

PROPERTY RIGHTS AND RESOURCE CONFLICT IN THE SUDAN

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Across Africa, from the Sahel to the Congo, tens of thousands of people are now at war. You might think these struggles are about religion, or ethnicity, or even political differences, but often you would only be partially right. In a great many of these African conflicts, people are fighting their neighbors not so much because the other person worships God in a different way or has a different genetic makeup. Rather, they are fighting because this is the only way left to them to determine who “owns” which field, or who has what rights to graze animals, or who should control the revenue from the mineral wealth under people’s feet.

Resource conflict is behind much of the violence, death, and destruction that plague the African continent. The problem involves herders and farmers across the

dry Sahel. It involves mineral wealth such as oil or diamonds in Nigeria and Sierra Leone. Even in South Africa, some of the problems of violence associated with the taxi industry can be attributed to fighting over lucrative routes: another type of resource. Finding ways to resolve resource conflicts is essential to promote peace in Africa, but this will require many African governments to do something they have not – so far at least – been very good at: they must create systems of clearly defined, defensible, and secure property rights that are accessible and affordable for all their citizens.

This paper focuses on some of the recent civil strife in the Sudan and investigates how it is related to problems of resource conflict – conflict over access to fertile land in the western Sudanese re-

gion of Darfur. The paper uses an economic analysis of property rights to investigate why people may be fighting over this resource and concludes that unless and until the property rights element of the long-run Sudanese fighting is adequately addressed, we can expect the violence to continue.

A brief history of the Sudanese Civil Wars

The Sudanese people have lived with civil war for decades. This fighting began even before independence from Great Britain in 1956 and, generally speaking, it pits Islamic northerners against Christian and animist southerners. The causes of the conflict are complex and, of necessity, this paper touches on them only briefly.

British colonial policies, which tended to show political favor to the people of the north over those of the south, exacerbated fears of southerners that those in the north would oppress them. British policy also led to unequal economic development, with the north benefiting from investment in infrastructure and industry while the south was left largely undeveloped with little infrastructure and a rural, subsistence economy. Deeply frustrated, southerners rose in rebellion in the First Sudanese Civil War (1954–72) and again in 1983. The parties to the Second Sudanese Civil War have only recently reached a peace accord (2005).

In 2003, a related conflict erupted in Darfur, in western Sudan. Darfur is home to the Fur, a non-Arab people, who make up 60% of the population. The Fur believe that the central Sudanese government has

encouraged and armed Zaghawa nomads, who attack them. They also resent not being party to peace negotiations to end the Second Sudanese Civil War. They feel left out of the power-sharing arrangements being crafted through this process and so have several serious grievances with the central government.¹

This frustration is echoed by the Sudanese Liberation Movement/Army (“SLM/A”) and the Justice and Equality Movement (“JEM”). These groups have rebelled against the government’s failure to protect them from nomadic attacks and the general neglect and mistreatment by the government of Darfur’s citizens – especially during past droughts that brought widespread hunger and hardship.² The government has tried to crush the rebellion, and government-backed Janjawid militia have brutalized civilians, leading many critics to claim the central government is engaged in genocide.³

Tragically, the Darfur conflict continues,⁴ despite intense media scrutiny and despite African Union (and western) efforts to end the genocidal attacks. It is worth noting that, like the longer-run civil war in Sudan, the Darfur conflict is typically characterized as an ethnic/religious clash between northern Arab, Islamic forces, and southern black Christians. As with many conflicts however, reality may be more complicated.

The problems of resource conflict in Darfur

Much, though by no means all, of the trouble in Darfur stems from resource conflict, in this case, conflicts over access to

land, traditional grazing rights, and cattle theft.⁵ Herders and farmers in the area have traditionally had a largely peaceful, symbiotic relationship. Herders had fairly open access to grazing land. Customary grazing rights allowed them to pasture animals on fields for a short time. Herders provided farmers with manure and milk; farmers' fields provided fodder for the animals. Both parties gained from this trade.

This system of mutual accommodation through trade has come under severe strain. One problem is the increasing desertification that drives herders from the northern areas of Darfur towards the south in search of grazing lands. Another significant problem is the massive influx of refugees from the civil wars. Millions of Sudanese are now displaced, some in surrounding countries such as Chad and Ethiopia, but a great many moved to Darfur to escape the worst of the fighting – only to become targets of violence once again.⁶ Finally, as a result of drought, the stakes involved in determining who has rights to use which land are exceptionally high: having the right to farm or herd a particular piece of land may make the difference between starving or surviving for some of these people.

The influx of refugees from the south means that the population in Darfur has diversified and is more heterogeneous than before. The old settled groups must now compete with these newcomers for the fertile land in Darfur. But these newcomers may not accede to the customary norms and practices of the area, or these norms may seem irrelevant in the face of a crisis of this scale, or the government

might favor one group over another (say, northern nomads over southern farmers), making compliance with the customary norms less important.

Repudiating customary practices would have serious repercussions in terms of peaceful, stable relations among differing ethnic/lineage groups for two reasons. First, it has been argued that customary property norms provide incentives for kinship groups to cooperate and coordinate production activities to effectively allocate resources.⁷ If customary norms break down, this coordinating function will disappear if not replaced by a viable alternative, such as a functioning market. Second, these customary norms and rights also provided the framework for the establishment and enforcement of contracts and property rights with strangers. If this framework disintegrates, it is also essential that some other effective institutions – normally commercial contracting and property laws – take its place.

The Sudan, like Nigeria, is a former British colony and so has a common-law heritage, but in many parts of the country it is the customary law and traditional dispute-resolution institutions that operate *de facto*. If the social consensus-supporting customary norms break down and if the traditional means for resolving disputes falls apart – as seems to be the case in Darfur⁸ – then the parties must hope that an impartial, trustworthy institution steps in to fill the void. Typically, government assumes this function. However, in Darfur, central government has failed to take on this role. Not only does the central government ignore traditional

land rights, it has failed to provide impartial tribunals for dispute resolution. The violence has escalated to enormous proportions.

An economic analysis of property rights

An economic analysis of property rights can help us to understand, at least in part, why people in Darfur are fighting over property. As demand for fertile land increases, the value of the land rises. In a relatively free property market, people faced with this situation should renegotiate contracts (whether formal or informal) as they expire, to better reflect this changed reality.⁹ If fertile land becomes scarcer, farmers should be able to modify the terms of any short-term loan they make to herders to reflect the new opportunity-cost of lending the land; farmers might demand more milk or a calf from a herder. Herders could accept or reject these changes, though rejecting the offer would mean searching for an alternative grazing location. The virtue, under customary law, of a short-term loan, such as represented by grazing rights is that so long as it is enforceable, it may involve relatively low transaction costs since relatively little is at stake: some circumscribed use rights for a limited time.

Customary law is flexible and allows for changes to the terms of short-term loans to herders, but it generally protects grazing rights against enclosures or outright confiscation of land by farmers. However, if loans to herders become unenforceable, if herders fail to vacate at the end of a term and can be removed only

with difficulty, then the costs of contracting will rise, making future contracts less desirable. In such cases, farmers might seek greater security (and reduced risk) through more individualized tenure. When faced with problems of growing land scarcity we often see customary property systems evolve in the direction of a more individualistic tenure system.¹⁰

The inhabitants of Darfur are competing for a scarce resource: in this case fertile land, in an increasingly heterogeneous environment. Economic theory predicts that they will seek to create and enforce more individualized rights to land in order to internalize externalities caused by these changes. They will seek these rights in order to allocate the resource more efficiently and to restrict entry to better capture the increasing value of land.¹¹ Evidence suggests that as far back as the mid-1980s, residents in southern Darfur were responding to this increasing demand by enclosing what had been communal property.¹² These Darfurians were expending resources, building thorn fences in order to better define their rights to land.

As the heterogeneity of the players vying for this resource increases, transaction costs rise. As transaction costs rise, it becomes more difficult (hence, more costly) to enter agreements that effectively coordinate group action or allocate resources. The cost of monitoring and enforcing contracts rises because social norms alone are no longer capable of ensuring compliance with agreements – some more formal compliance mechanism is needed.¹³

In situations where resources are highly valued and where the number of competitors for the resource is both large and heterogeneous, it is normally assumed that formal governance structures are needed both to define and enforce rights.¹⁴ But few government services have ever existed in Darfur and the government has been neither willing nor able to effectively delineate and protect property rights. The judiciary is not independent and there is no due process of law, rather summary judgment and punishment by military officials is common.¹⁵

Rising population, increasing heterogeneity, and ineffective government enforcement all combine in Darfur to raise costs associated with negotiating property-rights claims.¹⁶ The result is that people increasingly clash over access to valuable, scarce land and to possession of valuable cattle. They choose to “raid rather than to trade.” These clashes in turn have led to increasingly militarized communities in which allegiances based on racial and religious affiliations became more prominent.¹⁷

The inadequacy of the formal judiciary coupled with a breakdown of traditional dispute-resolution mechanisms leaves the people of Darfur with little room for peaceful negotiation and contracting. The value of fertile land in Darfur is rising due to increased demand. This rise in value should, as noted above, lead to a gradual movement away from the traditional communal-property regime and towards greater individualization of tenure.¹⁸ Greater individualization of tenure rights would address problems that now exist over the

allocation of scarce land. However, this natural evolution is slowed because no mutually acceptable institutional structure exists that would allow stakeholders to facilitate the transition.

Farmers and herders are not able to contract effectively to allocate property rights because contract enforcement mechanisms are lacking, de jure rules are ignored, and customary, de facto property rules are rejected. Faced with serious institutional roadblocks, people may take “justice” into their own hands, form alliances based on religions or ethnicity, and fight to establish valuable property rights.¹⁹ Given that the central government in Sudan has created many of these roadblocks, it seems unlikely that it will voluntarily dismantle them. Thus, the international community must insist that property claims be impartially adjudicated (perhaps by an international arbitral panel) as a part of any negotiated peace settlement in Darfur.

Looking at the problem of resource conflict through economic lenses provides us with a way to understand why people who previously co-existed rather peacefully might resort to violence when their ability to contact and negotiate breaks down, when agreements are unenforceable, and there is no trust-worthy institution left to settle the resultant disputes.

Conclusion

At the heart of the matter, much of what underlies the conflict in Darfur are disputes over property. It is therefore imperative that efforts be undertaken to address these concerns. Darfurians may need the

help of professionals such as property-law experts, surveyors and appraisers, and mediators – all of whom can aid in the clarifying property claims in Darfur. The need for such experts may be nearly as great as the need for peacekeepers and other aid workers.

As the African Union and other nations implement plans to quell the violence in Darfur, they must consider strategies to clarify the property rights of farmers and herders. It may be that it is less important who, or which group, gets any particular property right. Losers can be compensated from some portion of the aid money flowing to the Sudan. More important than the allocation of rights may be the post-allocation environment. In other words, to address property-rights concerns in Darfur, considerable effort must be put into creating an environment in which these rights will be respected and enforced.

Thus, it is essential for the Sudanese to build institutions to protect and defend the property rights that are determined to exist. A rule of law, in other words, must be established in this war-torn nation for property reform to stick. And yet, this may all prove difficult. As the 2005 Index of Economic Freedom notes “There is little respect for private property in the Sudan.”²⁰

The situation remains especially perilous in Darfur,²¹ but fighting continues in Nigeria, the Congo, and elsewhere in Africa. While much attention is focused on problems of religious and ethnic tension, too little time and effort are being put into solving the very real problems created

by a poor property-rights environment. And sadly, unless and until the property-rights component of these disputes is understood and addressed, the fighting is likely to continue.

Property Rights and Resource Conflict in the Sudan

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¹ See GlobalSecurity/Darfur, at: www.globalsecurity.org/military/world/para/darfur.htm

² Sudan, Darfur: "Too many people killed for no reason," Amnesty International, Feb. 3, 2004, at: <http://web.amnesty.org/library/Index/ENGAFR540082004>.

³ For documentation regarding the central gov-

ernment's support of the Janjawiid militia see "Ties Between Government and Janjaweed Militias Confirmed," Human Rights Watch, July 20, 2004, at: www.hrw.org/english/docs/2004/07/20/darfur9095.htm.

⁴ "Fresh fighting in Darfur threatens peace talks," IRINnews.org, Sept. 23, 2005, at: http://www.irinnews.org/report.asp?ReportID=49222&SelectRegion=East_Africa,%20West_Africa&SelectCountry=NIGERIA-SUDAN.

⁵ "Sudan – The long road to embracing peace," IRINnews.org, Sept. 12, 2005, at: http://www.irinnews.org/report.asp?ReportID=48999&SelectRegion=East_Africa&SelectCountry=SUDAN.

⁶ GlobalSecurity.org states that "The ongoing civil war has displaced more than 4 million southerners." Available at www.globalsecurity.org/military/world/war/sudan.htm.

⁷ See Robert Cooter, "Issues in Customary Land Law," Institute of National Affairs, Port Moresby, Papua New Guinea 1989. Available at: http://works.bepress.com/robert_cooter/

⁸ Amnesty International, note 1.

⁹ For example, assume you own an apartment and rent it to a young couple for US\$ 1,500/month for a term of one year. At the end of the year's time it turns out that demand for housing in this area is much stronger and you, the landlord, can now offer this apartment at US\$ 1,750/month. In a free property market you should be able to renegotiate with the couple, offering them another year's housing at the increased price. They might need to move if the price is too high for them, or they might accept. The important issue is that the contract terms be allowed to change to reflect changes in demand.

¹⁰ See Karol Boudreaux, "The Human Face of Resource Conflict: Property and Power in

- Nigeria,” *San Diego International Journal of Law*, Nov/Dec 2005.
- ¹¹ In his seminal work “Toward a Theory of Property Rights” (*American Economic Review* 57/2 1967 p. 350) Harold Demsetz argues: “[P]roperty rights develop to internalize externalities when the gains of internalization become larger than the cost of internalization. Increased internalization, in the main, results from changes in economic values ... changes to which old property rights are poorly attuned.” He goes on to discuss the ways in which Montagnes Indians developed property rights in hunting grounds in response to increases in the value of fur-bearing animals. *Id.* p. 351–354. See also, Eirik G. Furubotn and Svetozar Pejovich, “Property Rights and Economic Theory: A Survey of Recent Literature,” *Journal of Economic Literature* 10/4 1972, p. 1141; Terry L. Anderson and Peter J. Hill, “The Evolution of Property Rights,” in: Terry L. Anderson & Fred S. McChesney (eds.), *Property Rights: Cooperation, Conflict, and Law*, Princeton 2003, p. 126.
- ¹² For a discussion of this enclosure movement see Roy H. Behnke, Jr., “Open-Range Management and Property Rights in Pastoral Africa: A Case of Spontaneous Range Enclosure in South Darfur, Sudan,” London 1985.
- ¹³ Gary D. Libecap, “Contracting for Property Rights,” in: “Property Rights: Cooperation, Conflict, and Law” (see n.11) p. 144–45.
- ¹⁴ Libecap (n. 13, p. 145) notes that in such a situation, “the power of the state usually is necessary to supplement informal constraints on access and use.” In the Sudan, the state fails to provide such supplemental support.
- ¹⁵ 2005 Index of Economic Freedom, “Sudan” Heritage Foundation and Wall Street Journal, at: <http://www.heritage.org/research/features/index/country.cfm?id=Sudan>.
- ¹⁶ Terry L. Anderson and Fred S. McChesney, “Raid or Trade? An Economic Model of Indian-White Relations,” *Journal of Law and Economics* 37 1994, p. 49–52.
- ¹⁷ See Alex de Waal, “Tragedy in Darfur,” *Boston Review* Oct/Nov 2004, at: <http://www.bostonreview.net/BR29.5/dewaal.html>. See also Gary D. Libecap (“Contracting for Property Rights,” Cambridge 1989) p. 16: “For example, an increase in relative prices or a fall in production costs will raise the stream of rents attainable from ownership and encourage new competition for control. Old enforcement mechanisms may no longer be adequate, leading to rent dissipation as inputs are diverted from production to protect against trespass and theft ... Capturing a portion of any rents that can be saved by more precisely defining property rights motivates individuals to organize for collective action to adjust property institutions from their current state to the new conditions.”
- ¹⁸ Demsetz n.3, p. 350. In situations where property values increase, competition for control of the resource often increases. For discussions of increased conflict over land as a result of increases in value see, Lee J. Alston, Gary D. Libecap & Bernardo Mueller *Titles, Conflict and Land Use*, Ann Arbor 1999, who discuss episodes of violence in the Brazilian rain forest in response to increasing demand for land; see also, Gershon Feder and David Feeny, “Land Tenure and Property Rights: Theory and Implications for Development Policy,” *The World Bank Economic Review* 5/1 1991, p. 138–39, discussing the

conflict levels in Thailand in the late 19th century in response to rising land value.

- ¹⁹ For an economic analysis of the decision-making process involved in determining when to negotiate property rights claims and when to fight over conflicting claims see Terry L. Anderson and Fred S. McChesney "Raid or Trade? An Economic Model of Indian-White Relations," *Journal of Law and Economics* 37 1994, p. 39–74.
- ²⁰ 2005 Index of Economic Freedom, "Sudan" Heritage Foundation and Wall Street Journal, at: <http://www.heritage.org/research/features/index/country.cfm?id=Sudan>.
- ²¹ "Sudan-Darfur risks descending into anarchy," IRINnews.org, Sept. 14, 2005, at: http://www.irinnews.org/report.asp?ReportID=49063&SelectRegion=East_Africa&SelectCountry=SUDAN.