



UPHOLDING PEACE FOR A PROSPEROUS AND INTEGRATED REGION SINCE 1986
AU SERVICE DE LA PAIX POUR UNE REGION PROSPERE ET INTEGREE DEPUIS 1986

LAND GOVERNANCE IN IGAD REGION



SUDAN

Country Profile

Assessment of Land
Governance Framework,
Training & Research Land
Governance Institutions

Contents

1.1.1	Country Context	3
1.1.2	Policies and Laws Relevant to Land Governance in Sudan	3
1.1.3	Land Tenure Systems	9
1.1.4	Land Administration and Institutions	12
1.1.5	Land tax in Sudan	15
1.1.6	Gender concerns in Sudan land governance	16
1.1.7	Summary of challenges, Gaps, conflicts and Duplications	16
1.1.8	Recommendations	18

1.1 Sudan

1.1.1 Country Context

The Republic of the Sudan once the largest nation in Africa, is now the third largest country after losing nearly a third of its territory to the newly created nation of South Sudan in 2011. It is located in northeastern Africa and it a total land area of 1,861,484 square kilometers. It is bordered by Egypt to the north, the Red Sea, Eritrea, and Ethiopia to the east, South Sudan to the south, the Central African Republic to the southwest, and Chad to the west and Libya to the northwest. It has arable land 15.7%; permanent crops 0.2% and permanent pasture 84.2% As of July 2015, the population was estimated to be 36,108,853 million people and of this approximately 60% is rural.

1.1.2 Policies and Laws Relevant to Land Governance in Sudan

The legal framework governing land in Sudan is a complex mix of statutory law and customary law that have evolved over time, with little to no coordination between the two. The formal laws governing land include colonial era laws and a handful of post-independence statutes relating to the registration of land and its impact on land rights, and the legal framework regarding land access. Thus, there is no unified legal framework of land tenure across the country.

The following are the policies and laws that are relevant to land governance in Sudan:

(a) The Comprehensive Peace Agreement (CPA) 2005

The CPA was signed on January 9, 2005, by the Sudan People's Liberation Movement (SPLM) and the Government of Sudan. Its purpose was to end the Second Sudanese Civil War and develop democratic governance countrywide. It established a National Land Commission to arbitrate between willing contending parties on claims over land

and sort out their claims (Art. 2.6). This NLC was expected to be representative and independent. The CPA does not address issues regarding the ownership of land and natural resources, but calls for recognition of customary land rights.

(b) Interim National Constitution (INC) 2005

The INC was enacted in 2005 following the signing of the Comprehensive Peace Agreement. It recognizes the rights of women and children. Thus under Article 32 (1) it requires State to guarantee equal right of men and women to the enjoyment of all civil, political, social, cultural and economic rights, including the right to equal pay for equal work and other related benefits he State shall combat harmful customs and traditions which undermine the dignity and the status of women.

Article 43 recognizes the right to own property. The Article states that every citizen shall have the right to acquire or own property as regulated by law and no private property may be expropriated save by law in the public interest and in consideration for prompt and fair compensation and also no private property shall be confiscated save by an order of a court of law.

Under Article 186, the regulation of land tenure, usage and exercise of rights thereon shall be a concurrent competence, exercised at the appropriate level of government and rights in land owned by the Government of the Sudan shall be exercised through the appropriate or designated level of Government. It further requires all levels of government shall institute a process to progressively develop and amend the relevant laws to incorporate customary laws, practices, local heritage and international trends and practices. Articles 187 and 188 establish a National Land Commission and Southern Sudan Land Commission respectively.

(c) Land Resettlement and Registration Act, 1925 (LRRRA)

The LRRRA is the primary reference for details on land settlement and the registration of rights. The LRRRA also consolidated government ownership over land by establishing that all unoccupied land is presumed to be state land. It rules and procedures for the gazetting of land for mainly urban settlement and resettlement, surveying of plots and

demarcation, land (lease) registration, transfers of leasehold land, issuance of land certificates (including provisions for the destruction and loss of documentation), fraud and erroneous registration.

(d) Land Acquisition Act, 1930

This Act provide procedures for the acquisition of land for public purposes (mainly for urban settlement); expropriation and compensation mechanisms.

(e) Unregistered Land Act, 1970

The Unregistered Land Act (1970) served to nationalize all unregistered land in the country. The Act provided that all land that had not been registered at the time of the Act's passage was state land. The state retained land ownership and could grant leasehold interests to individuals and entities, in effect allocating land for commercial development without regard for customary rights ((UNEP 2012a);

- The 1970 Act even entitled the Government to use force in safeguarding its “land”; this has further been strengthened by the 1991-1993 amendments to the 1984 Civil Transactions Act, which states that: No court of law is competent to receive a complaint that goes against the interest of the state. The Unregistered Lands Act of 1970 was a Sudanese legislation. The law stipulated that all lands not privately owned and registered would automatically belong to the state. The law effectively abolished communal land ownership under customary practices. The Unregistered Land Act (1970): This is the legal cornerstone to the process of expropriation of rural communities. The Unregistered Land Act “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.” It abolished the rights of native authorities to allocate land. The idea was for the state to operate as a ‘supra-tribe’ that would allocate land as tribal leaders had done previously. In fact, it opened the way for the development of modern schemes to the benefit of the state’s key constituents.

Although this act was repealed by the Civil Transaction Act (1984) it still reflects the present Government of Sudan philosophy concerning land:

- All land that is not registered before the enactment of this law becomes the property of the government by default;
- Cuts heavily into rural communities' land rights and challenges communal and tribal ownership;
- Provides the government with a tool to facilitate the acquisition of large tracts of land for agricultural schemes, at the expense of rural residents and especially pastoralists;
- Transfers all unregistered land to the government, assigning the power of transfer to any public or national enterprise, as well as to farmers on a leasehold basis.

(f) Civil Procedure Act, 1983

It sets the legal scene for arbitration of conflicts but seriously lacks details on procedures.

(g) Civil Transaction Act, 1984 and its Amendment, 1990

The Civil Transaction Act (1984) and its Amendment of 1990 covered the following:

- Repealed the Unregistered Land Act of 1970 and identifies different forms of land and property rights such as land held in undivided shares, family ownership, etc.
- Identifies different forms of land and property rights such as: land held in undivided shares, family ownership, possession of unclaimed property, ownership of usufruct rights over land and property, grants of usufruct rights, easement rights, acquisition of ownership by accession (good faith and bad faith article 608), possession and succession;
- States that registered usufruct rights are equal to registered ownership;

- Regulates inheritance, compensation for land required by the state, usufruct rights and the possibility of registering easement rights, or rights of way;
- States that registered usufruct rights are equal to registered ownership;
- Considers the following issues, pertinent to securing land tenure:
 - ✓ Transfer and inheritance of rights;
 - ✓ Compensation requirements for land appropriated by the state;
 - ✓ Granting of land leases to cooperative bodies (communities and IDPs);
 - ✓ Conditions for obtaining usufruct rights;
 - ✓ Possibility of registering easement rights (rights of way);
- Legalizes elements of shari'ah (Islamic) law;
- Legally confirms the role of the state as a landowner and a land manager;
- Legalizes elements of Sharia law and confirms the role of the State as a landowner.

(h) Urban Planning and Land Disposal Act, 1994

- It lays out the procedures and institutional responsibilities for urban planning, including the delimitation of town and village boundaries, needs for gazetting;
- It needs to be implemented in conjunction with the 1930 Land Acquisition Act, but includes further details on:
 - ✓ Expropriation of land for public interest, including settlement;
 - ✓ Compensation modalities for expropriated land (25 percent rule of compensation in kind);
 - ✓ Disposal of government land through leases;

- ✓ Procedures for acquiring land leases.

(i) The Local Government Act 1998

The Local Government Act 1998 was an attempt to restore the land management and administration vacuum at the local level created by the abolition of the Native Administration system in 1971 (De Wit, 2001). According to De Wit, the Act confers important responsibilities to the States and localities (mahaliyya) and calls for:

- Identification of territories of jurisdiction that reflect rural reality with the possibility of identifying territories of local governance that coincide with customary land management territories;
- Setting and functioning of land management committees. These committees exist in every locality (for example, in Darfur) and are functional. The committees are made up of participants from various sectoral departments and contribute to decision-making on validation of land claims to allow registration. A similar overarching committee exists at state level, usually linked to the Ministry of Agriculture, which performs a similar function;
- Development of local bylaws for regulation of land management, including grazing lands and transhumance routes. For example, there are committees at state and locality level whose function it is to determine bylaws on grazing land and transhumance routes, as dictated by the state acts which regulate grazing and farming;
- Active and legal involvement of customary authorities and land users in land management. For example, the Act gives states the authority to formulate their respective Native Administration State Acts

(j) The Abolition of the Prescription and Limitation Act

This act ensured that occupation of the land – i.e., use of the land as opposed to registered ownership, the condition of most rural communities outside the Nile valley – would confer no legal rights over the land. In other words, the fact that a community or

an individual have been exploiting a piece of land for generations gives them no rights over its future use.

(k) Organisation of Nomads and Farmers Act

The Act aimed to establish institutional structures to organize nomads and farmers and to assist in the implementation of government programs for rural development. In particular, a Higher Council for Farmers and Pastoralists was supposed to be established to implement the Act. To date the Act is still by and large awaiting implementation.

(l) Disposition of Lands and Physical Planning Act

This Act regulates the designation of land for different purposes and urban planning

1.1.3 Land Tenure Systems

Land tenure is a critical issue for both cultivated areas and grazing lands in the Sudan. In the past the tribe, the principle unit of social organization, had the responsibility for allocation of land for various uses within the boundaries of the tribal domain (dar). In 1903 the Land Acquisition Ordinance gave the government powers to acquire land for irrigation schemes and other public purposes (Craig, 1991). Following this the 1905 Land Settlement Ordinance made general provision for the settlement and registration of claims to lands known to be waste, forest or unoccupied; such lands should be deemed the property of government unless claims to the contrary were proven. The two ordinances were then consolidated with others in the 1925 Land Settlement and Registration Ordinance. The 1970 Unregistered Land Act introduced an important modification by stating that any land, occupied or unoccupied, which had not been registered before the commencement of the Act should be the property of the government. This Act, together with the abolition of the traditional tribal institutions, has worked to the detriment of rangelands, with the loss of the controlling authority and traditional regulation of use.

More recently, and with the establishment of the federal system of government, arrangements are being made for the division of land and resources between the federal and state governments.

Although privately owned (registered) lands are not affected by the various acts, they are subject to continuous fragmentation due to the Islamic inheritance law.

Agricultural holding size varies according to the region and system of production: in the Gezira Scheme the size of tenancy is about 12 ha, while it is 6 ha. in the new Halfa Scheme; in Kuku Dairy Project in Khartoum State the tenancy is about 4 ha., while the average holding for vegetable growers in the same state is around 1.5 ha. and along the banks of the Nile freehold land may vary from less than 0.5 ha to a few ha.; in the mechanized farming areas the size of holding is around 400 ha., while in the traditional rain-fed areas a holding may vary from 2-30 ha. (Craig, 1991).

Land in Sudan is classified under categories namely: government-owned and customary tenure.

State Land

The Unregistered Land Act of 1970 and the Civil Transaction Act of 1984 designated all unregistered land as state land. The Unregistered Land Act further legitimizes expropriation by expressly authorizing government eviction of occupants on unregistered lands, through the use of reasonable force if necessary. Thus under those two laws all 90% unregistered land in Sudan is s owned by the government. Individuals and entities can obtain leasehold interests of various durations and terms. Islamic law recognizes individual freehold interests in land, and land that was registered as of 1970 is considered privately owned (UNEP 2012a).

Customary Tenure

Customary land tenure systems exist throughout Sudan and govern the practices of pastoralists in the north, the semi-feudal systems that developed on land close to the Nile, and the practices of southern and western tribes. Customary law varies throughout the country but has general features that are summarized as following:

- Land is considered to belong to the people;
- Usufructuary rights, not ownership rights, are the predominant forms;
- Rights are liable to be defeated/ reversed after the elapse of certain period of time over which such rights are not exercised.
- Occupied lands for cultivation, pasture, woodcutting, etc. are not formally registered;
- land remains with the tribe or clan and cannot usually be sold to outsiders;
- Most land rights are use rights, and land is considered retained by a household until abandoned (and in some circumstances even if abandoned); and rights to land and its natural resources may overlap;
- Rights of excluding non-tribe members from the use of land;
- Land is deemed to be the property of a tribe or clan and dealings in land are an exception rather than the rule;
- The allocation of land rights is vested in the village's headman (Sheikh). The Sheikh has the right to divide the land within his domain among his villagers as well as to allot land to outsiders or to settle a dispute if he wishes to do so; and
- Women have restricted access to land rights and in most cases, they do not possess the land, unless inherited from fathers or husbands.

Most groups distinguish between land used for grazing and hunting and land used for farming and residences, and different rules apply to the various land categories. Local leaders determine who has rights to land and other natural resources and who must seek permission for use of land (Rahhal).

1.1.4 Land Administration and Institutions

There are several institutions that are responsible for land governance in Sudan.

(a) The Ministry of Environment and Physical Development

The MEFPD was established in 2003 with a mandate covering surveying, construction, urban planning and, more recently, environment, which is derived from the Environmental Protection Act (EPA) of 2001.

(b) The Higher Council for Environment and Natural Resources (HCENR)

The HCENR is a technical advisory and coordinating body under the Ministry of Environment and Physical Development. It is mandated to assume the role of coordination between the various concerned government agencies and between national and state government on efforts related to the environment and natural resource management. It is concerned with policies, legislation and strategic planning in relation to environmental and natural resources conservation and management.

The main functions of the HCENR, according to the 2001 Environmental Act, include the following:

- Laying down general policies and long term plans for environmental protection and sustainable use of natural resources
- Coordinating efforts on environment and natural resource management among concerned government agencies and between the federal and state governments
- Periodic reviewing of environmental legislation to make them more effective instruments for sustainable development
- Encouraging and supporting research on environment and natural resources

- Promoting environmental awareness and education.

(c) Darfur Land Commission (DLC)

Darfur Land Commission (DLC) was established on 13th July 2007 as an integral part of the Transitional Darfur Regional Authority (TDRA) to address traditional and historical issues of land tenure and to review natural resources management in accordance with Article (20) of the Darfur Peace Agreement (DPA). In pursuing its objectives, the DLC intends to build broad database on natural resources and land use Mapping for Darfur to come up with comprehensive regional development plan in-order to help decision makers and planners in setting up plans for agricultural development, housing strategies and other land intensive livelihood initiatives; as well as enabling development agencies and investors to select potentially productive areas for projects and investment, n-addition to initiation of new development projects.

(d) National Land Commission

The Independent National Land Commission with representative of all levels of government established under Article 187 INC. Its functions are:

- To arbitrate between willing contending parties on claims over land;
- To entertain claims, at its discretion, in respect of land, be they against the relevant government or other parties interested in the land. The parties to the arbitration shall be bound by the decision of the Commission on the basis of mutual consent and upon registration of the award in a court of law;
- Enforce the law applicable to the locality where the land is situated or such other law as the parties to the arbitration agree, including principles of equity;
- Accept references on request from the relevant government or in the process of resolving claims, make recommendations to the appropriate level of government concerning land reform policies and recognition of customary rights or customary land law;

- Assess appropriate land compensation including but not limited to monetary compensation, for applicants in the course of arbitration or in the course of a reference from a court;
- Advise different levels of government on how to coordinate policies on national projects affecting land or land rights;
- Study and record land use practices in areas where natural resource development occurs; and
- Conduct hearings and formulate its own rules of procedure.

(e) The Remote Sensing Authority

The Remote sensing Authority was established in 1977 as a National Remote Sensing Center (NRSC) within the National Council for Research, Ministry of Higher Education. In 1996, the NRSC was upgraded and renamed as Remote Sensing Authority (RSA) under the National Center for Research, Ministry of Science and Technology.

(f) Other institutions

- The Government Land Disposition and Committee, responsible for allocating land, is comprised of individuals from other state level Ministries;
- The Survey Department performs physical planning and surveying of urban plots, and is housed within the State Ministry of Engineering Affairs;
- Within each state there is also a Land Registration Office that is part of the Civil Court and is responsible for maintaining a state land registry. These institutions' capabilities vary significantly from state to state, but all lack necessary training and resources (De Wit 2001);
- At the local level or *mahalia* level the customary authorities intersect with formal government institutions. Each mahalia supports a Land Conflict Resolution Committee that is responsible for resolving land disputes. Customary authorities

typically play a prominent role on these committees. Disputes that cannot be resolved by the committee may be taken to Civil Court (De Wit 2001);

- The Sudanese Environment Conservation Society (SECS) is first Sudanese civil society group concerned primarily with the issue of environment. Its mandate of the SECS is to raise environmental awareness and to advocate for environmental management and accountability;
- The Sudan Development Association (SDA) is made up of development experts, as well as environment and gender advocates. Its main objective is promoting sustainable development in realizing its stated vision, which is a 'just, inclusive and peaceful Sudan'. The SDA has been the Sudan focal organisation for the regional network 'the Sustainable Land Use Forum' (SLUF);
- The Farmers and Pastoralists Unions work to improve the service and production environments for their respective members and to advocate for members' concerns with government and non-government actors;
- There are customary institutions which function to some degree in rural areas. In some areas, traditional leaders continue to allocate land, and many such leaders maintain some record of land occupancy and transfers. The Native Administration is a form of a clan and tribal administration that administers the affairs of the tribal groups according to their norms and traditions.

1.1.5 Land tax in Sudan

The government of Sudan levies the following taxes in respect to land and transactions pertaining thereto; tax on leasing income at the rate of 10%, capital gains tax of 5% in respect to gains on the sale of lands and buildings, rentals at the rate of 10% for any sum above 3000SDG.

1.1.6 Gender concerns in Sudan land governance

Article 31 of the Sudan's Constitution of 2005 provides for equality before the law under which all persons are equal before the law and are entitled without discrimination, as to race, colour, sex, language, religious creed, political opinion, or ethnic origin, to the equal protection of the law. Art. 32 provides for the rights of women and children where under the State shall guarantee equal right of men and women to the enjoyment of all civil, political, social, cultural and economic rights, including the right to equal pay for equal work and other related benefits. The State shall promote woman rights through affirmative action. The State shall combat harmful customs and traditions which undermine the dignity and the status of women. Art. 44 on the right to own property states thus every citizen shall have the right to acquire or own property as regulated by law and no private property may be expropriated save by law in the public interest and in consideration for prompt and fair compensation. On reading the above Articles read as a whole *mutatis mutandis*, it follows that gender aspects in land management are being addressed under the Sudan's Constitution of 2005.

1.1.7 Summary of challenges, Gaps, conflicts and Duplications

- No central authority for land administration addition to weak institutions that deal enforcing land law in the states;
- National Land Commission or State Land Commissions in South Kordofan and Blue Nile are not operational. Each of which would be responsible for recommending land policy reforms and resolving historical claims over land. These reforms are specifically to include recognition of customary rights and customary land law.
- 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;
- Failure to adequately consult with local communities in matters of land use;
- Limited policy/legislative framework to grant secure access and user rights to local communities;
- Traditional communities especially the pastoralist communities do not usually formally register individual land ownership.
- Customary law is not a panacea. In many instances, custom is iniquitous, especially with regards to the rights of women. Any return to customary law will require reform.
- The existing land laws are based on colonial land laws that decrees have undermined the land rights of rural communities, small farmers and pastoralists. The most notable was the Unregistered Land Act of 1970, now repealed, in which unregistered land was to go to the State and could not be acquired through long-standing use. These land grabs led to massive displacement
- Women land rights are not recognized under the law and practice. Though they can own land the right to use is reserved to the brothers and husbands;
- No land registers in rural areas and there is informal land tenure
- Informal land ownership in rural areas;
- Limited role of CSO in enforcing land rights.

1.1.8 Recommendations

- Develop a National Land Policy and a law that supports for recognition of customary land rights. The customary regimes that govern and inform rights to land and water – especially in the border states, the Darfur region and for pastoralists – need to be identified, documented and integrated into a policy and law;
- Operationalize the National Land Commission;
- Support for land access and tenure security for IDPs. The rights of IDPs to land and housing and the authority over land allocation for IDPs need to be established and clarified, and the information disseminated to local governments and the population of IDPs;
- Support urban planning and formalization of urban land rights. Rapid urbanization across Sudan has outpaced the capacity of government institutions to create and implement master plans and develop policies for upgrading and regularizing informal settlements;
- Support for dispute resolution mechanisms and forums. Conflicts among competing groups over access to and control over land and water are common in Sudan, and the decades of war, prevalence of weapons and numbers of people with combat experience have increased the likelihood of disputes turning violent. It is therefore necessary to establish an effective, integrated, socially legitimate system for resolving disputes over land and other natural resources is critical to Sudan's future;
- Review of land laws and develop a new pastoral charter with the objective of clarifying pastoral resource use and management and reducing conflict between pastoral and agricultural land uses;
- Develop courses on land use and train land users about the principles of land use.



African Union



African Development Bank



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