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Post-conflict land governance reform in the African Great Lakes region

Part II – Reshuffling land ownership for development

After conflict, governments and donors often feel a need for up-scaling and modernizing land use. There is an ambition to achieve economic recovery and contribute to food security through stimulating large-scale investment in land. Our research in Uganda, Burundi and South Sudan suggests that policymakers should be extremely careful when promoting large-scale land acquisitions, both foreign and national. Especially in the difficult transition from war to peace, large-scale appropriation of land risks becoming a threat to tenure security and the recovery of rural livelihoods.

The second part of this infosheet analyses ongoing transformations in and policies on pastoralism in the Great Lakes Region, which also has a significant effect on rural livelihoods and land use patterns. Pastoralism is widespread in the region, and plays an important role in contestation over land. Issues at stake are the increasing enclosure of former communal lands, competition with other land users, and limitations on cross-border movement. Pastoralists are perceived as privileged by incumbent power holders, which adds to contestation, while small pastoralists are marginalized by their elite brothers.

Large-scale land acquisitions and development

Contemporary discussions on large-scale foreign investment in land often sketch a picture of a radical transformation of agricultural production systems, including dramatic shifts in ownership, expelling people from their properties without proper compensation and without employing them elsewhere, mainly benefitting elites. On the other hand, large-scale commercial farming is also seen as a development opportunity, as a strategy to ensure food security and the well-being of the population. Proponents argue that guidelines and international codes of conduct can prevent the adverse effects of acquisitions, and assure transparency and public consultation.

Our research demonstrates that such debates are particularly urgent in conflict-affected settings.

A review of literature points out how post-conflict settings provide a window of opportunity for problematic large-scale acquisitions, or so-called land grabbing, due to the absence of people, and weakened mechanisms to protect land ownership. Notably, the military play a critical role in land grabbing in conflict-affected settings: armed people sporadically acquire land themselves or offer protection to those doing so. These irregular land acquisitions, during or shortly after violent conflict, pose a risk to stability, hampering resettlement and return; they also erode confidence in the re-establishing state. At the same time, donors and government representatives in post-conflict settings frequently consider that foreign investment is critical for economic recovery and peace building.¹

Specifically, there is a lack of clarity about actual acquisitions in post-conflict settings. In the experience of our partners in South Sudan, many acquisitions are not documented. In the 2007-2010 period, investors rushed to acquire land prior to a referendum, exploiting loopholes in legislation and uncertainty. This resulted in deals that, reportedly, were very favourable for investors, and lacking proper consultation with affected local communities. Consequently, residents were driven to neighbouring communities and new land disputes have emerged. Local academics point out that this lack of clarity is increasing: “those involved in fuzzy deals develop increasingly better ways to do it without us seeing it”. For instance, in Burundi, according to government authorities, the investor who acquired the land on which the main market of Bujumbura was located until its destruction by a fire, was a ‘Chinese’. The media discovered, however, that he was actually a rich Burundian, involved in business activities in Hong Kong.

¹ Gemma van der Haar & Mathijs van Leeuwen (2013) ‘Post-conflict ‘land grabbing’; Governance challenges’, *Annual World Bank Conference on Land and Poverty 2013*, Washington D.C.

Shovel to clear land granted to a large investor in Otego Payam Yei River County



While ongoing debates on land grabbing often highlight the role of foreigners, in many cases national actors play significant roles, collaborating in and profiting from the deals. There is a lot of talk about acquisitions that do not comply to national legislation. In this respect, there appears to be an important difference in the institutional context between Uganda and South Sudan. In Uganda, land acquisitions are facilitated through decentralized structures that follow the wishes of power holders at the central level, while local elites serve as middle men in the deals. Here, customary institutions stand up to protests against the acquisitions. In South Sudan, often, national elites, and particularly the military generals, are the facilitators between external investors and local chiefs, who are rewarded for handing over the land of their constituents. Furthermore, despite the attention for large-scale irregular land acquisitions, we should not forget about the range of other irregular practices of acquiring land, also within local communities; and the continuities between such local practices and larger deals: notably, the role of elites, and manipulation of ambiguous legal frameworks.

Regarding those large-scale acquisitions, stakeholders at all levels point out that the problem is basically a lack of consultation and participation. In South Sudan, despite provisions in the Land Act and the Local Government Act about the protection of local land ownership, people see that the new government is taking great liberties in deciding on land issues. Government argues that though land belongs to the people in South Sudan, it is the government that manages the land on behalf of its people. Also in Uganda, the priorities of the government and local people are very different, and the question is to what extent national plans really aim to promote local priorities and interests.

Regarding debate on the potential contribution of large-scale land acquisitions to development, a critical issue is that these acquisitions are not necessarily followed by investment and actual transformation of agriculture. In Buliisa District (Uganda),

national elites appropriate land to speculate on future increases in the value of land, and then sell it. In South Sudan, too, various appropriations appear to be for speculative purposes rather than for developing the land. Another critical issue is the follow-up of the deals: Will external investment result in substantial return to the local communities who lost their land? And even if people are properly compensated, will they be able to reconstruct alternative livelihoods with the compensation they received? Moreover, though many observers agree that development is needed, what this development should look like needs to be subject of public debate, and would enhance the well-being of a country as whole. As one participant of the regional seminar observed: "Why flower production if you could also produce food?" Participants in our seminar in Entebbe pointed out that investment is often only understood in terms of foreign investment, rather than local investment and community enterprises.

It is striking that, in all countries, the expropriation of local land has a long history. Contemporary acquisitions constitute a new phase, yet are not fundamentally different from dispossessions in the past.² For instance, in Uganda, practices of handing over local communities' land to foreign investors, and consecutive gazettelement and degazettelement, which effectively result in expropriation, started in colonial times. Repeatedly, reform programmes in Uganda have resulted in expropriation of lands of local pastoralists, to benefit national and regional elites, legitimized by discourses of development, and promoting progressive farming. In this connection, it appears that the introduction of property rights by the colonial state was significant, enabling the appropriation of local farmers' land, and introducing a tendency for farmers to become tenants on their own lands.

In several cases, the land in question contains oil, resulting in debate about the benefits of using the land for agriculture or for oil. While oil may be a blessing for national development, its exploitation is often a violent process, displacing people. In South Sudan, resource extraction during war was problematic, especially in areas where oil was a direct

² Mathijs van Leeuwen, Ilse Zeemeijer, Doreen Kobusingye, Charles Muchunguzi, Linda Haartsen, Claudia Piacenza (2014) 'The continuities in contested land acquisitions in Uganda', in: An Ansoms & Thea Hilhorst (Eds.) *Losing your Land; Dispossession in the Great Lakes*. James Curry

issue for the fighting.³ After the Comprehensive Peace Agreement, southern elites continue with the same practices of liberating agricultural land to access the oil fields, leading to enormous environmental consequences as well.

Recommendations

- There is a need for more detailed knowledge about the processes and scale of actual land acquisitions, and how conflict-affected settings may be particularly conducive to irregular and contested practices.
- There is also need for a clear legal framework to guide foreign investment that takes interests of communities into account. Yet, even if legal frameworks are not conducive (or missing) to preventing irregular acquisitions, the main problems are a lack of implementation, ignoring existing regulations, and powerful manoeuvring through procedures.
- National policymakers should be careful in terms of their assumptions about large scale agriculture. There are high expectations without thinking about the potential negative outcomes. The question is also to what extent one should expect development to come from external stakeholders, instead of local investors, or local landowning rural communities. How can we make local people interested in investing in their own country?
- Better consultation with local people is a top priority. Consider local communities as partners in and not as obstructers to development.
- More research is needed into how the links between investors and local politics function; as well as on the impact of investment in land on local economy and power relations, as well as of the impact of alternatives to large scale land acquisition

Pastoralist livelihoods under pressure

Many localities in the Great Lakes Region have a tradition of (nomadic) pastoralism, for instance, the so-called 'cattle corridor' in Uganda. Over recent decades, cattle herding and notably its associated migration, have added to contestation over land. At the same time, discourses are on the increase that depict pastoralists' migratory lifestyle as inefficient and unproductive, if not harming the environment, and their lifestyles as backward. The question is

³ Presentation Daud Gideon 'South Sudan Oil Induced Changes in Land Patterns in Melut Basin', Regional Seminar 'Post-conflict land governance reform in the Great Lakes region: insights and challenges', Imperial Botanical Beach Hotel, Entebbe, 20 May 2015.

how pastoralism may still fill a niche in the agricultural landscape in efficient and less contested ways.

Ankole cattle in South-western Uganda



Space for pastoralist movement in the region is reducing. This is commonly associated with the increasing individual enclosure of former communal lands, competition with other land users (agriculturalist and nature conservation), and limitations on cross-border movements. Climate variability and population growth concur towards a need for more land for pastoralists at a time when they are increasingly excluded from accessing lands. Dryland pastoralists like the Toposa and Murle, who need mobility because of drought periods and fragility of the land in their region, are increasingly restricted in their movement, also due to mining in their areas. In Uganda, the majority of natural parks are located in land traditionally belonging to pastoralists. This reduction of pastoralist space adds to difficult relations with other land users.⁴

At the same time, there seems to be an emerging power of pastoralists in the region. While in the past pastoralists were marginalized, now pastoralists play important political and military roles in Uganda and South Sudan. This contributes to negative perceptions of pastoralism. Migration by pastoralists is seen as efforts by certain ethnic groups to take over land. Elite pastoralists play a significant role in the marginalization of common pastoralists. For instance, in Uganda, herder-farmer conflicts are also related to the fact that cattle keepers are seen as privileged by political elites, or are associated with certain ethnic communities. Such conflicts are often disadvantageous to marginal, less politically connected pastoralists. Tragically, common pastoralists are disqualified by elite pastoralists as primi-

⁴ Charles Muchunguzi, Doctoral dissertation.

tive, and not economically valuable. At the same time, elite pastoralists have been responsible for large-scale irregular appropriation of common pastoralists' original herding grounds, for instance through development projects to create ranges. In turn, after having lost their lands, those common pastoralists are employed and armed by those elites to protect their herds in other areas. This then contributes to negative perceptions of pastoralists in general, or ethnic stigmatization of people from the south-west in other parts of the country. People in the north-eastern part of the country see the government condoning particular ethnic groups to take their cattle.⁵

Likewise, in South Sudan, conflicts around cattle keeping are often seen in ethnic terms. Years of violence contributed to the temporal migration of Dinka to the southern Equatoria region becoming more permanent. War increased cattle rustling in the north, which meant pastoralists prefer to stay in cultivators' areas. In some regions, populations of pastoralists are now larger than those of the returnees. Increasingly, the presence of those pastoralists results in negative perceptions from local residents. A decree from the government that cattle keepers should return to the north is ineffective as powerful cattle keepers affiliated to the military refuse to return, considering their home areas still too insecure.⁶

Policies regarding pastoralism at a national level may have regional effects. For instance, the introduction of a maximum amount of cattle per herder in Rwanda resulted in the migration of large herds to Uganda, DRC and South Sudan.

Recommendations

- Access rights of both pastoralists' and agriculturalists' should be included in policies to secure tenure and formalize ownership. More research also needs to be done into the potential economic contributions of pastoralists living in marginal, otherwise unproductive areas.
- Policymakers need to distinguish between elite pastoralism and common pastoralists, and their interests. They should be concerned about the militarization of natural resource management, and instrumentalization of pastoralists for exter-

nal political and economic interests, which may contribute to their stigmatization, and, eventually, (in)security.

- Mobility and migration of nomads is a regional issue that needs to be addressed collectively, and offers possibilities for further regional integration. At the same time, further policy analysis on regional dimensions and implications of migration is necessary.



Grounding Land Governance

This series of infosheets brings together main findings from the interdisciplinary research programme 'Grounding Land Governance – Land conflicts, local governance and decentralization in post-conflict Uganda, Burundi, and South Sudan'. In the period 2011-2016, this research programme studied how land disputes and land governance evolve in post-conflict Uganda, Burundi and South Sudan, and what this implies for state-citizen relationships, the legitimacy and authority of local land tenure institutions, and the resolution of land conflicts. Seminars in Entebbe, Kampala, and Juba, in May 2015, brought together academics, development practitioners and government officials from the region to discuss findings from the case studies and explore the implications for policy and future research, which are included in these infosheets.

'Grounding Land Governance' is a collaboration of African Studies Centre; Institute of Interdisciplinary Training and Research, Mbarara University of Science & Technology, Uganda; Centre for International Conflict Analysis & Management, Radboud University Nijmegen; Disaster Studies, Wageningen University; and a series of other institutes and NGOs. The programme is funded by NWO-WOTRO Science for Global Development.

Authors:

Mathijs van Leeuwen, ASC/CICAM Radboud University Nijmegen – m.vanleeuwen@fm.ru.nl
Doreen Kobusingye, ASC – kobsdoris@yahoo.com
Peter Hakim Justin, ASC – logoro28@gmail.com
Rosine Tchatchoua Djomo, ASC – tdrosine@yahoo.fr
Han van Dijk, ASC/Wageningen University – dijkh@ascleiden.nl

Contact:

African Studies Centre, Leiden University
PO Box 9555, 2300 RB Leiden, The Netherlands
+31 (0)71 527 3372/76 www.ascleiden.nl

⁵ Charles Muchunguzi, Doctoral dissertation.

⁶ Dr Leben Nelson Moro, presentation 'Displacement and Land Conflicts in Greater Equatoria Region, South Sudan', Regional Seminar 'Post-conflict land governance reform....', Imperial Botanical Beach Hotel, Entebbe, 20 May 2015.