

**Conventions, Changes, and Contradictions in Land Governance in
Africa: The story of Land Grabbing in Sudan and Ghana**

Dr. Yasin Abdalla Eltayeb ElHadary
Post Doctoral Fellowship
USM-School of Humanities
Geography Section
Penang-11800
Malaysia

Franklin Obeng-Odoom
Department of Political Economy
The University of Sydney
Australia

Abstract

Land tenure systems in Africa are undergoing rapid transformation *inter alia* to promote secure tenure and increase access to credit which, in turn, are supposed to drive the aspiration to reduce poverty levels. Critics claim that the process is mainly designed to benefit trans-national corporations (TNCs) that ‘grab’ land from local people, convert it from farmland, and turn it into investment land. Using Sudan and Ghana as case study areas and drawing on multiple sources of evidence, including official policy documents, land acts, and existing court cases, this paper examines the nature of land tenurial systems, explore their changing character, and identifies the tensions and contradictions within the system. It finds little support for the official rhetoric that the transformation in land tenure systems leads to secure tenure but mixed results for the claim that the process creates avenues for obtaining credit. Furthermore, at least in the case of Sudan and Ghana, land grabbing does not usually take the form of land expropriation by big TNCs. Rather, it is the state that grabs land, sells it, and dissipates it to cronies of its agents under the guise of compulsorily acquiring land in the ‘public interest’.

Keywords: land grabbing, governance, communal right, Ghana and Sudan

Introduction

The ownership and use of land, especially among traditional producers in most developing countries, is not just a source of livelihood but also a symbol of identity, dignity, solidarity, and peace (Egemi 2006; Komey 2009 and El Hadary 2010). So, the World Bank devoted its A Better Investment Climate for Everyone report of (2005) to the issue of access to secure property rights, land grabbing and land-related inequality. There, the World Bank (2005) argued that the ownership of land facilitates access to credit, gives the poor more voice in the political arena and contributes to higher investments in children's education, and thereby arrests the intergenerational transmission of poverty. Thus, lack of access to land can foster social exclusion, a diminution of human capabilities, and cultivate violence and conflict. Yet landownership in many developing countries is highly unequal, substantially more so than income or consumption (Payne, 2000), making it difficult for countries to attain the Millennium Development Goals [MDGs] (ICA, 2004).

It is in this context that we welcomed the special issue of *Development* on 'global land grabs' (vol.54, number 1, 2011). We found the sections on Africa particularly interesting because our research work focuses on this continent. However, we thought that most of the contributions (Cotula and Vermeulen, 2011, pp.40-48; Grain, 2011, pp.31-34; Chu, 2011, pp.35-39; Zoomers, 2011, pp.12-20) centred on giving the general picture and only one (Kadiri and Oyalowo, 2011, pp.64-69) drilled deeper into the local context of one country. In turn, other debates about land, such as the claim that formalisation leads to more secure tenure and more efficient land

management (see De Soto, 2000; 2004) were not highlighted. Breadth is important but so is depth. Both are necessary to understand the land question.

So, in this contribution, we zoom in on two case studies, Ghana and Sudan, which are radically different in terms of so-called ‘good governance’ indicators. While Ghana has won many international accolades for its democratic credentials, Sudan has sometimes been described as a failed state (e.g., Taylor, 2007; Gyimah-Boadi, 2009). However, as we shall see, it is in the realm of land tenure that the similarities and differences are most glaring. The paper tries to achieve three aims. First, it presents the nature of land tenure in Sudan and Ghana and discusses ‘recent’ transformation in tenurial relations. Next, it ascertains the extent to which the transformations have attained their stated aims. Then, it charts the different dimensions of land grabbing as a way to return to the theme of the March 2011 issue of *Development*.

Nature of Land Tenure and ‘recent’ transformations in Sudan and Ghana

Customary land tenure is the dominant system of land use and ownership in both Sudan and Ghana. Almost 80 per cent of the land in both countries is held customarily. The rest is statutorily owned (Kasanga 2003; Babiker 2008). However, there are significant differences between the two systems of customary land tenure. In Sudan, formal, statutorily owned land is based on civil laws and institutions and effectively precludes land owned by most of the Sudanese rural communities (Komey 2010). Such statutorily owned land can be found in only some parts of the central and the northern regions, particularly in urban areas and along the Nile River (Runger 1987).

The communal, “informal” land, on the other hand, is based on tribal systems and regulated by customary laws and institutions known locally as *Elidara Elahlia*: the system governs all matters regarding communal right). This system is not officially recognized in government courts when it comes to legal land ownership (Komey 2009; Komey 2010 and El Hadary 2010).

The communal land tenure system is known locally as *Dar, Silif* or *Hakura*. The basic principles governing its use include access based mainly on having a historic right to land, obtained either fighting with neighbors or, in few cases, granted as a gift from the king of the State (El Hadary 2010). The village leader, known locally as *Nazir* and its crew (*Omda and Sheikh*), is considered as the sole owner of the land. Nazirs have authority to collect tithes, maintain orders, settle disputes, and distribute land resources to members with their respective villages. The Nazir also has the power to make new laws pertaining to land and related matters. Within the tribal homeland, a collective security of the community is constituted with individual use and inheritance rights without alienating the land from the collective ownership of the community (Komey 2009). This implies that each member of the tribe would maintain primary rights of access to use land for farming and herding within the tribal territory.

The system of communal right has undergone radical changes that threaten the livelihood of the rural communities. The changes date back to the colonial era (1898-1956), during which the colonialists paid particular attention to the system of land tenure as a source to exploit natural resources for their own benefit (Babiker 2008). The Title to Land Ordinance of 1899 was issued

on the eve of colonization and, after two decades, the Land Settlement and Registration Ordinance Act of 1925 came into force. Such laws set the precedents for paved the way to the current state-led land grabs. According to the Land Settlement and Registration Ordinance Act of 1925 all waste, forest, and unoccupied land was deemed to be the property of the state until the contrary is proved' (Shazali and Ahmed 1999). Through these acts, the state sought to register land tenure in the whole country. However, in practice, only parcels of land in the northern and central part of the country have been registered.

The Land Acquisition Ordinance Act of 1930 makes it possible for the Government of Sudan to acquire any land (village or tribal) on the basis of using the acquired land in the 'public interest'. It is telling that these acts do not recognize communal rights or the *Dar* system. Contrast that position with the early recognition of land in the northern and central regions. In turn the land acts have created regional disparity in the country, explaining why people in regions like Darfur, Eastern and Southern Sudan have strong feeling that they have historically been marginalized from economic development (Komey 2009; El Hadary 2010)

After Sudan gained independent in 1956, the national governments inherited the legacy of the colonial people and followed their line in neglecting the right of rural communities. Successive government issued several land Acts to facilitate land grabbing. One of these was the Unregistered Lands Act of 1970 which decreed that all unregistered land throughout the country occupied or unoccupied which is not registered before the commencement of the Act shall be registered as government property, and granted the government the legality of disposing of lands

as it saw fit. This implies that all land in Sudan except those parcels earlier registered in the northern and central part has become government land. Moreover, as stated by Egemi (2006), the Act of 1970 entitled the government to use force in safeguarding "its land" and this has further been strengthened by the 1991–1993 amendment of 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. This Act stated clearly that all land, including unoccupied parcels, if not registered based on the act of 1925 must be regarded as government land. It is important to note that communal ownership, for different reasons, were unable in the past to register their lands under the provisions of 1925 Act. These reasons include the overly complicated and lengthy land registration procedures, lack of adequate information on existing land tenure, lack of awareness about the existing land Acts and their provisions, and the difficulty of getting exclusive property rights in situations involving complex land use arrangements (El Hadary 2010). Also, it may be argued that both colonial and post colonial policy makers were not initially serious in registering tribal land because it was of no use at that time or they did that intentionally aiming to reserve it for future use.

The situation in Ghana is rather different. Unlike Sudan where land is ‘owned’ by village leaders, by custom, land is ‘held’ in trust – not owned - by traditional authorities (e.g., priests, chiefs, family and clan elders) on behalf of members of a community, family, ethnic groups or clans. But, like Sudan, it is traditional laws and norms, rather than the national constitution, which guide the ownership and use of communal land (Larbi, 2006; Ubink, 2008). In contrast to

the experience in Sudan, the constitution recognises these traditional rules (see, for example, articles 267 and 270), although their rights differ from one place to another.

As with communal land in Sudan, communal land in Ghana is not usually documented. But, since 1843, the state has taken the position that some writing or documentation is crucial to ensure clarity in land management. In 1895, the state passed the Land Registry Ordinance, and, in 1962, repealed and replaced it with the Land Registry Act, which stipulated voluntary registration of any *instrument* in land (Alhassan and Manuh, 2005). The late 1980s and 1990s witnessed three significant shifts in land management. First, the state passed the Land Title Registration Law in 1986 to replace deed registration¹. Second, the first land policy was introduced in Ghana in 1999. Christened the National Land Policy (MLF, 1999), its aim are been to ensure ‘the judicious use of the nation’s land and all its natural resources by all sections of the Ghanaian society in support of various socio-economic activities undertaken in accordance with sustainable resource management principles and in maintaining viable ecosystems’ (Ministry of Land and Forestry² [MLF], 1999, p. 6).

Third, to operationalise the land policy, the government launched the Land Administration Project (LAP) in 2003. The project has four main components³ in its first phase. First, there

¹ Title registration is different from deed registration. It requires compulsory registration and serves as a framework for the registration of *interests* in land rather than instruments. Furthermore, unlike deed registration, it is believed to provide the basis for a more secure backing by the state, what is called the ‘indefeasibility principle’.

² The name has been recently changed to ‘Ministry of Land and Natural Resources’.

³ These components are for Phase 1 of the project. It is expected that in the very long term, there may be other phases of the project (See Kotey, 2004).

would be institutional reforms under which all the land sector agencies⁴, namely Survey Department, Land Valuation Board, Lands Commission and Land Title Registry, would work under one umbrella body called the new *Lands Commission*. Under this body, there would be the Customary Land Administration Unit which would ensure the establishment of customary land secretariats as either centralised land secretariats or village and town secretariats under the control of local chiefs, *tindaana* or family heads. The second component of LAP entails the harmonisation of land policies. Under a third, there would be constant monitoring and evaluation; and in a fourth component, the reforms would remove government from the management of stool lands, and generally make the Lands Commission market-focused (see Karikari, 2006; LAP, 2009). These reforms were initially to be undertaken from 2003 to 2008 but have now been extended to 2010 (Kudom-Agyemang, 2009). The *expressed* aim of LAP is to provide secure land tenure which is believed to be *sine qua non* for growth, economic development and poverty reduction.

The nature of land tenure in Sudan and Ghana and the recent transformations are informed by the notion that unless a bundle of rights can be privately owned by individuals, they will have little incentive to put it to the highest and best use or little interest in ensuring that it is used sustainably. From this perspective, people are driven mainly by self interest which, in turn, spurs them on to be productive. According to this view, communal property rights are inefficient because, not having any private or individual interest in a resource, people are likely to become

⁴ Except the Town and Country Planning Department (TCPD) and the Office of the Administrator of Stool Lands (OASL).

irresponsible and act in ways that will injure the common good or what economists commonly refer to as a ‘tragedy of the commons’. As two advocates of private property rights Armen Alchian and Harold Demsetz (1973, p.19) put it, ‘persons who own communal rights will tend to exercise these rights in ways that ignore the full consequences of their actions’. From a modernisation perspective, it is more efficient to commodify and create markets in traditional land. From this perspective, titling should promote (a). secure tenure and (b). greater investment in land (De Soto, 2000;2004; Einemark, 2004). It is important to ascertain the validity of these claims.

Has formalization led to secure land tenure?

The concept of secure tenure is multidimensional and assumes different meanings in different disciplines. However, when it is used in the debate about titling, it connotes protecting the rights of landowners and their descendants from becoming landless and curbing the incidence of land encroachment and multiple land sales (Obeng-Odoom, 2011).

From this perspective, it is hard to accept that formalization has led to secure tenure in the case of the study areas. In Sudan, the land question is considered as a crucial factor behind escalating violence and armed conflict in many parts of the country. Several published works have pointed out that access to land resource was the single biggest issue of contention on the outbreak of resource-based conflict that may escalate into a national conflict (see Pantuliano 2007; Manger

2009; Ahmed 2009; Komey 2009; Komey 2010 and El Hadary 2010). This should not be understood that difficulty in physical access to or lack of natural resources is behind the conflict in places like Darfur. Instead, the ‘land resource curse’ in Sudan must be contextualized as deriving from the discordant socio-political relationship between the state and its people. The way in which resource conflicts have evolved in the country seems to require a focus on the state and on the concept of ‘good governance’. In line with this dynamic, a possible suggestion is that there is a need to look at people’s use of, and control over, resources at many different levels, thus permitting a consideration of processes of power and authority (Manger 2009). The inequality of land distribution and legal recognition of communal land rights only in the central and northern part has led to socio-economic variation and feeling of marginalization in the regions where land tenure system is fragile and insecure, and thus contributing to the, violence and armed conflict in places such as Darfur in the western part, and Abyie in the South. This chain of reasoning led El Hadary (2010) to conclude that most, if not all, areas governed by customary rights have undergone severe conflict in Sudan. This is due to the fact that land is everything for people: it is a source of livelihood, credit, dignity, wealth and social peace. So, when it is lost, it means losing all things and thus having nothing to lose if the dispossessed are involved in protracted fighting. Therefore, all the peace agreements that have currently taken place in Sudan (Comprehensive Peace Agreement CPA, 2005; Darfur Peace Agreement DPA 2006; East Peace Agreement EPA, 2006) have tried to focus on the issue of land tenure. For example, the Comprehensive Peace Agreement calls for the incorporation of customary laws and the establishment of four Land Commissions, to arbitrate claims, offer compensation and recommend land reform policies. Yet, more needs to be done. The CPA of 2005, for example,

addressed several issues such as power and wealth sharing and left the core issue of land ownership to be resolved later. In this light, Shanmugaratnam (2008) has argued that the National Congress Party and the Sudanese people Liberation Movement (SPLM) addressed several core issues in the CPA 2005 such as the right to self determination of the peoples of south Sudan, power sharing, and oil and non oil wealth sharing, democracy, and permanent ceasefire and security management, but left the vexed land question to be resolved at a later stage by the two parties. It raises both the question whether parties want to benefit from the current situation and take land whenever there is a need (oil extraction, mechanized, or irrigated schemes), despite the existence of CPA. According to Komey (2009) despite the fact that the CPA provides some mechanisms for settling land-related issues in the post-conflict era, the current difficulties facing the implementation of the Agreement has raised great fear among the local Nuba peoples as to how secure is their land.

Similar uncertainties exist in Ghana where, in spite of ongoing registration of title, land is the source of conflict and litigation. As of 2003, there were 15, 000 land cases pending before the courts in Accra (World Bank, 2003), 9,214 cases pending before the courts in Kumasi (Crook, 2004), 74 land cases pending before the courts in Bolgatanga, Tamale and Wa (Abdulai, 2010), and 40 cases in Cape Coast (Cashiers' Office, 2010). Overall, there were an estimated 60,000 land cases in Ghana in 2003 (Kasanga, 2003) as against 11,556 land cases in 1999 and 14,964

cases in 2002 (Kotey, 2004). It implies that, between 1999 and 2003, there was a 419⁵ per cent increase in the number of land cases in Ghana. More recent evidence suggests that the spate of land conflicts has increased. In Cape Coast, for example, the number of cases pending in the High court as of 2008 was 114 (Cashiers' Office, 2010), being an increase of over 100 per cent over 2003 levels. These figures exclude over 770 land disputes that arose between 2003 and 2010, which were resolved through alternative dispute resolution (LAP, 2010).

Between 1961 and 2004, 31 per cent of the reliefs sought in land cases were declaration of title, 19 per cent damages and 22 per cent relate to recovery of possession. Disaggregated further, there was over 500 per cent rise in the declaration of title relief sought prior to the 1980s (1971-1980), when registration was voluntary and the post 1980s, when registration became compulsory (based on figures made available by Kotey, 2004, p.98).

Not all parcels of land which are the subject of litigation are registered. So, the continuing litigation should not be read as a failure of registered land to provide security. Unregistered land has its own problems, including the multiple sale of land by tribal chiefs and is the source of bitter conflicts too (Ubink, 2008). Either way, insecure land tenure sometimes leads to loss of life, as happened between 1994 and 1995, when land related conflicts in the northern parts of the country led to the death of 1,000 people (Aryee et al., 2011).

⁵ Ghanaian and Nigerian readers may be inclined to strike a connection between section 419 of the Criminal Code of Nigeria and this figure. No such connection exists between the percentage increase and the criminal code.

Has titling led to easier access to credit?

The titling for poverty reduction claim can be explained in three ways. First, possessing formal property rights enhances the opportunity to obtain credit which, in turn, contributes to a reduction in poverty levels. Second, clearer property rights contribute to increased real property values inter alia through a reduction in transaction costs and increase in the credibility of the property. Exchanging such ‘high value’ real property increases the monetary gain of a property owner whose income level can thereby be improved. Third, the enhanced attributes of real property, often a key asset of the poor, encourage them to invest in their property to increase its value (Mooya and Cloete, 2007; Kim, 2011). According to Bromley (2008) and Abdulai (2010), in practice, the nexus between formal property rights, real property values, credit and poverty is not direct.

However, in Sudan there is a direct correlation between accessing loan and securing land rights especially when it comes to providing collateral. Without having official land ownership documents approved by the state, having access to credit mainly from formal sources (banks) is difficult if not impossible. People who have customary rights to land have failed to prove ownership of land. Sometimes, their land is regarded as “government land” and therefore would not be approved by the banks as collateral security. The failure to fulfill the requirement demanded by banks, especially when it comes to providing collateral, has deprived large groups of pastoralists from accessing funding. In this regard, El Amin (2008) discovered that throughout the 1990s, the irrigated sub-sector received an average of 50 per cent of all Agricultural Bank of

Sudan credit allocations, the mechanized subsector more than 25 per cent and only an average of 14 per cent for the peasant-farming sub-sector. Interestingly, it appears that big farmers in the so-called mechanized and the irrigated sector who can access credit from banks are defaulting on their loans. Elhardy (2010) has found that more than half of them not repaying the credit and now they are considered bankrupt. That trend notwithstanding, peasants whose rights to land are often unregistered have difficulties accessing loans. In the absence of formal credit, poor peasant farmers resort to informal credit "*shail*" with a very high interest rate that varies between 150 per cent and 200 per cent under the compulsion to meet some production pre-requisites and consumption needs. Therefore, lack of access to credit for rural producers remains one of the driving forces behind the declining of farming activities and thus led to wide spread of poverty among them (El Amin 2008). Lack of access to credit coupled with the adoption of structural adjustment programme where state has heavily withdrawn agricultural subsidies and introduce of market liberalization has led to increase the cost of production and thus a decline the return coming from agriculture. This explains why most of the rural people give up farming and flee into urban areas in search for better economic opportunities (El Hadary 2011).

Is the Sudanese experience borne out in Ghana? In Ghana, the view that registration of land rights is necessary to obtain credit is contested by land researchers such as Bromley (2008); Abdulai, (2006; 2010) and Devas (2006). Banks require more than title certificates to offer loans. According to these scholars, the most important requirement for many banks in offering a loan facility is stable employment which would enable the creditor to honour the interest payments on the loans until the loan is fully amortised. This practice may be a reflection of the general view that registration of title is not a big determinant of housing and land prices. One survey of 498 people *inter alia*

comprising 462 builders and 12 officials from real estate companies revealed that location and access to utilities are the most important drivers of real estate prices, while possessing formal title documents is one of the least determinants of property prices (Kwame and Antwi, 2004, pp.44 and 45).

A juxtaposition of the experiences in Ghana and Sudan suggest that it is not registration per se that gives access to credit and secure tenure. Rather, it is the legal recognition of communal rights. Hence, there is a failure in the assumption underlying titling. But, ‘failure’ in the transformations should not be interpreted as ‘success’ in customary system, as some anthropological reasonings would have us believe. Indeed in both Sudan and Ghana, the customary system has several limitations such as the absence of democracy, gender bias and concentration on subsistence economy (see Duncan and Brants, 2004; Amanor, 2010). In this regard, Babiker (2008) states that the most important disadvantage of customary land tenure system is the embodiment of judicial and executive authority in a single individual (Sultan, a village headman), which makes him a person of considerable powers in the allocation of tribal land rights, abandoned land or land to which there is no heir and the settlement of tribal disputes over land.

‘Failure’ must however be interpreted as success for the few people who have benefitted from the transformation in land tenure system. This claim is developed further in the next section.

When failure means success: Dimensions and effects of land grabbing

The special issue of *Development* conceptualized land grabbing as the expropriation of large amounts of land by corporate interests – especially trans national corporations - often for the purpose of establishing agri-businesses in food production, tilling land for agro fuels, or high class tourism development (see, for example, Land Research Action Network, 2011, pp. 5-6; Zoomers, 2011, pp. 12-13). The emphasis on the notion of land grabbing is not the purpose to which the ‘grabbed’ land is put. Rather, it is the *alienation* or *expropriation* of land usually from people in weaker socio-economic classes. So, land may be ‘grabbed’ by governments too as in taking land from people in the name of ‘national interest’ and refusing to pay fair compensation, as suggested earlier in the case of Sudan.

‘Government land grab’ is evidently the case in Ghana. Between 1850 and 2004, the state executed 1,336 instruments to compulsorily acquire land. It did so in all the 10 regions of Ghana. The regions with the greatest share of compulsorily acquired lands are Greater Accra (34.1 per cent), Western (26.7 per cent), Ashanti (13.3 per cent) and Brong Ahafo (10.1 per cent) (Larbi et al, 2004, pp.121-122). Section 20 (1 and 2) of the 1992 Constitution⁶ of Ghana provides four

⁶ Article 20 of the 1992 (current) constitution of Ghana has no retrospective effect (see *Nii Kpope Tsuru v Attorney General* and *Nii Amotia v Ghana Telecom*). Earlier constitutions did not necessarily regard compensation as pre-requisite for compulsory acquisition. But the point under discussion is whether land policies have ensured the prompt payment of fair and adequate compensation.

conditions under which private land can be compulsorily acquired. First, the acquisition must be in the public interest, defined as satisfying ‘the interest of defence, public safety, public order, public morality, public health, town and country planning or the development or utilization of property in such a manner as to promote the public benefit’. Second, the specific purpose for the acquisition must be stated. That is, it is not sufficient to acquire land for the ‘public interest’. That interest must be named. Third, the compulsory acquisition can only take place if it is done according to a law which provides for ‘the prompt payment of fair and adequate compensation’. Fourth, the expropriated person shall have the liberty to question the acquisition in a high court in Ghana.

Has the Ghanaian state met these conditions? State land is mostly underutilised. For example, 50 per cent of state lands are idle (Larbi, 2008). Most of the state lands which have been put to ‘use’ are alleged to have been sold to state officials. According to the Committee for Joint Action (2010), the immediate past government ‘shared’ state land in prime locations in Accra to 103 of its sympathisers. 36 plots were also shared to other party members and individuals, who were believed to be closely affiliated to the government. In addition to giving land to cronies, governments sometimes grant state land to people who voted for their favourite politicians (Onoma, 2008), and dispossess those people who voted against their preferred politicians (Yeboah and Obeng-Odoom, 2010).

It is estimated that the state owes compensation in excess of 100 billion old Ghana cedis (Kasanga, 2001). The severity of the problem varies among the 10 regions in Ghana. In the Central Region, for example, the state has paid compensation for only 20.4 per cent of the 692 parcels of land it has purportedly acquired. It is estimated that about \$66 million is required to

settle compensation claims in the region (Larbi, 2008). In the few cases in which compensation is paid, it goes to the wrong people. Article 20 (2a) of the Constitution of Ghana states that fair and adequate compensation must be paid promptly to persons from whom the state has compulsorily acquired land. However, in practice, the state has tended to pay compensation to chiefs and traditional authority, the so called custodians of land, rather than the common people who make a living from tilling the land (Brobbly, 1990).

What about the fairness and adequacy of the compensation the state pays? One way to assess the adequacy of compensation is to look at the method of assessment. In valuation parlance, the usual basis of compensation is the *deprivation value* concept. That is, how much would it cost to reinstate an expropriated person to the condition in which he was prior to the compulsory acquisition? (Johnson et al, 2000). Estimating compensation on this basis requires accounting for the crops lost as well as incidental costs such as the cost of relocation. However, the Land Valuation Division, which is the branch under the New Lands Commission responsible for valuation for the assessment of (state) compensation, adopts a severely limited concept of compensation. It typically uses the *Crop Enumeration Method* to assess compensation for farmers from whom land is taken by the state. The method entails counting how many crops are destroyed (enumeration) multiplied by the value of the crops assessed by the Ministry of Agriculture. The method fails to compensate for any other inconvenience as stipulated in the State Lands Act, Act 125. Where the Land Valuation Division considers the land value, it makes reference to only the market value and ignores the cost of disturbance in its assessment (Larbi, 2008; Obeng-Odoom, 2012). Even for those items for which the state valuer calculates compensation, there are instances when the rates adopted for crops, for example, are dated. That

was the case in *Sono v Kwadwo*⁷ [1982-83] GLR 398, when Ampiah J (as he then was) held (bullet point 2) that ‘If fair value was to be given to the injured plaintiff then it was only reasonable that a realistic assessment was made of the properties damaged since compensation based on rates which had outlived their usefulness and had no semblance to realities would be unfair and unreasonable’

In a few cases, land grabbing in Ghana takes the ‘classical’ shape of big corporations taking the land of peasant farmers. The problem is particularly prevalent in the Western region of Ghana where there is considerable mining sector. For instance, in Tarkwa, one of the urban centres in the region, 70 per cent of the total land is devoted to mining activities. However, between 1998 and 2006, there were 14 major cases related to land, including displacement without settlement and settlement without compensating for other losses (Tsuma, 2010, pp.25-26). However, on balance, it seems that this aspect of land grabbing is minimal.

Contrariwise, it is the latter form of land grabbing that is prevalent in Sudan. Land grabbing in Sudan is not a 21st century phenomenon, it goes back to the 19th century, it is still going on today, and there are signs that it will continue in the future (Babiker 2011).

During the colonial era several land acts were introduced in Sudan, the overall objective was to give the state full power to grab land and relocate it to investors and loyalists. The eastern part was the first region that witnessed land grabbing during the colonial era. In the early nineties the establishment of Gash and Tokar schemes in land which belonged customarily to the Beja people

⁷ In the High Court of Sunyani, Western Region Ghana. Judgment delivered on March 5, 1980

has deprived local people from accessing their land rights. The second victim was the Central part where around 850,000 ha of land was taken from the local communities for growing cotton in the Gezira, the biggest irrigated scheme in Africa. Besides irrigated schemes, a communal land has also taken for mechanized farming. According to Eltayeb et al (1983), mechanized farming in Gedarif state, eastern region, started in the year 1940, for growing sorghum (*Dura*) largely to meet the food needs of British army. It began on a small scale (21,000 feddan), but dramatically increased to eight million feddan in the year 2008. This rapid grabbing of communal land right in Gedarif state has negative implications on livelihood security of people and is considered as one of the essential factors behind the grievance, resource conflict, and speed up the rate of poverty among rural communities (El Hadary 2010 and Babiker 2011).

The experiences of Sudan and Ghana show that successive national governments inherited the colonial legacy and adopted the same policy but, in some cases, have introduced land Acts which are even more repressive. Since independence, land tenure systems in both countries have been frequently amended to suit the current requirements and facilitate land grabbing. For example the unregistered land act of 1970 Act in Sudan enabled the government to implement a development policy based on the expansion of the agricultural sector, especially mechanized farming, and by 2005 the total area under mechanized farming had increased fifteen fold (Ayoub 2006). The act granted the government the power to dispose of land as it saw fit. Abolition of the native administration system in 1971 was the last decision taken by the Government of Sudan to ensure the suppression of community or individual that might resist the process of land grabbing and to disable their efforts (Komey 2009). The grabbing of land for public and private use under the pretext of “new development” and ‘public interest’ has undermined the rights of communal

system and thus led many people to join rebel groups in Sudan. According to Pantuliano (2007) land grabs led to massive displacement and was the main reason why in the late 1980s, people in Southern Kordofan joined the Sudan People's Liberation Movement (SPLM) insurgency. Till date, a large group of rural people believe that the communal land tenure system serves them well. However, the actors in the state insist that that system is no longer valid, describing it as 'history' (El Hadary 2010). Based on that, large productive areas have been taken from pastoral communities and given to investors, merchants, and close affiliates of the government with no compensation or commitment to the traditional right.

In Sudan the situation is particularly pervasive in Kordofan and Gedarif state. According to Komey (2010), in the state of South Kordofan, 50 per cent of the leaseholders in Habila mechanized rain-fed farming project were merchants and only 11 per cent had previously been farmers. The intervention was mainly exploited by the private sector based on the concessions made by the government to secure food for the urban population and cash crops for export. The same happened in Gedarif state of the eastern region, the early home of mechanized farming. In this state, 64 per cent of mechanized schemes holders are considered as outsiders. A huge share of the beneficiaries are traders (31%) or retired government officials, including civil servants and army and police officers (48%) with no agricultural background (Ijaimi 2006). This led Assal (2005) (cited in Miller 2005) to describe such merchants; the winners of agricultural "development", as Mafia and a number of them have joined the current regime to maintain their position, privileges and get protection to their land "right". Although it was written that no farmer is allowed to have more than one scheme (4.2 square kilometers) as a maximum, but the

reality showed that one third (32%) have more than ten schemes and in some cases it reaches thirty schemes each. At times, when land for securing a livelihood for an overwhelming number of traditional producers remains reduced, the area under unplanned mechanized farming is increasing rapidly. Recently, the total area under cultivation in Gedarif reached 33 600 km²; 66.2% is considered as unplanned schemes and only 33.8% demarcated (Miller, 2005).

Conclusion

The experiences of Sudan and Ghana have shown that land tenure systems in Africa are characterized by overlapping and contradicting forms of regulation. Significant differences exist between the experiences of the two countries in the area of ownership of communal land tenure, its legal recognition, and acquisition. Similarities may be found in the nature of recent transformations which seek to privatize communal land.

A crucial lesson from the paper is that land grabbing is state and government led, rather than led by transnational corporations (TNCs). Under the guise of compulsory acquisition in the public interest with the rhetoric of providing national development, some agents of the state grab land from ordinary people and, in turn, give land to powerful interest groups such as investors, the rich, and cronies of governments. Formal title registration has not been able to guarantee the secure tenure it promised and even though in Sudan it seems that it may be able to lubricate the process of accessing loans, the Ghanaian experience shows that it is the extension of legal recognition to tenure rather than private tenure per se which enhances access to credit.

References

- Abdulai R. 2010. Traditional Landholding Institutions in Sub-Saharan Africa, the Operation of Traditional Landholding institutions in Sub-Sahara Africa: A case Study of Ghana. Saarbrücken: Lambert Academic Publishing.
- Ahmed, Abdel Ghaffar Mohamed. 2009. Climate Change as a Crucial Factor in the Darfur Crisis. In Environment and Conflict in Africa: Reflections on Darfur, edited by Marcel Leroy. Addis Ababa: University of Peace.
- Alchian A and Demsetz H. 1973. The property right paradigm. *The Journal of Economic History* 33 (1):16-27.
- Alhassan O and Manuh T. 2005. Land Registration in Eastern and Western Regions, Ghana. IIED, Nottingham.
- Amanor S. 2010. Family values, land sales and agricultural commodification in South-Eastern Ghana. *Africa* 80 (1):104-125.
- Aryee J, Frempong A, Asante R, and Boafo-Arthur K. 2011. Local Power Struggles, Conflicts and Conflict Resolution in Ghana. CODESRIA Research Reports.
- Ayoub, Mona. 2006. Land and Conflict in Sudan. In *Peace by piece Addressing Sudan's conflicts*, edited by M. Simmons and P. Dixon. London, UK: Conciliation Resources.
- Babiker, Mustafa 2008. Communal Land Rights and Peace-Building in North Kordofan: Policy and Legislative Challenges. *SWP* (3).
- . 2011. Mobile pastoralism and land grabbing in Sudan: impact and responses. In *future of pastoralism*. Addis Ethiopia.
- Babiker, Mustafa, and Sara Pantuliano. 2006. Addressing chronic livelihoods vulnerability in Red Sea State. Red Sea Sudan: OXFAM GB.
- Brobby W. 1990. Compensation claims in Ghana. *Journal of Property Valuation and Investment*:313-322.
- Bromley D. 2008. Formalising property relations in the developing world: the wrong prescription for the wrong malady. *Use Policy. Land Use Policy* 26 (1):20-27.
- Cashiers' Office. 2010. Information made available by the Cashiers' Office (Cape Coast Court Complex). In *Process Books and Register of Land Cases, 2000 – 2009*, edited by Information taken from Case File Dockets. Cape Coast.
- Chu J. 2011. Gender and 'land grabbing' in sub-Saharan Africa: women's land rights and customary land tenure. *Development* 54 (1):35-39.

- Cotula L and Vermeulen S. 2011. Contexts and procedures for farmland acquisitions in Africa: What outcomes for local people? *Development* 54 (1):40-48.
- Crook R. 2004. Access to justice and land disputes in Ghana's state courts: The litigants' perspective. *Journal of Legal Pluralism* 50:1-28.
- De Soto H. 2000. *The mystery of capital: why capitalism triumphs in the West and fails everywhere else*. London: Bantam Press.
- . 2004. Bringing capitalism to the masses'. *Cato's Letter* 2 (3):1-8.
- Devas N. 2006. Local democracy and the challenges of decentralizing the state: An international perspective. *Local Government Studies* 32 (5):677-695.
- Duncan B, and Brants C. 2004. *Access to and control over land from a gender perspective: a study conducted in the Volta Region of Ghana*. edited by F. UN. Ghana: Regional Office for Africa SNV Netherlands Development Organisation, Ghana Office Women in Law and Development in Africa.
- ECA Economic Commission of Africa. 2004. *Land Tenure Systems and their Impacts on Food Security and Sustainable Development in Africa*. Addis Ethiopia: Economic Commission for Africa.
- Egemi, Omer. 2006. Land tenure in Sudan: challenges to livelihood security and social peace. In *Land issue and peace in Sudan*, edited by Galal-Eldeen El Tayeb. Khartoum, Sudan: Sudan Environment Conservation Society.
- . 2006. Sudan: Land and peace processes in Sudan. In *Peace by piece Addressing Sudan's conflicts*, edited by M. Simmons and P. Dixon. London, UK: Conciliation Resources.
- El Amin Khalid Ali. 2008. POVERTY CAUSES IN SUDAN:SOME ECONOMIC AND POLITICAL ASPECTS1990-2000. In *Economic Research Forum*.
- El Hadary, Yasin Abdalla. 2010. Challenges facing land tenure system in relation to pastoral livelihood security in Gedarif State, Eastern Sudan. *Geography and Regional Planning* 3 (9):208-218.
- . 2011. *Challenges facing pastoral communities in the eastern Sudan*, Geography and Regional Planning Germany: Lambert Academic Publishing.
- El Tayeb, Gala Eldien. 1983. *Environmental Degradation in Gedarif District*. Paper read at proceeding of the National Seminar on Indicators of Environmental Changes and Degradation in Sudan, at Khartoum, Sudan.
- Enemark S. 2004. Land management in support of the millennium development goals. *Property Management* 26 (4):1-3.

- Gyimah-Boadi E, 2009, 'Another step forward for Ghana', *Journal of Democracy*, vol. 20, no. 2. pp. 138-152.
- Ijami, Abdelatif. 2006. Mechanized farming and conflict in Sudan. In *Land issue and peace in Sudan*, edited by G. E. E. Tayeb. Khartoum, Sudan: Sudan Environment Conservation Society.
- Johnson T, Davies T and Shapiro E. 2000. *methods of valuation*, 9th edition. London.: Estates Gazette.
- Kandiri W and Oyalowo B, 2011, 'Land alienation and sustainability issues in the peri-urban interface of South-West Nigeria', *Development*, vol. 54, issue 1, pp. 64-69.
- Karikari I, 2006, 'Ghana's Land Administration Project (LAP) and Land Information Systems (LIS) implementation: The issues', paper ('Article of the Month) presented to the International Federation of Surveyors in February.
- Kasanga K. 2001. Land resource management for agricultural development in Ghana. *Our Common Estate*:5-30.
- . 2003. Current land policy issues in Ghana', in Gropo P, *Land Reform: Land settlement and cooperatives*. FAO, Rome:141-154.
- Kim A. 2011. Introduction: Real Rights to the City— Cases of Property Rights Changes towards Equity in Eastern Asia'. *Urban Studies* 48 (3):459–469.
- Komey, Guma Kunda. 2009. Communal Land Rights, Identities and Conflicts in Sudan: The Nuba Question. In *The Human Rights Dimensions of Land in the Middle East and North Africa*. Cairo, Egypt
- . 2010. The denied land rights of the indigenous peoples and their endangered livelihood and survival: the case of the Nuba of the Sudan. *Ethnic and Racial Studies* 31 (5):991-1008.
- Kotey N. 2004. *Ghana Land Administration Project Legislative and Judicial Review* Accra: Kotey and Associates.
- Kudom-Agyemang A. 2009. LAP extended for two more years' in LAP, *LAP News A Newsletter of the Land Administration Project*, 8.
- Kwame S and Antwi F. 2004. The impact of Land Delivery and Finance in the supply of Residential Accommodation in the urban centres of Ghana. The Case study of Accra, Tema and Kumasi, KTH, Stockholm.
- Land Research Action Network, 2011, 'Global land grabs: Investments, risks and dangerous legacies', vol. 54, no.1, pp. 5 – 11.

- LAP. 2010. LAP Development Objectives'. LAP 2009 [cited 23 December 2010]. Available from <http://www.ghanalap.gov.gh/index1.php?linkid=47&sublinkid=105>.
- Larbi W. 2006. Land administration reform in a plural environment – The case of Ghana. In Land administration and good governance conference, 5th FIG Regional Conference. Accra, Ghana.
- . 2008. Compulsory Land Acquisition and Compensation in Ghana: Searching for Alternative Policies and Strategies'. In FIG/FAO/CNG International Seminar on State and Public Sector Land Management Verona. Italy.
- Larbi W, Antwi A and Olomolaiye P. 2004. Compulsory land acquisition in Ghana - policy and praxis. *Land Use Policy* 21:115-127.
- Manger, leif. 2006. RESOURCE CONFLICT AS A FACTOR IN THE DARFUR CRISIS IN SUDAN. In *Les frontières de la question foncière-At the frontier of land issues*. Montpellier.
- Manger, Leif. 2009. Resource Based Conflicts in Western Sudan-Some Reflections on the Role of the State. In *Environment and Conflict in Africa: Reflections on Darfur*, edited by Marcel Leroy. Addis Ababa: University of Peace.
- Miller, Catherine 2005. Power, land and ethnicity in the Kassala-Gedaref States: An introduction. In *Land, Ethnicity and Political Legitimacy in Eastern Sudan*, edited by Catherine Miller. Cairo/Khartoum CEDEJ/DSRC.
- Ministry of Lands and Forestry. 1999. National Land Policy. edited by M. o. L. a. Forestry. Accra.
- Mooya M, and Cloete E. 2007. Informal urban property markets and poverty alleviation: A conceptual framework. *Urban Studies* 44 (1):147–165.
- Mooya M and Cloete E. 2007. Informal urban property markets and poverty alleviation: A conceptual framework. *Urban Studies* 44 (1):147 – 165.
- Obeng-Odoom F. 2011. The many meanings of secure tenure'. In *IJAS International Conference*. Orlando, Florida, USA
- . 2012. Good property valuation in emerging real estate markets? Evidence from Ghana. *Surveying and Built Environment* 23.
- Onoma A. 2008. The use of land to generate political support. *Africa Development* 33 (3):147-155.
- Owusu-Koranteng D. 2008. Mining Investment and Community Struggles. *Review of African Political Economy* 117:467-521.
- Pantuliano, Sara, and et al. 2007. The land question: Sudan's peace nemesis. In *Humanitarian Policy Group* London, UK: Overseas Development Institute.

- . 2010. Oil, land and conflict: the decline of Misseriyya pastoralism in Sudan. Overseas Development Institute.
- Payne G. 2000. Urban Land Tenure Policy Options: Titles or Rights? In World Bank Urban Forum Virginia, USA.
- Runger M. 1987. land law and land use control in western Sudan the case of Southern Darfur. London and Atlantic Highlands, England.: Ithaca press,
- Salah Shazali & Abdelgafar Ahmed. 1999. Pastoral land tenure and agricultural expansion: Sudan and the Horn of Africa. International Institute for Environment and Development IIED (85).
- Shanmugaratnam N. 2008. Post-War development and the land wuestion in South Sudan. In in International Symposium on Resource Under Stress. Ryukoku University, Kyoto Japan: African Centre for Peace and Development.
- Taylor I. 2007. Governance in Africa and Sino-African relations: contradictions or confluence? *Politics* 27:139–146.
- Tsuma. 2010. Actors, Alliances and Power in Negotiations Unequal Distribution of Mining Benefits in Tarkwa’s Gold Mining Area of Western Ghana’, Rheinischen Friedrich-Wilhelms-Universität, Bonn.
- Ubink J. 2008. Traditional Authorities in Africa: Resurgence in an era of democratisation. Leiden: Leiden University Press.
- World Bank. 2003. Project appraisal document on a proposed credit in the amount of SDR 15.1 million (US\$20.5 million equivalent) to the Republic of Ghana for a Land Administration Project. The World Bank.
- . 2005. A Better Investment Climate for Everyone report Washington DC: World Bank.
- Yeboah E, and Obeng-Odoom F. 2010. We are not the only ones to blame’: District Assemblies’ perspectives on the state of planning in Ghana. *Commonwealth Journal of Local Governanc.*
- Zoomers A, 2011, ‘Introduction: rushing for land: equitable and sustainable development in Africa, Asia and Latin America’, *Development*, vol.54, no.1, pp. 12-20.