

Land Grab and Institutional Legacy of Colonialism: The Case of Sudan

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Abstract

Over last decade Africa has experienced an unprecedented amounts of land being concessioned, leased or sold to business, corporations or foreign sovereign capital. The land question (who can acquire or have access to land) and the political question (who belongs in the political community) are connected to the citizenship question. These questions are among the most politicized in Africa. This article answers the following questions: Who benefits from the ‘land grabs’? What can a critical analysis of the ‘land grabs’ tell us about the contemporary politics of development? The first section of this article discusses and provides the intellectual background that informs today’s land rush. The second section discusses the competing actors involved in the land grab, winners and victims. Here I will argue that the majority of victims of land dispossession in the African context are peasants, pastoralists, nomadic, and trans-boundary communities, whose land management system is based on customary land tenure.

Keywords: land grabbing, Sudan, colonialism, accumulation/dispossession, Unregistered Land Act (1970)/Civil Transaction Act (1984)

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Science Research in Africa (CODESRIA), Berghof Foundation, consulted and contributed to the United Nations Development Programme (UNDP) commissioned reports on anti-corruption initiatives in East and Southern Africa as well as infrastructures for peace. His specialization is in international law and security, political reform and socio-economic development, governance and democracy, nation and state-building processes in Africa and in the Middle East. His work has been published in law, economic, and public policy journals.

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I. Introduction

Over last decade Africa has experienced an unprecedented amounts of land being concessioned, leased or sold to business, corporations or foreign sovereign capital. The land question (who can acquire or have access to land) and the political question (who belongs in the political community) are connected to the citizenship question. These questions are among the most politicized in Africa. This article answers the following questions: Who benefits from the 'land grabs'? What can a critical analysis of the 'land grabs' tell us about the contemporary politics of development? The first section of this article discusses and provides the intellectual background that informs today's land rush.

The second section discusses the competing actors involved in the land grab, winners and victims. Here I will argue that the majority of victims of land dispossession in the African context are peasants, pastoralists, nomadic, and trans-boundary communities, whose land management system is based on customary land tenure. These groups constitute the vast majority of the population in many countries. They have been left landless in the face of an increasing marketization, commodification, and the privatization of land.

The third section uses critical analysis to provide an insight into the case of Sudan where modernization of agriculture, privatization of land, undertaken by the government has left a large segment of the population landless, evicted, and forcefully displaced. While there is a renewed scholarly interest in land grabbing, the phenomena itself, characterized by an acquisition of land through dispossession, is not new. The next section discusses the legacy of colonial governance, and its accumulation through dispossession.

II. Legacy of Colonialism and Accumulation Through Dispossession

Over last decade we have witnessed unprecedented amounts of land being concessioned, leased or sold by countries in the global south. According to an OXFAM Report: "In developing countries, as many as 227 million hectares of land – an area the size of Western Europe – has been sold or leased since 2001, mostly to international investors."¹ From the Americas to Africa, more peasants are being

¹ OXFAM 2011. Land and Power: The growing scandal surrounding the new wave of investments in land. 151 *Oxfam Briefing Paper*. Oxford, UK Oxfam. Accessible

forcefully evicted from land. These disposessions are justified in development terms, increased productivity, mechanized farming to feed more people, job creation, and attract foreign direct investment. The assumption is that leasing or selling land to investors who bring in foreign capital will create jobs and help the host country. In the African or Latin/South Central American context, there haven't been many studies which have shown the benefits to society of land concessioned to investors. Instead there have been many studies critical of land deals and the negative effect they cause to local communities. This justification, modernization of the economy, lies in the colonial discourse of conquest, which set in motion accumulation through dispossession few centuries back.

The conquest of the Americas went hand in hand with a discourse on the nature of those that lived on the continent.² In a famous U.S. Supreme Court case, *Johnson v. M'Intosh* (1823),³ the future of American Indians was sealed and their citizenship and access to land was locked in law. The court authorized the expropriation of land and extinguished the Indian title of occupancy. The reasoning of the court was informed by debates and discussions driven by the Salamanca School in Spain.⁴ In justifying dispossession of land, Justice Marshall wrote: "To leave them in possession of their country, was to leave the country a wilderness; to govern them as a distinct people, was impossible."⁵ The logic informing the decision was framed in development discourse. According to this reasoning, leaving Indians in possession of land was to render the land unproductive. There was only one way to deal with Amerindians, land deprivation through forceful removal. Given the resistance to this policy the inevitable outcome was genocide because the Indian was 'fierce' and a 'savage' who could not cohabitate with the 'civilized' settler. In addressing the relationship between political power and the rights obtained through conquest, Marshall wrote: "conquest gives a title which the Courts of the conqueror cannot deny"⁶ and made his statement more clear when he explained how

from

<http://www.oxfam.org/sites/www.oxfam.org/files/file_attachments/bp151-land-power-rights-acquisitions-220911-en_4.pdf>.

² PAGDEN, A. 1982. *The Fall of Natural Man: The American Indian and the Origins of Comparative Ethnology*, New York, Cambridge University Press.

³ 1823. *Thomas Johnson and Graham's Lessee v. William M'Intosh*. 21 U.S. 543.

⁴ PAGDEN, A. 1982. *The Fall of Natural Man: The American Indian and the Origins of Comparative Ethnology*, New York, Cambridge University Press.

⁵ 1823. *Thomas Johnson and Graham's Lessee v. William M'Intosh*. 21 U.S. 543.

⁶ *Ibid.*

this right was maintained when he noted: "title by conquest is acquired and maintained by force."⁷

Colonial governance in Africa, with its civilizing and modernizing discourse, had a contradictory outcome on the ground. According to Nyong'o, modernization combined constructive (wealth accumulation and increased productivity), with destruction, reducing labor to the state of a commodity sold on the market, often destroying the natural ecological basis needed for the reproduction of life and production – and polarizing the distribution of wealth on a global level."⁸

The shift from the Americas passing through India and later Africa saw another shift in colonial governmentality.⁹ In the African context, Martin Chanock notes that "The colonial state brought immensely far reaching changes to colonised peoples which undermined their structures of authority; their relationships to land; their relationships to other peoples; gender and generational relationships in their communities; and usually completely changed the economic world within which they lived."¹⁰ Further south, General Ian Smuts, the ideological architect of apartheid, made the case for apartheid by framing his argument in civilizational and development discourse. He wrote that "what is urgently wanted is the settlement of a white population, able and competent to undertake the task of development, and finally to conquer and hold this continent for European civilization."¹¹ One of the gravest crimes of apartheid was contained in several legal acts. This included the infamous pass laws and the Group Areas Act. However, it was the Land Acts which led to the dispossession of land from Black South

⁷ Ibid.

⁸ Peter Anyang' Nyong'o, "The Land Question, Land Grabbing and Agriculture in Africa," *CODESRIA Bulletin*, no. 3 & 4, (2013): 26.

⁹ I used this term in its broadest sense as articulated by Michel Foucault to include a technology of rule, employed by a state to exercise control over territory, populace. This includes governance, the structure of power, and how a state governs.

¹⁰ Martin Chanock, "Constitutionalism and the 'Customary'." University of Pretoria, <http://web.up.ac.za/sitefiles/file/47/15338/Constitutionalism%20and%20the%20%E2%80%98Customary%E2%80%99%20Chanock.pdf>.

¹¹ Jan Christiaan Smuts, *Africa and Some World Problems: Including the Rhodes Memorial Lectures Delivered in Michaelmas Term, 1929* (Oxford, UK: The Clarendon Press, 1930).

Africans. The combined force of these acts led to forceful removal and displacement of millions of South Africans. Mamdani notes that under the apartheid regime, an estimated “3.5 million people were forcibly removed from their communities”¹² between 1960 and 1982. The legacy of those removals and dispossession are still haunting South Africa today.

Today, the land grab phenomenon is also presented as way to modernize agriculture, to develop a country’s industries, and framed in “a narrative of promoting Foreign Direct Investment which will stimulate the modernization of the agricultural sector through large scale commercial farming, and thus ensure ‘development’ and food security.”¹³ Expropriation then is rationalized through a development discourse. Whereas land acquisition is a global phenomenon, it is particularly more acute in Africa. Of all reported land deals, a total of “948 land acquisitions totaling 134 million hectares are located in Africa.”¹⁴ This is a significantly large acquisition when compared with other regions: “43 million hectares reported for Asia, 19 million hectares in Latin America, and 5.4 million hectares in other regions, particularly Eastern Europe and Oceania.”¹⁵ This rapid land acquisition is driven by a number of factors: governments securing food and fuel exports, Multinational Corporations and financiers speculating on commodities¹⁶ as well as actors interested in natural resource explorations. The confluence of all these factors has generated increased interests in land. With all these factors, rooted in the colonial legacy of conquest, accumulation through dispossession, I will turn my attention to the losers of land grab in the African context, namely, peasants, nomad and pastoral communities, internally displaced population, and migrants who move around in search for a better living condition.

¹² Mamdani, Mahmood. "A Diminished Truth." In *After the Truce: Reflections on Truth and Reconciliation in South Africa*, edited by Wilmot Godfrey James and Linda Van de Vijver. Athens: Ohio University Press, 2001, page 39.

¹³ CODESRIA. "Accumulation by Dispossession, Climate Change and Natural Resources Governance in Africa." Council for the Development of Social Science Research in Africa, <http://www.codesria.org/spip.php?article1936>.

¹⁴ Anseeuw, W., L. Alden Wily, L. Cotula, and M. Taylor. "Land Rights and the Rush for Land: Findings of the Global Commercial Pressures on Land Research Project." edited by Tim Bending and David Wilson. Rome, Italy: The International Land Coalition, CIRAD, and IIED. Accessible from http://www.landcoalition.org/sites/default/files/publication/1205/ILC%20GSR%20report_ENG.pdf, 2012.

¹⁵ Ibid, page 23

¹⁶ Philip, McMichael. "The Land Grab and Corporate Food Regime Restructuring." *The Journal of Peasant Studies* 39, no. 3-4 (2012): 681.

III. Regimes of Land Tenure: The Case of Sudan

In many countries around Africa, land has more than economic values to its owners. People's identity is linked to land and acts as a source of livelihood, wealth, social peace, and in some cases hold ceremonial and religious values. For pastoralists and sedentary/agriculturalist communities, and peasant societies, land is key to livelihood. Without it they cannot farm. Without grazing land, pastoral communities cannot feed their animals.¹⁷ The struggle over land is a struggle for a vital source of livelihood. In most countries in Sub-Saharan Africa, two regimes of land tenure can be found, one based on private property rights and the second based on customary rights. The tension between these two regimes produces a minority of winners and a majority of victims (whose land is often dispossessed). Advocates of land titling includes governments, international organizations like International Monetary Funds, World Bank, and local Non-Governmental Organizations (NGOs) like the Land and Equality Movement in Uganda (LEMU) and the Uganda Land Alliance (ULA)¹⁸ as well as investors and Multinational Corporation (MNCs). According to CODESRIA: "Within customary tenure regimes, commons lands are even more vulnerable to expropriation as they are not physically possessed, are deemed to be under-utilized or unutilized, and thus can be expropriated in 'national interest' through government led interventions as part of the 'national development' process."¹⁹ On the one hand, the state wants land to be titled to facilitate its commodification. On the other hand, we see the mass of peasantry who stand to lose from this very commodification. To lose one's land is to lose one's source of livelihood.

To illustrate the dilemma of the African peasantry, the majority of losers of the land grab, I will analyze the case of Sudan. As Mamdani noted given that the rich whether native or non-native could purchase land anywhere, what then is the reality of the poor

¹⁷ Christopher Zambakari, "Nation and State Building in South Sudan: Violence, Development, and Democracy," *Business, Peace and Sustainable Development* 2014, no. 3 (2014): 164.

¹⁸ Mamdani, Mahmood. "The Contemporary Ugandan Discourse on Customary Tenure: Some Theoretical Considerations." In *Working Paper No. 13*. Kampala, Uganda: Makerere Institute of Social Research: Accessible from

¹⁹ CODESRIA. "Accumulation by Dispossession, Climate Change and Natural Resources Governance in Africa." Council for the Development of Social Science Research in Africa, <http://www.codesria.org/spip.php?article1936>.

peasant? If “you could not afford to buy land in the first place, you could still claim land ‘customarily’, in your ‘home’ area, from your ‘customary’ chief, as a ‘customary’ right, under ‘customary’ law”.²⁰ Security of tenure is built into customary law. A peasant doesn’t have to have a land title to make a living off the land. It is this security that is eroded by the marketization, privatization, and commodification of land. The outcome of which increasingly leaves peasants without land and livelihood. The increasing marketization of land, characterized by rapid titling of land is followed by eviction of producers who lose the right to work the land and in the case of Sudan discussed next, forceful displacement and relocation of entire communities. In this case, the victims have been poor peasants, communities who use customary land system but do not have written titles, agro-pastoral communities, nomads and other trans-boundary communities who move around seasonally.

The Republic of Sudan and South Sudan were jointly ruled by Great Britain in the colonial period. In the north, the government passed a series of law governing land with profound implication for Sudanese small farmers, peasants, and pastoral communities. Two legislations are of particular interest: The Unregistered Land Act (1970) and the Civil Transaction Act (1984).²¹ Both of this legislation strengthened the privileges of the state over land. By doing so, it also allowed elites to acquire rural land at low price. The most affected land was those that were held by customary authorities, accessed collectively by virtue of being a member of an ethnic group in the region. Those who were not resident on the land could secure the right of passage through the land or grazing rights from communities who lived on the land. In the border region of Abyei, the disputed Border State between Sudan and South Sudan, the land was shared jointly by the Ngok Dinka and seasonally by Missiriya – seasonal migrants who graze their cattle in Abyei, in the dry season. The same system worked with the Baggara pastoralists who moved from Darfur (Western Sudan) through Kordofan (state in Central Sudan) and into Bahr Ghazal (a region in Western South Sudan).

The 1970 Act was rationalized and justified as necessary for the expansion of the agricultural sector, specifically mechanized farming.²² The outcome of this legislation was that by 2005,

²⁰ Mamdani, Mahmood. "When Does a Settler Become a Native? The Colonial Roots of Citizenship." *Pretexts: Studies in Writing and Culture* 7, no. 2 (1998), page 2.

²¹ Ayoub, Mona. "Land and Conflict in Sudan." *Accord*, no. 18 (2006).

²²Ibid, pg 14

mechanized farming has fifteenfold.²³ The legislation “entitled the government to use force in safeguarding “its” land and encouraging the accumulation of land by a minority of rich investors (both local and foreign).”²⁴ The result was the displacement of communities, mostly agro-pastoralists, from land usually through violence. Both legislations dismantled the defense the peasants, pastoral communities, and nomads had in traditional authorities whose mandate also included the management of land. Lastly both legislation denied traditional authorities, “formal legitimacy or juridical status to traditional property rights, and implied the cancellation of all rights – and income – relating to water, land and grazing by pastoralists.”²⁵

The forceful eviction and displacement of entire communities, initiated by the passage of these laws in Sudan has created a large population who are landless and internally displaced, without jobs, and access to basic services. According to Dr Mona Ayoub, from the University of Khartoum “The displacement caused by mechanized farming remains a major source of grievance and conflict, reinforcing feelings of neglect, marginalization and social repression, as well as sealing off nomadic routes, water points and pastures, fostering a culture of land-grabbing and creating large landless groups who are forced to work as precarious wage labourers or to migrate”²⁶ outside the traditional areas.

The challenge faced by most communities is that communal land is not registered land. For centuries communities manage land for usage by all members and that land is accessed communally or through lineage. Access to land use is often more important to peasants than titles. For pastoral and nomadic communities, this is more important given their seasonal movement. They need the right to use the land for grazing and water. Traditionally they have shared the land without resorting to titling it with sedentary farmers and other pastoralist groups.

Under the Unregistered Land Act, unused and unregistered land is deemed unoccupied and hence subject to government takeover or as frequently happens, sold to investors. Using a development ideology, unoccupied lands are deemed to be under-utilized or unutilized. These can then be expropriated in national

²³ Ibid, pg 14

²⁴ Ibid, pg 14

²⁵ Ibid, pg 14

²⁶ Ibid, pg 14

interest. The Sudanese case is furthermore complicated by the fact that the law prohibits any recourse to the legal system by peasants and those who have been forcefully evicted or displaced. The legislations confirm the government ownership over all unregistered land on the one hand and remove legal redress brought by victims against the state. This means that “No court is competent to deal with any suit, claim or procedures on land ownership against the Government or any registered owner of investment land allocated to him.” In short, the interests of the regime and its supporters are beyond the law.”²⁷ The displaced and victims of eviction and displacement have had to resort to violence in dealing with the state in Sudan e.g. conflict in Abyei, Blue Nile, and South Kordofan, all Border States. The issue raised by land grabbing touches on communities’ rights to use their land and also on issues of social democracy. The question and challenge for many states in Africa is how to protect social democracy (right of the masses e.g. peasant/pastoral communities), and balance rights with social justice, market fundamentalism with social equity in the face of growing commodification of land and market forces.

IV. Conclusion

This essay engaged with two questions: Who benefits from the ‘land grabs’? What can a critical analysis of the ‘land grabs’ tell us about the contemporary politics of development? To answer these questions, I provided a historical background to the land-grabbing phenomenon by arguing that to understand the crisis requires we look back at the legacy of colonial conquest. Colonial powers advanced two justifications for conquest, civilization and modernity. The latter often presented in development language of increased productivity, modernization of industries, and wealth accumulation. This left a violent legacy of forcefully evicting population from their areas. In the second section, I turned my attention to the case of Sudan where two legislations, the Unregistered Land Act (1970) and the Civil Transaction Act (1984) have left many communities landless and/or displaced. These acts have provided a justification to the state to displace entire population under the guise of improving agriculture productivity. The victims of land grab or forceful eviction and

²⁷ Yoanes Ajawin and Alexander De Waal, eds., *When Peace Comes: Civil Society and Development in Sudan* (Red Sea Press: Ewing Township, NJ, 2002), 134-5.

dispossession of communal land has been peasants, pastoralists, nomadic and trans-boundary communities whose land management is based on customary land tenure. In conclusion, the biggest challenge in many African states is how to manage and protect social democracy while balancing rights with social justice and safeguarding against increasing market fundamentalism.

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