duties of both parties.

In the area of South Kordofan, tribal conflicts are common over land resources, especially grazing and water resources. Frequently, these disputes involve tribes from different ethnic or geographical background, for examples, Messiriya tribe of South Kordofan against Rezigat of South Darfur.

Blood money (dia) in death cases is usually borne by tribe on the behalf of a convicted member or members. The tribe constitutes a communal source of dia payment.

Tribal conference proved to be effective in solving conflicts over land resources. However, such solutions are rarely lasting or radical in their approach. Experience has shown that disputes are increasing steadily in the area of South Kordofan.

This is mainly due to the absence of a proper land demarcation and use system to adequately define and protect the rights and duties of various users.

To become a forum to settle disputes effectively, tribal authorities should be backed by an efficient and proper land use system to eliminate root causes of the problems associated with land use in the area of South Kordofan. This is particularly needed in view of the recent resurrection of the Tribal Authority in the Sudan by the presidential order of the Revolutionary Command Council 1990.

Problems with land resource tenure in the following modalities:

- a) Farmers and pastoralists- the later view the former as intruders and resent the expansion of farming into grazing areas, and the blockage of trek stock routes depriving herds of both grazing and access to water resources, thereby violating traditional grazing rights. Farmers resent the damage caused by herds crossing their farms.
- b) Farmers and wood cutters- expansion of mechanized farming deprived tree owners and wood cutters of an important source of income and cheap housing and energy sources.
- c) Authorized leased mechanized farmers and uncontrolled farmers- both mechanized and small traditional farmers, are usually driven from their land included in the mechanized farming projects to other less fertile areas.
- d) Wood cutters and forest authorities.
- e) Small farmers against small farmers – disputing farming rights over bildat (small farmers) allocated by Sheikhs and Meiks.
- f) Displaced and new settlers against village populations and traditional farmers.

The more important structural causes of land and resource tenure problems in South Kordofan are fragmentation of control over resources, lack of co-ordination, ill-considered land tenure policies and frequent legislative changes.

As regards settlement of land and resource tenure problems; the ordinary courts, hampered both by complexity and sheer volume of land and resource tenure legislation, and their own cumbersome procedures, do not appear to offer an effective means of settlement of land tenure disputes. A further

handicap is the lack of judges sitting in the ordinary courts with detailed knowledge of the local customary rules of each community.

Native courts are usually conversant in local custom; however, they lack the legal education and training which enables them to settle disputes and define rights once and for all. Inter-tribal conferences proved useful in resolving some of the perennial inter-tribal conflicts. They are less suited for the adjudication of individual disputes.

Special Land Courts panels manned by both professional judges, administrators and native leaders, might prove more effective in the settlement of land and resource tenure disputes. Success of such a court depends on the rationalization and coordination of legislation on land and resource tenure at both national and regional levels.

Since independence, Sudan has witnessed frequent upheavals in its administrative and bureaucratic constitution and hierarchies. Grand schemes to restructure the political and administrative bureaucracies have often resulted in the expansion, over-growth and multiplicity of government organization and institutions. Vague definition of the competence of government departments led to conflict of jurisdiction and duplication of functions.

Control over agricultural resources is distributed among too many departments, both at Federal and State levels. Lack of an effective co-ordinating body is apparent. Exercise of power by federal authorities is often resented by regional bodies. Competition and conflict of interest among provincial authorities is not an uncommon phenomenon. Federal and central departments view disposal of land by provincial and local authorities with suspicion and resentment. The problem is compounded by the fact that South Kordofan is inhabited by tribes of different ethnic origins and conflicting economic interests, for example farmers and pastoralists.

The study has shown that there are a considerable number of issues to clarify and problems to solve in the sphere of registration of land, land allocation and demarcation. The main conclusions recommendations to emerge are listed below.

- 1- All regulations appertaining to land use rights, land tenure and land allocation need to be reviewed from top to bottom in order to clarify the rights of the owner, title-holders and leaseholder:
- 2- It is essential to rationalize the land allocation situation by the creation of one institution to allocate register and demarcate land areas for specific uses and by named users. This body may be one of the existing institutions involved with land allocation, but must ensure that is sensitive to all needs, essentially those of the village communities, the small farmer and the nomadic peoples. There is a clear need for this institution to be responsible for carrying out detailed re-surveys and reviews of land suitability and claimants of demarcated land expire.
- 3- All un-demarcated land must be surveyed in terms of its future land use in order that specified use is appropriate to the present physical land characteristics, social needs and economic considerations. All un-demarcated land in the area should be demarcated and allocated a particular use as soon as possible and on the basis of the Land Use Plan.
- 4- Little notice has been taken of the existing regulation in the past and there has been equally little regulation must found to ensure that farmers comply with these regulations. The ultimate edict might be that of regulations are still being flouted three years from the granting of the allocation then the lease is null and void and the land can be granted for use to another farmer or another form of land use. Alternatively, the fuel allocation could be withdrawn until the regulation is complied with, or a fine imposed, or a combination of both.
- 5- A comprehensive cadastral programme of survey, settlement and demarcation of land is imperative. Piecemeal registration is, in this respect, counter productive, because it may delay or pre-empt such a programme.
- 6- Duration of Mechanized Farming Cooperation (MFC) leases should not be extended beyond 25 years since this may make the project inheritable and prone to subsequent fragmentation.

It is suggested that MFC under a new name (e.g. the Land Allocation Center-LAC) might perhaps be most appropriate institution to take on the role of allotting land for specific uses on the basis of the Land Use Plan, for surveying

and demarcating land, and for allocating land to land users, whether they are mechanized farmers, foresters, pastoralists or environmentalists. Considerable discussion would be necessary with other concerned groups in the state before land was allocated. The final registration of land would be carried out at the Land Registry Department in Dilling.

The LAC should fall under the jurisdiction of the state government, not the central government communities, local government authorities and land users must be presented on the board of directors. As the MFC does little at present to bar the collection of land rents and fees, organize the supply of fuel, carry out crops surveys. This suggestion calls for major investment and reorganization. However, with considerable effort in the near future a much greater degree of conflict, confusion and social unrest result from the present ambiguous and environmentally damaging land allocation conundrum.

The long term target of the LAC would be to detail all land claims in the area and to demarcate all the land on the basis of land suitability (as per the Land Use Plan) and the most appropriate land claim. The first task of the LAC would be to mobilize teams of surveyors to target villages in priority areas where land conflicts are most common- i.e. in areas of nomad vs. agriculture, community vs. large mechanized farms, and in areas around reserves and the national park. College and University students could provide the labour force during vacation periods. Land claims would be reviewed and decisions taken on demarcation and allotment. The coordination of land areas can be detailed using GPS receivers and mapped, possibly using GIS technology.

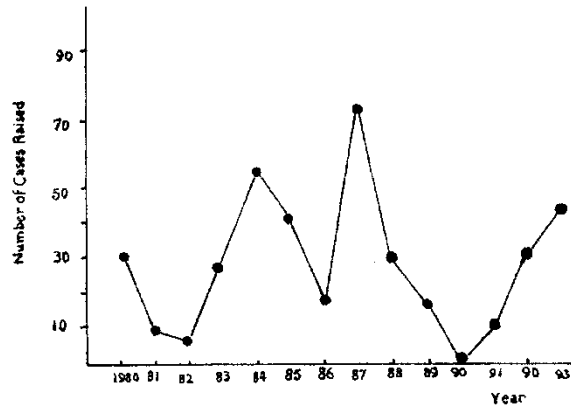
Conclusion:

The problems associated with land tenure at present are not of major constraint to agricultural production in the state but are a source of rising social conflict. It is necessary to stop the uncontrolled expansion in mechanized farming in order to check further damage to the natural and social environment, and to prevent escalation of the conflict between cultivators and livestock owners and other interest groups. The charter of mechanized farming should be reviewed to remedy its shortcomings including terms of lease, nature of title, subletting and re-assignment, and punitive measures and sanctions.

A comprehensive and sustainable land use plan is needed in the state to define and reconcile the various interests of land users. Public awareness should be raised among local communities of the value and importance of adhering to the directions and regulations of sustainable land use policies. This is vital to the realization of both private and public benefits. There is uncoordinated and compartmentalized control over land and its fragmentation among a multitude of ministries and government departments, both at national and state level.

The whole area of land allocation, registration demarcation and land use rights is fraught with confusion, contradictory laws and regulations, and disparate records. Rather than fewer institutions involved in the process, the recent trend has been to increase the number of government bodies who are responsible for allocation of land. This is the main present day problem, and in part caused by the move from central control to a system of federal state control. At the present time the roles of many government institutions remain unclear and lines of authority and overall responsibilities are ill-defined. Therefore, there is a need for a comprehensive restructuring of land control institutions. A new Land Allocation Center is suggested.

Fig.(1). Civil litigation in the District Court of Dilling Province.



Source: District Court of Dilling Province

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