

THE STATE, LAND AND CONFLICTS IN THE SUDAN

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ABSTRACT

This paper examines state land policy and conflict in four different areas in Sudan; South Kordofan, Darfur, the Blue Nile and Khartoum's countryside. Drawing on the literature on customary land tenure, state and conflict in Africa, and using secondary and some primary material plus the researcher's own field experience, the paper examines how state land policies have impacted differently by causing different forms of conflict in different parts of rural Sudan when effectively put in practice. The paper argues that state legislation has created land tenure dualism simultaneously incorporating both the practice of customary tenure pursued by farming and pastoralist communities and the legal status of these communal lands as state-owned; i.e., considered vacant or un-owned. In this dualism the state sometimes invoked state legal ownership rights to establish effective state control over communal land used and occupied by local communities, (for local and foreign business investment). In South Kordofan, the Blue Nile, Darfur and around Khartoum, state denial of customary land rights resulted, in displacement, impoverishment and different forms of violent conflicts. Current state tendency to put state legal ownership over communal lands into effect for large scale sale or lease to investors amounts to denying Sudanese pastoralists and farming communities of their land use rights established for generations. This is bound to create more severe and fierce conflicts, unless the dualism in land tenure is resolved by the recognition and legalization of customary land ownership, access and use rights.

Keywords: Land ownership and use; customary tenure; the state; pastoralists; farming communities; conflicts

INTRODUCTION

The recent few years have been characterized by conflict, violence and insecurity in much of Africa. Whether these conflicts are a product of governance failure, environmental decline shrinking natural resource base, unequal distribution of power and resources, land is and will remain one central issue. Modern ruling elites in Africa have often encroached on customarily communally-owned land for commercial farming and mining. As a consequence whole communities have been deprived of their customary land use rights, their livelihoods eroded and have been relegated to poverty and marginalization; creating much disenchantment, grievance and violent conflicts. Within the context of the literature on the pressures on African customary land tenure and its subordination to interests external to the local communities, this paper deals with state infringement on customary land rights and the erosion of traditional local governance institutions overseeing customary rules governing those rights in rural Sudan and the implications of this for peace and security. Using secondary sources (books, articles and reports) and data from primary sources (electronic newspapers and some archives), this paper argues that that state land policies have resulted in ambiguity and dualism in land tenure in Sudan. This dualism, which incorporates both modern statutory land ownership and customary tenure features, places communal lands held by most rural Sudanese communities under customary tenure under constant threat of expropriation by the state for private business interests both local and foreign. The paper further suggests that although state encroachment on customary land use rights has been manifested differently in different regions, the common denominator is an

increasing state denial of communal rights and the weakening of local governance structures regulating them. This reflects power imbalance between modern elites in control of the state and businesses allied to them on the one hand, and the rural communities on the other. In some respects the eruption of violence in parts of the Sudan over land issues reflects attempts by communities to redress this imbalance, and regain or maintain their customary land rights; contributing to a decline in peace and security.

The paper is presented in six sections. The first section outlines some features of customary land tenure in Africa and the forces of change impinging upon it; including the state and how these impact on rural Africans. The second section deals with state legislation in Sudan to introduce modern statutory land tenure and persistent post-colonial state efforts to gain control over communally-owned land. The section also highlights the problematic of the resulting dualism in land tenure that simultaneously combines both state legal ownership over communal lands in theory and the local communities' pursuit of customary tenure in practice. The third, fourth and fifth sections examine the differential disrupting impact of post-colonial state effective imposition of its legal ownership rights over customarily communally-owned lands in Darfur, South Kordofan, and the Blue Nile states and around Khartoum, consecutively, and the different forms of conflicts it has generated. Closely related to the previous sections, the sixth gives a brief narrative of recent developments in the governing elites' drive to give away customarily communally-owned lands to foreigners on unprecedented scales, and indicate the serious security repercussions of this trend. The paper ends up by concluding that conflicts between the state and rural communities over land would continue unless community customary rights were addressed, formally recognized and legalized.

CUSTOMARY LAND TENURE IN AFRICA: SOME RELEVANT CONCEPTUAL ISSUES

In much of Africa customary land tenure systems have been influenced by changing socio-economic, environmental and political conditions. Where cash crop production has been introduced, customary tenure systems have changed either by deliberate colonial or post-colonial state actions or gradually yielded under the pressure of commercialisation and commodity production that incorporated African peasant communities into the expanding capitalist market (Bernstein 1979; Bernstein 1986; Rakes 1986). However, customary land tenure still prevails among most African communities despite attempts by the state to bring it under control (Chimhowu & Woodhouse 2006).

Customary land tenure in Africa is characterized by flexibility and capacity to continuously adapt to changing socio-economic, political and environmental conditions; resulting in significant variations in forms and rules of tenure over time and space (Delville 1999: 16, 24; Pauline & Kambewa 2007; Delville 2007; Ben Cousins 2009: 1). Land ownership according to African customary tenure arrangements is vested in the community or the group (which could be the tribe, clan or village), but never in the individual, who would only have the right of use (Chanock 1991: 65; Peters 2012: 4.). Individual access to land under customary tenure is thus linked to need and actual use of the land and it follows from this that while communal control over land is maintained, individual retention of usufruct rights depends on effective land use and continuous occupation.

Local community leaders (of the tribe, the clan or the village) play a pivotal role in land allocations, the resolution of conflicts over land and the observance of adherence to customary rules governing communal control and individual land access and use rights (El Amin 1999; Peters 2012: 5). The customary rule of the individual losing the right of use over land left unused beyond a defined fallow period, guards against landlessness and ensures land access to community members in need (El Amin 1999; Cotula et al 2004). Among farming communities customary rules governing communal control over land and individual access, use and transfer are complex, definitive but flexible, the details of which vary from one community to another and also over time following adaptations to changing conditions (Delville 2007). However, in the case of pastoralists, customary ownership and use rights are rather ambiguous. Like many other African subsistent communities, pastoral groups (the tribe or the clan) could lay communal claims to land; however, individual households have free shared access to all communal pastureland and conditional grazing rights on farmlands. The vagueness arises from pastoralist continuous mobility in search of water and pasture; leading to locational shifts in land use over time and space. Despite inter-penetration and overlap in land use between different tribal, clan and lineage groups, due to mobility, vague communal land ownership could be claimed but not specified in terms of physical space.

Moreover, individual pastoral households, in contrast to households in farming communities do not establish exclusive right of use claims to a definite physically specified piece of land. Mobile pastoralist groups' main interest is in land use, which amounts in practice to access to pasture and water over widely stretched space that continuously shifts in location during the changing seasons of the year (El Amin 2015).

Many factors and forces associated with demographic, environmental and socioeconomic changes threaten customary tenure that need not be detailed here (Galaty& Fratkin 1994; El Amin 1999; Wily 2001; El Amin 1999; Juul 2005; Guasset 2005; Cotula 2007; Wily 2008; Peters 2012: 5-6). However, the major threat to communal customary tenure in Africa has been posed by the post-colonial state. From the preceding discussion, customary tenure is characterized by some features that give the state some leeway to claim ownership over communally-owned and used lands; i) that lands owned and used according to custom are unregistered, not surveyed nor clearly demarcated; ii) that among farmers, (and for geographic, climatic, topographic and other factors) land is intermittently used; i.e., only seasonally farmed during the rainy season and fallowing is pursued to regain land fertility; iii) that among pastoralists the mobile mode of land use inhibits permanent land occupation; giving the sense that the land is vacant and un-owned; and, iv) that both farming communities and pastoralists who derive livelihoods from communal lands are among the most impoverished, who although numerically large, are unorganized and do not politically count for the governing elites. Under most post-colonial African states communal lands under customary tenure are thus considered un-owned and vacant. With this perception, for the governing elites the land could thus be brought under state control and be disposed of, through sale and long term leases to private businesses both local and foreign. State intervention in customary tenure, (often leading to the assertion of effective state control over communal lands, the squeeze of rural livelihoods resource base and/or the disruption of customary rules organizing communal land access and use), has devastated African rural communities. In many African countries, the countryside has been ravaged by disorder, violence, dispossession, displacement and further impoverishment.

THE STATE AND EVOLVING STATUTORY AND RESILIENCE OF CUSTOMARY LAND TENURE IN THE SUDAN

Sudan is a very vast country with some significant regional geographical, topographical, and demographic variations as well as differences in economic activities. Subsequently there are marked variations in land tenure and land use patterns corresponding in general to differences in geographic regions, economic activities and the distribution of the population. Thus any meaningful understanding of land tenure in Sudan has to investigate the different complex issues of land tenure in its different forms, in different regions in relation to different economic activities within the local and national socioeconomic and political contexts.

Land tenure in the Sudan could very broadly be categorized into main two forms; i) land accessed and used under customary land tenure; and, ii) land registered in freehold titles in the modern sense¹. While land under private ownership, (which is clearly demarcated, orderly registered and indisputably specified), predominantly prevails along the river Nile and its tributaries; (the main Nile, the White Nile and the Blue Nile), communal ownership which predominates in the hinterlands away from the Nile basin is characterized by ambiguity and has often been a venue for contestation and conflict. The adoption of irrigation and the practice of year-round cultivation, permanent land occupation combined with population concentration have all led to the gradual emergence of what amounted in custom to private land ownership along the Nile and its tributaries in addition to the Gezira irrigation Scheme in central Sudan. In these areas the colonial state issued successive land ordinances and acts that recognized and confirmed private ownership in the modern legal sense and preserved communal land control in the hinterland away from the riverine areas.

The main feature of the colonial state's land policy was its serious attempt to secure existing land rights that grounded private land ownership rights and registration on customary rights gained through continuous use or possession. The first legislation on land, the 1899 Land Ordinance Act, stated, "Continuous possession, receipt of rent or profit during the five years immediately preceding the date of the claim created an absolute title as against all persons" (GoS 1899). The criterion of continuous cultivation, which in customary land tenure confers rights close to land ownership, was adopted by the British for the registration of land as freehold; thus basing the inception of statutory land tenure firmly on customary land rights based on continuous use. Land legislation that followed dealt with the complex issues of settling claims to land.

Although the colonial state claimed ownership of “unoccupied” land but various rights (intermittent cultivation, pasture and woodlands) were carefully investigated, recognized and dealt with before any state claim was put into effect to implement land development (GoS 1946).

Parallel to legislation on land, successive acts that strengthened traditional leadership in Sudan’s countryside were issued during the 1920s and the 1930s (Abu Shouk 2009: 121). Traditional leaders at the different levels of the traditional leadership hierarchy were given conditional judicial, administrative and financial powers (Al Gaddal 2002: 348-349). In customary land tenure, local traditional leaders oversaw customary rules regulating land access, land use and resolved disputes over land. According to the first land legislation, and emerging out of customary land tenure, absolute individual land ownership of plots occupied or possessed was confirmed, registered as freehold and documents were issued certifying that right. In terms of conflict, privately owned land, so registered and precisely demarcated, is less problematic. Conflicting individual claims to ownership do not imply political significance and normally settled in civil courts.

It is the customary tenure, which prevails in most Sudan’s countryside that has been the site of contestations and violent conflicts. The ambiguity of customary land tenure, state denial of recognition of this form of tenure, the erosion of traditional institutional structures regulating it and increasing state encroachment on customary land tenure, have all been sources of conflict in most parts of rural Sudan in recent years; including rural Khartoum. In Kordofan, South Sudan, Eastern Sudan, the Blue Nile, Darfur and areas in Northern Sudan away from the river Nile, customary tenure has been the dominant form of land ownership, access and use. Effective state assertion of control over land held under customary land tenure implies the deprivation of the majority Sudanese in the countryside of the major source of their livelihood and this has been and would continue to be a source of serious conflicts.

The beginning of the 1970s witnessed, for the first time since the end of British rule, the major post-colonial state’s steps to shake up the traditional authorities in the countryside and attempts to take control over communal land held according to customary tenure. These developments followed Nimieri’s takeover power in a coup d’état in 1969. One year after the coup, the 1970 Unregistered Land Act (ULA) was issued followed by the 1971 People’s Local Government Act (El Mahdi 1976; Khalid 1985: 34). Taken together the two acts amounted to formal state denial of communal lands held under customary tenure and the abolition of the traditional leadership in charge of local governance structures overseeing it. This has had significant implications for peace and security in the Sudanese countryside; particularly in Darfur and South Kordofan. According to the 1970 ULA all lands not registered in private ownership prior to the proclamation of the Act were declared to be state-owned lands; including tribal lands (El Mahdi 1976; El Amin 1999: 69-72). The Act ignored customary land use rights and regarded communally-owned and used lands as vacant regardless of pre-existing usufruct rights, which earlier legislations carefully considered and recognized. The 1970 ULA, in legal terms at least, amounted to the confiscation of all customarily communally-owned, accessed and used lands. State control over communal land was further enhanced by issuing the 1971 People’s Local Government Act that abolished the local leadership overseeing adherence to customary rules governing ownership, access to and use of communally owned lands.

However, in practice matters work out differently. Communities have continued to practice economic activities on land held under customary tenure. In response to the political difficulties in implementing the 1970 ULA, the Civil Transactions Act was issued in 1984, which recognized existing land use rights according to custom while in legal terms it maintained government ownership (El Amin 1999: 74-75; De Wit 2001: 8). Later amendments to the 1984 Civil Transactions Act were enacted, in 1991 and 1993, which further strengthened state ownership of communal lands under customary tenure by disabling courts to hear complaints against the state regarding unregistered land (Elhadary 2010,;2015). Taken together these land legislations gave the state further justification for encroachment on customary land tenure in rural Sudan with grave security repercussions.

THE STATE AND CONFLICT IN DARFUR: SOME LAND-RELATED ISSUES

While customary land tenure in Darfur continues to be pursued in practice, despite state legislation that vested ownership and control over land in the state, however, the legislation that diminished the powers of the traditional authorities, has had significant impact on the preservation of peace and security. Custom

regulates and allows pastoralist to pass through farms and graze on crop residues on farms after harvest but within the limits defined by customary rules that govern such access (El Amin 2015). Both pastoralist and farming groups respect those rules, conformity to which is overseen by both groups' traditional leadership (El Amin 2015). From the view point of securing livelihoods, pastoralists' interest in land is to have access to pasture, water and **not** in owning a particular physically demarcated land to which they have to be permanently attached. Adherence to the rules that regulate sharing land resources between farming communities and pastoralists in Darfur is significant for the functioning of their interdependent economies and peaceful coexistence between them that prevailed for decades. This underscores the centrality of traditional leadership in overseeing customary rules that organized overlapping access to resources and maintained peaceful coexistence within and between groups (El Amin 2015).

State dual attitude towards customary land tenure, i.e., denying it in theory and in legal terms, while allowing it to function in practice, has been equally paralleled by ambivalence and ambiguity in attitude towards traditional local governance institutions. The Local Government Councils, instituted according to the 1971 People's Local Government Act, which were assigned with the local administration; including land, failed to provide a substitute for the local traditional authorities (Khalid 1985; Abu Shouk 2009: 124-126). The abolition of the judicial, administrative and financial powers of the traditional authorities severely constrained their ability to regulate access to land according to customary rules. This has significant negative implications for orderly access to land resources and the resolution of conflicts when they occurred. As a result intra and inter-group conflicts over land access and use erupted more frequently since the 1990s (El Amin 2015).

The abolition of traditional leaders' powers eroded an effectively functioning local governance structure that maintained land use sharing between pastoralists and peasant farming communities, in ways that served both groups' interest in land. Detailed and complex customary rules were developed in Darfur to organize pastoralist passage through corridors and grazing on farmland after harvest. Traditional local leadership in the past ensured that these customary rules were strictly observed. This helped maintain peace and peaceful coexistence between pastoralist and farming communities despite occasional individual clashes that local leadership promptly resolved according to custom (El Amin 2015). Thus the abolition of the traditional local leadership was a recipe for disorder and chaos as both groups frequently violated customary rules; with farmers encroaching on passage corridors and pastoralists grazing on farms (Mustafa n.d). Subsequently pastoralists' passage corridors as resource access regulation mechanisms collapsed and failed to function effectively during the 1990s (El Amin 2015). Inter group conflicts; particularly between pastoralists and peasant farming communities became more widespread, larger in scale and more severe in terms of damage and loss of human lives (Mustafa n.d). This constituted the backdrop to the post 2003-higher level conflict in Darfur and the major contributory factor to it.

SOUTH KORDOFAN AND THE BLUE NILE STATES: LAND DISPOSSESSION AND CONFLICT

Although all rural Sudanese have been touched to different degrees, by state legislation dispossessing local communities of their customary communal land ownership rights, South Kordofan and the Blue Nile have been the most severely affected. Being unregistered in the modern legal sense, ownership of land held under customary tenure in South Kordofan and the Blue Nile has been transferred from the local communities to the state in accordance with the stipulations of the 1970 ULA. The potential of the state using legal ownership rights to control customarily communally-owned land, has placed South Kordofan and the Blue Nile communities under constant threat of dispossession and impoverishment. In both South Kordofan and the Blue Nile state, state-issued land legislation strengthened and legalized state outright acquisition of customarily owned land. Since the 1970s, the state extensively used that legal right to takeover large tracts of communal lands and leased to private investors from outside the two regions for mechanized farming (Wily 2010: 5). Millions of feddans have been leased to local and foreign investors who were supported by cheap credit and low land rent rates to boost grain production for local consumption and oil seeds for export (Large and El-Basha 2010). Local communities have subsequently been dispossessed and lost the only source of their livelihood. While many have been turned into agricultural laborers on their own land, many others

migrated to seek sources of livelihoods elsewhere in Sudan (Komey 2008a). The FAO estimates the size of land affected, (mostly in South Kordofan, the Blue Nile and Eastern Sudan), to be between 25 and 31 million feddans (Wily 2010: 6). This has affected the lives of hundreds of thousands of pastoralists and small farmers.

Grievance created by large scale acquisition of communally-owned land and the dispossession of local communities has been a major factor in South Kordofan's and Blue Nile's youth joining SPLA/SPLM (Sudan People's Liberation Army/Movement) in 1984 (Pantuliano 2007: 8; Komey 2008b; Wily 2010: 4). The Nuba rebellion against the central government was a response to state apathy toward Nuba grievances; including land expropriation for business interests at the expense of Nuba poor farmers (Komey 2009). Both South Kordofan and the Blue Nile have been sites for civil war since the 1980s that halted agricultural business operations in substantial areas (USAID 2012: 9). At the level of inter-group relations, the expansion of mechanized farming on communal lands in South Kordofan and the Blue Nile, pushed pastoralists off their traditional grazing grounds and blocked their seasonal passage routes. In both the Blue Nile and South Kordofan violent confrontations between pastoralists and Nuba farming communities occurred more frequently (El Bahir 1998: 4-11; Large & El-Basha 2010: 7-8). Violence between "Arab" pastoralists and Nuba farming communities resulting from a shrinking natural resource base has been complicated by the link to the GoS-SPLM/ North higher level conflict; implying a clash of culture and identities. Violent conflicts also tend to erupt between pastoralists and mechanized scheme owners when pastoralists enter into farms and damage crops (El Bahir 1998: 4-11; Large & El-Basha 2010: 7-8).

The significance of land for peace, in South Kordofan and the Blue Nile states, made it an issue in both the body of the 2005 Comprehensive Peace Agreement and the Protocol, signed in 2004, specifically set for the Resolution of Conflict in South Kordofan and the Blue Nile states. In both the body of the Agreement and the Protocol, the legal status of communal land ownership held under customary tenure in the two States was unclear. The 2005 CPA states in very general and ambiguous terms that, "existing laws and practices be amended to incorporate customary laws and practices with a commitment to give customary tenure statutory support" (GoS & SPLM 2005). The 2005 CPA did not provide protection for customary tenure and that the Agreement neither clearly recognized nor formally legalized communal land control, despite the significance of these land issues for security and peace building in the two states and the country as a whole. Neither on paper in peace agreements nor in implementing what has been written on paper, had the land issues in the two states been properly addressed. The 2005 CPA made provisions for the establishment of a National Land Commission (NLC) and a State Land Commission (SLC) for each of the South Kordofan and the Blue Nile states. The NLC and the two SLCs were to coordinate the review of existing land allocations and make recommendations on changes; including restitution or compensation (GoS & SPLM 2004). Apart from the fact that the ways in which the land issue was dealt with on paper did not reflect the security significance it warrants, in practice the NLC and the two SLCs have never been formed (Large & El-Basha 2010: 3). The deliberate attempt to evade the recognition of customary tenure and maintain the status *que of state legal ownership of communal lands*, is further evidenced by the fact that all CPA clauses on customary tenure are characterized by vagueness and do not make a clear statement on its legal status. Furthermore, Clause 9 of the Protocol on South Kordofan and the Blue Nile states, which details the mandate of the SLCs for each of the two states, does not even mention, in all the eight sub-clauses it contains on land, the term customary land tenure. Instead the Protocol refers to "Rights in land owned by the national Government within the State" (GoS & SPLM 2004). This amounts to official denial of customary communal land rights practically pursued on the ground, make communities susceptible to dispossession and places them in direct confrontation with the 'would be new land owners' and the state. Violence has been the outcome when the state put its legal ownership over customarily communally owned lands into effect in South Kordofan, the Blue Nile, around Khartoum and other Sudanese regions.

In contrast, South Sudan, which gained full regional autonomy, by 2005 and before gaining independence in 2011, established its own land commission and enacted the 2009 Land Act for South Sudan that formalized and legalized communal land ownership held under customary tenure (Deng 2011: 10; Marongwe 2013: 4). In the case of South Kordofan and the Blue Nile states, both the inadequacy of the 2005 CPA provisions on communally owned land and the failure to implement what the Agreement

stipulated, demonstrate unwillingness to change the *status que* that favors state and business interests in land. The reluctance or inability to form the Land Commissions, does not only indicate that injustices in land would continue, but moreover implies that the laws and legislations that give legal backing to those injustices would remain in force and so would the sources of grievances and conflicts².

THE STATE AND CONFLICT OVER LAND AROUND KHARTOUM

Most lands adjacent to the Blue Nile, the White Nile and the main Nile rivers, are registered in freehold titles (private ownership) according to previous state legislation; particularly under colonial rule. However, some lands away from the rivers in rural Khartoum are still held in communal ownership by village communities under customary tenure and utilized for seasonal rain-fed farming. In recent years these lands have been sites for violent confrontations between the government and the local communities when former attempted to enforce its legal ownership of lands customarily owned by the latter. Pursuing a ruthless policy of selling and leasing lands to foreign investors, the Government has often invoked earlier legislation giving it legal ownership rights over communally-owned land; disposing of it at will without regard for local communities' interests in land and their pre-existing rights³. In the absence of transparency and accountability mechanisms, communal lands are often disposed of to investors in deals unknown to the public and the communities concerned (Elzobier 2010). In most recent cases of land allocations conflict erupted between the local communities and the government. The police was deployed by the ruling elites to enforce evictions; placing these land cases in the media spotlight that attracted much public attention.

One of the high profile cases that gained wide publicity is the violence that erupted in Omdoum over communally-owned land. Omdoum neighborhood is located in East rural Khartoum, whose land was allocated by state authorities in 2013 to a Gulf investor. The land, estimated to be about 1000 feddans in size, is not far away from the Blue Nile to the East. It was formerly used for rain-fed sorghum farming under customary tenure. Given the dual land tenure system in Sudan which gives the state legal ownership over unregistered but customarily communally-owned land, conflict was bound to arise when the law was put into effect. When the investor started construction work on the site, Omdoum community members obstructed the construction work in defense of their land rights (Sudan Tribune 2013). Armed police was sent to the scene, engaged with the unarmed but enraged protesters and violent clashes erupted and ensued for a few days. A protestor was killed and many others injured from the police and the protesters (Naharnet 2013). These events were highly publicized, turned into a hot political issue and Omdoum community gained wide public sympathy; constituting a strong political pressure on the governing elites. The top political leadership intervened, the Gulf investor withdrew and the land reverted to the community to be distributed as a residential extension to Omdoum neighborhood.

The areas of Eseilat, Grief, Fteihab, Burrie and Hamadab around Khartoum witnessed similar confrontations between the authorities and communities over communally-owned land. In all these cases deals were struck between investors and the governing elites behind closed doors and communities were surprised with construction works on their lands. However, different forms of resistance by the affected communities; including protest in the face of state violence, have compelled the ruling elites to yield to community demands and communities were able to regain all or part of their customary landownership rights. Community access to the media, educated and enlightened leadership and spatial proximity to the seat of power all played roles in the success of community protests around Khartoum to regain communal land rights. Compared to communal land dispossession in other parts of the Sudan which could reach hundreds of thousands of feddans, the size of land areas around Khartoum by comparison is relatively small but high in value. Subsequently, confrontations were fierce and the political stakes for Khartoum elites were high. While violent confrontations over land in distant marginalized regions which claimed thousands of lives and relatively went unnoticed, conflicts over land around Khartoum received high publicity and were promptly resolved because of the direct threat they pose for those in power. Resolution or non-resolution to land conflict issues in Sudan, and perhaps elsewhere, often seems to reflect the relative political significance and the power positions of those involved.

GIVING AWAY COMMUNAL LANDS TO FOREIGN INVESTORS:

Recent Developments in State Land Acquisition and Conflict

The previous cases show that the dualism in the land tenure system in most rural Sudan, which combines customary land tenure and state legal land ownership of communal land to which customary tenure applies has been a major source of conflicts in rural Sudan. While in the recent past state imposition of legal ownership rights over communal lands, held under customary tenure has led to conflicts in South Kordfoan, the Blue Nile and around Khartoum, recent developments in land policies that attempt to effectively impose state control over communal lands would create even more serious future conflicts.

Engulfed by economic crisis, the current NIF regime embarked on land sales and leases in different parts of the Sudan, to the Gulf States and other investors on an unprecedented scale. Numerous examples could be cited to illustrate this state drive for large scale land sales in recent years. According to Western media sources, Sudan leased in 2009, about 690,000 feddans of agricultural land to South Korea (Large & El-Basha, 2010: 4). In 2012 it was announced in Riyadh that Sudan had allocated 2 million feddans to Saudi Arabia as a free zone for agricultural investment in the Red Sea state, on a 50-year long term lease (Hurriyatsudan May 20, 2012). In 2013, one million hectares were sold to Gulf investors; and this amounted to 4, 76 million feddans (Hurriyatsudan April 20, 2014). During the same year a Saudi investor, Al Rajihi, was granted 150 000 feddans in the Northern region, West of the Nile, for planting dates, wheat and fodder for animal production (Alrakoba April 21, 2013). Also in 2013, and according to one Kuwaiti official, Sudan granted the State of Kuwait 4 200 sq km; amounting to one million feddans. This is estimated to be about a quarter of the size of the State of Kuwait. The latter was considering using the land for agricultural and livestock production or alternatively turning it into a natural reserve (Alrakoba Jan 30, 2014).

The potential of further state encroachment on rural communities' customary land rights, with predictable conflict and confrontation implications, has further been enhanced by the issuing of the 2013 Investment Encouragement Act on January the 31st 2013 (Hurriyatsudan April 20, 2014). The Act awards foreign investors exemption from export and import duties and gives foreign investors immunity from prosecution, arrest and approves the right of foreign investors to own Sudanese land (Hurriyatsudan April 20, 2014). The Act goes even further to state that the state stands on behalf of the investor in case of objections by individuals, ministries, government institutions and local communities regarding land or in the case of initiation of court proceedings against investors to regain communal land granted by government (Hurriyatsudan Feb 19, 2015).

While no significant practical steps have been taken by the major Gulf and Asian investors to exploit the lands being allocated, these recent developments in large scale land allocations, reflect ferocious governing elites' drive to acquire land held under customary tenure, and manifest the ruling elites' detachment from the rural population. Implementation of agricultural and livestock projects on communal lands on such large scale effectively means depriving pastoralists and farming communities of their customary land use rights and the ultimate expropriation of their only source of livelihoods. Past and recent experiences of state effecting legal ownership of customarily communally-owned lands in different parts of the Sudan reveal that the disrupting impact of such encroachment has often been violent conflicts. Community responses to imposition of state ownership of communal land, which were allocated to investors, often resulted in violent confrontations. The governing elite's use of the state's oppressive machine on behalf of investors to confront the local communities protesting against dispossession reflects the collusion of interests between the elites and the local communities. The civil war, which is still ranging in South Kordofan and the Blue Nile states, the recent violent confrontations in rural Khartoum and similar ones in different parts of the Sudan, all indicate the future forms of resistance to come; including violence, which such land allocations could ignite when investors begin implementing their projects on the land.

CONCLUSION

State encroachment on customary land tenure and the local governance structures overseeing it, in many African countries reflects the unequal power balance between the governing elites and allied local and foreign business interests on the one hand and the majority African rural population on the other. This is a central issue that fuels the dynamics of violent contestations in the countryside where local communities attempt to counteract the power of the state by various forms of resistance including violence, with grave security implications. The case of the Sudan is one in which customary land rights and the governance structures overseeing it have been continuously and consistently undermined by the governing elites through issuing successive land acts that transferred land ownership, in the legal sense, from the rural communities to the state. However, in practice communities that have not yet been effectively dispossessed continue to use land according to customary tenure creating a dualism in land tenure that would continue to be a source of conflict unless resolved. Currently, the potentiality of the governing elites invoking state legal ownership, affirmed by legislation, to gain effective control over customarily communally-owned land, places rural communities in an unpredictable insecure position in which they could be, at any time, subjected to dispossession and displacement. The cases in which this state legal ownership right over communal land was effectively applied the result had been the dispossession, poverty and marginalization of local communities. The grievances and disruptions generated by this process are among the major root causes of multi-layered conflicts in South Kordofan and the Blue Nile; (i.e., between the state and local communities resulting in armed rebel movements, between pastoralists and farming communities and between local communities and outside investors).

In Darfur, governing elites' attempts to deliberately erode the power of the traditional governance structures overseeing conformity to customary rules undermined indigenous mechanisms that organized farming and pastoralist communities' access to and use of one and the same land resource. This was a major factor in the spread of violent conflicts between pastoralists and farming communities on an unprecedented scale during the 1990s. These conflicts were a prelude to the Darfur high level conflict, starting in 2003 to the present (2016), in which the central state, Darfur armed movements and other outside forces have been involved as major actors. This continuing violent conflict has claimed tens of thousands of lives, displaced millions and disrupted the livelihoods of almost all Darfur communities. The conflicts created by the dualism of land tenure in Sudan that incorporates state legal ownership of unregistered land; i.e., communally-owned land, and the community practice of customary land tenure have taken a different form around Khartoum. The governing elites' attempts to acquire communal land for themselves and for foreign investors have often prompted resistance by the local communities and led to violent confrontations with the security forces. The loss of lives and serious injuries that resulted from these violent confrontations gave community resistance wide publicity and sympathy. Public solidarity constituted strong pressure on the governing elites who were often forced to recognize community land ownership held under customary tenure.

However, the tendency of the elites in control of the state to invoke state legislations that deny customary land ownership, and enable them to control communally-owned lands on large scale, in different parts of the Sudan, to lease or sell to foreign investors have been on the increase in recent years. This tendency has been further enhanced by lucrative material and other incentives offered to foreign land buyers and investors. In addition to tax exemptions investors are granted immunity from prosecution and from presence in courts, which all indicate the extent to which Sudanese governing elites could go to promote their interests and those of allied businesses regardless of the dispossession, poverty and suffering of rural communities that might result. Past and current experience indicate that elites expropriation of communally-owned land would continue to be a source of, perhaps more fierce violent, conflicts in Sudan unless the dualism in land tenure is tackled in ways in which communal customary land ownership, access and use rights are recognized, affirmed and formalized in legal terms. This could be a key to reaching a negotiated settlement between the state and local communities that incorporates local community interests into prospective investments.

There is a need to exert effort in terms of research and documentation; i) to identify customary community rights in different parts of the Sudan; community land ownership rights, forms of land access and

use, rules governing ownership, access and use rights held under customary land tenure with emphasis on land rights of pastoralists and farming communities; ii) to document community responses to state encroachment on communal lands, state responses to community resistance, factors and forces affecting state responses and explore ways to further strengthen communities' power position in facing up to state encroachment; iii) the impact of large scale foreign agricultural investment on local communities, (employment, incomes, food production, water provision, services provision), local community attitude towards large scale foreign investment and the possibilities of cooperation between the local communities and foreign investors to serve the interests of both.

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Endnotes

¹ This is a very sketchy categorization and only indicates the dominant land tenure forms. Land tenure in reality is more complex in each region and within each economic activity than what is indicated in this categorization.

² According to the CPA, if the government failed to make changes to laws, existing laws should remain in force.

³ Recent developments in the capital city have led to a rapid rise in land value. Capital intensive vegetable and fruit production, poultry and dairy farming to meet rising local demand and also for export have all been attractive areas of investment for local and foreign investors that further increased the demand for land around Khartoum. Steep rise in land value fuelled state tendency to control communally-owned lands using earlier legislation; giving rise to violent confrontations, between the state and the local communities.

BIOGRAPHY

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