

This Land is not Yours!

A Comparative Study of the Struggle for Land Claims in the Kivus, Eastern Democratic Republic of the Congo (DRC) and Abyei, Sudan

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*In Memory of **Abshir Hassan Nur (Adam) (1958-2011)**,
whose spirit, ambition and wisdom
inspired the writing of these pages.*

TABLE OF CONTENTS

TABLE OF CONTENTS	iii
LIST OF TABLES	v
LIST OF FIGURES.....	v
LIST OF MAPS	vi
ACKNOWLEDGEMENTS	vii
LIST OF ACRONYMS.....	viii
WHO’S WHO	x
DEMOCRATIC REPUBLIC OF THE CONGO (DRC)	x
SUDAN	xii
INTRODUCTION.....	1
The Kivus, DRC: A Contextual Overview	2
Abyei District, Sudan: A Contextual Overview.....	6
CHAPTER ONE: METHODOLOGY AND KEY CONCEPTS.....	10
1.1 Research Question.....	11
1.2 Comparative Case Study Analysis	11
1.3 Relevant Literature.....	12
Land, Collective identity, and the State in Africa	12
Land, Collective identity, and the State in the DRC	14
Land, Collective identity, and the State in Sudan	15
Land Claims in Post-colonial Africa.....	16
2.4 Research Design and Project Plan.....	16
2.5 Key Terms and Concepts	17
2.6 Conclusion.....	26
CHAPTER 2: TO WHOM DOES THIS LAND BELONG?.....	27
LAND AS SPACE, SYMBOLIC SPACE AND SACRED SPACE:	27
SPIRITUAL AND ANCESTRAL ROOTS IN THE KIVUS AND ABYEI.....	27
2.1 Land as Space in Africa – Capturing the Frontier Thesis	28
Some Theoretical Underpinnings of Space and Boundaries.....	28

The African Frontier Thesis.....	31
2.2 Land as Symbolic.....	43
Land, Human Identity Needs and Social Identity	43
Land in African society.....	46
2.3 Land as Sacred	48
2.4 Conclusion.....	53
CHAPTER 3: THE LANGUAGE OF LAND CLAIMS IN THE DRC AND SUDAN	54
3.1 Land on the Onset of Colonization	55
The Kivus, Eastern DRC.....	56
Sudan.....	59
3.2 The Impact of Colonialism on Land	66
Indirect Rule in the Congo	73
Indirect Rule in Sudan.....	75
Emerging trends in land, belonging and citizenship	79
3.3 The Post-Colonial Landscape	80
Land Claims in the Eastern Congo.....	86
Land Claims in Abyei	91
3.4 Conclusion.....	99
CHAPTER 4: LAND AND IDENTITY – THE BANYAMULENGE AND THE NGOK DINKA.....	101
4.1 Collective Identity and Land.....	103
4.2 ‘Placing and Naming’: The Banyamulenge of South Kivu	109
4.3 ‘Political Centralization’: The Ngok Dinka of Abyei	123
4.4 Understanding Land and Collective Identity	142
CHAPTER 5: THE POLITICS OF LAND, IDENTITY AND CITIZENSHIP	144
5.1 The Crisis of Recognition: The Banyamulenge.....	146
The Crisis of Recognition and the Crisis of Citizenship: Which one comes first?.....	147
Patterns of Violence	152
5.2 The Abyei Conundrum: The Ngok Dinka.....	158
The Abyei Protocol, the Abyei Boundaries Commission (ABC) and the Permanent Court of Arbitration (PCA)	158

Violence, Oil and a Humanitarian Catastrophe.....	161
5.3 In the Crossfire of Land, Identity, the State and Citizenship: The Banyamulenge and the Ngok Dinka	167
CONCLUSION	172
BIBLIOGRAPHY	176
APPENDIX	
A – Abyei Arbitration: Final Award	
B – UN Security Council Resolution 1990	
C – UN Security Council Resolution 2032	
D – Statement by Ban Ki-moon	

LIST OF TABLES

3-1: Clans of the Ngok Dinka who arrived in the Abyei region, 1740-1810	65
3-2: Native Authority in Uvira, South Kivu	89
3-3: Territorial Units within Tenure Regimes in Pastoralist Systems	95
4-1: The Colonial State	112
4-2: The Postcolonial State	116
4-3: Economic seasons and corresponding activities of the Ngok Dinka	125
4-4: Paramount Leaders of the Ngok Dinka	128
5-1: DRC Citizenship Laws and <i>jus sanguinis</i> for Banyarwanda	147

LIST OF FIGURES

1-1: Conceptualizing the Research Puzzle	11
3-1: How Identity Impacts Land Claims	98
4-1: Identity Map for the Banyamulenge	108
4-2: Identity Map for the Ngok Dinka	122
4-3: Ngok Dinka Hierarchical Group Structure	127
5-1: Shifting Allegiances in the Eastern DRC	151

LIST OF MAPS

1-1: The Kivus, Eastern DRC	xiv
1-2: Abyei, Sudan	xv
1-3: The People of Northern Sudan	xvi
1-4: The People of Southern Sudan	xvii
3-1: Lake Kivu trade network, around 1850	58
3-2: Province of Kordofan, Sudan	64
3-3: Congo in the Colonial Period	72
3-4: The Southern Sudan Civil Wars	94
5-1: The FDLR Presence in the DRC, 2008	156
5-2: Oil in the Sudans	163

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LIST OF ACRONYMS

ABC	Abyei Boundaries Commission
ADP	Alliance Démocratique de Peuples – organization of all Congolese Tutsi
AFDL	Alliance des Forces Démocratiques pour la Libération – Umbrella rebel organization that formed in 1996 in Eastern Zaïre under the leadership of Laurent Kabila
CNDP	Congrès National pour la Défense du Peuple – armed group of Congolese Tutsi that formed in 2004
CNS	Conférence Nationale Souveraine – internal opposition to Mobutu’s party state, Zaïre
CPA	Comprehensive Peace Agreement 2005 – the agreement signed between northern and southern Sudan which ended the second civil war
DC	District Commissioner – Personnel for Native Authority
DDRRR	Disarmament, Demobilization, Rehabilitation, Reintegration and Resettlement
DRC	Democratic Republic of the Congo
DUP	North Sudanese Democratic Unionist Party
ex-FAR	Rwandese National Army – comprised of Hutu from Rwanda; perpetrators in Rwandan genocide
FARDC	Forces d’Armées de la République Démocratique du Congo – State Armed forces of the DRC
FDLR	Forces Démocratiques de Libération du Rwanda – armed Hutu group that emerged in 2006/2007
GoS	Government of Sudan (northern Sudan)
HCR	Haut Conseil de la République/ High Command of the Republic – transition parliament in Zaïre
HIID	Harvard Institute for International Development
IGADD	Intergovernmental Authority on Drought and

Desertification

MONUC	United Nations Peacekeeping Mission for the Congo – launched in 1999 as a provision of the Lusaka Accords
MONUSCO	United Nations Organization Stabilization Mission in the Democratic Republic of the Congo – replaced MONUC in 2010
NCP	National Congress Party – the current government of Sudan under al-Bashir; renamed from NIF after 2005
NIF	National Islamic Front – government in Sudan
NUP	National Unionist Party – 1 st Government of independent Sudan
PARECO	Coalition des patriotes résistants Congolais – The largest group of the Mayi-Mayi militia
PCA	Permanent Court of Arbitration – The Hague, Netherlands
RCD	Rassemblement Congolais pour la Démocratie – rebel group comprised of Banyamulenge in the Kivus
RPF	Rwandan Patriotic Front – comprised of mostly Rwandan Tutsi from the diaspora
SAF	North Sudan’s Armed Forces – state military
SSAF	South Sudan Armed Forces – state military
SSLM	South Sudan Liberation Movement – active during the first civil war in Sudan
SPLA/M	Sudan People’s Liberation Army/Movement
STAREC	Stabilization and Reconstruction Plan for Areas Emerging from Armed Conflict – plan put forth by Congolese government in 2009 to restore state authority to post-conflict regions and resettle IDPs and refugees
UNISFA	United Nations Interim Security Force for Abyei
UNMAS	UN Mine Action Service

WHO'S WHO

Indigenous Groups: Indigenous refers to populations present in the two regions before the arrival of settlers, migrants and refugees. In the Eastern DRC, the indigenous population is comprised of over 200 ethnic groups of which the majority is Bantu. The four largest tribes are the Mongo, Luba, Kongo (all Bantu), and the Mangbetu-Azande (Hamitic), who in total make up about 45% of the population (CIA, 2011). Sudan (prior to the secession of the South) is comprised of over 56 ethnic groups and close to 600 sub-ethnic groups. The Western Nilotes are the largest Sudanese linguistic group and they include the Anuak, Dinka, Nuer and Shilluk. These groups occupy parts of southern Kordofan and the White Nile province (Minority-Rights-Group-International, 2009).

DEMOCRATIC REPUBLIC OF THE CONGO (DRC)

Banyarwanda: Term for Rwandan diaspora, Hutu and Tutsi, living in the Eastern Congo, primarily the Kivu regions. Newbury (2009) says that it is difficult to classify Tutsi or Hutu as distinct ethnicities, as there have been intermarriages throughout history, and the ethnicity of children follows the patriarchal line. The Banyarwanda speak Kinyarwanda, the Rwandan language, and they are the largest ethnic group in East Africa as they are spread over Rwanda, Burundi, Uganda, Congo and Tanzania. For most of the post-colonial period, they have been considered ethnic strangers in the DRC.

Banyamulenge: They are a sub-group of Banyarwanda, who are Tutsi. They settled South Kivu, Eastern DRC, in order to differentiate and distance themselves from political events in Rwanda and Burundi. Many were elites and wealthy. They have not classified themselves under the Banyarwanda umbrella. Like the Banyarwanda, they too have been considered ethnic strangers in the DRC.

Alliance des Forces Démocratiques pour la Libération (AFDL): Umbrella group for rebel organizations in Eastern Zaïre, who were against Mobutu. AFDL was led by Laurent Desiré Kabila and in 1997, they overthrew Mobutu, took charge of the Zaïrean state and renamed the country the Democratic Republic of the Congo. AFDL consisted of Banyarwanda and Banyamulenge and was supported by the Rwandan state.

Conférence Nationale Souveraine (CNS): an internal opposition party to Mobutu's one-party state of Zaïre that emerged in the 1980s, after Mobutu was pressured from the international community to incorporate democratic principles. A civil society initiative from Upper Congo province sought that CNS representation would reflect Zaïre's differing "demographic weights" (de Villers & Tshonda, 1997), so this worked to benefit Mobutu and his geopolitical support strategies. Mobutu said that delegates could only represent the provinces to which they were indigenous, which disfavoured all Rwandophones. The CNS based its platform on classifying Banyarwanda and Banyamulenge as foreigners. The CNS was responsible for implementing the 1981 citizenship decree in 1991, which opposed citizenship rights for Banyarwanda and Banyamulenge.

Congrès National pour la Défense du Peuple (CNDP): In 2004, a former commander of the RCD, Laurent Nkunda, who had refused to disarm, returned to arms under the CNDP.

Nkunda was a Rwandan-trained Congolese Tutsi who sought to protect the political and economic interests of the Congolese Tutsi, and was supported by the Rwandan government. After the elections of 2006, which kept the transitional government under Joseph Kabila in power, the CNDP engaged in conflict with the Congolese army and the FDLR. In a drastic shift of allegiances at the end of 2008, President Kabila and President Kagame of Rwanda, a Tutsi, joined forces to address the violence in Eastern Congo. Therefore, in 2009, the CNDP was officially dismantled and its members were incorporated into the Congolese Army in a joint Congo-Rwanda initiative, Operation ‘Umoja Wetu’ (Our Unity) to resolve the violence. This agreement kept MONUC out of the planning and implementation as its primary objective was to dismantle the FDLR. Former CNDP were therefore given key political and security positions within the Congolese army in the Kivus (ICG, 2009). Although this was a significant step in resolving the conflict, displaying a great deal of political will, it has not put an end to the violence in the Eastern Congo.

Forces Démocratiques de Libération du Rwanda (FDLR): They are an anti-RPF Hutu guerilla group composed of the ex-FAR, Interahamwe and the former *génocidaires*, who were all responsible for the 1994 Rwandan Genocide. In the various peace agreements to end the wars in the Eastern Congo, 1998-2003, the Hutu militia were never disarmed (Havermans, 1999: 244; Prunier, 2009) and as a result, these groups only got stronger and the UN Mission in the Congo (MONUC) was unable to stop the violence when the cease-fire was breached. MONUC was frozen by its peacekeeping mandate as well as its commitment to disarmament, demobilization, rehabilitation, reintegration and resettlement (DDRRR). Currently, the FDLR are allied with the Mayi-Mayi in South Kivu and the FARDC, with support from the international community, is trying to disarm them. The FDLR are also responsible for mass atrocities against civilians.

Mayi-Mayi The Mayi-Mayi are ethnic militias used as surrogates to serve national and foreign factions. They are indigenous Bantu Congolese who have assisted the FARDC, the FDLR and the AFDL at different points in time. The groups control areas rich in resources.

Coalition des patriotes résistants Congolais (PARECO): The largest Mayi-Mayi group is the PARECO, which was created in March 2007 and was comprised of Congolese Hutu, Hunde and Nande people. PARECO cooperated with the FDLR in 2007 and 2008, but in 2009, many were incorporated into the FARDC.

Rassemblement Congolais pour la Démocratie (RCD): The political wing of the Anti-Kabila movement, Congolese Rally for Democracy (RCD), was formed by Congolese politicians and headed by Wamba Dia Wamba in 1998. The members of the main rebel coalition cried out against Kabila and the crisis in state institutions, accusing the government of corruption, nepotism, vote-catching, arbitrary rule, adding to impoverishment of population, mismanaging funds, inability to restore peace, security and unity at national and regional levels. These members included the Banyamulenge. The RCD-Goma, supported and endorsed by Rwanda, wanted to establish an administrative territory of Minembwe, where the Banyamulenge would be the majority (Manby, 2009). Minembwe was an attempt to give the Banyamulenge indigenous rights to land and to secure a place in which they could legitimately belong. This attempt was quickly countered by Kabila when he sent militias to defeat the RCD-Goma in 2004.

Rwandan Patriotic Front (RPF): Militia group made up of Rwandan exiles, mainly Tutsi, who were living in Uganda. They formed in Uganda in 1987 to carry out an insurgency against the Rwandan state. In 1994, the RPF defeated the Hutu militias in Rwanda, who were the conductors of genocide. The RPF took power in Rwanda immediately afterwards.

SUDAN

Ngok Dinka: They are a group of Dinka who settled in Abyei from 1740. There are nine sub-groups, one of which is the Pajok lineage that determines chieftaincy. They are agro-pastoralists.

Humr-Misseriya: A sub-group of the Misseriya people, who are Baqqara people, and travel to the Abyei region during the dry season of the North. For over a century, they cooperated with the Ngok Dinka for shared rights to land near the Bahr al-Arab river. In present day, they claim rights to Abyei and maintain that the region should belong to Sudan.

Anya-nya: A guerilla group that formed in Southern Sudan in 1963, consisting of Southern Sudanese indigenous groups. They believed themselves to be freedom fighters against the oppressive and discriminatory policies of the North. During the first civil war, they were armed by Israel, who supported their resistance and war against Arabization and Islamicization. Egypt, through most of history, has been closely allied with the Arab Sudanese State. During the 1960s, Egypt was among the Arab enemies of Israel, so therefore, Israel's support of Southern Sudan was consistent with its own best interests.

Anya-nya II: An offshoot group that formed after Anya-nya came apart. Anya-nya II emerged during the second civil war, after 1983.

Baqqara People: Arab nomadic-pastoralists of Sudan, who participated in slave-raids of the South under the Mahdiyya. They include the Humr-Misseriya group.

Mahdiyya: Overthrew the Turco-Egyptian regime and ruled Sudan from 1885-1898 prior to the Anglo-Egyptian Condominium. The religious messages of the Mahdi attracted a large following of Sufi mystics who pledged an oath of allegiance to him, among who were the Baqqara Arabs. The regime was referred to as the Madhiyya. When the Mahdi died on June 22, 1885, he was succeeded by his confidant, the Khalifa 'Abdallahi, 'the Khalifa', who became the new leader of the Mahdiyya.

South Sudan Liberation Movement (SSLM): A Southern resistance movement that existed before the SPLM/A. The SSLM were signatories of the Addis Ababa Peace Agreement of 1972, which ended the first civil war.

Sudan Armed Forces (SAF): The armed forces of Sudan (North). Under the Government of Sudan, the SAF entered Abyei in May 2011, causing massive displacement.

Sudan People's Liberation Movement/Army (SPLM/A): Movement of Southern Sudanese resistance that formed in 1983 under the leadership of John Garang. The group fought the

North in the second civil war (1983-2005) that ended when they signed the Comprehensive Peace Agreement in 2005 with the National Islamic Front (NIF). Only months after the signing of the CPA, Garang was killed in a helicopter crash. Salva Kiir became the new leader of the group. Under Garang, the group favoured unity, but under Salva Kiir, the SPLM/A shifted to separatism. Upon secession, members of the SPLM/A formed the new government of South Sudan with Kiir as president.

SPLM/A-North: Non-Arab groups that are presently living in Sudan, but who connect with the identity of the Southerners. They are currently fighting the SAF in the Nuba mountains region and in South Kordofan.

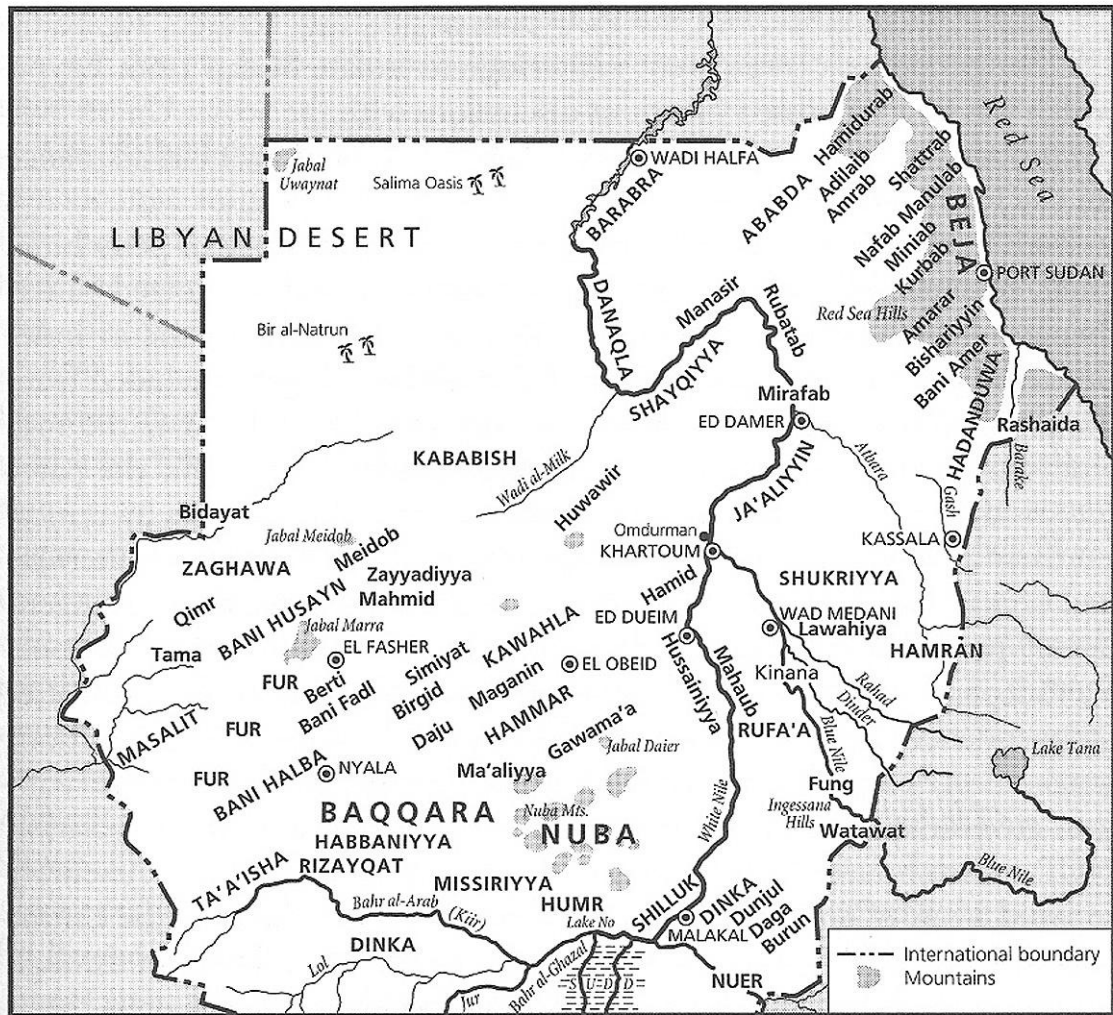
Turco-Egyptian regime: Rulers of Sudan from 1821-1885. Muhammed Ali, an Albanian soldier who became Egypt's leader after the Napoleonic wars, was the leader of the entire Turco-Egyptian regime and his invasion of Sudan began in 1820. See Johnson, D.H., 2011, *The Root Causes of Sudan's Civil Wars: Peace or Truce*.

Map 1-1: The Kivus, Eastern DRC



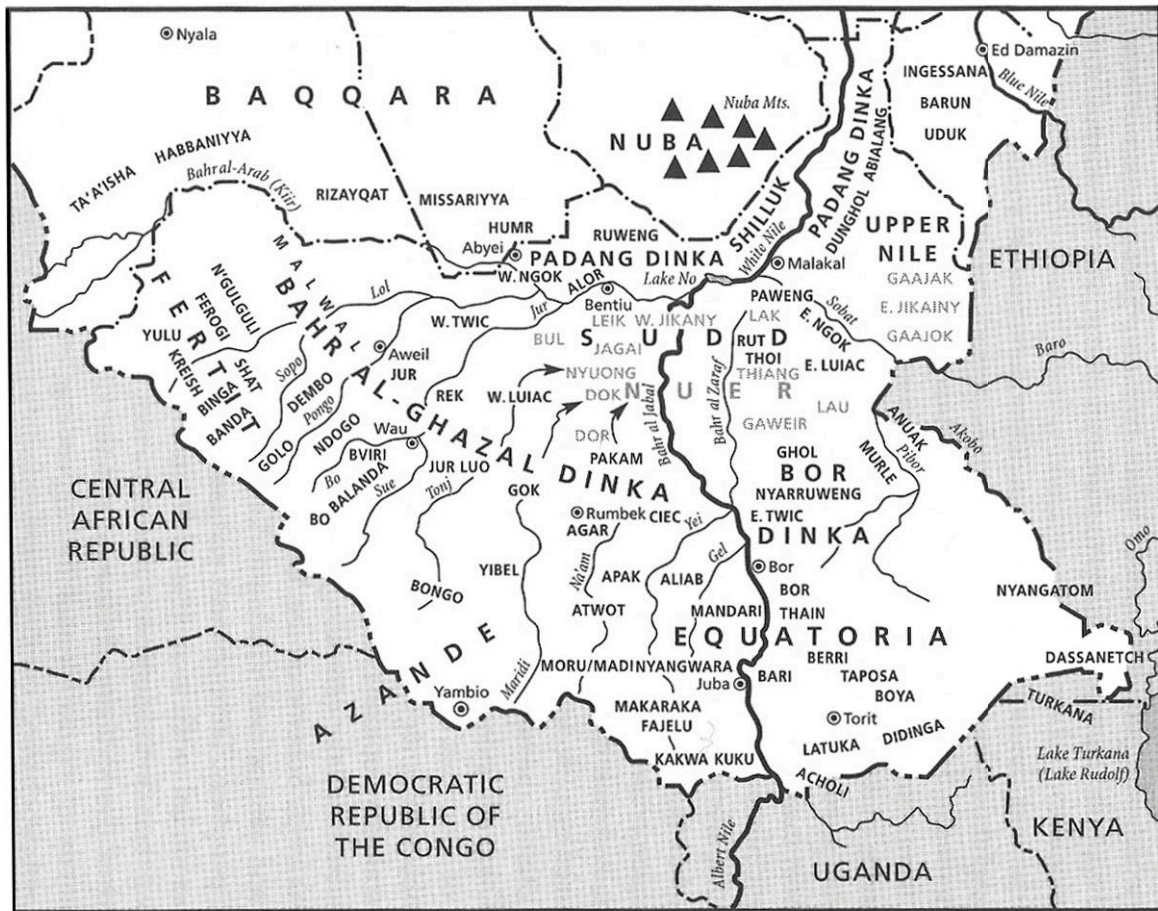
Source: <http://conflictmineral.wordpress.com/a-brief-history-of-drc/>

Map 1-3: The People of Northern Sudan



Source : (Collins, 2008: 71)

Map 1-4: The People of Southern Sudan



Source: (Collins, 2008: 246)

INTRODUCTION

The ongoing crisis in the Democratic Republic of the Congo (DRC) is known as one of the worst since World War II because of the number of deaths that have occurred and are still occurring. Since 1998, an estimated 5.4 million people have died (International-Rescue-Committee, 2007). As of April 2010, at least 1.8 million people were displaced, a displacement which constituted the fourth largest in the world. 1.4 million of these were displaced in the provinces of North and South Kivu in Eastern DRC, an area that borders Rwanda (HRW, 2010). Another significant crisis on the continent has unfolded in Sudan. The Comprehensive Peace Agreement (CPA) of 2005 ended Africa's longest-running war that claimed over 2 million lives (International-Rescue-Committee, 2011). The Comprehensive Peace Agreement (CPA) of 2005 was the prelude for the secession of South Sudan from the North. There were a few unresolved issues that were set to be discussed at a later date, and among them was the status of Abyei (Böckenförde, 2010; Johnson, 2007). In the Addis Ababa Accord of 1972 that ended the first civil war, the issue of Abyei was also unresolved, as the region has proved to be an issue of contention for decades.

South Sudan became the world's newest state on July 9th, 2011; however, the Abyei region on the border between the North and the South remains stateless. Following the CPA a special team of experts, the Abyei Boundaries Commission (ABC), was appointed to define and delineate the Abyei area. The findings were rejected by the Government of Sudan (GoS)¹ in 2008, and the Abyei dilemma moved to the Permanent Court of Arbitration (PCA) in The Hague. Violence erupted on the North-South border in May 2008 displacing over 50,000 people and nearly destroying the town of Abyei (Kristof, 2008). When the Hague Tribunal presented the Final Award for Abyei in 2009, it too was rejected by the Sudanese government. As of June 2011, approximately 200,000 people have been displaced or severely affected by the conflict that continues to resonate in this deeply contested region (OCHA, 2011).

The time has come to understand the factors underneath the chaos to enable us to address the root causes of conflict effectively. This project seeks to investigate the deeper

¹ The GoS is led by President Al-Bashir and is also referred to as the National Congress Party (NCP).

systemic issues that affect or sustain conflict by focusing on the collective identity and relationship to the land of two specific groups, the Banyamulenge of South Kivu and the Ngok Dinka of Abyei. The Land Question in Africa has occupied academic investigation and policy research for decades. Land tenure is complex enough in stable regions, but in conflict-ridden areas, it is complicated further. For competing land claims, what varies between contexts is “the specific conjuncture of activities, interests, relationships, and understandings that make up history at a particular time and place” (Berry, 2001: 200). Land has also been one of the causes of social conflict as it relates to nationalism (Anseeuw and Alden, 2010).

The Kivus, DRC: A Contextual Overview

The DRC is a 2,267,000 km² area characterized as a rim-land country where “the major population concentrations are found in its border regions while its interior is relatively empty.” (Herbst, 2000: 147) It is the second-largest country in Africa and the eleventh largest country in the world by area, which is equivalent to about a quarter of the size of the United States. The estimated population is 73,599,190 (CIA, 2012). DRC has not had a census since 1981, but according the UN Statistics Division, a census is underway for 2012. South Kivu is 65, 070 km² which makes it larger than Sri Lanka but smaller than Ireland. North Kivu is slightly smaller at 59, 483 km². Although the Kivus are densely populated, no accurate statistics are currently available for this region. There are over 200 African ethnic groups of which the majority are Bantu, indigenous Congolese, with the three largest groups being the Mongo, Luba and Kongo. Additionally, the country is rich in resources which include cobalt, copper, niobium, tantalum, petroleum, industrial and gem diamonds, gold, silver, zinc, manganese, tin, uranium, coal, hydropower and timber (CIA, 2012).

In the Kivus of DRC, the Banyarwanda are of Rwandan Hutu and Tutsi descent. Some Banyarwandans arrived during the colonial period, during which the Congo Free State was first administered under King Leopold II of Belgium (1885-1908) before being

transferred to the Belgian government (1908-1960).² The Banyarwanda were granted land in the Congo Free State from the Belgians, who did not see them as ‘foreign natives’, since Rwanda was also a Belgian colony. According to Deng (2001: 193), “it is estimated that two hundred thousand persons immigrated to Kivu during the colonial period.” Between 1937 and 1955, the Banyarwanda that arrived in the Eastern DRC were mostly Hutu, who were forced by the Belgian administrators to work on the colonial plantations (Deng, 2001). There were three waves of immigration in the post-colonial period: 1959-1963, 1972-1973 and 1994. As a result when Zaïre gained independence in 1960, the Banyarwanda constituted a majority of the population in certain regions. It was at this point that the tensions between the Banyarwanda and indigenous Congolese began.

The Banyamulenge are a sub-group of Banyarwanda, who are Tutsi and who came from Rwanda at various points in history. With the permission of an indigenous tribe, vis-à-vis the colonial administration, the Banyamulenge settled in an area of South Kivu, the Eastern DRC, known as ‘Mulenge’, and hence this is the derivation of their name (Deng, 2001; Prunier, 2009). They speak Kinyarwanda, the language spoken by Rwandan Hutu and Tutsis. Kinyarwanda is the linguistic marker that differentiates the Banyamulenge from the indigenous Congolese in the DRC. As such, their ethnic group is the same as the Tutsis of Rwanda, but their experience from living in the Eastern DRC alters their identity from that of their neighbouring counterparts (Newbury, 2009).

Tensions between the indigenous Congolese and the Banyamulenge intensified during the civil war of 1964-65 when the Banyamulenge assisted the state in crushing a rebellion that the indigenous Congolese supported (Deng, 2001). These tensions included disputes over rights to the land. After the period of decolonization in the early 1970s, political conflicts in Rwanda and Burundi generated hundreds of thousands of refugees (Schneider, 1999). It was during this period that the name ‘Banyamulenge’ was adopted, a political strategy allowing these people to differentiate themselves from the Banyarwanda, who were known by the Congolese state as foreigners (Prunier, 2009). The name was

² The Congo Free State was transferred to the Belgian government after King Leopold came under international scrutiny for the mass human rights abuses committed in the Congo (Hochschild, 1999).

contested by the indigenous Congolese, “who feared that the claim to a place-based identity really masks an immigrant strategy designed to lay claim to local land.” (Deng, 2001: 194) Scholars (Mamdani, 1997; Newbury, 1997) have pointed to the fact that the Banyamulenge may have been intentionally distinguishing themselves in order to escape their history of originating in Rwanda during the political upheaval that forced them to flee the country when they were subject to the royal court in Rwanda (Deng 2001).

In North Kivu, the Banyarwanda population existed among indigenous Congolese citizen groups who asserted authority over access to the land and viewed the Banyarwanda as foreigners. Tensions over land claims, economic envy and the civil war of 1964-65 were exacerbated into explicit disputes about citizenship (Deng, 2001), which became the basis to legal entitlement to the land. Because the Banyarwanda were excluded from local power structures, they began to seek electoral positions at the provincial and national levels, an initiative which provoked a negative response from the indigenous Congolese who, following the civil war, started to oppose the extension of citizenship rights for the Banyarwanda (Mamdani, 1997 in Deng, 2001: 196-7). In both North and South Kivu, the politics of identity and land claims were evident, as were the assertions of rightful belonging and citizenship. These developments marked the preliminary stages of the Kivus as a contested landscape that remains highly ethnicized.

In 1971, Mobutu had declared that all persons from Rwanda and Burundi that were established in Zaïre by June 30, 1960 were citizens, but in 1981 he revoked this policy in a decree that was fully implemented in 1991. The 1981 law treated the Banyarwanda as though they were denationalized but it was not enforced through administrative measures. During the 1980s, Banyarwanda were prevented from participating in active politics and there were few cases of forced repatriation to Rwanda and Burundi, but their identity cards were not revoked so they were still able to vote (Deng, 2001; Jackson, 2007; Manby, 2009). At the end of the Cold War and under pressure from the international community to abide by democratic principles, Mobutu moved away from the one-party state to incorporating political pluralism for each citizen, which encouraged people to abide to the political party of their choice (*Mobutu: roi du Zaïre*, 1999). The Conférence Nationale Souveraine (CNS)

emerged in 1991 as an internal opposition to Mobutu's party state, and agreed that the matter of citizenship for Banyarwanda needed to be settled. The CNS validated the 1981 law and enforced it at the administrative level. Since the rights of citizenship and belonging for the Banyarwanda and Banyamulenge have been manipulated by the state, these groups are now vulnerable and marginalized. Their ability to secure land is hindered.

When the Rwandan genocide in 1994 occurred, it induced another influx of Rwandan Tutsi and moderate Hutu migration into the Eastern Congo. There were approximately 1,100,000 Rwandese refugees in Eastern DRC in September 1996, 200,000 of whom died as a result of violent attacks on the camps by various militia groups (Prunier, 2009). Congo became the site of the imported Rwandan conflict and the site of territorial control by various groups vying for power, which intensified the disputes over land claims. According to Prunier (2009), the population of the Banyamulenge in South Kivu Province was between 60,000 to 80,000 in 1997 which was approximately 3 to 4 percent of the 2.4 million people living in South Kivu. In North Kivu, the Banyarwanda make up about 40 percent of the 2.8 million people living in the province (Prunier, 2009).³ When Mobutu was ousted in 1997 by Laurent Kabila and the Alliance des Forces Démocratiques pour la Libération (AFDL), Kabila became the president with the assistance of Rwandans in his army. Kabila renamed the country the Democratic Republic of the Congo. He initially planned to keep Tutsis in key positions in the army and government. Many Congolese felt the Rwandan mission in the country echoed colonial occupation, sentiments which led to the dismissal by Kabila of all native Rwandans from the Congolese army in order to maintain political power and to appease his Congolese citizens (Afoaku, 2004; Havermans, 1999). The anti-Rwandan rhetoric increased drastically during this time and began to target Rwandans who had lived in the country for decades as well as those people who were born in the DRC to Rwandan parents. Brief, as a result of their long and difficult history in the region, the polarization occurring during the Congo Wars of 1996-2003 and their constant ethnic marginalization among native Congolese, the Banyamulenge's claim to belonging to the land, as well as their

³ It is difficult to estimate these numbers in recent years given the refugee movements from neighbouring countries into the DRC, the number of deaths due to prolonged conflict and the rebel movements within the region and to neighbouring countries. Similarly, it is difficult to know the numbers of Banyamulenge in rebel factions. I will draw on data from NGO reports, UNHCR and the World Bank from 2010 and 2011 to estimate figures, as the DRC has not had a census since 1981.

right to exist peacefully on that land, have been undermined at local, regional and national levels. The lack of territory in which to assert political will, economic opportunity, and a sense of belonging has resulted in the formation of rebel groups and armed militia, as well as pronounced political mobilization (Salehyan, 2009). A by-product of political mobilization is the exploitation of natural resources to ensure survival within a corrupt and hostile state under Kabila.

Abyei District, Sudan: A Contextual Overview

The population of North and South Sudan prior to secession in July 2011 was estimated at 34,206,710. For South Sudan the population is approximately 10,625,176 (CIA, 2012). There are no recent statistics for the current population of Sudan. Sudan, excluding Abyei, is approximately 1.8 million km² and is the third-largest country in Africa (US-Department-of-State, 2012). The region of Abyei is roughly 9,764 km², which is slightly smaller than the size of Lebanon.⁴ This includes the region in northern Abyei where shared land rights between the Ngok Dinka and Humr-Misseriya were suggested by the PCA.

The Dinka form the largest tribe in South Sudan, and it is the Ngok Dinka, the Dinka who reside in and around the Abyei region, who claim the right to Abyei for several reasons. First, Abyei was the birthplace of Chief Deng Majok who led the Ngok Dinka from 1942 until his death in 1969 (Deng, 2009). Abyei can be depicted as a sacred space for the Ngok Dinka because of its spiritual connection to ancestry (Deng 1995). Dividing the land is problematic because sacred space loses significance if divided. According to Hassner (2009: 43), “sacred places are monolithic spaces that cannot be subdivided; they have clearly defined and inflexible boundaries; they are unique sites for which no material or spiritual substitute is available.” Second, Abyei was of political importance to the Ngok Dinka. Beswick (1998) argues that until the 20th century, the Dinka settlements remained diffused and dispersed, but a centralized political structure emerged in Abyei with the dawn of the

⁴ There are no available statistics for Abyei as the region is highly contested. The size of the Abyei area is also disputed between the governments of Sudan and South Sudan. A mathematician, Mark Pahwa (BMath, MBA Carleton University), calculated the area by using longitudinal and latitudinal specifications of borders put forth in the Abyei Final Award by the PCA (see appendices).

Anglo-Egyptian Condominium in 1898 under Ngok chief, Arob Biong. Third, Abyei was a bridge between the Islamic North and the multi-religious, multi-ethnic South during the colonial period of 'Indirect Rule. To achieve maximum efficiency, the colonial powers deemed it necessary to divide the Sudan along ethnic and religious lines (Babiker, 1998). The history of the region is dauntingly complex in terms of land use and tenure, indirect rule by the Native Authorities, the multi-ethnic and multi-religious composition and its very ecology that has attracted pastoralists for centuries.

Consider, for instance, the relationship between the Ngok Dinka, agro-pastoralists, and the Humr-Misseriya, transhumant pastoralists, who migrate to Abyei during the dry season to escape the harsh environmental conditions in the north. The Humr-Misseriya people originate from the Nuba Mountain region in the north of Sudan and are Arab-African. Both of these tribes maintained peaceful alliances for significant lengths of time throughout history and jointly made use of the land for their respective livelihoods. Yet, there are also several points in history where the tribes (including the Nuer) invaded each others' land, causing the colonial administrators to create borders along tribal lines with the intention of creating peace (Beswick, 1998). While Abyei is symbolic to the Ngok Dinka, it is also important to the Humr-Misseriya because it is a place of fertile land that accommodates their livelihoods (Johnson, 2007). President al-Bashir and the National Congress Party (NCP) promote a policy of Arabization and Islamicization in Sudan so the GoS supports the Humr-Misseriya because they are Arabs. This support is also used to secure the GoS's hold on the oil-rich region of Abyei that is of economic importance. It was estimated that in 2002, Sudan's annual revenue from oil was over US \$1 billion, which the GoS used to finance the war against the South and in Darfur. The existence of oil in Abyei has added another dimension to the conflict on the North-South border.

It is important to note that while living in the Muslim North of Sudan, the Ngok, unlike several other tribes, were never Arabized. The few Ngok Dinka who converted to Islam retained their Dinka identity. They were able to exist in Abyei with the support of the British until the Ngok's state structure became as strong as that of their neighbours, the Humr-Misseriya (Beswick, 1998). Abyei, however, was never part of the South, which

today complicates the issue of the Ngok Dinka in Abyei, who in 1983 helped to form the Sudan Peoples' Liberation Movement/Army (SPLM/A) to exercise and protect their right of self-determination. The SPLM/A and the Sudanese Armed Forces (SAF) were involved in a brutal civil war for decades, resulting in the Comprehensive Peace Agreement (CPA) of 2005. Given the sacred dimension of the land, the economic potential of the area, the social history of the Ngok Dinka living among the Humr-Misseriya in the Muslim North, their allegiance with the SPLM/A, it becomes clear how identity is highly politicized in Sudan and in South Sudan, making the Abyei region an extremely volatile 'flashpoint' for conflict.

At first glance it would be tempting to classify the conflicts in Sudan or in the DRC as wars of identity, resource wars or ruthless power struggles. These elements exist, but there are more factors to take into account. It is important to understand how collective identity impacts and is impacted by land claims and in turn, how these elements relate to the current conflicts. While I do not argue that land is the largest or only reason for turmoil, groups vying for territory have been one of the cornerstones of the ongoing dysfunction. The study will employ historical inquiry to make sense of the unresolved issues from the past and reveal the contexts in which people lived, as these are critical to framing land and identity in the present. As Newbury (2009: xiii) asserts, an "informed historical understanding can be seen as an integral part of addressing contemporary tensions." Much of African history is found in oral tradition, so there was little of that history that was documented until European colonization. Many of the perceptions of Africa, therefore, came from an imperialist perspective through a lens of European moral superiority. Thus, "as with so much else in African history, with its paucity of written records, to reconstruct from the few pieces that we know we must have a structured understanding of what we do not and may never know." (Kopytoff, 1987: 78)

In the beginning of this work I was aware that given my years of living and working on the continent, my pre-conceived notions of the complexities of the African state could impact my research. I lived in Accra, Ghana from 1989-91, where at the age of seven my first impressions of the continent were formed. Then I lived in Harare, Zimbabwe from 1991-95 and I returned to Southern Africa in 2008, where I worked as a project management advisor in the HIV/AIDS sector in Botswana until December 2009. This research has

therefore demanded quite a degree of introspection such that I must remain as objective as possible in analyzing the phenomena. According to Finlay (2001: 70), “the one who can interrogate positioning and be accountable” is the researcher who is aware of the “split and contradictory self.” Research “is often motivated by...‘*felt necessity*’ in the sense that the topic of the research, or the approach to it, resonates with the ‘personal context of the researcher’.” (Finlay, 2001: 70-71) My accumulated thoughts and ideas about Africa have influenced the direction I have chosen for this study in my objective to bring forth another lens through which we can analyze the current crises of the Eastern DRC and Abyei.

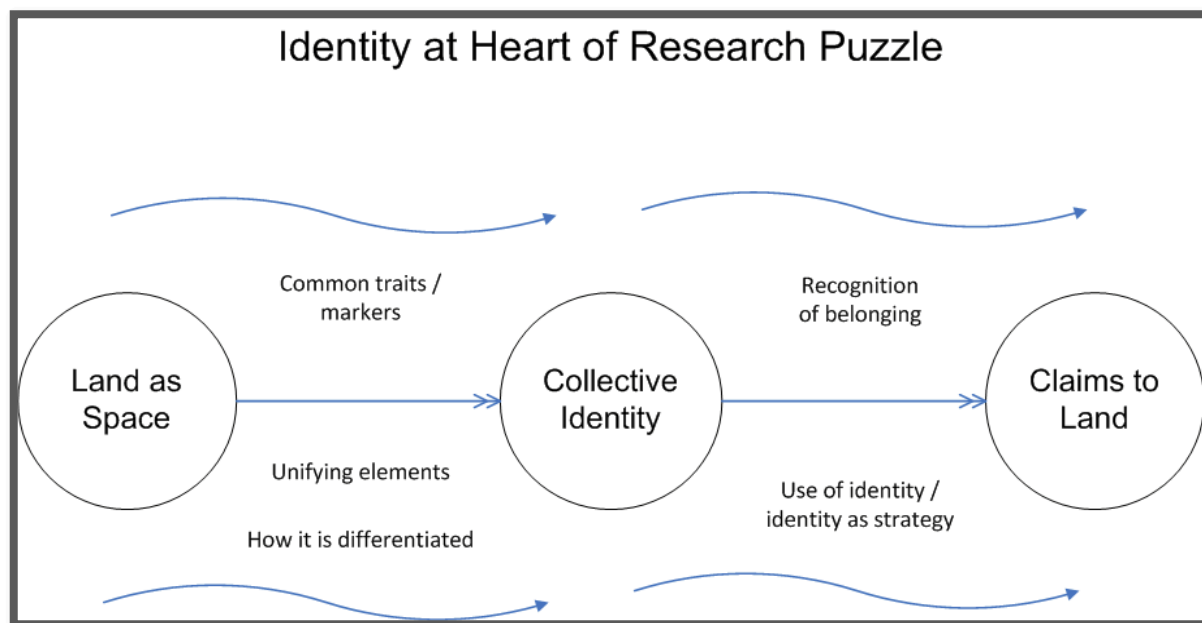
CHAPTER ONE: METHODOLOGY AND KEY CONCEPTS

This project is a focused comparative case-study between two regions of Africa, the Kivu regions of the Eastern DRC and the Abyei District of Sudan to understand and compare the history of land claims. I examine the groups of Banyamulenge of South Kivu and the Ngok Dinka of Abyei specifically. The analysis is grounded in the impact of collective identity coupled with notions of citizenship, belonging and the role of the state to assess how these factors intersect and thus determine land allocation. The important questions that guide my research are: how is land conceptualized for the specified groups of people? How has land as a symbolic entity been strategized for groups claiming land? Is the contemporary means to assert authority over the land a legacy of colonialism? When and how does the state recognize territory and belonging for groups?

The study looks at the politics of land and collective identity⁵, how citizenship was assigned and its implications in terms of land rights and belonging, the role of the state in exacerbating policies of inclusion and exclusion and the history of land claims. By employing an interpretivist approach (Jackson and Verberg, 2002), this research specifically focuses on the role and the power of collective identity in advancing land claims in regions that have undergone protracted conflict. The key foundational principle for this thesis is the fluidity of collective identity as well as the meaning of land.

In this chapter I begin by introducing the research question and providing an overview of the relevant literature. I then outline the research design and structure of this comparative case study, specifying the variables that will be considered. This is followed by detailed definitions of the key terms and concepts that will be used to compare and contrast the history of land claims between the two groups. Finally, I acknowledge the challenges in undertaking this study and discuss how these challenges were managed.

⁵ Collective identity in this study will entail ethnic, religious, racial and cultural identities.

Figure 1-1: Conceptualizing the Research Puzzle

1.1 Research Question

This study is grounded in a heuristic framework and has one guiding research question as well as a hypothesis.

Research Question

How do groups competing for land rights in Abyei, Sudan and the Kivus, Eastern DRC use multiple identities to advance their claims?

Hypothesis

I hypothesize that both collective identity and the meaning of land are fluid concepts, that they are subject to shifts and reconfiguration because they are constructed according to context, time and place.

1.2 Comparative Case Study Analysis

The case study approach offers “the detailed examination of an aspect of a historical episode to develop or test historical explanations that may be generalizable to other events.” (George and Bennett, 2005: 5) Case study methods are useful in achieving high conceptual

validity, formulating new hypotheses, closely examining hypotheses of causal variables in individualized cases and addressing causal complexities (George and Bennett, 2005). The research embarks upon an in-depth comparative case study analysis drawing on secondary sources. Literature of history, anthropology, sociology and political science is used to examine the relationships among land claims, collective identity, citizenship and belonging and the state.

[C]ase selection should be an integral part of a good research strategy to achieve well-defined objectives of the study. Hence, the primary criterion for case selection should be relevance to the research objective of the study, whether it includes theory development, theory testing, or heuristic purposes. (George and Bennett, 2005: 83)

The two regions are currently hot beds for conflict, have not been investigated in a comparative study for land claims and are regions that are contested among different groups. They also represent regions that are lush and contain cultivable land, factors that explain why historically they have been sought after by different groups. Given that much of Africa is dry, the environmental conditions in these areas have underscored group competition to gain access. Both regions also contain valuable resources.

1.3 Relevant Literature

Land, Collective identity, and the State in Africa

There is a growing body of literature that relates land to collective identity politics in Africa (Chaveau, 2006; Lentz, 2006; Lund, 2008). In the academic literature, there is a tendency to look at land from a materialist lens but it is necessary to understand land in the African context. According to Lentz (2006:1), “Rights to land are intimately tied to membership in specific communities, be it the nuclear or extended family, the larger descent group (clan), the ethnic group, or, as is the case in modern property regimes, the nation-state.” Understanding the importance of land is critical because “the absence of any systematic analysis of land conflicts, and the integration of these insights into sound policies and post-conflict reconstruction strategies, potentially contributes to the perpetuation of the conditions which fuel conflict.” (Lentz, 2006: 2) Moreover, ancestral land impacts upon identities from “the ways in which people are bound to the land and relate to their natural

surroundings as well as fundamental feelings of connectedness with the social and cultural environment in its entirety.” (ibid) Land is symbolic for most Africans because of how it has been positioned in traditionalist societies and economies.

For Brown (2006) people claim collective identity to the land through the state, the national sense of belonging, the sensually intimate connection to the terrain, the economic potential it holds, and what is legally defensible as property rights. Also, people tend to have stories which intensify and validate the connections to the land. When groups have been kicked off the land, when land was redistributed and when claims to land were not honoured by governing figures, these stories become tales of historical grievances.

Generally speaking, land in Africa has been the site of struggles of possession, representation and control (Trigger, 2003). Land and inequality around land have negative repercussions. The likelihood of violent conflict increases when many forms of inequality intersect and when these correspond to lines of racial and class identity (Derman, Odgaard and Sjaastad, 2007).

In addressing the state in Africa, Bayart (1993) discusses the existence of an ethnic conscience that is often depicted as tribalism. Ethnicity cannot be separated from the state. “A product of history and the race for accumulation, created ‘from the bottom’ as much as by the ‘national bourgeoisie’ or ‘imperialism’, ethnicity criss-crosses the lines of social stratification and those of integration within the State.” (Bayart, 1993: 58) Ethnic conflict is prevalent throughout the continent and many scholars attribute this to the failed efforts of governments to accommodate contesting identities (Steeves, 2002; Zewde, 2008). Other scholars point to the violence in the African state “as a process of identification and differentiation” (Broch-Due, 2005: 19), which is intrinsically linked to belonging. There may be implications for violence and belonging specifically in terms of land rights.

Nationality and land rights have been explored in the context of territorial sovereignty and conflict (Metzer and Engerman, 2004; Austin, 2004; Levy, 2000). In reference to land and nationalism generally, Levy (2000) states

...nationalism thinks about that homeland in certain recurrent ways. It elides the distinction between sovereignty and ownership; all of the land belongs to this people, from whom it cannot be taken away. Nationalism typically conceptualizes land as place, not property. This piece of land is part of the patrimony of this nation. Perhaps it is of particular historical or religious importance. Perhaps the beauty of this spot is a cause for national pride, or perhaps this kind of terrain is taken to embody something about the nation... A people is in some way particularly well-suited to this piece of land. (Levy, 2000: 205)

This concept captures the idea of land as space and a place for a specified group of people. It is in this vein that I explore whether collective identity is entrenched in concepts of territory and belonging in Abyeï and the Kivus. In order to examine the formation of collective identity and its relationship to the land, I look at precolonial traditional Africa, the introduction of the colonial mindset and the interface between tradition and modernity in the post-colonial era.

Land, Collective identity, and the State in the DRC

Newbury (2009) uses identity narratives and history enquiry to examine collective identity formation around the land in Eastern DRC. In Newbury's work, the fluidity of identity is prevalent. Additionally, there is information on the struggle for land claims in the Kivu regions, in light of the Banyamulenge occupying customary land that is administered by the state and communal realm (van Acker, 2005). The competing claims to land have perpetuated conflict between the Banyamulenge and the indigenous Congolese. Local power bases and militias in the Eastern DRC use their collective identity to further their strategic interests:

While ethnicity is not intrinsically violent, its manipulation by militias and other groups has made it a source of profound instability. Ethnic identities, however, remain a potent basis for belonging and accessing power at a local level in eastern DRC – and in the wider region – and are likely to continue to do so. Addressing the impact of local power structures based on ethnicity is therefore key to stability in order to encourage an environment in which ethnic identities are accommodated and expressed without being a major source of instability. (IRRI, 2010: 5)

IRRI (2010) and Jackson (2006) address how the right of belonging is ethnicized and then politicized in the Great Lakes region, depending on geo-political interests. The research problematizes the granting of citizenship along ethnic lines and in turn, how citizenship

affects and is affected by belonging. However, given the recent trend in the political economy of conflict, much of the literature focuses on the legal and economic aspects of land and conflict (Hintjens, 2006; Jackson, 2002; Kennes, 2005), specifically on conflict minerals. The work of Austin (2004) and Metzger and Engerman (2004) use ethno-nationality in an analytical framework and draws on European expansion to examine land rights and territorial sovereignty in history. My study explores the intricacies of collective identity and land claims by investigating the symbolic dimension of land, the politics of collective identity and belonging, and how citizenship has been problematized by ethnic and racial identity as well as by the state.

Land, Collective identity, and the State in Sudan

During the colonial period, European powers had an ideology of superiority which discredited local ideology. For instance, the British notion of unsettled land in Sudan justified their actions in using the land to their benefit (Babiker, 1998).⁶ African relationships to the land, in terms of authority and society, were perceived by the British as traditional and spiritual. The people were deemed unready for the discipline and the rationality of modernism and property ownership.

Much has been documented on the conflict of identities in Sudan in the aftermath of colonial rule, typically referring to the resistance in the South to the Islamicized North (Akol, 2007; Deng, 1995; Sharkey-Balasubramanian, 2000). There is also documentation on collective identity and the Dinka as well as their participation in the Sudan People's Liberation Army/Movement (SPLA/M) (Salih, 1994). Furthermore, there is literature on violence and the Ngok Dinka of Abyei (Deng, 2000).

Various scholars have focused on the devastating effects on the civil war in Sudan (Collins, 2008) as well as the peace-building process after the Comprehensive Peace Agreement (CPA) of 2005 (Ahmed, 2010; Iyob and Khadiagala, 2006; Manger, 2008). Development, institutional re-structuring and democratic reform are among some of the key

⁶ The same phenomena have been documented for North America (Goulet, 2010).

elements outlined in the literature. Issues related to land and customary institutions have been researched for Southern Sudan (Sundness and Shanmugaratnam, 2008).

Land Claims in Post-colonial Africa

This study does not attempt to legally analyze land claims as it is outside the scope of the research. Land claims will be assessed in such a manner as to understand and evaluate the relationships between collective identity, the state, citizenship and belonging among the groups of interest in the study. Strathern (2009) asserts that land rights in Africa have been depicted through a Euro-Western lens that is premised on individual rather than group ownership. Furthermore, there is a tendency to evaluate the value of land by examining what is physically visible (Strathern, 2009). This degree of physicality suggests the primacy of natural resources, which is a materialistic perspective of the land. There is a clear distinction between customary land rights and civil land rights. The latter was born out of the modern political systems in both countries and the former has to do with traditional systems of land tenure (Deng, 2001). In Africa part of the reason land is so contentious is because the perceived right of belonging to the land is grounded in narratives (Lentz, 2005; Wiwa, 2009), which have been passed down through generations. There may be ancestral ties to the land, but without written documents it is difficult to prove claims. The language of traditional claims competes with modernized codifications of land rights that exist in a legal framework.

2.4 Research Design and Project Plan

In Chapter 2 of this project, I investigate the origins of people and their places and examine how that phenomenon became territorialized. I draw on the work of numerous scholars who capture the idea of land as space to bring to light the symbolic dimension of land as well as a place for economic opportunity. To capture land as space in Africa, land is conceptualized as a 'frontier' (Kopytoff, 1987). To analyze the implications of land for the specified local communities, this section examines how land is derived ancestrally, historically, politically, and economically. Then, to capture how identities are connected to land, I conceptualize land as symbolic and sacred space (Hassner, 2009; Gupta and Ferguson, 1992).

In Chapter 3 I investigate land claims from the pre-colonial period to the present in the Eastern DRC and in the same fashion for Sudan. From a thorough review of academic literature⁷, I examine the land claims of the Banyamulenge in light of the indigenous Congolese populations in Eastern DRC. Similarly, I examine land claims of the Ngok Dinka in co-existence with the Humr-Misseriya in the Abyei District, Sudan to determine the 'Language of Land Claims'. I review academic literature for the legalities behind rights to land in the 'bifurcated state' (Mamdani, 1996) and how these have shifted historically, in Sub-Saharan Africa generally (Chesters, 2009; Walker, 2008; Austin, 2004; Strathern, 2009; Anseeuw and Alden, 2010), and in Eastern DRC and Abyei District specifically (Chavunduka and Bromley, 2011; Spaulding and Kapteijns, 2002; Huggins, 2010).

In Chapter 4 I focus on land and collective identity for the Banyamulenge and Ngok Dinka and outline their strategies for claiming land. This chapter overviews some of the key political developments that affected the groups and their ways of accessing land. In Chapter 5 I grapple with the politics of land, collective identity and citizenship in recent years against the ongoing conflicts to develop a framework for understanding land claims, collective identity and group strategies for accessing land. For Chapter 4 and 5, I will also draw upon current reports and online news sources to deepen my analysis of the contemporary issues around land and the conflicts that persist.

2.5 Key Terms and Concepts

Land as Space

Borders were imposed on Africa through colonization that all began with the Berlin Conference of 1884-85. This new era of imperialism launched the north-south divide that continues to persist today. For this study, I investigate the spatial dimension of land from a cultural perspective and challenge the mainstream concept of borders.

Representations of space in the social sciences are remarkably dependent on images of break, rupture, and disjunction. The distinctiveness of societies, nations, and cultures is based upon a seemingly unproblematic division of space, on the fact that they occupy "naturally" discontinuous spaces. The

⁷ I will look at literature published from the 1980s onwards, which will include books and journal articles. I will mostly be conducting my research in English; however, I may draw upon some French sources for the DRC.

premise of discontinuity forms the starting point from which to theorize contact, conflict, and contradiction between cultures and societies. (Gupta and Ferguson, 1992: 6)

Territorial boundaries and state borders will not be ignored for this project, nor the ways in which they were created. It is important, however, to think of land in its culturally-relative concepts to really grapple with groups who are competing for land claims. Groups also arose out of identification mechanisms. In order to understand these mechanisms, it is necessary to consider how these groups existed and formed livelihoods in certain spaces, and therefore how collective identities have been shaped through interaction with the land. Looking at land as space (Gupta and Ferguson, 1992) means to conceptualize land in a different way, beyond Western imposed borders, concepts of ownership and territorial divide.

I will draw upon the work of Igor Kopytoff (1987), *The Internal African Frontier: The making of African Political Culture*, to highlight how the identification of people in Africa became territorialized for regional control. By incorporating this work, I would like to capture how it was the control over people that necessitated the creation of regions before it was about the land in Africa. The codification of territory in Africa was born out of the colonial experience. This is not to say that territory in Africa did not exist in the pre-colonial period. Rather, that it was not subject to the European taxonomy that allowed for divide and conquer. Territorialization first came about as colonial powers discovered areas where people were of similar ethnic, cultural and racial identities. Having relatively homogenous groups in the same space allowed the colonial authorities to easily exercise strategies for control. In order to control the region, they had to exercise authority over the people of that region. Traditional concepts of territory and rightful belonging in terms of land claims have been problematized by colonial demarcation. In framing the parameters of the project, elements from the frontier will be brought forth in an attempt to comprehend the Africanized concept of land as space.

Land as symbolic space; land as sacred space

For the purpose of this research, I define 'land as symbolic' when it is a space of meaning for a specified group. I use concepts from human identity needs and social needs

theory to qualify meaning and belonging. The symbolic element strictly refers to the groups of focus in this study and accounts for economic, ancestral and spiritual meaning. In order to be a place of meaning, there needs to be a history of living and working on the land along with ancestral roots to the land. Sacred space refers to space with religious and spiritual affiliation that has become institutionalized (Hassner, 2009). Sacred space does not necessarily need to have monuments for it to be deemed sacred.

...defining sacred space is difficult given the diversity of such spaces as displayed across the great religious traditions. Some sacred sites, such as temples or shrines, are constructed. Others are natural sites, like mountains or caves, that are made sacred by means of interpretation, not construction...given that different religious traditions employ radically differing conceptions of time and space, it is not entirely surprising that they also exhibit sacred spaces that vary in shape, location, importance, and purpose. (Hassner, 2009: 17-18)

For this comparative study, the idea of sacred space will take into account location, importance and purpose. Land is not typically considered sacred if sacred space is only viewed within the parameters of man-made monuments, temples, shrines and other holy structures. These objects are not plentiful in Africa.

Goody (1997: 2) speaks of representations, which are “basic to human communication, to human culture.” In African tradition, the supreme deity rarely takes a figurative form. This aniconic trend contrasted with several iconic-premised cultures and religions that invaded parts of Africa. Since invaders perceived Africa with a lack of spirituality, it justified the religious imposition of Islam (Sudan) and Christianity (DRC and Sudan). “With humans, representations are mapped on to an externalized language” (Goody, 1997: 33), but the ways in which representations are externalized differ among cultures. Pantheism exists in African culture which is why there are few man-made structures to connect to the divine. In brief,

...the belief that God is not a personality but is everything everywhere; likewise everything everywhere is God. From a pantheistic standpoint it is more logical not to re-present God but to present him, to address his presence directly in the shape of one of his own creations rather than one of ours, that is, in manifestations or refractions of God rather than in images of representations to him. (Goody, 1997: 60)

Pantheism is the reason why chiefs are considered sacred and why the Dinka believe that certain sub-tribes carry the bloodline of God.

For the Ngok Dinka, the region of Abyei holds spiritual significance and is sacred because it was the birthplace of two of their most powerful chiefs. It is symbolic because it was the place where the Ngok developed political centralization through “the leadership of the two most powerful Ngok leaders of this century⁸, Kwol Arob and Deng Majok” (Beswick, 1998: 155). The Banyamulenge have a connection to the land that is sacred in the ‘Mulenge’ hills, of which their name derives. The act of a group identifying itself with a specific location is symbolic, even if this was an attempt to claim rightful belonging. Land as sacred and as symbolic will be a guiding principle when examining land claims for the groups in the two case studies.

Communal Land Tenure

The relationship between land and social/ethnic collective identity in Africa was amplified under colonialism. Africans could only claim land on the basis of their ethnic/tribal group, and this set forth a system of communal tenure (Evers, Spierenburg and Wels, 2005). There were three basic features of indigenous tenure regimes that allowed for a variety of interpretations. The first one has to do with the complexity of multiple owners, the second has to do with contested territorial boundaries, and the third involves the multiple layers of rights around natural resources (Lentz, 2005).

Communal tenure refers to traditional rights to use of land which depended on the “degree of community control over who is allowed into the group, thereby qualifying for an allocation of land and residence and cropping, as well as rights of access to the common property resources used by the group.” (Evers, Spierenburg and Wels, 2005: 22) Therefore, groups tend to restrict access to outsiders. Communal land tenure is a system of property rights that is not premised on individual but collective ownership. It is difficult for Western legal systems today to grapple with the issue of collective ownership, and as a result, the system tends to discriminate against indigenous land rights holders. However, collective

⁸ The author is referring to the 20th Century.

ownership can entail common exploitation as well as management. In African society, land is passed down from groups to later generations through customary rules of succession. A group can be defined by extended family, kin, clan, lineage, common villagers or an ethnic group. The community are the decision makers and deal with land allocation and resource management (Bruce, 1988; Evers, Spierenburg and Wels, 2005).

Bruce (1998) specifies four dimensions of indigenous tenure: vertical, horizontal, historical and personal. The vertical dimension is the social hierarchy of which land is allocated and is governed through the family, the clan and lineage. However, this is not always clearly defined,

In many traditional polities, not one group but a hierarchy of groups is the focus of land rights, with each ascending group larger and embracing several groups of the next lower order, pyramiding toward a king or paramount chief of the tribe. The groups may be defined by common descent or common residence, or some combination of the two. (Bruce, 1988: 26)

These hierarchies can exist between societies too which further complicates land claims. In situations where land was plentiful, multiple groups share rights to land and this is where the distinction of being a ‘newcomer’ to a place disadvantages those groups from ones that have been recognized as being on the land for a longer period of time. The concept of ‘firstcomer/newcomer’ is elaborated in the following chapter as this has its roots in the precolonial era.

The horizontal dimension is characterized by multitenure systems. Different land has different tenures, which can include, but is not limited to grazing land, residential land, farming land, irrigated land, and land with trees or a cultivable floodplain. In essence, “land tenure systems provide a particular tenure for particular land uses” (Bruce, 1988: 27), which is what makes land-use negotiable and open to interpretation. Secondary tenures exist as share-cropping arrangements, rights of way and water, and rights of wives over their husbands’ land (Bruce, 1988: 27).

The historical dimension of land takes into account those who were granted land at certain points in time and for what reasons. Leaders had the power to grant land as they saw

fit and this differed during times of war from times of peace. The personal dimension is about personal access to land for livelihood purposes, so that a farmer, for example, can ensure food for his community, family or group. An individual member of the communal sphere has the right to use the entire area of land independently as a right of commons; however, individuals are not able to sell off their holdings. This dimension is affected by systems of inheritance and family lineage.

Citizenship

Mamdani (1996) discusses how citizenship was constructed in Africa during colonial rule to allow the foreign minority to rule over the indigenous majority. Direct rule did not recognize any native institutions because “citizenship would be a privilege of the civilized; the uncivilized would be subject to an all-round tutelage. They may have a modicum of civil rights, but not political rights, for a propertied franchise separated the civilized from the uncivilized.” (Mamdani, 1996: 17) Defining citizenship allowed for greater power and control as the majority of Africans lived in rural areas in their traditional structures that were not seen as civilized. Mamdani (1996: 18) differentiates the colonial policies of direct and indirect rule and how that shaped citizenship.

Direct rule was the form of urban civil power. It was about the exclusion of natives from civil freedoms guaranteed to citizens in civil society. Indirect rule, however, signified a rural tribal authority. It was about incorporating natives into a state-enforced customary order. Reformulated, direct and indirect rule are better understood as variants of despotism: the former centralized, the latter decentralized.

Additionally, “direct rule tended to generate race-based political identities: settler and native. Indirect rule... tended to mitigate the settler-native dialectic by fracturing the race consciousness of natives into multiple and separate ethnic consciousness.” (Mamdani, 2002: 23) Since a racial distinction for the communal sphere would have emphasized the African majority, indirect rule ethnicized this sphere, deliberately enforcing separate groups such that Europeans could continue to exercise control in their civilizing project. Through empowering specific ethnic groups with state administration in the communal sphere, the colonial powers ensured that their policies would be implemented accordingly (Mamdani, 2002). This method was executed by granting decisional roles to specific groups, meaning it was granted in such a way to privilege certain people who served the colonial mandate. This

strategy of indirect control had the debilitating effect of enforcing hegemonic structures of dominance, where ethnic groups were positioned against each other. Ethnicity, therefore, was a powerful marker of favouritism, privilege and citizenship, a factor that has lived on to the present. In the post-colonial period, ethnicity is intertwined with power and resistance because of its historical function (Mamdani, 1996).

In post-colonial Africa, “the distinction between the exclusivist understanding of ethnicity and the inclusive concept of citizenship is pertinent.” (Deng, 2001: 185) Colonial powers imposed a ‘civilizational ladder’. “The law thus enfranchised and empowered as citizens the minority it identified as civilized, and at the same time disempowered and disenfranchised the majority it identified as yet-to-be-civilized.” (Mamdani, 2002: 25) Taking from Mamdani’s concept of citizenship, Deng elaborates on the ethnic dimension of citizenship in Africa and how crucial this is for grasping the politics of belonging. Citizenship “has to do with both individual rights and collective identity” (Deng, 2001: 190) and “is predicated on elements of ethnic and cultural affiliation” (Deng, 2001: 184). Citizenship is the recognition of belonging to a state and being protected under the laws of that state. Furthermore,

the right to citizenship is a means of acquiring status under the law and through that status the right to enjoy many other entitlements of life, such as the right to vote, to own property, to health care, to send one’s children to school, to employment, and to travel outside one’s country of residence...It is often a condition of belonging and being accepted as a member of a nation, characterized by a collective sense of collective identity through such factors as descent, ethnicity, and culture. (Deng, 2001: 185)

Citizenship and belonging is highly ethnicized in both the Eastern DRC and Abyei Sudan because both regions are products of the colonial legacy and the post-colonial struggle for territory and control. It is necessary to explore notions of citizenship and belonging to assess the struggle for land claims.

Customary Rights

Out of the colonial period, the distinction between customary and civil rights was important because the native groups were governed indirectly through a separate authority, typically a chief, who reported back to the European colonizers.

Every colony had two legal systems: one modern, the other customary. Customary law was defined in the plural, as the law of the tribe, and not in the singular, as a law for all natives. Thus, there was not one customary law for all natives, but roughly as many sets of customary laws as there were said to be tribes. The genius of British rule in Africa...was in seeking to civilize Africans as communities, not as individuals. More than anywhere else, there was in the African colonial experience a one-sided opposition between the individual and the group, civil society and community, rights and tradition (Mamdani, 1996: 22).

Customary rights refer to group rights that are accessed by virtue of belonging to a certain ethnic group and stem from customary law. Each chief had judicial, legislative, executive, and administrative power in the customary realm (Mamdani, 1996). For the people of lower socio-economic strata in Africa, “ethnic citizenship was far more important than civic citizenship because belonging to an ethnic group gave one a customary right, especially to land.” (Deng, 2001: 192) Ethnic citizenship in this context means that one is governed by customary law which is anchored in African tradition rather than in European ones.

The colonial policies of indirect rule gave power to customary authorities to govern the native, non-settler sphere in Africa, which entailed governing the land. A crucial component was

the definition of land as a customary possession, for in nonsettler Africa, the Africa administered through Native Authorities, the general rule was that land could not be a private possession, of either landlords or peasants. It was defined as a customary communal holding, to which every peasant household had a customary access, defined by state-appointed authorities. (Mamdani, 1996: 21-22)

Within the pluralized ethnic sphere of indirect rule, Mamdani (2002) states that separate political identities emerged who carried an ethnicized dimension.

These are rights that come out of civil law that are premised upon individual rights within the civic sphere. They will be juxtaposed against customary rights to highlight the complexities of defining citizenship in Africa. In the civic sphere governed by direct rule, “the legal basis of group discrimination was *race*.” (Mamdani, 2002: 24) However, under civil law, there were different categories of citizens to distinguish between the colonizer and the colonized. The non-indigenous colonized people were seen to be ‘subject-races’ (Mamdani, 2002: 27-28), who came under the colonizers in the citizenship ladder, but above the indigenous people. Tutsis in Rwanda and Burundi were considered ‘subject-races’ – they could be used as a civilizing race – they did not have full citizenship rights, but had the potential of becoming full citizens through the civilizing project. They qualified for preferential treatment as they were seen as superior races to the indigenous colonized, but they were still subject to discrimination.

Theirs was a contradictory experience: on the one hand, they were elevated above natives and treated as virtual citizens, part of the hierarchy of the civilized races; on the other hand, they were subjected to racial discrimination, which emphasized their position in the lower rungs of that hierarchy.” (Mamdani, 2002: 28)

Tutsis could be both collaborators of the colonizing project as well as nationalists who wanted to overturn racial discrimination and pursue self-determination.

After colonialism, “civic space was de-racialized in the sense that the rights of the individual did not depend on membership in a racial group.” (Deng, 2001: 192) In late colonialism, after WWII, Africans who became urbanized and left the communal sphere were able to change their customary status and be governed by the inclusive laws of the country (ibid, 192). Prior to this period, civil law was restricted to white settler populations. According to Mamdani (1996), civic space was deracialized in the anti-colonial revolt, but not within civil society as the customary sphere remained ethnicized and tribalized. This was an impediment to the democratization process in post-colonial Africa and has massive implications for citizenship, land and belonging. In post-colonial Rwanda and Burundi, on the other hand, the legacies of prioritized status for Tutsi in the civic sphere culminated in resentment then violence from the Hutu. Tutsi as subject-races did not exist in the Belgian

Congo, but many Rwandan and Burundian refugees of the post-colonial period carried these resentments and identity markers with them.

2.6 Conclusion

The methodology I have adopted for this project calls for an in depth comparative analysis of the literature on land claims for the two proposed cases. I was not able to travel to the selected regions for further research due to time constraints and safety concerns. Therefore I have designed my research to set in place a theoretical framework for examining land claims in Africa. Investigating land through a multidisciplinary lens is essential for this study. What is also important is situating and framing the area of focus. The groups of focus had their unique experiences lived throughout the continent, so as a researcher I have tried to be sensitive to the historicities, the political landscape, the economic environment, the cultural context, as well as the socio-cultural relations of power, community, hierarchy and the day to day functions of livelihood. Drawing on the symbolic dimension of land transcends state boundaries and allows me to examine the movement of people, with specific ethnic and cultural identities, and the ways in which they entrench their sense of belonging to the land. The idea of 'symbolic' is multifaceted as meaning is constructed by individuals, groups and familial importance. Being symbolic can mean ancestral, economic, political, spiritual as well as strategic interest. For these reasons, I have set up a holistic approach of investigation.

In this research, I have tried to be as case specific as possible. Most of Africa was subject to colonial domination and power structures that have shaped the post-colonial legacy in terms of land tenure. Yet, the ways in which groups take on, adhere to and formulate their identities is group-specific, but the methods can be similar to those of other groups. Broad identities can exist for groups that inhabit large regions, such as the Dinka. It is not that the theoretical framework I have constructed would not be applicable to different groups across the continent, but it must be tested meticulously in a manner that is sensitive to the specific collective identity of the group under study. Thus, this project has only investigated two war-torn regions where the selected groups have lived in conflict and insecurity over land for more than a century.

CHAPTER 2: TO WHOM DOES THIS LAND BELONG? LAND AS SPACE, SYMBOLIC SPACE AND SACRED SPACE: SPIRITUAL AND ANCESTRAL ROOTS IN THE KIVUS AND ABYEI

In Africa, territorialisation began with the means of controlling people under designated leadership before it was about controlling the land per se. How can we understand the land? If people were understood by their identity and communal ties, then what exactly does land and belonging mean to them? Did land ever matter symbolically to these groups in history? By contextualizing land as symbolic, land as a sacred entity and land as space in Africa, it is possible to trace the history of groups' attachments to place. Although this investigation examines land claims from the colonial period to the present, the pre-colonial landscape is essential to understand the idea of land as space and how it was socially constructed in sub-Saharan Africa.

This chapter demonstrates, by drawing on studies of the pre-colonial period, land's symbolic aspect in history for sub-Saharan Africa. As such, the frontier thesis addresses the territorialisation of people in time, pre-colonial and colonial, and is a useful framework for understanding land claims in the contemporary period.

Since it is hard to discuss land matters without reference to time and space, the topic is geographical and historical. The topic has a physical side, since it is about our relation to places and the planet that are our home, to the substances and flows of energy thereon, and the potential these offer for life itself (Shipton, 2009: 4).

The first section frames land as space in an African context by illustrating the African frontier in order to place the two cases of focus historically, and outline the implications of this theoretical framework for space and belonging. The next section discusses the symbolic dimension of land, which will bring forth social construction by taking a brief sketch of how humans construct meaning and then apply this to the land. The final section examines the sacred aspects of land. What constitutes the sacred? How have notions of the sacred transposed to the land in Africa? By framing land as space and land as place, taking into account the symbolic and sacred aspects, I intend to set the stage for the many ways of conceptualizing the meaning of land and how this impacts land claims for the groups vying for territory in the Eastern DRC and Sudan.

2.1 Land as Space in Africa – Capturing the Frontier Thesis

Land claims did not exist (in the way we conceive of them today) in pre-colonial Africa. The idea of ‘ownership’ came out of the colonial experience. Before land is conceptualized as place, it is necessary to unpack the notion of land as space, and from there examine boundaries, designated spaces and how people have constructed their social groupings on the land. The way in which I will distinguish between space and place is that land becomes place when there is human settlement, interaction, livelihood and rootedness in a space of land. Space is meaningful and “the experience of space is always socially constructed.” (Gupta and Ferguson, 1992: 11) In order to get a better sense of identities and how they are entrenched in the land, it is important to go backwards in time, back to the African Frontier.

Some Theoretical Underpinnings of Space and Boundaries

In examining the work of Gupta and Ferguson (1992), it is apparent that there are some fundamental problems with how culture and space have been theoretically constructed. The assumptions that certain groups live within specific confines overlooks those who live near the borderlines or those who exist in overlapping territory to another’s place. Immediately, this poses a problem for assessing the case of the Ngok Dinka, who live in a border region and who share the struggle for land among different ethnic groups of Sudan. The Banyamulenge assert their right to land amongst multiple ethnic groups who are advancing the same rights to land.

Designating groups to selected locales also diminishes the historical processes of how people became settled in places. However, space has functioned “as a central organizing principle in the social sciences” where it is akin to a “neutral grid on which cultural difference, historical memory, and societal organization are inscribed.” (Gupta and Ferguson, 1992: 7) Thus,

challenging the ruptured landscape of independent nations and autonomous cultures raises the question of understanding social change and cultural transformation as situated within interconnected spaces... if one begins with the premise that spaces have *always* been hierarchically interconnected, instead of naturally disconnected, then cultural and social change becomes not

a matter of cultural contact and articulation but one of rethinking difference *through* connection. (Gupta and Ferguson, 1992: 8, italics in original)

There is a “need to pay attention to the way spaces and places are made, imagined, contested, and enforced.” (Gupta and Ferguson, 1992: 18) A similar conundrum occurs when examining the notion of boundaries, as these too have been subject to social construction. Moreover,

boundaries are spaces within, through, and in the name of which negotiations can take place... boundaries need not be the focus of hostility they often are but, instead, may serve the indispensable function of helping people engage and manage an otherwise chaotic world. They are not lines but spaces; neither fixed nor empty but flexible and inhabited. (Bal, van Eekelen and Spyer, 2006: xi)

According to Boer (2006), boundaries have transgressability. They exist as spaces of different ideas that are unequal in terms of the power structures that maintain them. Therefore it is important to investigate why and how boundaries come to be in the first place. The ways in which they are constructed has implications for territorial divide – how boundaries exist to separate class structures, races, ethnicities and religions. Boundaries are not only physical space but they exist between cultures, norms, values, old world versus the new, countries, citizens and immigrants (Boer, 2006). Regardless of the method or strategy, boundaries are artificial creations. Instead, we can recognize boundaries, culture and space as a place of negotiation and interconnectedness to focus on the bridges between these constructs (Boer, 2006; Gupta and Ferguson, 1992).

A culturally unitary group and its territory are not things that should be assumed as natural nor is the connection of citizens of states to their territories (Gupta and Ferguson, 1992). Instead, the cultural connections to space need to be questioned to understand the processes and nature of their construction. In this vein, we can imply that the development and evolution of communities is not necessarily natural either. Communities exist and are maintained through their social, political, economic and spiritual significance. Since it is humans that create and sustain these communities, are they really concrete entities? If we

envision these entities as ‘imagined communities’⁹ we can challenge the idea of an entity fixed in time and place. The idea of imagining ties into people’s perceptions of comprehending and making sense of the world in which they live. The reasons communities must be imagined is because it is impossible for all members (in constituencies that are larger than primordial villages) to know their fellow-members. The boundaries of a nation are artificially constructed to separate the ‘other’ and the notion of commonality and camaraderie fails to account for the deep-seated intra-national inequalities that exist in reality. Therefore the idea of community is imagined (Anderson, 1983).

The irony of these times, however, is that as actual places and localities become ever more blurred and indeterminate, *ideas* of culturally and ethnically distinct places become perhaps even more salient. It is here that it becomes most visible how imagined communities (Anderson, 1983) come to be attached to imagined places, as displaced peoples cluster around remembered or imagined homelands, places, or communities in a world that seems increasingly to deny such firm territorialized anchors in their actuality. (Gupta and Ferguson, 1992: 10-11)

Space and boundaries have also been imagined but they are maintained by rulers and political players. “A boundary is a space that separates worlds of difference but is itself a world of difference... Spaces... in which people live, but also, spaces that people defend, attach, that nourish them and that they fight over; they are places of contestation.” (Boer, 2006: 108) The multiplicity of ways in which spaces have been imagined in sub-Saharan Africa effects the ways in which belonging to the land is recognized. Space in Africa is “the product of social practices and conventions which in themselves are the result of symbolic and discursive acts.” (Engel and Nugent, 2010: 2) Anderson’s definition of a nation implies that there have been imaginings of land and space, to which the community is connected. If the sociological make-up of community can define a nation, then this nation has to be rooted in space. In this project, the space to be investigated is that of the African frontier.

⁹ The definition of the nation “is an imagined political community – and imagined as both inherently limited and sovereign” (Anderson, 1983). For a thorough discussion, please refer to Anderson, 1983. *Imagined Communities: Reflections on the Origin and Spread of Nationalism*.

The African Frontier Thesis

Gupta and Ferguson (1992) speak of the importance of historical examinations of cultural and societal formations because communities were constructed in unique ways, and this helps us to conceptualize the spatial characteristics of land that pre-dated the building of civilizations. In pre-colonial Africa,

Established societies were surrounded by large tracts of land that were open politically or physically, or both. Together, these tracts made up a continent-wide interstitial network of thousands of potential local frontiers. Settlers wishing to leave the established societies could move into this internal African frontier and set up their own social order in the midst of what was effectively an institutional vacuum. It was under such frontier conditions that the dynamic of African social and political formation was played out over the past centuries (Kopytoff, 1987: 10).

The frontier was the space between units that had political control. It was the empty spaces that were 'ripe' for societal construction (Herbst, 2000). Because territory in Africa was never static, societies and peoples have shifted historically such that contemporary state boundaries do not represent ethnically homogenous groups. There was a lack of policing by the metropolises on the frontier areas and most of the time, the frontiersmen were not the primary agents for metropolitan expansion. The in-administered space of the frontier allowed it to be the landscape for independent political formations (Kopytoff, 1987). Kopytoff states that it is possible to generalize the African frontier because of the similarities of the processes that occurred throughout the continent. These generalized elements are (Kopytoff, 1987: 14):

- a) The frontier factor is permissive rather than determinant; it does not create a type of society and culture but provides instead an institutional vacuum for the unfolding of social processes.
- b) An important variable in the structure of relations between frontier and metropole is whether the frontier is an area into which the metropole is itself expanding or one into which it merely sends out settlers who remain independent of the metropole.
- c) A crucial factor in the outcome of the frontier process is the nature of the initial model carried from the metropolitan culture to the frontier.
- d) The institutional vacuum perceived by the frontiersman exists to the extent that the balance of forces gives them the freedom of action to express the model brought from the metropole – to express it more directly and forcefully in the course of social construction than it could be in the metropole.
- e) If communications continue between the metropole and the frontier, the repetitive use of the model on the frontier maintains it in the regional cultural

awareness, validates it, and constantly revitalizes it. The frontier may consequently act as a culturally and ideologically conservative force.

Although there were general elements, the degree of cultural awareness was still more localized. The characteristics of the frontier are outlined below.

Kopytoff's thesis is central to capturing the theoretical premise of the African Frontier, which will be used to frame land as space in its regional contexts. Africa has been a frontier continent which has had an impact on the shaping of African cultural history and African political culture in general. Frontiers tend to be seen as vast open spaces, a finite expanse of land that is sparsely populated and an empty space where there would be little political resistance to intrusion (Boer, 2006; Kopytoff, 1987; Newbury, 1987). Accordingly, "the frontier is above all a political fact, a matter of a political definition of geographical space." (Kopytoff, 1987: 11) The African frontier was different from the American frontier because of it had an authoritarian element that favoured the inequality in social organization. This inequality allowed for the system to be premised on hierarchy.

The frontier perspective taken here is that of the local frontier, lying at the fringes of the numerous established African societies. It is on such frontiers that most African polities and societies have, so to speak, been "constructed" out of the bits and pieces – human and cultural – of existing societies. This posits a process in which incipient small polities are produced by other similar and usually more complex societies. (Kopytoff, 1987: 3)

Since the region was sparsely populated in the pre-colonial era, the frontiersmen brought similar kits of cultural and ideological resources into the areas they were to settle in. With the constant formation of polities from larger metropolises, there was a degree of uniformity because of the continuous cultural interaction and exchange. The author terms this an 'ecumene' (Kopytoff, 1987: 10). Communities are formed in unique ways but there were some similar patterns in the African frontier that could be generalized.

The first characteristic of the frontier was the production of frontiersmen, where new groups were offshoots of established groups. The uncontrolled areas of the frontier seduced those who desired autonomy. If there were quarrels among kin groups in the metropole, it was easy at that time, given the sparse population and the amount of available land, to

faction off into smaller groups and to create an autonomous polity. Polities often merged with others to become a society in order to protect the smaller units from being overrun by new frontiersmen. Not every settlement on the frontier became a polity, nor did every polity grown into a society. There were certain elements that allowed for polities to become strong and they are discussed below. The idea of being first on the land has significance, for indigenous populations, because it gave the degree of seniority, and African societies have been premised on hierarchical social relations. In order to inherit a position of primacy, one had to break away from a group and find a new place in the frontier. In Kopytoff's analysis of being a firstcomer, the role of force, violence and conflict has not been clearly outlined. There is a brief mentioning of the use of military tactics where "on populated frontiers, the intruders could overcome the constraints by sheer military superiority." (Kopytoff, 1987: 28) Herbst (2000: 41), on the other hand, asserts that "formal political control in pre-colonial Africa was difficult and had to be earned through the construction of loyalties, the use of coercion, and the creation of infrastructure." Similar generalized comments in Kopytoff's thesis pertain to conflict on the frontier and they are mostly discussed in relation to groups attempting to claim firstcomer authority. Since 'being first' is directly related to the system of social hierarchy, it must be queried further. There are many factors that are ambiguous from the time of the frontier and one of those is the degree of force in establishing firstcomer status. Since this is ambiguous, it is difficult to investigate. For that reason, I have decided to draw from certain elements of Kopytoff's sketch of the African frontier to help to ground my theoretical framework. Since there are so many unknowns in African history, I am attempting to piece together a puzzle out of many elements that are not certain, but I do hope to broaden the lens of analysis for the ways in which we conceptualize the land.

Furthermore, "African 'roots' were not conceived to be in a place but in a kin group, in ancestors, in a genealogical position. And by projecting this notion into the future, one established one's future roots by becoming the founder of a group yet to come." (Kopytoff, 1987: 22) Since African roots are not grounded in place but in groups, how can we comprehend groups vying for land claims currently? The importance of land seems to have been influenced and impacted by a variety of factors.

The structure of a group is one that is defined by hierarchy. Kopytoff states that this is the reason for the disengagement from the metropole.

African societies were largely structured in terms of corporate groups, individual survival was possible only by being under the protective umbrella of one or another such group, and the larger and more powerful it was, the safer one was. The most immediate and most secure groups of support were those based on ties of kinship. (Kopytoff, 1987: 24)

This model applied to the frontier in group-building. “Once established on the frontier, a kin-group segment could strengthen itself by reactivating this dormant network of kin relations and use it to draw additional kinsmen to itself.” (Kopytoff, 1987: 24) The connection of frontier kinsmen to those of the metropole helped to establish the identity on the frontier. While solidifying a sense of belonging and attachment, this also brought expansionist policies to the frontier. Newbury (1987) draws on an example of the frontier areas that spanned from Rwanda to the Eastern Congo:

The expansion of this western frontier is difficult to trace with precision because the Tuutsi ‘colonists’ (originally ‘refugees’) did not move into the area in any regular pattern. Instead, their slow penetration over several generations created a loose series of intersecting ties that eventually became incorporated within the political network of the Central Court. But these ties did not form a continuous web; many areas remained independent of this network, and in some cases ‘Tuutsi’ refugees continued to move farther west still... in the mountainous highlands west of Lake Kivu. (Newbury, 1987: 171)

The area West of Lake Kivu is the present-day North and South Kivu regions of the Eastern DRC. The cases of Rwandan frontiersmen¹⁰ help to us to uncover the earliest settlements of Banyarwanda that settled in the Eastern Congo, prior to the advent of colonization.

The nature of the frontier was that of an institutional vacuum, a space that was free in which communities could be created, “once outsiders have defined an area as a frontier and have intruded into it in order to settle in it, there begins a process of social construction that, if successful, brings into being a new society.” (Kopytoff, 1987: 26) Furthermore, “A space that is thought to be void of inhabitants... is up for grabs.” (Boer, 2006: 107) These models of civic organization were influenced by “pre-existing conceptions of social order”

¹⁰ It is known that in the history of the Great Lakes region, the Rwandans acted as frontiersmen and settled in areas in the Eastern Congo. The numbers of settlements and frontiersmen is unknown, but what we do know is that there is evidence of settlements that pre-dated the colonial era.

(Kopytoff, 1987: 33) that frontiersmen carried from the metropole which perpetuated a degree of cultural reproduction. On the new found frontier polity, the known values, beliefs and concepts of legitimacy were helpful in establishing a place. Thus, the “frontier process then becomes one of cultural self-reproduction on a regional scale” (Kopytoff, 1987: 35). In order to maintain corporate unity, social and political positions were reserved for the kin group of firstcomers to the frontier. Newcomers to the area joined as subordinates, in kinship, politics or through material relations, where material goods would be exchanged as gifts in order for people to become members of the group. This apparatus of authority was evident across the African frontier. Thus, when the colonial conquests began, Europeans strategically aligned themselves with local authorities to execute their objectives and maintain a system of indirect rule.

Social capital was very important in African history, therefore, it was quintessential to build and expand relations by “acquiring relatives, adherents, dependents, retainers, and subjects, and to keep them attached to oneself as a kind of social and political ‘capital.’” (Kopytoff, 1987: 40) If there were newcomers or latecomers, the smartest thing to do was for them to affiliate themselves with the strongest polity around to build the attachment. The strength of the polity depended upon its social capital and therefore the process of acquiring additional members was a common practice. Social relations have been crucial throughout African history and in the contemporary period¹¹. Due to the underpopulated continent of Africa, “societies have usually faced a shortage of people amidst an abundance of land; and the latter allowed them to secure their livelihood by mobile and extensive exploitation of the land through shifting cultivation or, less often, pastoralism” (Kopytoff, 1987: 41). This is how leadership and control was over people and not the land to start. In order to have control over the land, it was necessary to have control over the people.

For expansion purposes in pre-colonial times, the new frontier group had “to establish its independence... to assert its exclusiveness as ‘firstcomers’ in its particular territory... to expand its numbers to be able to stand up to neighboring groups and the readiest pool of people to draw upon for adherents was the local population” (Kopytoff, 1987: 43). Through

¹¹ The contemporary period is unpacked in proceeding chapters.

these processes, a kin group on the frontier became established and was perceived to be strong enough to have a level of autonomy. Only these established areas on the frontier had little interference from the metropole politically. Membership in the kin group was primarily based on blood, and this has been true for most pastoralist or horticultural groups. The conditions on the frontier for immigrants was different as they were all deemed to be relatively equal under the same sex, which meant that marginal economic utility of each individual was relatively constant so that adding more members did not make newcomers become subjects of discrimination (Kopytoff, 1987). The African frontier had an authoritarian element that stemmed from the inequality in social organization to maintain positions of hierarchy.

The inequality, however, had to be instituted and maintained with circumspection, for frontier conditions also made it relatively easy for dissatisfied adherents to leave. Hence, no matter how low their formal status in crucial matters of authority, the adherents had to be well treated in everyday life – usually as quasi-kinsmen. (Kopytoff, 1987: 47)

Conquered peoples became adherents to the local polity, which meant that previous enemies were invested into the corporate entity of the next conquests. Because of the importance of first on the land, newcomers were at the bottom rung of the social hierarchy so joined the community as subjects. As societies grew and broke up into other sub-groups could former newcomers from the bottom of the hierarchy work their way up the system to eventually become village heads and chiefs. This was known as ‘political mobility’. The other way newcomers rose in status was when immigrants joined the local social structure in a process known as ‘mobility by levitation’ (Kopytoff, 1987: 51).

The groups that ended up forming a polity had to establish a hegemony which in time became ethnically homogeneous, or what could also be understood as the notion of a tribe. This occurred when adherents were treated as kinsmen and followed the political growth of the polity. From the interaction of different identities coexisting in the same area, new ethnic identities were formed. This was an example of how new identities emerged in the pre-colonial era and speaks to the fluidity of identity. Building the social capital to protect the society from being overrun by stronger frontiersmen or from individuals breaking away to form other polities on the frontier was extremely important, and that is why adherents were

sought after for the various communities. Adherents were not necessarily the same ethnic grouping as the kin group, but through a process of interaction, it was possible that they came to identify themselves as part of the kin group, where “the group’s continued growth would lead to a gradual consolidation of customs from the disparate but kindred customs of its constituent units.” (Kopytoff, 1987: 49) In the vast open spaces that existed in Africa’s history, grounding a place on the land depended on having a strong social foundation. Solidifying a polity was about securing the people in spaces.

There were also cases where adherents were treated as subjects and the process for strengthening social capital was different than that of the fellow kinsmen. This was the case when polities grew into becoming large societies or metropolises. For rulers of the land:

When they arrive in the present area, they find it empty, or occupied by a few people whom they expel outright, or by people too strong to be subdued or dislodged. In the latter case, after a period of co-existence, or submission to their hosts, and inter-marriage, the newcomers eventually clash with their hosts. They then expel them, or conquer them, or co-opt their rulers, or at least secure the hosts’ acceptance of their autonomy. (Kopytoff, 1987: 49)

If the newcomer frontiersmen were strong, there was a point where they could assume power and dominate the people that had already existed in the polity. In this circumstance, there was a change in the model of polity integration where “the frontier community had moved from a corporate solidarity modelled on kinship to a solidarity of inter-dependence modelled on political contract.” (Kopytoff, 1987: 50) Therefore, in order to exercise dominance, the former groups of the polity became subjects to the more powerful newcomers, who would become the rulers. Additionally, the subjects were often a different ethnic group than the newcomers but what the ruler of the polity could offer was protection, so this became an incentive to remain in the polity. As these polities grew, it was common for the community to divide into sub-units or sub-chiefdoms so that “the heads of these sub-units became... the local ‘firstcomers’ who ‘showed the place’ to newcomers and mediated between them and the rulers.” (Kopytoff, 1987: 51) The sub-units within a larger society consisted of groups with their respective identities. The larger societies had established a pyramidal structure of social order that could accommodate different ethnic groups.

As previously mentioned, firstcomers had an assumed authority in the hierarchical social order, and this meant legitimacy of being the leader.

In Africa, the principle of precedence... is intimately intertwined with the legitimacy of authority. It does not determine authority, but authority must accommodate to it in some way. The first occupant was in some sense the 'owner' of the land, with a special ritual relationship to it and its spirits. (Kopytoff, 1987: 53)

This logic was carried forth into political legitimacy where being 'first' justified the leadership role in the social hierarchy. Yet, the firstcomer claim did not always translate into automatic leadership, nor did it always follow a chronological order, as will be discussed below. For Rwandans in the Eastern Congo, "the concept of the frontier was thus both cause and effect of specific kinds of political interaction." (Newbury, 1987: 186) The paradox in being first in frontier conditions is that it is difficult to know who really was 'first' in frontier conditions. Many people had been pushed deeper into other lands or had returned to a place that was once empty only to discover a settlement. The lack of written documentation complicates matters further when attempting to determine real and legitimate belonging to land within modernized legal frameworks. The firstcomer claim holds a lot of weight in African society when it comes to the right to belong in a place as well as for leadership purposes. In the contemporary period, it is common to hear the discourse of firstcomer when it comes to land claims.

Being first is subject to debate, as was the case in the Eastern Congo. Because there were powerful implications of being first, the status was often contested. With the BaShu people, there were several ethnic layers of immigrant populations who each defined their own arrival as the pivotal point of being first to the land. For example, the early arrivals said they were first to open the land, the next stream of arrivals claimed they were the first to clear the forest for agriculture, the next group said they were the first to introduce food crops, and the last comers, who are the dominant pastoralists today, claim they founded the first civilized political system (Kopytoff, 1987). Therefore, precedence does not necessarily equate to a chronological order in firstcomer claims. This is also a case where ambiguity can lead itself to manipulation of claiming land because there is a multiplicity of meanings behind seniority.

The process of recognition follows an oral history which serves as the proof of authority in a social system. These ambiguities that exist in oral interpretation leave plenty of room for group manipulation of firstcomer claims. Groups have undergone several means of co-optation through history to secure their place on the land. Yet, “once the earlier settlers are recognized to exist, the newcomers attempt to co-opt their mystical powers in relation to the land” (Kopytoff, 1987: 55). This co-optation was executed in numerous ways, including the newcomers that tried to bind themselves to the hierarchical chain of command in order to secure a position within the civic structure which also meant having a place on the land. There was also evidence of groups who subordinated themselves to the ritual heads of a political order. Firstcomer authority put in place a hegemonic structure on the frontier where “one either absorbed or one got absorbed” (Kopytoff, 1987: 61). Whether absorption used violence is unclear. From a historical investigation of the frontier, it seems to be that adhering to communities served the individual and group interest. Cohesion of a given group was of importance, and social order was made possible through hierarchical structures.

In the ideal established hierarchical structure, there existed a chief as the symbol of authority. This position was perceived as sacred and was derived from the paradigmatic myths of precedence and legitimate leadership (Kopytoff, 1987). The chief’s legitimacy came through local ritual symbols, but the appropriation was not free of manipulation and deceit. “The crucial point in Africa was that legitimacy had been conferred by the people by way of the ‘consent’ of their symbols.” (Kopytoff, 1987: 65) This meant that the people’s ritual beliefs corresponded to what the chief represented. There was a voluntary element in chieftainship because it was the subjects, the members of the community, who wanted an overarching authority and therefore welcomed the chief into their societies. This ties into the inherent hierarchical nature of civil society in general. From certain perspectives it may be difficult to comprehend voluntary subjugation to an authority figure. However, in African society, the chief has a sacred, spiritual underpinning, which can be understood as stemming from the religious and spiritual convictions of the group.

The African configuration was an accentuated form of the ‘sacred’ aura that suffused all African authority: kin group elders, village heads, chiefs, and kings were all in some sense ‘priests’ ritually bound to the group they headed. The symbolism of this boundedness was at its most elementary in the ritual

duties of the heads of kin groups... the symbolic elaborations were most florid in the royal ritual of large polities (Kopytoff, 1987: 66-67).

The idea of sacred chieftaincy or divine kinship was an element that explained and legitimized authority over a group. In the pre-colonial era, there were chiefdoms in place in the Eastern Congo which posed a great deal of resistance to Rwandan frontiersmen. The sacred dimension of chieftaincy was evident among the Ngok Dinka of Abyei. If territorialisation of Africa stemmed from the control over the people before the land, it is possible that the sacred dimension transposed itself into the land, as the place of belonging which was elaborated from the group of belonging. The sacred dimension of the land could also be a testament to pantheism (Goody, 1997). The place of belonging became more important with population growth and enforced boundaries, so it is possible the idea of sacred attachment to the leader of the group has carried through to the attachment of the place of that group, as place became more and more scarce. There is literature that discusses how identities have formed in connection to land to show land's symbolic and spiritual significance for groups in Africa (Anseeuw and Alden, 2010; Brown, 2006; Shipton, 2009; Walker, 2008), but the processes by which this happens are not clear. This is not to insinuate that land held no symbolic or spiritual significance in the frontier, only that little is known about that era.

The frontier process also included the ruler-subject inter-dependence and polity integration. In the pre-colonial period, there were four stages in the metamorphosis of a frontier settlement into a chieftaincy and kingdom (Kopytoff, 1987: 69-70):

- (1) The initial immigrant settlement, organizing its limited expansion on the model of a corporate kin group.
- (2) The growth of the latter into a chieftaincy that incorporated new subjects and neighboring settlements into an integrated polity built on the recognition of the separateness and interdependence of rulers and subjects, which was done according to a model of an implicit contract which glossed over the role of force in the making of the polity.
- (3) The maturing of the preceding chieftaincy into a 'kingdom'.
- (4) The further expansion of the kingdom through open conquest and frank domination of peripheral areas, which created an outer circle of vassal polities and subordinate allies, over whom control was achieved by pragmatic means.

The internal solidarity of the polity on the frontier was based on common belief and outlook. In order for a polity to be legitimate, it not only depended on the legitimacy of ‘firstcomer’ authority, but also on being recognized by the metropole and neighbouring polities. In order for the polity to expand to regional stature, this recognition was vital. To have regional standing and validation, the established polity had to have a charter that drew on the regional values, themes and traditions as well as upon historical events specific to that region. “The recognition by emergent polities of links with established metropolises was one of the mechanisms that provided a historical continuity between frontier and mature societies in Africa.” (Kopytoff, 1987: 75) Thus, the formation, existence and legitimacy of a polity were structured in an inter-dependent relationship to the metropole and neighbouring areas.

The African frontier provided the landscape for the production and reproduction of polities. Kopytoff (1987) stresses that in order to understand the functioning of mature societies, it is important to travel backwards in time to understand the early stages of the small polities.

The African societies we know were all born not ‘in the beginning’ but as part of a continuous and variegated process of interaction and social formation – a process that involved a local political ecology that included these forms as part of the conditions in which they were created and re-created (Kopytoff, 1987: 78).

All societies in sub-Saharan Africa were born out of processes of creation and recreation, as well as relocation to available space on the frontier. Therefore cultural differences mapped in spaces need to be re-examined because territories are not and have never been static entities.

Physical location and physical territory, for so long the *only* grid on which cultural difference could be mapped, need to be replaced by multiple grids that enable us to see that connection and contiguity... vary considerably by factors such as class, gender, race, and sexuality, and are differentially available to those in different locations in the field of power. (Gupta and Ferguson, 1992: 20, italics in original)

The processes by which identity and attachment to the land is formed is group specific, but we can infer, through the processes of codification and demarcation, that the need to own selected territories was a product of colonialism. Prior to European arrival, the continent was

sparsely populated and there was a cultural code of conduct and understanding of the respected territories and polities of kin groups, sub-groups and their subjects. After space became a place for community formation, this allowed for the strengthening of group and kinship ties.

In the colonial era, with the growth of populations and the sheer number of European settlers that began to carve out space in the once open frontier, group attachments and identities were further entrenched to the land. Europeans had their own vision of the African frontier and what the space offered. In terms of the European conquest of Africa, it is important to remember that the making of a frontier, regardless of racial or cultural classes, is a process of colonialism that is preceded by imperialist outlook. By drawing on Edward Said, the definition of imperialism can be understood as “the practice, the theory, and the attitudes of a dominating metropolitan center ruling a distant territory” (Said, 1994: 9). For the colonial era, the ruling metropolitan center was considered to be the European countries. Colonialism “is almost always a consequence of imperialism, is the implanting of settlements on distant territory.” (Said, 1994: 9) In this frame of thought, the formation of European settlements in the ‘frontier’ can be comprehended as a form of imperialist domination. For the Europeans, the nature of a frontier was that of being able to conquer, to build and to create out of a vacant space. Africa was perceived to be open to domination and control. There is also an arrogance of thought that comes with expansion to the frontier that can be perceived under imperialism: “Neither imperialism nor colonialism is a simple act of accumulation and acquisition. Both are supported and perhaps even impelled by impressive ideological formations that include notions that certain territories and people *require* and beseech domination.” (Said, 1994: 9, italics in original) It is well known that social Darwinism justified racial domination over the native African. With new population groups arriving on the continent, land became scarcer in time, and it was that much more important for a native group to claim a portion of it. There were also mechanisms of private ownership that were introduced by the Europeans. The historical picture of the frontier as a space, to the transformation into place and homeland for groups and, finally, the impact of European colonialism give an understanding of how land transforms into being symbolic and sacred, and a thing to be claimed.

2.2 Land as Symbolic

Land has a material dimension, a social dimension and a symbolic dimension. Often we focus on the material aspect and witness people competing for scarce resources, but in so doing, we often overlook how the meaning and value of resources are constructed. The symbolic dimension is critical for understanding perceptions and expressions of conflict (Schirch, 2005) and the struggle for land claims. Land has meaning for all groups that have livelihoods, ancestry, economic and political importance and a spiritual connection associated with it. Land can be thought of as a place as well as space, that is a space to live, move and act. In both these aspects, land serves a functional purpose. The importance of land increases as it can provide resources for economic life (Redekop, 2002), and this is where the competition over land claims is often accentuated.

The groups attribute meaning to land through their lived experiences and ancestral connections. Humans have a need to symbolically understand and give meaning to the world in which they live (Schirch, 2005). Within the symbolic dimension are ‘worldviews’, where “people symbolically construct conflict [or the struggle for land claims] through their worldview, a dynamic lens to understand the world through senses, emotions, complicated perceptual dynamics, culture, values, and identity” (Schirch, 2005: 38). At the core of worldviewing is perception and this impacts how specified parties in the Kivus and Abyei understand the symbolism of land. Each group believes that its claims are valid and legitimate, but in the war-torn landscapes of the Eastern DRC and Sudan, these claims are often not recognized by the state or other groups, let alone prioritized. For groups of the Kivus and Abyei, the symbolic significance of land has implications for the ongoing struggle for land claims.

Land, Human Identity Needs and Social Identity

The symbolic significance of land comes from the ways in which people have attached meaning to it. In order to deepen the ways in which humans construct meaning and to understand meaning in relation to land, it is useful to unpack human identity needs. I borrow some concepts from human needs scholars (Fisher, 1990; Redekop, 2002; Sandole,

1990) to assess the identity needs of security, belongingness and meaning in relation to the land. Identity is so important because it is how humans define themselves and form social and cultural distinctions entrenched in the sense of connection. Our identity needs influence our behaviour as “rooted in biology but influenced by environment are basic human needs: necessary conditions to basic survival and further physical and psychological development.” (Sandole, 1990: 60) Satisfaction of identity needs is essential to achieve the fullness of humanity, and when these needs are compromised, the likelihood of conflict increases. Identity is “developed and maintained through a process of exchange with the environment, which parallels the classic notion...that personal identity is formed through social interaction.” (Fisher, 1990: 94) The space for social interaction is rooted in the land and this has generated the development of identity for the Banyamulenge and the Ngok Dinka. In Africa, the power over the land is grounded in identity politics where, “the absence of any systematic analysis of land conflicts, and the integration of these insights into sound policies and post-conflict reconstruction strategies, potentially contributes to the perpetuation of the conditions which fuel conflict” (Anseeuw and Alden, 2010: 2). While the conflicts in Abyei and in the Kivus are not strictly about land, land does play a role.

Meaning of the land is constructed through what the land symbolizes for the groups in the Kivus and Abyei, which in turn forms their perceptions in their right to claim land. The discourse of ‘whose right to land’ is intimately tied to meaning. Around meaning and belongingness are the identity narratives of the two groups, which validate and intensify the connection to the land (Brown, 2006). Most Africans have an identity narrative in their spiritual connection of the land from their ancestors. Meaning to the land has been socially constructed to satisfy identity needs and livelihood, to justify political power and economic opportunity and to legitimize rightful belonging. It is these needs that are vital for individuals to attain the highest capacity of humanness.

The meaning of land is specific to each group, which creates group homogeneity in the need to belong to a space on the land. Since both parties claim ancestral attachments, this impacts upon their current identities because they can relate to their natural surroundings “as well as the fundamental feelings of connectedness with the social and cultural environment

in its entirety.” (Anseeuw and Alden, 2010: 2) For Sandole (1990) the human need for belongingness is self-transcending and the denial or absence of this need can contribute to violence. A sense of belonging to the land is a vital component of identity for the specified parties.

Security can be understood in terms of a collective group identity to the land, the political importance of having land and the economic significance of farming land. Identity relates to a need for security and therefore the need to assert group identity, which translates into an action taken over the land (Sandole, 1990). For both parties, a collective group identity has been formed from the relationship to land as a space to act upon and a place of common cultural norms, values and behaviours. For economic purposes, the land encompasses the potential for growth and production which is measured by wealth.

In social identity theory, the individuals strive to maintain a positive self-concept and social identity. Membership in groups contributes to an individual’s social identity, since the evaluation of one’s own group is based on a social comparison with other groups. A positive social identity is based on favourable comparisons (Fisher, 1990: 95-96). From the previous section, it is evident that land plays a major role in the formation of collective identity.

Social actors attribute certain meanings to the landscape and the resources it contains. Landscapes have clear historical dimensions, are partly the materialisation of culture as well as the product of institutional arrangements, such as property rights... an understanding of land-use histories and the interplay between social, institutional, political and economic processes over time is essential. (Hebinck, 2007: 15-16)

Through symbol and identity, the groups have established a collective entitlement around the right to belong on the land. Identity can be claimed in many ways through the politically declared, the national to the sensually intimate, the economic and the legally defensible. What it means to live in a place can be understood in terms of intimacy, ownership, usage, displacement or alienation (Brown, 2006). For the groups in the Kivus and in Abyei, the land holds layers of meaning that impact on their group identities.

Land in African society

Land is a symbolic resource for most Africans because of its position in traditional societies and economies (Anseeuw and Alden, 2010; Shipton, 2009; Walker, 2008). When groups claim new territories, they carry with them the memory of places that have been lost (Walker, 2008). In sub-Saharan Africa, belonging has been ‘recorded’ through narrative which has formed a connection to land and entrenched group identity. Stories intensify and validate the connection to land (Brown, 2006). These stories tell of the ‘firstcomers’ and in Africa, being first legitimizes belonging. Narrative carries certain stories in which people can romanticize upon their ancestral roots. This can be misleading for contemporary issues of land distribution, especially because of the lack of written documentation. However, the narrative of loss fuels the actions to reclaim the land (Walker, 2008). Furthermore, this sense of belonging to land began with belonging to a group of people. “People do not just own or inherit land... they also belong to it. Belonging to land is part and parcel of belonging to other people – in groups, networks, or open categories” (Shipton, 2009: 110-111). If this sense of belonging is rooted in the people as well as in the land, this has implications for how the realm of meaning transcends over people and space.

According to Hebinck (2007), the importance of land is also about its ability to construct and maintain livelihoods¹².

Livelihood transcends sectoral economic boundaries as well as geographical boundaries, particularly those between urban and rural environments. In constructing their livelihoods people’s behaviour is not simply determined by cultural and social structures; instead they are actively engaged as social actors, constantly manoeuvring to improve their lives. Through these

¹² Livelihoods are conceptualized in four ways (Hebinck, 2007: 12-14):

“(1) Livelihoods are treated as revolving around the utilisation of *resources*, which can be tangible and non-tangible, social as well as natural.

(2) Livelihoods can only properly be understood when seen as embedded in the *institutions* that social actors create through their daily lives.

(3) Livelihood is too often equated solely with having a job or with working, and is portrayed as consisting of portfolios of resources and income generating activities.

(4) From recent studies, it is evident that livelihoods are rather *heterogeneous* in the following two respects: there is not one ‘ideal’ livelihood that can be constructed, either in theory or in practice; and that heterogeneity also encompasses aspects of social and economic differentiation.

(5) Livelihoods are investigated in their historical contexts. Therefore livelihoods are not static and they can change within the lifecycle of individuals.”

endeavours they engage with others over a range of issues. (Hebinck, 2007: 11-12)

Hebinck connects livelihood to land through the idea of landscapes, which “are physical, non-distinct entities within ecosystems, where all resources are linked by interactive, dynamic processes... The landscape is the outcome of the way local people understand and order their natural environment.” (Hebinck, 2007: 16-17) By linking livelihoods and landscapes in this manner, livelihoods can be conceptualized “as a script through which people read, understand, order and utilise the landscape and give meaning to it.” (Hebinck, 2007: 17) Livelihoods can be conceived as coproduction, “an outcome of a continuous encounter and interaction between the natural and the political, the social and the cultural... The interrelationships and interdependencies in the landscape are... the result of historical processes of coproduction.” (Hebinck, 2007: 17) The historical processes apply to the pre-colonial and colonial periods. As livelihood needs to be assessed in a matter that draws on various factors and perspectives, so does the land itself. The symbolic aspect takes into account the social, institutional, political, economic and spiritual processes of livelihood. These elements have made the historical process of interaction on the land meaningful to the inhabitants.

Thus, the significance of land in African society is a component of livelihood, which has shifted and transformed through the course of history. Currently in the Kivus, livelihood is one of surviving in a system of criminality in the absence of good governance, state support and the rule of law. Yet, the mode of survival still constitutes a livelihood. In Abyei, those who are loyal to the GoS are able to participate in oil production. Those groups who are not loyal to the government and do not benefit from political patronage are competing for land claims, which in turn complicates the fate of this unsettled border region. Hebinck and Lent (2007) remind us that in order to understand the processes and functionality of livelihood-landscapes, there needs to be grounding in the locality, as well as the everyday life of the inhabitants.

2.3 Land as Sacred

Belonging to a particular piece of land may also be based on spiritual tradition (Redekop, 2002: 140). What is grounded in spiritual and religious tradition becomes sacred for groups. In order for land to be deemed sacred, it does not need to be constructed by man-made shrines, monuments, temples or any other building; it is a place of spiritual significance and meaning to a given group. “The holy place speaks for and of a community, and that therefore the meaning of such a site has to be analysed in terms not of the place itself, but in terms of the social practices of the communities which revere it and the identities generated by those activities” (Bowman, 1993: 432). The holy place or sacred space is a place to be defended as it is so deeply connected to the religious and spiritual affiliations of selected groups. “Appealing to religious absolutes, conflicts at sacred places mobilize tribal, nationalist, and ethnic sentiments and lead to violence that spreads rapidly beyond the boundaries of the sacred place.” (Hassner, 2009: 2) Through religion and spiritual beliefs, humans create meaning in their lives and if a sacred space is threatened, it threatens the identity of the group. Furthermore, it is impossible to place a value on sacred space if it is conceptualized and/or constructed in response to a divine sign. This also makes it impossible to substitute a sacred space with another place (Hassner, 2009).

As mentioned earlier, in sub-Saharan Africa, the sacred was defined by tradition and belief over ritual and place, and not by monuments that can be seen in other places in the world. For example, chiefs were considered to be sacred as they perceived as the spiritual leaders of a group, who could bring security, prosperity and fortune and avert danger and misfortune. At the onset of European colonialism and during the colonial era, chiefs were usually of the same ethnic distinctions of the group they led and lived among their community in a rooted place¹³. Chiefs were associated with constructed ethnic groups that developed through complex historical processes. The chief was the earthly connection to the divine and this helps to qualify the sacred space of Abyei for the Ngok Dinka. This was the birthplace of their chief, Deng Majok, who was the second chief to lead the Ngok during the

¹³ Groups often broke off into sub-groups or relocated to other corners of the ‘Frontier’. However, upon establishing a community on a place on the vast landscape, the social hierarchical order meant that the group would need a chief to lead them. This was discussed in section 3.1 of the African Frontier.

political centralization of Abyei¹⁴. The land in Abyei has a sacred dimension as this has been transposed from the nature of the Ngok Dinka's leadership in chieftaincy to the political centrality of place. According to Hassner (2009), centrality is one of the characteristics of sacred space.

The more central the space in the religious landscape of the community, the greater the divine power vested in the place and the greater the obligation of the community to defend the sanctity of the space. This obligation is owed, not only to all members of the community, but to future generations, deceased ancestors, and the gods themselves, leaving the community with no ability or desire to bargain over the space with rivals. (Hassner, 2009: 49-50)

Sacred space is central to a group because it is their connection to the divine. However a group may perceive the 'holy' or the 'divine', the sacred space remains their most important site of spiritual and religious connection. If the group believes that the site offers communication with the divine and has divine, the more meaningful it becomes.

Bowman (1993) alludes to holy sites being those that are symbolic to 'imaginings of communities'¹⁵ and that these sites are labile because the communities themselves are labile. People fix meaning to places in various ways to entrench their identities and their connection to the divine. What becomes sacred has been socially constructed, often defined by particular ethnic distinctions. In the face of a threat, new identities are constructed who can then attribute sacredness to specific places. Many of the Nilotic tribes in southern Sudan, including the Dinka, constructed their identities against threat (Bowman, 1993: 433). The same concept is applicable to the Banyamulenge in South Kivu, who constructed an identity in order to be differentiated from the Banyarwanda Tutsi who stemmed from the Royal Court in Rwanda. The Banyarwanda were perceived to be 'foreigners' by indigenous Congolese and the Banyamulenge did not want such a stigma attached to them. The Mulenge Hills hold a sacred dimension for the Banyamulenge because it is the place to

¹⁴ The transformation of Abyei into a political entity (Beswick, 1998) will be outlined in Chapter 4.

¹⁵ This concept is taken from Anderson (1983). "The fact that this new discursive space is articulated in nationalist rather than localist terms points to the role of the enemy in constituting identity" (Bowman, 1993: 451). In this article, Bowman refers to the case of the Palestinians living in the Occupied Territories but the same idea can be applied to the Ngok Dinka and the Banyamulenge living in uncertainty amidst recurring conflict.

which their very name is associated and where their identity was constructed. It was the place where these people of Rwandan descent settled.

Hassner's thesis on sacred spaces helps to establish more of the ways in which the sacred is applicable to the Ngok Dinka in Abyei and the Banyamulenge in the Eastern DRC, and to disputed territories. Although his work primarily focuses on sites where there are religious monuments, he mentions that the sacred can encompass natural sites. The qualifying factor is for the site to have religious and spiritual meaning attached to it. Yet, it may be of different value to other groups or parties who lay claim to it,

The land on which a sacred place is located may hold value other than the religious. Secular forces may wish to use the same land for development, exploration, or tourism. This gives rise to a type of dispute that has religious repercussions for only one of the parties involved. Often these disputes will include a disenfranchised religious party on the one hand and a party motivated by material interests on the other. (Hassner, 2009: 59)

Hassner extends his thesis to territorial disputes to show how many of the characteristics of sacred sites are applicable, which is particularly useful to conceptualizing land in this project. In the case of Abyei, the Ngok Dinka claim the space to be symbolic and sacred for their group, while the GoS wants the space for economic reasons.

Along with centrality, sacred spaces are also characterized by their vulnerability to attack and their indivisibility. Vulnerability has to do with the likelihood of conflict or territorial dispute, where,

...the more central the site to the identity of the religious community, the more likely the community is to take action in response to challenges to the integrity of the site. The more vulnerable the site, the greater the risk that foreign presence or conduct will be interpreted as an offensive act. (Hassner, 2009: 32)

Abyei is a contested border region between the north and the south, while the Mulenge Hills have many rebel groups competing for control over the area.

Because believers value these sites, they become attractive targets for political actors as well. By controlling sacred sites, political actors hope to control believers, the religious movements they form, the leadership hierarchies of these movements, and their assets. The characteristics of sacred sites thus create the potential for conflict not only between competing religious groups but also between religious groups and political actors (Hassner, 2009: 3).

Hassner (2009) says it is important to pay attention to how the parameters of what defines and constitutes the sacred can be manipulated by political actors. The sacred dimension can become a tool of functionalism where parties and/or groups use self-interest to execute claims of legitimacy.

Lastly, sacred spaces are indivisible and this is especially problematic when there are multiple claims to ownership. The three conditions for indivisibility are:

...the parties must hold that the issue cannot be parceled out or subdivided without significantly diminishing its subjective value (*cohesion*). Second, the parties must mean the same thing when they refer to the issue they are bargaining over (*boundaries*)... Finally, the parties must believe that the issue cannot be substituted for or exchanged for something of equal value (*uniqueness*). (Hassner, 2009: 41-42, italics in original)

These conditions shed light on how the symbolic and sacred value of the land in Abyei and in the Kivus may be perceived for the groups vying for rights and recognition of belonging. An indivisibility dispute is created by “the need of more than one party to possess, or hold sovereignty over, an indivisible good” (Hassner, 2009: 42). The challenge of indivisibility makes the disputes over these regions almost inevitable.

Indivisibility becomes applicable to territorial disputes as well, which has implications for multiple land claims. Territorial disputes undergo a process of entrenchment as they continue and evolve in time.

All territorial disputes move toward indivisibility over time, as a result not only of top-down manipulations by wily or shortsighted leaders but also of gradual shifts in the meaning, content, and definition of issues as perceived by society. These shifts involve three characteristics that match the three indivisibility aspects of sacred space: cohesion, boundaries, and uniqueness. Territorial disputes become more difficult to resolve over time because the disputed territory grows increasingly cohesive over time, its boundaries rigidify, and its subjective value rises, adding layers of emotional, nationalist, and religious value to what may well have started off as a dispute over strategically or materially valuable land. (Hassner, 2009: 163-4)

The ways in which groups have formed communities in symbolic and sacred places enforces the attachment to territory over time. With population increase, the building of infrastructure and institutions, the development and spread of livelihood, the socio-cultural dimension and

the strength of the political unit all add to the territory's cohesion. The value of the land increases, in both its tangible and intangible components. As the value increases, the more a specific group wants to exercise complete control over the area, especially when it is ridden with religious and spiritual meaning. Thus, "the higher the value assigned to the land, the more effort goes into defending it, the more likely are future sacrifices. Similarly, the more developed land is, the more settlers will want to move there, the more likely it is to undergo further development." (Hassner, 2009: 164) All of these processes reinforce each other and create self-sustaining institutions which form the obstacles that become insurmountable to dividing the land.

For the participants, territorial disputes that are entrenched through the aforementioned processes can become conceptualized as civil-religious sacred space.

Civil-religious sacred spaces are secular spaces...that serve emotive and ritualistic functions for a nation that parallel the functions sacred space serves for a religious movement...civil-religious sacred space provides the community with the means for visualizing, celebrating, and memorializing the nation, both past and present... Patriotic discourse links these spaces to the nation's ethos, history, and destiny. (Hassner, 2009: 166-7)

Therefore, this type of space can play an important role in solidifying a group's claim over disputed land. What land symbolizes for a people varies across the different landscapes and within and between groups of people. The sacred spaces are heavily contested because of their religious and spiritual symbolism.

Sacred places, then, are characterized by an extreme duality. Because they are attractive, they are coveted. Because they offer access to the divine, they pose the risk of desecration. Because they form social centers, they offer temptations to those who wish to control social groups. And because they offer terrestrial evidence of divine presence, they become arenas for competition between religious groups, each wishing to assert its ownership, rights and rituals at once and the same site. (Hassner, 2009: 21)

Once a place is deemed sacred, it cannot be reversed. It is ingrained in meaning, purpose, and existence. However, ideas of the sacred are constructed differently for each group, often in the same vicinity or on over-lapping territory.

2.4 Conclusion

This chapter has outlined the layers of significance attached to the land and how these meanings are constructed by the groups that attach themselves to specific place. By taking the African Frontier as the starting point, it is apparent how in pre-colonial times vast open spaces became populated with different communities seeking a place in the landscape. As groups entrenched their livelihoods, their families and social institutions, the land became more valuable. This evolutionary perspective of community rooting itself in a locale transforms spaces into places of meaning, tradition, ritual and religious and spiritual practices. The idea of 'homeland' is "one of the most powerful unifying symbols for mobile and displaced peoples, through the relation to homeland may be very differently constructed in different settings" (Gupta and Ferguson, 1992: 11). The narrative of the loss of land and the inscription of home-land, derived from historical, cultural, socio-economic, political and spiritual practices, there is a place that binds the group connection to rightful belonging. "Land becomes crucial to identity in the transition from land as space to land as place. Land as place is historically rooted: it is home-land" (Redekop, 2002: 138). When the place channels access to the divine, the sacred becomes bound in the land. The land is then an entity to fight for, to defend and to claim, as do the Banyamulenge and the Ngok Dinka in the Kivus and in Sudan respectively.

CHAPTER 3: THE LANGUAGE OF LAND CLAIMS IN THE DRC AND SUDAN

I have titled this chapter as ‘the language of land claims’ because the ways in which to claim and own land are numerous and they differ according to locale. By thoroughly investigating the ‘how to’ question around claiming land, this chapter is a means of examining the ways in which groups have learned and have strategically positioned themselves over territory. The multiple definitions around land claims and ownership correspond to the subsequent processes in which groups vie for them. Land is a space to belong, and after persistent conflicts, it is all the more crucial for groups to entrench themselves to the land: as, from the theoretical bases from the previous chapter, it is the land that is the arena for group cohesion and livelihood. Two key elements that contributed to defining territory by first securing the people to place were the slave-based systems (in precolonial Sudan and later as slave labour in the Sudan and the Eastern Congo) and later the Native Administrations (put in place by the European colonizers) that allowed for proxy control over the customary realm.

This chapter investigates how the claiming of land has shifted through means of complex socio-cultural, historic, economic, political and localized processes. The codification of territory came out of the colonial period; yet, in the precolonial context the significance of land for groups should not be overlooked, nor should the designation of territory be restricted to an understanding in empire and conquest. Elements of land importance are manifested within the social systems and have made the land question in Africa in general more complicated, but in the conflict ridden areas of the Eastern Congo and Abyei, Sudan, land claims become all the more confusing. The colonial period introduced mechanisms for land allocation to propel production in a rapidly growing capitalist system. In pre-colonial Africa, however, land transactions existed through social networks, but their ambiguities continue to puzzle modern legal systems where property and rights are more explicitly and meticulously defined. In customary tenure where the rigorous methods of codification were absent, the transactions were heavily premised on trust, and this acts as a social system of significance.

In the first section, I briefly outline the nature of land claims for the Kivu region and Sudan in the late precolonial period. These factors have resonated into the contemporary arena so it is necessary to frame the social context of accordingly for the two cases. The theory of the bifurcated state by Mamdani (1996) puts forth that the colonial period instilled a dichotomized system of citizen and subject of the state. These ideas are critical; however, I find it necessary to incorporate some other key elements from the late pre-colonial period (1500-1900) to capture the fluidity of the meaning of land and identity. For land, strict mechanisms of codification emerged from the influence of the Europeans,

But the history of colonial rule is not simply the product of short-term political decisions of the moment. It is rather the product of the conjunction of the accumulated traditions of social and political behavior with newly imposed demands. The longer-term historical rhythms and social patterns are important because they affect, even if they do not determine, the matter of application and the nature of the impact of policy decisions (Newbury, 2009: 185).

Furthermore, several other scholars (Benjaminsen and Lund, 2003; Berry, 2001; Cousins, 2000; Deng, 1988; Lentz, 2006; Lund, 2008; Peters, 2004; Platteau, 2000; Toulmin and Quan, 2000; Anseeuw and Alden, 2010) have stressed the importance of historical inquiry to comprehend how the socio-cultural dimension of land impacts upon how land is addressed and allocated in the present. These traditional systems have mixed and overlapped with modern systems of land privatization, such that the social aspect of land in Africa cannot be ignored. The second section examines land claims and the shifts of land tenure in the colonial period. Sophisticated and modern modes of privatization were introduced and there existed a two tier system of the communal and individualized ownership schemes. In the third section, the post-colonial landscape will look at land policies from independence to the contemporary period, and will pay special attention to the interplay of land and ongoing conflict. These points in history will help to weave the complex, complicated and multi-layered nature of land claims into a deep understanding of the present day.

3.1 Land on the Onset of Colonization

The precolonial period in Africa included several systems of land tenure and belonging. The frontier landscape was highly applicable to the Eastern DRC, which has been

historically contextualized by Africans¹⁶ as being wild and unclaimed terrain that was subject to grab by powerful groups and kinsmen, primarily from Rwanda. The territory was not designated to any group necessarily but was a space of undecided belonging and claim. Raids and military expeditions occurred in the Kivus. The situation in Sudan was significantly different, as the land in Northeast Africa was under the jurisdiction of lords and kings, and was also subject to systems of slavery and labour for control, power and taxation. Frontier conditions existed in the Sudan as well, but areas were specified, claimed and controlled earlier than in the DRC. Lentz (2006: 8) argues that “the dominant paradigm that land in Africa was a free and plentiful good, that political control tended to be over people rather than over land and that Africans were indifferent to rootedness in physical space, needs to be reassessed,” and that “it is, therefore, necessary to apply the concept of ‘legal pluralism’, of ambiguity, negotiability and political embeddedness of land rights to the pre-colonial past also.” I would like to emphasize that I do not agree that Africans were indifferent about physical space, but to clarify that it was the legal and territorial codification of people to land during the colonial period that amplified the urgency and need to claim fixed spaces. In order to appreciate the evolution of land tenure and allocation, it is necessary to visit the late pre-colonial period. Some of the components that were evident from that era in matters to land continue to be evident today.

The Kivus, Eastern DRC

To gain insight into the processes of appropriation of land in the Kivu regions, I will draw on the historical scholarly work of David Newbury (2009) to briefly highlight the frontier conditions, the developing economies with trade networks and the early settlements. The Eastern Congo has had a legacy of interaction with Rwandans and this has had implications for the development of group identities. There is a danger in assuming that cultures and identities are static and unchanging because the encounters between indigenous Congolese and Rwandans in the Eastern Congo would have necessitated the formation of new, enhanced and shifting identities (Newbury, 2009). Although Kopytoff’s sketch of the frontier is applicable to the land in the Eastern Congo, I emphasize how the region was a

¹⁶ In his research, David Newbury (2009) used ethnographic methods to put forth the perspectives of the indigenous Rwandan and Congolese people as well as the victims of violent events. To investigate historical events, Newbury relied on peoples’ stories of their ancestors.

space of interaction for livelihood prior to the arrival of the Belgians and the insertion of Rwandan labour for the colonial plantations in the Kivus. This section seeks to hone in on the societies in the Eastern Congo, despite where people may have come from, because no matter the length of time spent on a location, these people have developed a connection to the land. Identities are partly constructed via these connections and attachments to the land. I argue that the place of residence is perceived as home-land to the generations that were born and raised there, who therefore have a different conception of home-land than their ancestors, who may have been migrants.

Around the area of Lake Kivu (refer to map 3-1), there were developed as well as developing livelihoods. In the nineteenth century,

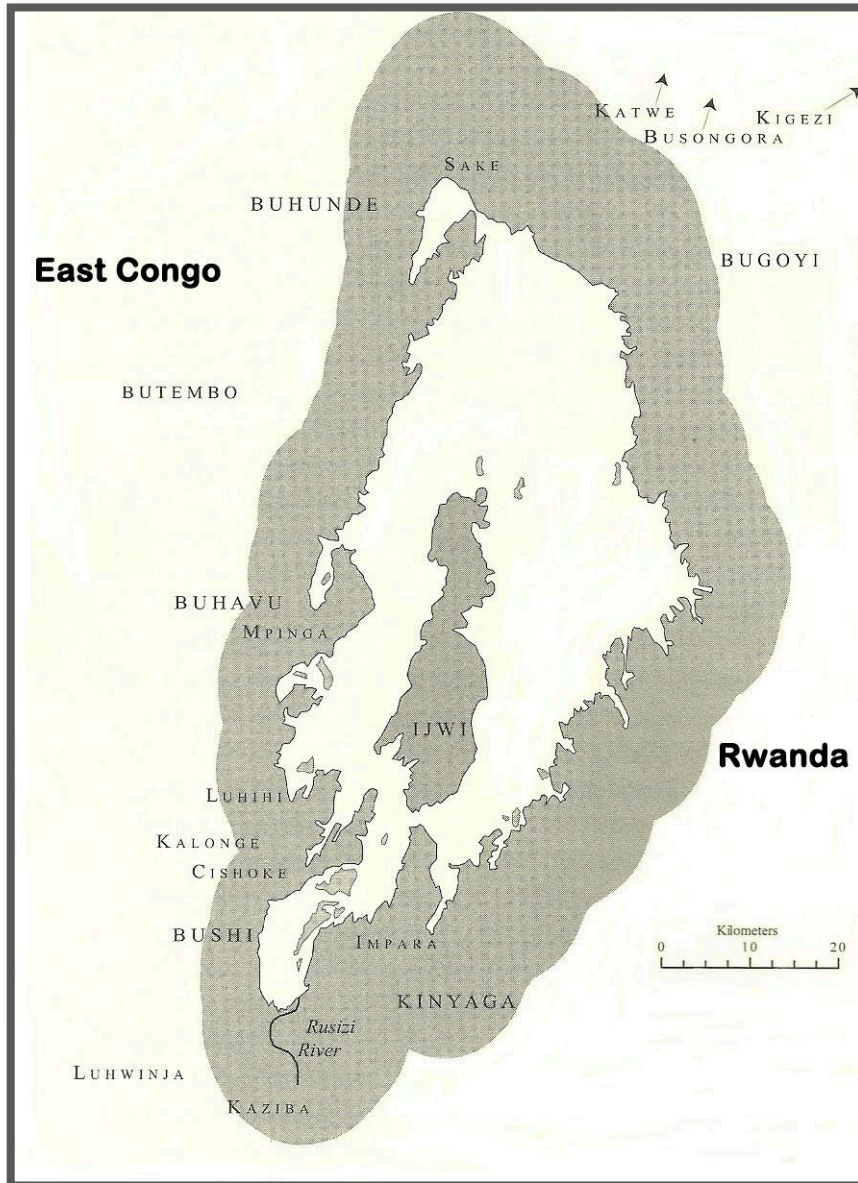
environmental and cultural differences encouraged rather than impeded commercial interaction, that trade was carried out on a significant scale without organized markets, and that the Lake Kivu trade networks flourished independently of direct political control by local state structures (Newbury, 2009: 66).

Trade networks involved the present day Havu, Hunde and Shi peoples. Environmental and cultural differences were most pronounced in the Tembo and Nyanga peoples of the Zaïre basin. “Sparsely settled in precolonial times, they were organized politically into small-scale, ritually based units with a minimum of specialized political institutions” (Newbury, 2009: 67-69). It was not that commodities traveled far distances, but that the sites for trade allowed for the space of personal contact amongst a variety of groups. Rwandans sought a commodity known as *butega*¹⁷ from the Eastern Congo. The transfer of livestock occurred within Eastern Kivu, but it is difficult to approximate the time in which it became commercial. The Lake Kivu region should not only be measured in economic terms, but in terms of a place where cross-cultural linkages emerged in an ethnically heterogeneous area (Newbury, 2009). Land became a place to accommodate these livelihood functions as well as cross-cultural exchange, but it was not designated to any group or ruling body. Therefore, different people were free to interact in this space for the purposes that sustained and

¹⁷ This is a bracelet that is made from raffia fibers that are woven into distinct patterns. It was an accessory that people wore to connect their group identities. See Newbury, 2009.

enhanced their livelihoods. Land was a shared space of interaction and livelihood development.

Map 3-1: Lake Kivu trade network, around 1850



Source: (Newbury, 2009: 68)

Military expeditions took place in the Kivus under the reign of King Rwaburigi of Rwanda, who ruled from 1865 to 1895. His military objectives included control and occupation of the area, raiding loot and cattle, personal vengeance and the desire for

conquest and submission of groups.¹⁸ It is documented that the area of Bushi (South-West of Lake Kivu) in present day South Kivu resisted the most to Rwabugiri's military campaigns and it was during another campaign attempt that he eventually died.¹⁹ The Shi people had defeated him in previous campaigns such that his expeditions were never successful in Bushi. This is an early indication of the amount of resistance that is possible out of the Eastern Congo and that the people had learned to fight off intrusion. It is also an indicator of the use of force and violence that both Rwabugiri's troops would have had to exert and the Shi peoples would have had to employ to halt the campaigns. King Rwabugiri is an example of a ruler who directed his energy externally for power and control, and after his death "the internal factions at the court fought over positions and power" in the state of Rwanda (Newbury, 2009: 141). History demonstrates that force and violence existed in the Kivu frontier and that there was attempted control over people, land and livelihood. The resistance indicates a desire to protect the people and the land to which they belonged, an early example of land conflict.

Sudan

This section examines land occupation and allocation in the late precolonial period in Sudan, from around 1500 to 1900, which brings to light the largely pastoralist populations that were in place. From 1821 to 1885, Sudan was ruled by the Turco-Egyptian regime, which was overthrown by the Madhiyya, who ruled from 1885-1898. According to Collins (2008: 17), "Islam in Sudan has traditionally been dominated by the rituals of popular mysticism, *sufism*, for which the legalistic structure of orthodox Islam in Egypt had no appeal." The Turco-Egyptian regime excluded the Sufi mystics as religious leaders and this is where the appeal of Mahdism stemmed from. The message of the Mahdi attracted a large following of Sufi mystics, among who were the Baqqara Arabs.

¹⁸ For a detailed account of the military expeditions of Rwabugiri, refer to Newbury, 2009, Chapter 5: "The Campaigns of Rwabugiri" and Chapter 6: "Rwabugiri and Ijwi".

¹⁹ The cause of Rwabugiri's death is not certain, but he died in a canoe near the western shore of Ijwi. Some informants claimed that he was killed by Bany'Iju, the collective name for all the different people of Ijwi, while others claimed that he died of dysentery (Newbury, 2009: 160).

Both the Turco-Egyptians and the Mahdists exercised colonial like practices from slave raiding to exploitation of ivory in the South (Johnson, 2011). Pastoralists include the present day Dinka, the Ngok Dinka and the Humr-Misseriya groups, who had an influence on land tenure and allocation systems. During this time, the importance of land was equated to land that allowed for grazing for the cattle herds (Spaulding and Kapteijns, 2002). Out of frontier conditions, it was the groups of people and control over these groups that presupposed the control over areas of land. This theoretical premise can also be reflected in the control over livestock, which was considered ahead of the exact location of the land where they grazed. Spaulding and Kapteijns (2002) insist that land tenure involves both humans and the land, such that land cannot be treated as an isolated commodity because it is embedded within a social context. During this period, Sudan had a more established system of land tenure and social organization than that of the Eastern Congo. Sudan had a strong Islamic presence which favoured a centralized system that included permanent settlement as well as property rights (Beswick, 1994). The Islamic history spearheaded more advanced political and economic systems such that Sudan had not been a purely frontier terrain for as long as the DRC.

In precolonial Sudan, there existed two distinct classes, one of which was the landholding elite and the other was a class of subject commoners. There were also two different systems of land tenure, one of which applied to the peasantry and the other to the ruling elite, even though the elite allocated the land amongst themselves to secure labour and tax payments. Therefore there were multiple levels of ownership, although it was the elites who ultimately had the degree of control we conceive of today. “Most forms of wealth derived ultimately from the land, but the process of creating wealth was mediated both through the labor of its producers and through the modes of its extraction.” (Spaulding and Kapteijns, 2002: 45) For the peasantry, the lower level of ownership rights were vested in the individual, the one who first cleared the land and who prepared the land for cultivation. Ownership followed a hierarchical class structure, where the owner was an ancestor of a subject-class lineage. All newcomers and immigrants had to make small payments to the head of the lineage in order to use the land. “In all situations, the Sudanese land-holding institutions... erected a hierarchy of wealth and rank within communities of subject producers

and established a local arena of competition for the modest but not insignificant rewards at stake” (Spaulding and Kapteijns, 2002: 47-48). The head of the lineage accommodated the use of land among the peasantry, but this did not mean that they were in the position to guarantee security.

The highest level of ownership for the same land was in the hands of the ruling elite. “In Sudanic kingdoms... the ruling elite apportioned all the land among themselves as fiefs... and they relied primarily upon tributary payments drawn for the inhabitants of these holdings” (Spaulding and Kapteijns, 2002: 48). Ruling authorities took all the taxes possible out of their subjects. The subjects were vested in designated spaces that were ruled by lords, and in order to secure their place on the land, people were obliged to pay a lord for the right to dwell there. In this era, cattle acted as a currency for exchange. Precious metals and ivory could be found in the southern areas of the country. Poorer populations were permitted to deal in cattle but not in gold or copper, as these commodities were snatched up by the lords for tribute payments. This system was one of ‘institutionalized insecurity’ where “each community of subjects was obliged to buy peace from the government with precious goods, to seize neighbors as captives at tax time, or to endure government reprisals in the form of slave-collecting raids” (Spaulding and Kapteijns, 2002: 46-47). These are early examples of ownership that predated colonization, as rents and tributes were paid in return for usage of land. These developments make it clear that Sudan had a sophisticated system of land allocation and wealth accumulation in place prior to the enforced mandates of the British colonial regime.

There was some semblance of defined borders and territory as this was known among the lords as their specified jurisdictions, but their locations are not known today. It has been documented that “it was the Mahdists that felt the need to establish their monopoly of power within defined borders” (Kevane and Stiansen, 1998: 25), as this type of legitimacy was pivotal to their control. Lords were powerful figures in the Sudanic kingdoms as they were subordinates of the king. They had the power to grant land or take it away from subjects as they deemed appropriate (Spaulding and Kapteijns, 2002). The function of land was to allow for the lords to gain capital, whether this was cultivated by labour from slaves or subjects.

There were advanced systems of slavery, which included taking in foreigners as captives²⁰ or slavery as a form of punishment for subjects. The Baqqara groups migrated from the North and practiced slave and ivory trading in the South under the leadership of the Turco-Egyptians and prior to it (Johnson, 2011). From hundreds of years ago, the resources of the South have been used for the benefit of the North of which Johnson (2011) stresses was not a divide based on identity but on exploitation. In the South, “Traders and government officials each carved out their own personal fiefdoms, as did some indigenous leaders allied to them, and the maintenance of these fiefdoms through raiding and trading became their own justification.” (Johnson, 2011: 5) The present conflict in Sudan is associated with religion and identity, but as I will demonstrate through this project, those factors have become politicized in the grab for and justification of power along with land.

To exercise control over subjects, “enslavement was the punishment for certain key forms of deviance that threatened the social order and the ultimate sanction in the disciplining of labor” (Spaulding and Kapteijns, 2002: 50). Slavery was a means to exercise control over a population and to ensure their loyalty. This form of labour was used to benefit the monarchy and was essential to securing land:

...an understanding of enslavement is absolutely vital to comprehension of the old agrarian system of land tenure, for it was precisely through the threat of enslavement, directed not against foreigners but against one’s own lower orders, that a government rendered objectively superabundant land politically scarce. (Spaulding and Kapteijns, 2002: 51)

Hence, the control over territories stemmed from the lords’ control over subjects and slaves in labour to ensure a systemic collection of riches for the kingdoms. Subjects could rent or pay tribute for the use of land segments.

Land was allocated in terms of social identity but these identities entailed more than strictly ethnic underpinnings. There were social institutions comprised of ethnic groups yet, “each single ethnic group of subjects was in reality a composite amalgam built up over time

²⁰ Kings and lords sent out warriors to raid neighbouring lands in order to capture foreign people for slavery. Also, free commoners who left their homes, usually as refugees fleeing hunger and drought, would become enslaved in their place of destination. Slavery in Africa was a means to separate people from their kin. See Spaulding and Kapteijns, 2002, for their analysis of slave-based systems and agricultural production.

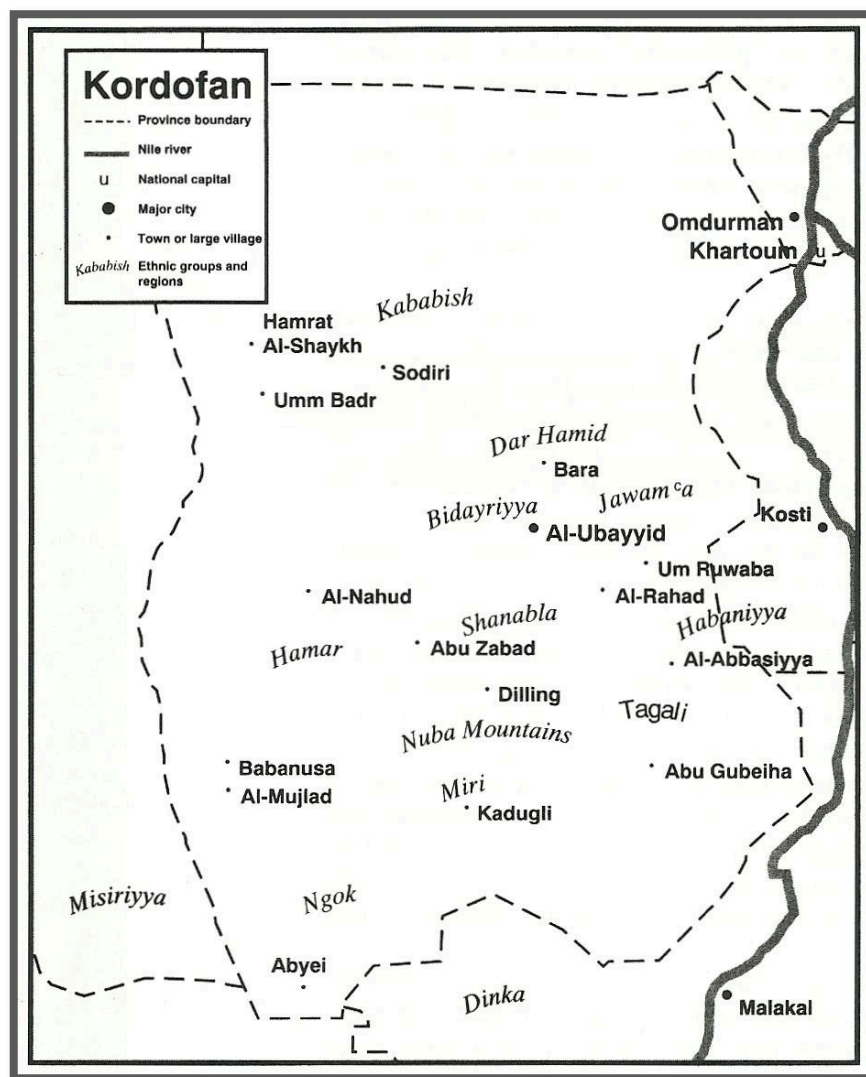
through the absorption of individuals and groups” as either subjects or slaves (Spaulding and Kapteijns, 2002: 54). Ethnic groups in Northeast Africa were born out of regimes of governance to which they were subjected. Additionally, “it would be misleading to say that each ethnic group of subjects had a homeland. Rather, the exercise of state authority over both land and subjects created first a tribal homeland and then a tribe to occupy it” (Spaulding and Kapteijns, 2002: 54). This tribal homeland was derived from the mixture of people that were both subject and slave to the leadership, and thus identities emerged from this platform. This must not be mistaken as empty territories that were filled with people to then rule over, but territories in which some groups already existed, but were absorbed into kingdoms. There is also evidence of conflicts between the ruler and the ruled over the use of land (Spaulding and Kapteijns, 2002). In sum, in precolonial Sudan state power was distributed in a spatial manner. Lords or noblemen were to control specified areas, which were composed of labour systems that allowed for maximum capital outputs that benefitted the constituency, and further, the entire kingdom.

The Turco-Egyptian regime was mainly concentrated in the North because of the geographical diversity of the entire country (Collins, 2008; Johnson, 2011). The regime finally gained access to the South by creating a passage through the Sudd (located near the middle of the north-south demarcation line) to proceed with expansion (Akol, 2007). When the Mahdi seized power, they destroyed all central authority in the south of Sudan (Akol, 2007). The Baqqara, who were once supporters of the Mahdi, longed to escape the leadership of the North as their livelihoods were at odds with being confined to centralized area of Omdurman (Johnson, 2011). The Mahdi died on June 22, 1885 and was succeeded by his confidant, the Khalifa ‘Abdallahi, who became the new leader of the Mahdiyya. After 1891, the Khalifa allowed the Baqqara to return to their home in Darfur (Collins, 2008). With dry conditions that were common to Darfur, the Baqqara would migrate south to the Bahr al-Ghazal. This is a point in history where the process of land sharing and negotiation with the Ngok Dinka began as the Southern areas were predominantly Dinka. It is early evidence of different groups co-existing on the same terrain as the South was a refuge from the colonial practices of the two preceding regimes.

In South Kordofan (see map 3-2), the same area was occupied by groups other than Muslims or Muslim pastoralists, one of which was the Ngok Dinka. According to Kevane and Stiansen (1998: 11), Kordofan itself was susceptible to invasion throughout history because of its geography and ecology.

The region occupies a *terra media* between the Jabal Marra massif and the Nile Valley. To the north the Libyan desert forms a natural border. The southern border is formed by the Bahr al-Ghazal. The northern half of the region is mostly desert and savanna, interspersed with occasional oases and larger depressions with accessible ground-water.

Map 3-2: Province of Kordofan, Sudan



Source: (Kevane and Stiansen, 1998: 12)

The region is a prime area for cultivation because the soils are high in clay and organic matter. These factors are important for the inherent value of land to several groups as South Kordofan provides a cultivable terrain that exists between desert conditions, thus providing the means of livelihood and basic survival that has been in place throughout history. According to Spaulding (1998),

Given the arid terrain of most of Kordofan, livelihood strategies of pastoral emphasis tended to prevail, while the Nuba Mountains of southern Kordofan provided a refuge area offering survival through horticulture to groups unsuccessful in competition for surrounding rangelands. (Spaulding, 1998: 46)

This point ties into the formation of communities that developed out of frontier conditions as there was an ecological premise for the early settlements.

One of the early settlements I address is that of the Ngok Dinka in the Abyei region of South Kordofan. Typically, the Dinka of Southern Sudan were never settled in a specific place but were a people sparsely populated throughout the southern areas. There were nine clans of Ngok Dinka (refer to Table 3-1) that remained in the Abyei region because of the geography of the area, one that allowed for concentrated food-crop cultivation, a factor that took away the necessity of the group to migrate for livelihood. This circumstance paved the way for political centralization of the group.

Table 3-1: Clans of the Ngok Dinka who arrived in the Abyei region, 1740-1810

Original Ngok Settlers	Latecomer Ngok
Abyor (Pajok lineage) (1740)	Alei
Achweng	Achak
Anyiel	Bongo (1810)
Diil	
Mannyuar	
Mareng	

Source (Beswick, 1998)

The firstcomers to the region were the Abyor who arrived around 1740 and subsequently occupied the most ideal lands for grazing. By 1810, the other nine Ngok sub-sections had settled around an area that was later to be known as Abyei (Beswick, 1998).

It has been argued that chiefdoms often evolve into states when a population is large and ‘circumscribed’ or has limited fertile lands, and where food is contributed to a central store for redistribution. In the Dinka case, under normal circumstances, dissatisfied sub-sections or clans would eventually leave a region where the best grazing and farming land had been taken, in search of better resources. The ecology of Abyei seriously hindered this customary migration because of lack of land for agriculture elsewhere in the region. (Beswick, 1998: 148)

Due to the oppressive tactics of the Turco-Egyptian regime, the Ngok had to coexist among Baqqara groups in the Abyei region. The Ngok also had to develop military tactics for defense against the Baqqara (Beswick, 1998), who would attempt cattle raids and slave capture of all Dinka groups (mostly in the areas of South Sudan). Under these circumstances, the Ngok Dinka underwent a process of negotiation with the Arab pastoralists and the Mahdi. In exchange for the protection of Dinka from slave capture, the Ngok allowed the Baqqara groups to use the lush area of the Bahr al-Ghazal during the dry season in the North (Deng, 2010). The Ngok remained in the North to safe-guard all Dinka in the South and thus acted as a bridge of cooperation between the two regions. Within the limited territory in Abyei, the Ngok sections began to compete for political power and this was how the group developed a “Nilotic protostate” in Abyei (Beswick, 1998).

3.2 The Impact of Colonialism on Land

As the wave of European colonization rippled throughout the continent, the dynamics of land in Africa was transformed to accommodate systems of private property, agricultural production and to distinguish communal lands from those that would cater to capitalist ideals. In the distinction of communal territory, a racial divide was imposed. Peasants and indigenous groups were ruled in these locales, while the upper educated African classes as well as Europeans engaged in land-based private enterprises. Mamdani (1996) speaks of the colonial regime being a systemized regime of differentiation, a ‘decentralized despotism’, which included the autonomy of local authorities coupled with administrative absolutism for the peasant population. “The decentralized arm of the colonial state was the Native Authority, comprising a hierarchy of chiefs.” (Mamdani, 1996: 52) Furthermore, the policies

of differentiation became grounded in ethnicity and the colonial powers were faced with a systemic dilemma:

...the problem with territorial segregation was that it rendered racial domination unstable: the more the economy developed, the more it came to depend on the ‘urbanized or detribalized natives’... The way to stabilize racial domination (territorial segregation) was to ground it in a politically enforced system of ethnic pluralism (institutional segregation), so that everyone, victims no less than beneficiaries, may appear as minorities. (Mamdani, 1996: 6)

The colonial legacy is important when considering contemporary land issues in Africa as its elements continue to exist throughout the continent. “Far from putting an end to debates over authority and property, colonial codification laid out institutional and semantic structures, which we encounter even now in contemporary conflicts” (Lund, 2008: 15).

Mamdani (1996) discusses how Europeans arrived with the concept that rights had to be exclusive. Therefore they disregarded and misunderstood the multiple rights to land that existed in traditional systems, and deemed it necessary to install a system of community rights to try and make land tenure exclusive in the communal realm. There were two primary policies adopted by colonial authorities: direct rule and indirect rule. Direct rule was the first strategy for Europe to rule over colonies and it was applied to the civic sphere. When land was defined as communal, access to it was contingent on the permission of customary authorities, who had the power to allocate land to peasants and rural communities. Mamdani (1996) states that indirect rule came to be more about control over cultural groups of people, rather than territory. The value of land for the colonial powers and for settlers came from their ability to control African labour and people’s access to the land (Berry, 2001). This phenomenon emphasized the control over people that presupposed the control over land, as had been apparent in the frontier conditions.

In order to control groups indirectly, chiefs, appointed by the colonial powers, controlled the customary realm: “...indirect rule was meant to hitch compliant sections from the traditional leadership of Africa to the colonial wagon and thereby broaden its social base.” (Mamdani, 1996: 102) By first securing control over the social realm indirect rule allowed for a measure of control over territory. Yet, Mamdani (1996) also raises the point that the colonial depictions of customary traditions came about during an impasse in history where the slave markets were disappearing and colonial rule was starting, therefore claims

about what constituted the customary became contentious. It is also important to remember that “colonial officials deliberately – and sometimes cynically – invoked traditional rules of land tenure to justify expropriation of land by the colonial state or European settlers” (Berry, 1988: 58). These factors have significant implications for claims to land as they were not grounded in universally accepted understanding of what constituted customary tenure. What stemmed from the colonial period was a ‘bifurcated world’, that was premised on “those who labor on the land and those who do not.” (Mamdani, 1996: 61) As Spaulding and Kapteijns (2002: 55) remind us, “land tenure is a complex social phenomenon that includes human beings, land, technology, ecology, and power relations.” These elements were also subject to the realms of the bifurcated world in which interpretations of each could be constructed and changed to suit the communal or the private.

Traditional authorities were superseded by chiefs who were strategically appointed by the colonizers, as indirect rule was only secured as far as the leaders of the customary realm served Europe’s interests (Mamdani, 1996; Berry, 1988). The colonial concept of land tenure distorted the traditional systems in three ways:

...the community as customary proprietor of land, its appointed political leaders as holders and executors of that proprietorship, and the right of access to community land on a customary basis as tribally defined and therefore excluding strangers... which developed a specifically colonial notion of customary land tenure. (Mamdani, 1996: 140)

It was during the colonial era where groups learned to align themselves with chiefs to gain access to land as access became based on ethnicity. This strategy has lingered to the present. Today, these systems of land tenure are termed as corrupt where history shows us that these systems were in fact adopted from what the Europeans installed in the customary realm. Thus, it was ethnic privilege and social relations that determined access to land for the peasantry and indigenous groups. “What changed under colonial rule was neither the interdependence of wealth, power, and belief nor the complexity of contestation, but the cast of contestants and the terms in which they framed and negotiated claims.” (Berry, 2001: 26) Chiefs also had control over the movements of people and the sites they would be allocated to, mostly to fulfill the labour requirements to propel agricultural production and resource development (Mamdani, 1996). This meant that a new system of livelihood was created

along with a new collectivity of groups as different groups of people who originated from different places were brought together to work on the same demarcated spaces.

The Native Authority was the cornerstone for indirect rule and was comprised of the Native Administration, Native Courts and the Native Treasury. The power vested in the appointed chief allowed him to make rules as he saw fit, to allocate land according to his preference and to enforce a system of slave labour. The tripartite system was one with no judicial restraints (Mamdani, 1996). Communities and people seeking access to land were subject to the sole decision of a chief who had no legitimacy in traditional authority. It was the groups who were favoured above others and the ones that had established relations with the appointed authorities who were ultimately granted access to land. These preferential tactics were evident in the Kivus under chief Bera. In Sudan, the Native Authority did not have the same strength as in the Congo because of the numerous nomadic and pastoralist groups, however favoured groups were given priority in access to land.

In the case of multiple tenures in land, this too was granted on the basis of social identity. “A further implication of multiple rights is that control over one or more rights in land may be concentrated at one point in time, but subsequently diffused as increasing numbers of people acquire additional rights in the land.” (Berry, 1988: 60) All colonial authorities practiced forced labour and cultivation that was authorized through the chiefs. With the movement of people to new places, the multiplicity of land claims only increased through the course of history. The Belgians introduced indirect rule to the Congo in 1920 and

From 1921 on, all Africans were eventually required to return to the rural areas from which they were deemed to have come in the first place. The native must belong to his tribe: the notion of the native as permanently a peasant and only temporarily a worker was given legal reality through a series of decrees between 1931 and 1933. (Mamdani, 1996: 86)

The colonial authorities had to ensure belonging to tribe to enforce a system of control and easier means of rule. In this, they tried to establish defined places of belonging that did not necessarily correspond to the various homelands of the peasantry. The connection of peasantry to ancestral lands was disregarded. What was set up was a system that was easy

for the Europeans to navigate: one of which attempted to codify homeland such that it corresponded with their ways of recognizing groups of people. However, this complicated boundaries among and between cultural groups.

Even during colonial rule the lines were blurred by the colonial imposition of fixed boundaries that had contradictory effects at several levels. Seeking to rigidify external differences and homogenize internal ambiguities, colonial policies bifurcated existing cultural identities. But these policies also introduced further political ambiguity, and the colonial power itself then abrogated those clear-cut boundaries. During colonial rule tens of thousands of people were affected by the forced displacement of Rwandans to the Congo, by the “recruitment” of Rwandans to work in the Congo... In short, colonial power sought to resolve the ambiguities of the area by establishing fixed boundaries, intended to arrest social flow and harden a fluid cultural landscape. But even their own policies belied the fixed nature of those boundaries. (Newbury, 2009: 6)

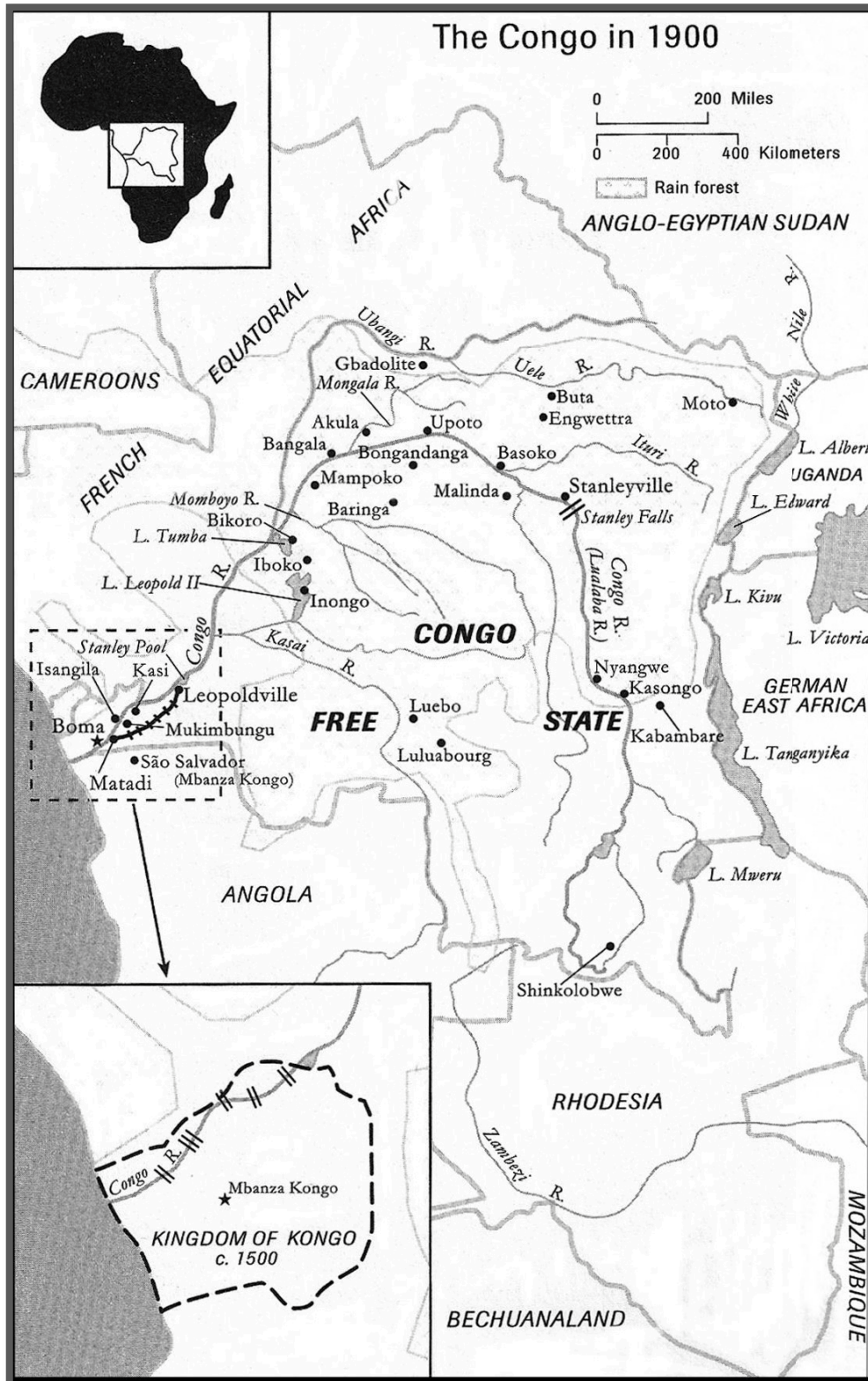
This system has compounded the struggle for land claims and a place of belonging for groups because different groups were combined in areas to serve profit-driven motives of colonial production strategies in rural Africa.

With the demarcation of territory imposed by the Europeans, a growing distinction between upper educated classes and the rural poor and two distinct systems of access to land, land suddenly was no longer perceived to be as plentiful. The need to assert power and claim territory for the means of empire and control increased the colonial authorities’ demand for land. The designation of land was concentrated in the hands of the colonizers who sought to carve up Africa amongst themselves. Communal lands gave the poor, uneducated classes a means to access the land, while the educated elites, aligned with colonial authorities, could benefit from privatized land holdings. The potential of wealth accumulation was vested in the land and how much territory could be controlled. “Struggles over land have been as much about power and the control of people as about access to land as a factor of production.” (Berry, 2001: xix) Livelihood and basic survival for people are connected to having access to land, which has clearly been contingent on social relations. Furthermore, “even if customary ownership did not prevent the transfer of right of use, it did hinder full-scale privatization by lending justification to multiple rights in land.” (Mamdani, 1996: 169) The multiplicity of claims disfavoured poorer people and those who did not have a favoured

social identity. These classes which were marginalized continue to be so as the legacy of colonization continue to impact land tenure.

After this overview of land and colonial policies throughout the African continent, I will highlight specific features that apply to the Eastern Congo and Sudan. In the Kivu regions, colonizers faced a great deal of resistance from indigenous groups, primarily the Shi people, who were in political conflict with the new so-called authority. The area of Eastern Kivu was brought into contact with European colonizers relatively late for this era, in 1900 (see map 3-3). Civilian colonial administrative institutions were not established until after WW1. Thus, the patterns of resistance are quite recent in comparison to other areas of the continent. Since the area of the frontier was under German-Belgian rivalry prior to WW1, indigenous resistance was tied to the ability of African authorities to draw on the support from one colonial power against another. The Europeans were involved in the internal politics and conflicts of the region in order to exercise control and domination (Newbury, 2009). The picture of the Sudan was drastically different, as people had already undergone colonial like policies of control from the Turco-Egyptian regime and the Mahdiyya. Since institutions and political control were more centralized in Sudan, the British colonizers were arguably less invasive with their policies than the Belgians were in the Congo. This was mostly due to the Condominium Agreement that the British established with the Egyptians in 1899, which was essentially a co-leadership agreement (Akol, 2007). The regime's early rulers were governor-generals as well as soldiers whose mandates were to pacify a conflict ridden country. Khartoum had a governor-general nominated from Britain but officially appointed by the ruler of Egypt where "the Condominium Agreement had not been negotiated but merely devised at the Residency in Cairo, adopted by London, and accepted by the Egyptian government. Britain's dominant position in Egypt naturally extended to the Sudan." (Daly, 1991: 47)

Map 3-3: Congo in the Colonial Period



Source: (Hochschild, 1999)

Indirect Rule in the Congo

In the Kivus, there were established systems of trade that mostly dealt with agriculture and was supplemented by iron, game, fish, livestock and vegetable products from the forest (Newbury, 2009). The European powers arrived during the intense competition at the Rwandan court from the militaristic legacy left behind by Rwabugiri. Unlike Sudan, prior to colonization, the land was by no means ‘settled’ with designated areas for specific groups of people, but rather was still very much under frontier conditions as Rwandan expansionist policies under Rwabugiri set out for conquest and control. Overlappings and exchanges of cultures and groupings were apparent. Regions and territories were still being fought over and disputed. Colonization complicated this further by setting out to define and demarcate regions for control. The mechanisms for colonial control were dependent on having the legitimacy and ability of controlling groups of people, through compliant local authorities.

Traditional elites in the Kivus were used by the colonial regime to help disguise foreign objectives. In the Eastern Congo, as in most other parts of the continent, colonial authorities appointed the elites that would serve their interests and cooperate accordingly. The legitimate traditional authorities were not necessarily the ones that helped execute policies of indirect rule. If they posed a challenge to colonial powers, they were exiled or overthrown.²¹ After the resistant king Ndogosa of Ijwi surrendered to the colonial power, he was succeeded by Bera, whose compliance and cooperation was welcomed by the Belgians (Newbury, 2009). The high praise that the Belgians showered on Bera was the result of his compliance as he did not pose a threat to the policies of control and domination. Here, power and politics took precedence over the people of the area. The ability to exert power and control and appoint cooperative elites gave the Belgians the means to exercise control over the people of the Eastern Congo. Bera, the traditional authority, was said to be the product and creation of the Belgians which represented a fundamental shift in the nature of

²¹ When the Belgians reoccupied the Kivus in 1916, the king of Ijwi (island in Lake Kivu) was Ndogosa. He resisted compliance to authority because he was afraid of losing sovereignty and compromising his position as king. He went into exile and remained hidden on a remote part of the island with the help of many of his supporters. Since the Belgians faced a lot of resistance on Ijwi, they had to enforce administrative control from elsewhere. Therefore the territorial headquarters was moved to Eastern Congo at Kalehe. This strengthened the power of Lushombo, the Havu king of Mpinga (area around Kalehe). The Buhavu Chiefdom was then created in August 1921 with Lushombo as ‘Grand Chef’ of the area, that included Ijwi (Newbury, 2009).

legitimacy. Ndogosa had gained legitimacy through his ritual authority, whereas Bera was a pawn of the colonial administration. Additionally, there was a mass exodus of people from Ijwi to the Congo mainland and many resisted Bera's imposed authority (Newbury, 2009). This demonstrates the significance of ritual for leadership in the Kivus. Ritual can be understood as part of the cultural code that was disregarded during the colonial era. If real authority was premised on ritual then how can we comprehend post-colonial authority in Africa? This is addressed in Chapter 5; however, the significance of ritual and spirituality to leadership in the Eastern Congo predated the colonial invasion.

Mobility among groups in the Eastern Congo declined after the 1930s (Newbury, 2009) as it was more difficult to relocate within the defined territories of colonialism. What we have learned from frontier conditions indicates that mobility was traditionally normal and was not restricted. However, to ground people in place for control, the Belgians demarcated spaces for agricultural, resource and general economic production. For this to be possible, a brutal system of slave labour was employed characterized by large-scale human rights abuse, which included torture and mutilations (Hochschild, 1999).²² Noteworthy is that people paid Bera for the right to settle on land, a trend that began with the onset of colonization, because "individual accumulation of wealth became more important while reciprocal work obligations and lineage solidarity became less important." (Newbury, 2009: 180) Individual ownership came with the European powers. Prior to this the collective notion of sharing space was prevalent because of the land available for settlement. Land claims became more important as the increase in population, the sectioning and specification of land for different purposes and the overall colonial land grab made it harder for groups to set out and 'settle' on vacant parts of land. Vacant lands decreased and the frontier landscape drastically disappeared.

By 1928 in the Congo, all chiefdoms had been demoted to sub-chiefdoms:

These policies marked a definitive shift in the locus of power in the region.
The political arena was enlarged, both in area and in the scope of powers

²² The mass human rights abuses under King Leopold are estimated to have caused over 5 million deaths, which has been coined as one of the largest account of unrecognized genocide throughout history. There were systematic acts of torture and abuse which mostly consisted of cutting off the hands of Congolese workers in the rubber industry. See *King Leopold's Ghost* (Hochschild, 1999).

available to the authorities within the hierarchical network. Formerly independent areas now became subordinated not only to the colonial authority, but (and symbolically equally significant) also to other mainland areas (Newbury, 2009: 169).

Any prior autonomy of these regions was compromised. The structures of authority were affected by neighbouring power structures as well as the colonial administrators. The re-definition of power structures over governing territory increased political rivalry over governing people, as this was intimately connected to the ability to control areas. Colonialism accentuated patterns of mistrust, cheating and engaging in dirty politics and forming strategic alliances for power. The policies also accentuated the ways in which ethnic groups were more explicitly defined as identity was closely affiliated with which power structure a group fell under. Also significant was that land was constantly being redefined while people were re-territorialized according to their loyalties and the extent of traditional authorities' capacity to control them.

Indirect Rule in Sudan

Indirect Rule was at its peak in the 1920s after the Egyptian Revolution.²³ In the North, indirect rule was very different from the situation in the south because of the strong presence of Islam that Britain had to take into consideration. 'Southern Policy' was in place for the south, which allowed for the area to develop along indigenous lines because it was significantly poorer. This policy gave the British far more control in the south and the room to promote their policies of indirect rule (Daly, 1991). Yet, the condominium arrangement restricted the impact of indirect rule. According to Daly (1991), the larger towns were already too 'de-tribalized' and there was a large population of nomadic peoples. Although indirect rule was intended to advance the regions of the south and the west, it was criticized for impeding development and growth. Mamdani (1996) states that colonial policies destroyed the ways of life for nomadic and pastoralist groups, as their access to land was limited and hindered by the creation of boundaries and the demarcation of territories. Thus, "the final object of official policy was to 'resettle' pastoralists, really to convert them into

²³ The governor-general was assassinated in Cairo in 1924 and Britain proceeded to evacuate Egyptian soldiers from Sudan. The failure of Egyptian troops against the minority of the British allowed the ascendancy of Britain and therefore their pursuit of policy (Daly, 1991).

agropastoralists, to pin them to the ground in the interest of maintaining law and order and ensuring an efficient collection of taxes.” (Mamdani, 1996: 166) Confining people to places, against their cultural practices, caused resistance in the South and among pastoralist and nomadic groups of the North. It was the British and Egyptians that filled most of the administrative positions in the South as the Sudanese were deemed to be unqualified (Daly, 1991) which also differed from the appointment of traditional elites in the Eastern Congo.

In Kordofan, the Native Administration was not as strong as in other parts of the country because of the presence of the Humr-Misseriya. There indirect rule was challenged in nomadic and semi-nomadic people. A process of amalgamation in the 1930s took place combining tribal units were combined to control them. Sparse populations made administration and rule very difficult, as indirect rule excelled under larger groups and populations. Because economic advancement depended on defined territories, colonial authorities pressed this forth in order to rent, buy and sell land, thus de-tribalizing the area (Kevane and Stiansen, 1998; Daly, 1991). Creating defined territories contributed to the marginalization of groups in social and economic systems. Security around access to land became a matter of urgency for groups so allow for their survival. The Anglo-Egyptian Condominium lacked the ability to ground mass groups of people in place, unlike the labour systems of the Congo. Controlling territory therefore became more of an economic venture and one of separating religious identity to keep the peace (Kevane and Stiansen, 1998). Group identity factored into indirect rule as it was easier to have systems in place that coupled similar cultural groups together, however this was perceived by colonial powers, and entrusted to few local authorities.

Religious identity was a factor of divisiveness in Sudan as the dominant Muslim North was separated from the southern groups for ease of control. Islam had dominated the North from the Turco-Egyptian regime and the Mahdiyya and both rulers exerted Arabization. The south had been the source for slaves, and so these people were never converted to Islam. The conflict between the North and the South was already present during the time of the Condominium, but with the designation of Southern Policy, identities were further entrenched and positioned in the land. With the British joint rule, Christian

missionaries were channeled into the education sector in the South. Many Southerners converted to Christianity but the South never became completely Christian. The Christian influence, along with Southern indigenous resistance, enhanced the Southern desire to remain connected to their African identity, and crystallized the divide between the two regions. Over time, religion enhanced the North-South differences (Akol, 2007; Daly, 1991; Duany and Duany, 2000).

Babiker (1998) states that all land rights in colonial Sudan were a combination of Islamic and local traditions. For economic advancement, the British foresaw this as being predicated on the settlement of agricultural land to pave the way for indirect rule. The development of Southern Policy was born out of this school of thought that sought to enforce a religious divide (Akol, 2007; Kevane and Stiansen, 1998). The one area that always posed problematic for falling under an Islamic control was Abyei in the North, as the Ngok Dinka were not Islamic. Allegiance with local authorities there was as important as anywhere else on the continent, as the right of access to land depended on it. Communal land rights were needed to empower the Native Administration and give them a degree of control over the local population. It was hoped that this system in Kordofan would provide a disincentive for the movement of groups as well as curtail migration to urban centres. The natives were meant to be stationed on the land and be subject to tax collection. The government began to grant land for cultivation, which started the trend of villages claiming rights to the land. Additionally, there was an increase in privatized holdings which also enforced this trend (Babiker, 1998). The dysfunctional government of Sudan followed a state socialist structure (Daly, 1991) which enabled nobles and the upper echelons of society to gain land in Kordofan for mechanized cultivation:

These large farms generated considerable wealth and created a new class of affluent 'absentee landlords' residing in the large towns whose participation in farming was limited to expeditious visits to ensure that the management of hired overseers was generating substantial profits. (Collins, 2008: 90)

With access to land disproportionately benefitting upper class structures, the poor and nomadic people were increasingly marginalized. Another aspect that could be inferred from this government was the degree of social connection to the ruling party. Land granting throughout the country would have typically been along similar religious lines to benefit the

Islamic leaning of Khartoum. What is not mentioned in the literature for land tenure in Kordofan was the need for a system of labour to extract the resources and work the land. This would be an important component of indirect rule and necessary to spur economic production. Babiker (1998) does emphasize that political bargaining influenced the pattern of rural transformations in Africa and not only patterns of social change.

Daly (1991) mentions that the agricultural economy in Sudan was dependent on one primary export good, cotton, which was heavily susceptible to climatic shifts. The seasonal variations restricted growth and diversity within the agricultural sector. Furthermore, droughts affected poorer populations the most, causing famine, malnutrition and the outbreak of disease. Sudan was affected by the Depression era that was a time of slow economic growth and progress. Indirect Rule was meant to spearhead economic development, but this was already affected by the difficulty in securing people to place. The war years (1939-1945) meant that local government began to replace indirect rule and the native administration. With the help of tribal agents (mostly chiefs), district commissioners (DC) were appointed as local government authorities (Daly, 1991). If tribal authorities assisted in Sudan, land allocation would have been prioritized according to social identity and group affiliation. It would have also further marginalized nomadic groups, who were not settled to a specific place.

In the postwar periods in Sudan (post 1945), nationalism was on the rise prompting colonial authorities to adopt strategies to secure control. Most Sudanese remained on the land as labourers where they were either cultivators or pastoralists. In 1947, there were approximately 45,000 people employed in the modern agricultural sector and labour disputes over land use were evident by 1953. Neither the British nor the Egyptians ever fully controlled the economic or political sector (Collins, 2008). Since they never had full control over land and land allocation, a system of negotiation among groups allowed forms of allocation and land use rights.

Abyei was a special case for the province of Kordofan and for the whole of Sudan, and very much continues to be so. During the British rule, Abyei remained a bridge between north and south, “the Ngok were later incorporated in the newly formed Missiriya Rural

Council and District in which they were to be a minority amidst the Arab majority in an independent Sudan.” (Deng, 2010: 45) The British authorities recognized the pacifying presence of the Ngok in the North and permitted them to maintain an established settlement in this territory. The Ngok had an alliance with the British as well as with the Islamic power structures of the province and were granted the land rights accordingly. This ability to negotiate and bring peace to a highly conflicted area helped the Ngok to establish a community in the North. This is a very special case in land claims and is directly connected to how the Ngok aligned themselves with ruling powers, what they represent as well as their values as a group. Political negotiation is closely linked with their identity.

Emerging trends in land, belonging and citizenship

The two systems of land access, the communal and the private, were not completely compartmentalized from each other, as elements of one impacted the other:

Although customary law presupposed segregation between European and African concepts, Africans soon began to use European terms as open to interpretation as local ones, at least in their communication with the colonial administration. Translating certain indigenous terms for forms of property into Western concepts also entailed an opportunity for changing the actual significance in terms of the extent, duration, and beneficiaries of the property rights. (Lund, 2008: 15)

What resulted in time was that “access to wealth and power depended less on codifying boundaries or the terms of surplus extraction than on continued participation in debates over their interpretation.” (Berry, 2001: 27) It will be evident in the following sections that in the post-independence era, the interpretation of land claims remained a challenge for allocation and for groups seeking a place of belonging. These interpretations directly affect land claims and the ways in which land is allocated.

A general trend that developed throughout the continent, as a result of different land allocation strategies was what Mamdani (1996) refers to as the citizen versus subject complex. Essentially, citizens were part of the civic realm, while the peasantry and rural populations remained subjects. Within the parameter of the subject was the distinction of stranger, who was a person or group who did not have full access to the land. By this premise, nomadic and pastoralist groups, such as the Ngok Dinka, or the newcomers in the

Eastern DRC, such as the Banyamulenge, were automatically disadvantaged. Selling off a piece of land was easier among kin. “Because land was considered a tribal asset and access to it a customary right confined to members of the tribe, the first group of persons subject to a levy in return for the right to use land – no matter how temporarily – were migrant farmers, dubbed strangers.” (Mamdani, 1996: 168) The citizen/stranger dichotomy persists today in Abyei and the Kivus. In these war-torn regions, access to land is difficult enough, but when this is compounded with the ethnic marginalization of groups, it becomes all the more challenging. Rules that governed the realm of the customary as well as those of the market economy were fluid, as they were both conditioned by and dependent on the social strata that governed it as well as the central state that had most of the power (Mamdani, 1996). If rules around control and allocation of the land were fluid, then it can be stated that the meaning and value of land to different groups was also fluid, as it has shifted and changed depending on the social relations for access, the resources available and group dynamics.

3.3 The Post-Colonial Landscape

African nationalism grew after the two world wars. As colonies witnessed European country-men at war with each other, the illusion of power and mastery of imperialism was challenged and the possibilities of self-determination prevailed. This was the era of Pan-Africanism, or, the start of independence movements. Sudan gained its independence from the Anglo-Egyptian Condominium on 1 January 1956 (Akol, 2007). The Congo gained independence from Belgium on 30 June 1960 (Emizet, 1997) and Mobutu renamed it Zaïre in 1971 (*Mobutu: Roi du Zaïre*, 1999). Despite all the hopes and aspirations of self-governance, the legacy of colonization persisted, and nowhere was it more apparent than in issues of land.

At independence, states were deracialized but not detribalized (Mamdani, 1996). This meant that social identity premised rights, claims and services. Group identity also prevailed when it came to strategies of granting land. A civic citizen was able to acquire land through the market, through purchase and/or property transactions that are kin-based and therefore limited to inheritance. An ethnic citizen is different from a civic citizen, but usually only ethnically indigenous groups could claim land in the customary sphere

(Mamdani, 2002). Although land laws were influenced by colonizers (Reyna and Downs, 1988), they were also restructured and reshaped to suit indigenous systems that “are commonly specific to particular ethnic groups.” (Bruce, 1988: 23) This is discussed for the case of the Banyamulenge below. “Land tenure systems may be thought of as sets of rules – at some times customs, at other laws – concerning peoples’ rights to land, together with the institutions that administer these rights and the resultant ways in which people hold the land” (Reyna and Downs, 1988: 9). As such, land tenure is subject to negotiation and re-negotiation (Berry, 2001; Derman, Odgaard and Sjaastad, 2007) and Peters (2004) highlights that it is important to pay attention to who are the parties who negotiate and whose interests they serve. These spaces for negotiation are revealing “processes of exclusion, deepening social divisions and class formation.” (Peters, 2004: 269)

It has been well documented that land rights are embedded in social relationships (Mathieu, Zongo and Paré, 2003; Berry, 1988; Deng, 1988; Cousins, 2000; Peters, 2004; Lentz, 2006). Memberships in certain groups are vital to obtaining land or having access to land. Within this social framework, there are structural power relations (Derman, Odgaard and Sjaastad, 2007) that affect the spaces of negotiation. Social identity is based on multiple criteria: “descent is often reckoned in both genealogical and classificatory terms; seniority is derived from achievement as well as from age and gender; affinity is relatively negotiable.” (Berry, 1988: 64) Cousins (2010) asserts that there is a difference between right and control in terms of land as rights have to do with power that society allocates to its various members to execute a multitude of functions. It is only when power amounts to exclusive control that a person or group actually capitalizes on ownership of private property. Otherwise right and control are distinct realms that are defined by social and cultural rules of engagement.

In African land tenure regimes access and control do not coincide, and property does not involve the vesting of the full complement of power over land that is possible (private property), and variations in power (rights) derive from social relations, not the market. Rights over land are trans-generational and control is exercised through members of the units of production and is not simply the product of political superordination. Different land uses attract varying degrees of control at different levels of socio-political organisation. (Cousins, 2010: 61)

Therefore, land tenure regimes remain as a space of sharing, negotiation and contestation among groups, especially when it is also subject to multiple and overlapping rights of tenure. Toulmin and Quan (2000) emphasize that people who hold a customary right over land are not necessarily a homogeneous group with common interests, so there is the possibility of contestation. Since the system is premised on social preference, disfavoured groups are often marginalized. In such a system, how do these marginalized people gain access? This section discusses some of the ways that people gain access to land in the post-independence period.

The post-independence era witnessed the largest population increase in African history. In 1950, there were approximately 221 million people and by 2009, Africa's population reached 1 billion. By 2050, the population is expected to reach 1.9 billion.²⁴ This means that the competition over land will continue to increase as

many rural-based families need to draw more from their land even in the face of declining inputs; entrenched and pensioned-off civil servants and other workers look to family and other land as a source of food and/or cash cropping; governments and environmentalists seek to demarcate conservation areas; and internal and external groups intensify their exploitation of valuable resources from/in/under the land. (Peters, 2004: 286)

The most intense competition for land is found in the most densely populated areas. Land tenure “is rendered even more critical by the fact that loss or restriction of access to land is occurring at a time when rapid population growth is leading to an increasing demand for land, a dilemma that must inevitably nourish tension and conflict.” (Deng, 1988: 363) With competition over land and resource areas, there are new schemes in place for environmental protections, which has in fact become a new form of competition among groups for access to these lands and protection for local populations. “Social conflict over land takes the form of stricter definitions of those who have legitimate claims to resources” (Peters, 2004: 302), which means that boundaries are more explicitly defined to privilege some groups over others, while the ones who are excluded resort to contesting these claims to get a piece of the land. It is important to keep in mind the inequality and social systems of differentiation around access to land. There are competing claims to land as a result of regional, civil and international wars, which forces people to change locations and constantly try to find refuge

²⁴ This statistical information was obtained from BBC News (BBC, 2009) and UNPF **Invalid source specified..**

elsewhere (Peters, 2004). This phenomenon is applicable to both Zaïre and Sudan where land claims are constantly shifting with groups trying to seek out new territory and the growing number of groups at a time seeking land in a given area.

Upon independence, both Zaïre and Sudan went through policies of land nationalization and bureaucratization (Bruce, 1988).

The purposes of nationalisation were to assert the power of the state over traditional chiefs and allow the appropriation of land for development, in the belief that the state would be best placed to manage and distribute land in the interests of all. Although the political power of indigenous chiefs and courts has been marginalised by land nationalisation, the impacts have been uneven, depending on the extent to which the state has been able to exert its own authority. (Quan, 2000: 33)

In colonial Sudan, the central government had more control over the land than in Zaïre, with the exception of the Southern region of Sudan. “In many of these cases indigenous tenure systems have continued to govern land use, and state ownership has been used primarily to give government a freer hand in land acquisition and distribution in development project areas.” (Bruce, 1988: 38) However, this system is open to the politics of preference, favouritism, inclusion and exclusion. Nationalization of land after independence actually followed very similar strategies and objectives as those that existed during the time of the colonial rule. In order to maintain a political stronghold, states had to respect the systems of patronage over land control (Toulmin and Quan, 2000). “Where access to land is a matter of bureaucratic discretion, there is clearly scope for abuse of office, misuse of influence, and other forms of corruption.” (Bruce, 1988: 46) Governments either maintained strong allegiances or installed the appropriate indigenous local authorities who would execute state policy with a degree of autonomy. During the rule of Mobutu in Zaïre, chiefs in the eastern regions governed the former communal lands and were permitted to make decisions about allocation while maintaining the positions of ownership (van Acker, 2005). With the central state in Sudan being Islamic, it was the corresponding identity that premised control of land in Kordofan. In both countries, land was granted along the lines of social and ethnic identity.

This era was also characterized by various measures of land reform, which was partly due to structural adjustment programs put in place by Western donors:

...in the 1980s, a land reform programme pushed through by the national political elite enabled many to obtain private control of large areas of formerly common grazing lands, while the maintenance of the ideology of cattle ownership and ‘communal’ lands facilitated a slow but persistent narrowing in the definition of those with primary rights to those lands. (Peters, 2004: 292)

Benjaminsen and Lund (2003) outline some measures of formalisation: decentralisation, gestion de terroir, community-based natural resource management, user pays principle, land or water reform, tenure reform and privatization. “People attempt to institutionalise their land rights through formalisation of customary rights while at the same time attempting to legitimate formal or ‘modern’ rights according to custom.” (Benjaminsen and Lund, 2003: 5) In both strategies, there is the entrenchment of social identity and relations. Mechanisms of privatization in Africa are not exclusive from the social realm, which causes ambiguity and a lack of clarity about claims. Yet both Bruce (1988) and Berry (1988, 2001, 2006) mention that property rights and private ownership are understood to be the engines of economic growth in capitalist discourse. However, in the African context, the realm of private enterprise and the realm of the customary are not mutually exclusive entities. In terms of communal tenure, “concentration *and* fragmentation, privatization *and* preservation of group-based rights may, and often do, occur simultaneously with respect to the same piece of land.” (Berry, 1988: 62, italics in original) Therefore, privatization has to be contextually grounded and culturally sensitive for groups’ claims to be handled equitably and fairly.

Bruce (1998) discusses the ways in which indigenous systems of tenure is vulnerable to land grabbing due to state control of land. Although the members of a community are entitled to land, those who are characterized by a specific social identity, can grab land as they see fit. Because there is no such thing as having too large a holding, an individual farmer can use all the communal land available which detracts from other groups’ use of the land. Traditional leaders are able to convert the communal tenure into personal estate because of their autonomy. This was evident in the Eastern Congo where under the rule and support of Mobutu chiefs used the land to their advantage (*Mobutu: Roi du Zaïre*, 1999). The indigenous tenure system permits the pledging of land where a borrower can give his land to a lender until he is able to repay his loan. If the loans do not get repaid, the land is not

returned. This system has the capacity to disadvantage, disfavour and marginalize several claimants.

There are several ways of advancing claims or gaining access to land. Some of these include “birthrights, first settlement, conquest, residence, cultivation, habitual grazing, visitation, manuring, tree planting, spiritual sanction, bureaucratic allocation, loan, rental and cash purchase” (Shipton, 1994: 348) (Shipton 1994: 348 in Lund, 2008: 16). However, “claims and claimants do not operate in a vacuum” (Lund, 2008: 106), because there is the relationship to institutions that are governed by their own interests. A set of legitimate claims does not necessarily translate into land rights because group organization is quintessential for the negotiation of property:

The improvisation in the face of opportunity and risk, the linking up with other groups, the creation of temporary or enduring alliances with resourceful actors, the choosing of fora for vindication of claims, and the orchestration of expression of interest are essential to success. (Lund, 2008: 106)

Since land access is tied to social identity, the ability for groups to link with others to advance their claims creates a space for new and refined group identities to emerge. When Mobutu appointed a Banyarwanda Tutsi minister, citizenship rights were granted for the Banyarwanda and they had access to land. During this time, the distinction between Hutu and Tutsi was not significant, so many Congolese-Rwandans, asserted themselves as simply Banyarwanda to obtain land. Here, social identity can be manipulated to advance claims.

Scholars (Platteau, 2000; Toulmin and Quan, 2000) point out that local groups and secondary rights holders (such as pastoralist groups) are in fact at a risk of losing their rights in strategies of reform and land titling. For example, “titling increases tenure insecurity for the poor because it places a formidable weapon in the hands of the rich who have both better ability to pay the price of registration and superior knowledge of government bureaucracy and procedures.” (Platteau, 2000: 68) With nationalization policies, titling and ownership for privatization purposes occurred but displaced many users of the land as the state “facilitated practices of bribing, fraudulent titling and expropriation of land.” (Peters, 2004: 274) The situation for secondary-rights holders, as pastoralists and nomadic people, is even bleaker. Multiple-rights over land are problematic for privatization measures (Berry, 1988; Delville,

2003; Lentz, 2006; Toulmin and Quan, 2000). They can also be the cause of competition and conflict. In conflict, formalized strategies such as land registration and titling are unlikely to succeed, and if they were to, governments would be able to disguise their power and control of land and resources under the guise of legitimacy. These mechanisms will end up privileging the elite, educated classes that are loyal to the state actors. Considering the resources in both the Kivus and in Abyei, the accumulation of wealth is highly politicized.

Lund (2008) emphasizes that the making of rules pertaining to land are subject to social construction, social systems of significance, manipulation and reconstruction so they remain ambiguous. There is a right and wrong moment for putting forth a claim and this is dependent on the socio-political context and the systems of local authorities in place. In conflict-ridden regions, the localized level of organization is difficult and hard to come by. When there is ongoing violence and corrupt governance, the greater concern is about establishing peace and security, and if necessary, engaging in defensive tactics to control territory. Armed groups operate in both the Kivus and Abyei to protect their groups and defend the territory they claim is theirs. Furthermore, in times of conflict, groups cannot trust the government to recognize claims as legitimate so there is the tendency to engage in violent tactics for survival. War and violence create a different scenario for land and belonging because the conflict in both areas is about controlling the territory and protecting it from falling into enemy hands. The post-colonial era for the DRC and Sudan has been underscored by conflict. Thus, land claims have to be assessed accordingly, in the light of political developments in the DRC and Sudan to show how these changes have impacted the ways that land is claimed.

Land Claims in the Eastern Congo

Prior to independence, the colonizers had divided areas along ethnic lines and in some cases grouped people together, which harnessed a new collective identity. In the DRC nationalization policies for land led to all public land being controlled by the state. This occurred in 1966 through the Bakajika Law (Emizet, 1997). This set in stage the platform for property rights and privatization schemes. Mobutu introduced a new law in 1973 “which declared all land property of the state, whether vacant or occupied, no matter the type of

occupation. Under this law, land could only be extracted from state possession through an administrative procedure that involved registration and cadastration.” (van Acker, 2005: 84) Because all rural land could be privatized and grabbed for wealth accumulation, the result was a large class of landless people. Much of the land was turned over to ruling groups and their families. Benefitting from land allocation was not only subject to social identity but to being loyal clients.

The normative shift under the 1973 law disqualified the patron-client type reciprocity of the customary networks. Rather, it introduced a new principle of stratification and elite-formation that stressed alliances of state patronage. The land market was to be established by administrative procedures of registration and cadastration of public land; hence, gaining access to land required access to the state and its administrative procedures. Closeness to the state, a fortiori closeness to president Mobutu, created the conditions that allowed economic prominence. (van Acker, 2005: 87)

The Banyarwanda of North Kivu were strong supporters of Mobutu and were rewarded accordingly by being granted large plots of land in the Kivus (van Acker, 2005). This underlines the state’s policy of social favouritism.

Historically, rural areas in the Congo had been neglected due to the long distances and the weak infrastructure (Emizet, 1997; Newbury, 2009). Chiefs were therefore granted the authority to administer the communal lands. In Zaïre, a system known as ‘kalinzi’ provided the contractual agreements among the hierarchical social structure that administered communal lands. Although the chief was the overall authority, kalinzi is a pyramidal structure that is designed for land to be a common good. Therefore the securing of land is derived through an initial payment to the patron as well as providing labour for land use. This means that the paying party could acquire the client status at the base of the pyramid. Immigrants could secure access to land as long as they had client status (van Acker, 2005). This system showcases the degree to which social capital was embedded within rural land tenure. With Mobutu’s land policies, it is easy to see how there were classes of people who essentially had their land grabbed from under them. The rule of Mobutu put in place a system of ‘haves and have-nots’ where his loyal patrons benefitted from Congolese wealth, while an increasing number of rural farmers, peasants and immigrant groups were marginalized.

According to van Acker (2005), chiefs, through local administrative processes, could allocate land that amounted to less than 100 ha, which mainly consisted of registration for village land. Land that amounted to more than 100 ha required the authorisation of the president or a trusted minister. The people who were granted 100 ha or more of land were part of an exclusive club that consisted of Congolese entrepreneurs, administrators, state employees and traditional chiefs. “Social capital built up in these broader circles of state patronage was used to acquire positions that allowed influencing the decision process on land allocations, or accumulating the necessary cash to purchase land.” (van Acker, 2005: 88) State patronage enhanced class differences and this disadvantaged many groups as well as the rural poor. The rapidly growing gap between the rich and the poor fuelled resentment among the lower classes, as it became clear that the system of privilege was connected to social identity and political support. It is to no surprise that ethnic clashes in the Eastern Congo began under the rule of Mobutu. Eventually, “the Banyarwanda were accused of the unrightful appropriation of customary land and subversion of the customary order.” (van Acker, 2005) Suddenly they became identified as ‘foreigners’ by indigenous Congolese who did not believe they had legitimate claims to land. It was, however, chiefs in the Kivus that sold the land to the Banyarwanda. Under Mobutu, the Banyarwanda were safe-guarded as long as they continued to be allied with him.²⁵

The Native authority in Kivu is three tiered where there is the chief of the locality at the lowest level, then the chef de groupement at the second-level, and the highest level is the mwami of the collectivité (see table 3-2). Non-indigenous people (strangers) can only access a chief at the lowest level. However, the two higher levels have the ability to trump any of the decisions of the lower level where “they have the power to confirm ethnic belonging and to issue identity cards, oversee administration, allocate customary land for livelihood, hold tribunals through which customary justice is meted out, run local markets, and so on.” (Mamdani, 2002: 238) In South Kivu, the Banyamulenge only had access to first level chief. The ‘territoire’ is the fourth level of administration after the localité, the groupement, and the collectivité, so the territoire contains several collectivités. In Uvira South Kivu, there are

²⁵ The system of state patronage was similar for the Banyamulenge, who inhabited an area of South Kivu and maintained a separate identity from the Banyarwanda.

three collectivités – the Bavira, the Barundi, and the Bafuliro – each is named after the name of the group considered indigenous to it. The Banyamulenge had to pay homage to chiefs of these three administrations as they were without their own Native authority (Mamdani, 2002).

Table 3-2: Native Authority in Uvira, South Kivu

Administrative Level (from highest to lowest)	Traditional Authority	Access for Banyamulenge (non-indigenous)
Territoire	3 Mwami, each representing the 3 collectivités of the Bavira, the Barundi, the Bafuliro	Pay homage to each Mwami to gain access to land
Collectivité	Mwami	Pay homage
Groupement	Chef de groupement	-
Localité	Chief of the locality	Could negotiate for access to land

The chiefs engaged in lucrative measures to privatize and allocate communal lands. These measures weakened the customary land use rights of the farmers where chiefs either offered illegitimate land contracts to new applicants or disputed the former land appropriations by doubting the amount of rents paid. If the client was accused of not paying rent on the land, it was considered customary treason, and this gave customary authorities enough justification to seize the land (van Acker, 2005). In this corrupt system, lower classes and the economically disadvantaged could become landless. By cheating people off their land, Mobutu seized the land in his strategy of power by wealth accumulation. Shipton (2009) states that ownership and the use of land is the cause of almost all social struggles throughout the course of history. “A place on the land – a place to belong among others – is something people fight for” (Shipton, 2009: 251). Sentiments of rightful and unrightful belonging to land were crystallized during the post-independence era. With the decline of the economy, the fall of Mobutu and the start of international war, the groups of the Eastern Congo have mobilised to assert their claim to land and their right of belonging.

After the Rwandan genocide of 1994, approximately 1 million refugees entered the Eastern Congo. A few years later, a war involving eight African countries took place on

these soils. Mobutu was ousted in 1997 by Laurent Kabila, and this shifted the dynamics of alliances and key players. Native Congolese echoed sentiments of foreigners taking over their lands and this led to the removal of Rwandan from military and political positions in the Congo. With these developments, land and a place of belonging for the Banyarwanda and Banyamulenge in the Kivus became uncertain. According to Huggins (2010), land policy reform after conflict is particularly difficult. In a national meeting in 2003 in the DRC, it was recommended that customary land tenure needed to be clarified legally. It was agreed that the Supreme Court should make judgments based on jurisprudence in order to achieve some uniformity on dealing with land, and that political leaders should stop interfering on matters pertaining to land. These suggestions assume that there is a rule of law in place that supersedes the political structure; however this has not been the case for the DRC. Politics of inclusion, exclusion and favouritism have dominated the arena, such that groups have resorted to military tactics to assert their claims over land.

Moreover, ethnic disputes are “intimately tied to their control of land, which is in turn dependent to some degree on the local dispensation of politico-military power as a result of the terrible conflicts and massacres.” (Huggins, 2010: 38) The Banyamulenge have been a part of different militias since 1996 and continue to be engaged in acts of violence to claim a homeland and to be recognized for rightfully belonging in South Kivu. Countries emerging from conflict are more focused on governance as

years of conflict have inculcated an authoritarian and unaccountable institutional culture, unaccustomed to multi-sectoral cooperation and hostile to civil society influence. Furthermore, while outright large-scale violence may have ceased, the country may still be affected by sporadic outbreaks of violence and key actors may remain hostile to each other. (Huggins, 2010: 38)

Since the Kivu regions remain in a state of persistent conflict and outbreaks of violence are sporadic, groups have armed themselves and resort to militaristic strategies to control what they believe is their rightful place on the land. Due to the pervasive dysfunction in the Eastern Congo, land reform measures are still being discussed as there is a limit as to what can measures can be adopted when the region is far from peace. Claiming land has become a violent struggle where groups have had to continuously engage in armed conflict.

Land Claims in Abyei

The situation in Abyei is also characterized by persistent conflict that has been recurring for decades. Land ownership did not develop in Dinka society at independence, “nor did the popularity of clientage as an organizing social and political principle.” (Beswick, 1994: 177) Yet for the past two decades, Sudan has been engaged in a re-evaluation of their land policies, laws, agrarian structures and support services (Okoth-Ogendo, 2000). Due to the presence of nomadic and pastoralist groups, land tenure has been challenging to implement fairly. In transhumant pastoralism, collective identity and resource management is predicated on mobility (Berry, 1988), which is the case for the Dinka as well as the Humr-Misseriya. Much of Sudan undergoes severely dry and arid conditions, which is why groups developed nomadic tendencies in order to survive through droughts and sustain their livestock. The Baqqara traveled to the Southern regions when environmental conditions in the north and west became too severe. The region around Abyei is also subject to drastic climatic shifts with six months of rains and six months of dry conditions. Environmental conditions have been the cause of pastoralist groups encroaching on territory of their neighbours in order to sustain their livelihoods (Deng, 1988). These factors, coupled with the polarization of identities in Sudan’s ongoing conflict as well as the birth of South Sudan as the world’s newest state, have all complicated land claims and challenged the nomadic traditions of several groups.

Sudan’s first civil war began shortly after independence, although tensions between the north and south had been brewing for decades. There was a massive displacement of peoples out of the South and many were pushed into exile in neighbouring countries (Akol, 2007). Land ownership and allocation shifted drastically with the exodus of people and the reclaiming of territory by groups that remained in the region. Furthermore, “in 1970 the Unregistered Land Act abolished customary rights of land use and access to land and set the foundation for the central state leasing of land for large-scale farming schemes.” (Johnson, 2011: 130) This put land allocation in the hands of the centralized state that was composed of an Islamic majority. This meant that Muslim groups sought to benefit from land granting, specifically those who were in the upper educated classes and those who were supportive of the government.

The Addis Ababa peace talks opened on the 16 of February 1972 to settle the conflict and to come to an agreement about contested regions on the border. One of these regions was Abyei (Akol, 2007; Johnson, 2011). Since the area is inhabited by non-Muslim Ngok Dinka, the Southerners believed that this area should fall to them, although it fell under the provincial jurisdiction of Islamic Kordofan. When major oil discoveries occurred in Abyei in 1978, this only exacerbated the conflict and made the region all the more valuable. The resumption of fighting after Addis Ababa was also due to land dispossession when the Law of Criminal Trespass in 1974 “strengthened the rights of leaseholders to their lands, further restricting the right of access by nomads and smallholding farmers.” (Johnson, 2011: 130) Leaseholders came from the upper educated classes and were allied with the central government, highlighting the favouritism that dictated land policy in Sudan. As a result, customary rights were eroded and these affected groups had to join the agricultural work force to survive.

President Nimeiri officially began to divide the South into three provinces after the Agreement of 1972. In 1983, the regional government of South Sudan included the provinces of Bahr al-Ghazal, Equatoria and the Upper Nile (Akol, 2007). Nimeiri’s strategy of divide received harsh criticism, where

An ugly apartheid on a regional basis was enforced all over the South. People who had lived in certain regions all their lives were uprooted and forced to move to the regions of their tribal origin. Many lost their lives, and livelihoods were lost as a result of this dislocation. (Akol, 2007: 165)

These divisions had massive implications for land claims and ownership as people were relocated in the quest for peace and autonomy, such that power struggles over land and overlapping claims multiplied. Conflict has bred an area of instability, uncertainty and insecurity in the search for belonging on the land. Akol (2007) also states that the Addis Ababa agreement led to favouritism in the South among like tribes and identities such that positions of power were granted on the basis of social identity. Since the Dinka were the largest group, they remained powerful actors and benefitted from land allocation. The dynamics in the South were important to Abyei because of the presence of the Ngok Dinka, who were allied with the Dinka of South Sudan. With the multitude of groups in Southern Sudan, unity amongst Southerners was challenged and the region experienced deepening

social divide as well as a continuous stand-off with the North. Development in Southern Sudan was hindered because of the civil war, yet Abyei underwent infrastructure development because of the discovery of oil.

In the 1980s, the Native Administration was completely abolished in the Northern provinces and replaced by weak regional governments. The transition from

...subsistence agriculture to export-oriented, highly capitalized, mechanized agricultural schemes had its greatest impact in the so-called 'Transition Zone' along Southern Kordofan, Southern Darfur, southern Blue Nile and the Sudan-Ethiopian border region, resulting in the dispossession of small-holding farmers from their customary rights to land, the erosion of land-use rights by pastoralists, and the creation of a large force of agricultural wage-labourers, whose numbers were increased through displacement by drought and war in the 1980s and 1990s. (Johnson, 2011: 145)

The current government under Bashir has "amended the Civil Transactions Act in 1990 to prohibit the recognition of customary land rights in the courts throughout the country." (Johnson, 2011: 130) Therefore the concentration of political power and the ability to make decisions on land use became concentrated in the central government, which meant further dispossession of land from nomadic and pastoralist groups. Furthermore, these groups were restricted in reclaiming land because the central government declared its authority over rural land claims. To gain access to land, people had to make strategic ties with powerful figures. Many Muslim pastoralists joined the political group of the Murahalin in 1980 to reclaim their dispossessed lands by exploiting the southern Sudan. The pastoralists chased several Ngok Dinka into the Bahr al-Ghazal (see map 3-4). Overall, the Dinka had no secure tenure on the land to which they were displaced so many became low wage labourers for the government's mechanized agriculture schemes (Johnson, 2011).

the different territorial units within tenure regimes and how they have been designated for use in pastoralist regions.

Table 3-3: Territorial Units within Tenure Regimes in Pastoralist Systems

Territorial Units (in hierarchical order)	How used
Customary territory	Belongs to the tribe
Annual grazing areas	Used by several clans or sections of sub-clans; flexibly defined areas
Dry-season bases	Primary user is specific group; other groups are secondary and tertiary users
Key sites	Areas for use within the dry-season base
Group or individual resources/areas	Household of group of households become primary users

Source (Cousins, 2010)

These shared lands had their own system of regulation, the ‘land ethic’. Cousins (2010) speaks of a ‘land ethic’ that is an understood set of social and legal principles that have survived the colonial and post-colonial policies of subversion, expropriation and suppression. Years of drought and the growth of cattle herds have caused environmental degradation such that groups are prone to encroach on areas of other groups for their own survival. Since the amount of cattle is increasing, the demand for land among groups is also increasing, which means there is a decrease in grazing land per unit of cattle that is continuing to put pressure on the land (Deng, 2010). Therefore, there is a spill-over of cattle into neighbouring lands that has fuelled tensions among groups and led to cattle raids over the past few decades. Land dispossession by the central government has further induced decades of conflict and fuelled group hostilities in former land sharing areas. “The pattern of war indicates that resource depletion and economic subjugation are the objectives of war, not just its incidental consequences.” (Johnson, 2011: 145)

The Ngok Dinka live in a region that has been contested between the North and South. They continue to pay taxes to the North and President Nimeiri had promised to grant them local autonomy. This was complicated further by the ongoing conflict between the SPLA and the SAF (Deng, 2010). However, Abyei retained a special status from the office of the president, and this continued through to secession. From the time of the Mahdiyya, land was only secured by the Ngok in Abyei because of their role as mediators between the

Baqqara and Dinka. They sought to propel peace and to protect the Dinka in the South from Arab slave raids by establishing a home base in the North. They were able to secure an agreement with the Mahdi giving the Baqqara access to the land in the Bahr al-Ghazal during the dry season in the North in exchange for the protection of the Southern Dinka from slave-raids. In contrast, in the Kivus, multiple claims to land are due to migratory groups who have arrived throughout the century for different reasons, and want their place on the land rightfully recognized. The situation in the Eastern Congo is now one of groups vying for territorial control, whereas Abyei is home to the Ngok Dinka who settled centuries ago in the region to bridge peaceful relations between two conflicted regions. Abyei is also important to the rural sector for the migration cycle of several groups (Deng, 2010). Since the fate of this region remains contested until now, it is difficult to execute any land claims that would be binding until it is decided whether Sudan or South Sudan will ultimately possess this territory.

Abyei is used as a grazing area for many groups as water is abundant here during the rainy season. In the late 1970s, there were roughly 80,000 permanent citizens in Abyei and an additional 80,000 nomads present during the North's dry season. There is agricultural production that is typically carried out through hand cultivation and farming by individual households, whose land use is on average ten acres. The main crop is dura (sorghum), which is in the maize family and is a staple food item for many groups across sub-Saharan Africa. Fruits and vegetables are scarce here (Deng, 2010). Individual households were severely affected by the government's policies on abolishing customary lands. This was also problematic for pastoralist and nomadic groups that rely on the region for access to water. The area has plenty of potential for development but this has been halted by the civil war.²⁶ The Dinka live in one of the most difficult environments in the world that alters between near-flood and semi-desert conditions, depending on the time of year, but in Abyei, "they have developed a balanced, three-part, mixed economy of cattle, dura cultivation, and foraging (hunting-fishing-gathering)." (Deng, 2010: 113) The Dinka have made their

²⁶ In the 1970s, the Harvard Institute for International Development (HIID) saw the potential in Abyei and wanted to implement strategies for development. They also saw the significance of the region for the whole of Sudan, whose successful example could inspire the neighbouring regions in the West and South (Deng, 2010).

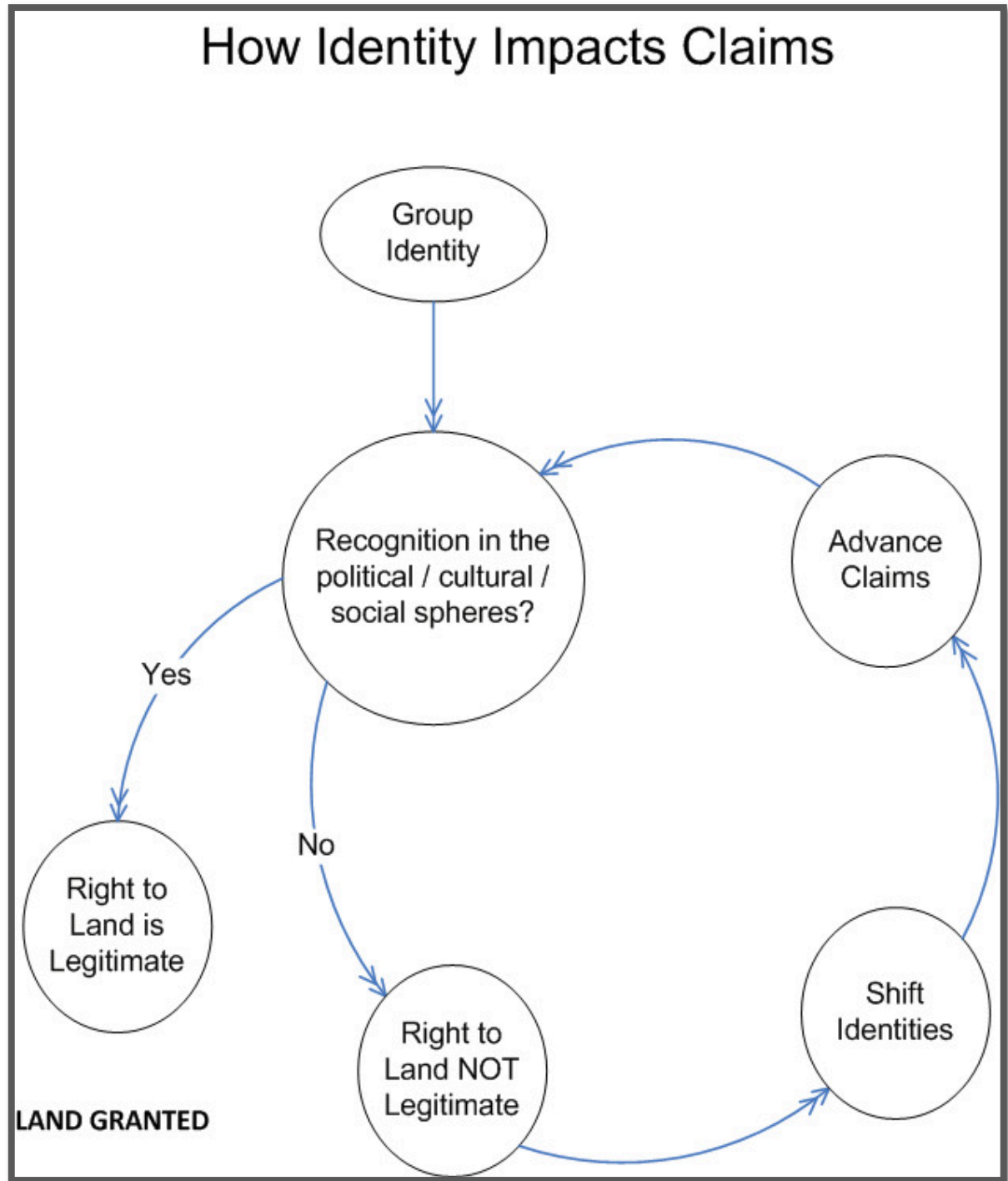
livelihoods adapt to the harsh seasonal variations in Abyei and have been successful. They have managed to adapt to seasonal fluctuations and have developed their own diversified economy; however this does not mean that their claim to land is secure.

Abyei was once considered a political symbol for unity for the entire country (Deng, 2010), but now it is in the middle of a tug-of-war between two governments. Prior to 1972, the area was almost completely destroyed and the Addis Ababa Agreement gave the Ngok Dinka the right to decide whether or not they would remain in the North or join the South. Unfortunately,

that right was never exercised because the government did not seriously intend it to be acted upon and the regional government in the South did not want to endanger its hard-won regional autonomy on account of the Abyei problem... That unfinished job in Abyei contributed directly to the resumption of North-South hostilities and the civil war that has ravaged the country since 1983. (Deng, 2010: 185)

After the CPA in 2005, the borders of Abyei were to be set by a separate body, which meant clearly defining the division of oil revenues to the South along with delineating the nine Ngok Dinka chiefdoms that were transferred to Kordofan in 1905. The Abyei Protocol was meant to specify the process of resolving the Abyei dispute, which has come to be known as “Sudan’s Kashmir, a territory claimed by two nations.” (Johnson, 2011: 172). Meanwhile the Ngok exist within the rural structure of the Humr-Misseriya (Deng, 2010), who are supported by the GoS. The issue of who does Abyei belong to remains unresolved. The 1905 Agreement reached between the Ngok Dinka and Misseriya during the Anglo-Egyptian Condominium is now very important for resolving the dispute, however, historical maps are missing and there are no living people left to report the terms of agreement. The Dinka claim the land is theirs and argue that Arab claims over the region are contrived (Deng, 2010). Abyei, once a bridge of peace between the North and the South, has caused two states to position themselves against each other for ‘the right to their land’.

Figure 3-1: How Identity Impacts Land Claims



3.4 Conclusion

This chapter has discussed the complexity of land claims and land tenure that exist throughout Africa, and specifically in conflict ridden areas of the Kivus and Abyei. It is evident that in situations where there are multiple claims to land, newcomers are disadvantaged as the idea of being a firstcomer has a stronghold in societies of sub-Saharan Africa (Bruce, 1988). The newcomer phenomenon from the frontier and the pre-colonial period continues to affect contemporary issues of land claims. What does this mean then for the Banyamulenge of the Eastern Congo? What happens to land claims when a group is dubbed a ‘stranger’? I have tried to demonstrate that land claims and land rights are not only impacted by the colonial legacy’s codification of territory, but that social structures and cultural understanding continue to weave themselves within more modern and formalized approaches for land allocation. Multiple tenured structures continue to disadvantage secondary rights users, as the pastoralist groups in Abyei. Ongoing conflict and the absolutist rule of governments have dispossessed groups of their land and marginalized several others. Social identity is entrenched within land reform and allocation as the politics of state favouritism interfere in the communal sphere. Simultaneously, favouritism exists at the local level where authorities allocate land according to ethnic, cultural and racial affiliation.

Custom is not static and group identity has shifted, evolved or been entirely refigured to adapt to political, economic and social conditions. Neither the Banyamulenge nor the Ngok Dinka have retained fixed rights to land through the centuries. During time of peace in Sudan, the Ngok were granted access to land, but in conflict, access was compromised. Societies and states are capable of shifting tenure patterns to adapt to changing circumstances. Therefore, groups claiming land have had to do so with agency. They had to know how to negotiate the socio-political sphere in which they were operating (see Figure 3-1).

This chapter sets the stage for the dynamics and complexities in land claims to pave the way for a deeper analysis into questions pertaining to identity, citizenship, belonging and involvement of the state. In Africa,

While the claims of aboriginal societies are so often perceived simply as problems, in fact they represent important possibilities: the highly mobile, developed and complex insights of such societies, which often exhibit considerable spiritual and intellectual latitude, have much to teach so-called Western society, have much in common with it, and epitomise much that is central, but repressed or latent, within it. (Brown, 2006: 34-35)

In the Kivus and Abyei, these claims have impacted, spurred and resuscitated conflict. In terms of land, “the association of place with memory, loss, and nostalgia plays directly into the hands of reactionary popular movements.” (Gupta and Ferguson, 1992: 13) We are witnessing these reactionary movements among the Banyamulenge and the Dinka, who claim the right to exist in the contested spaces. The following chapter will explore the identities of the Banyamulenge and the Ngok Dinka and how they are both connected and entrenched to the land.

CHAPTER 4: LAND AND IDENTITY – THE BANYAMULENGE AND THE NGOK DINKA

This chapter examines the Banyamulenge and Ngok Dinka to highlight their complex identities and how these have been influenced by the land that they claim. I argue that collective identity is subject to change, shift and reconfiguration depending on historical events and the political, social and economic context. Collective identity is also comprised of several elements, whether it is ethnic, racial, cultural, religious or political. These are markers of identity and not its only features. The danger in labeling a group according to one marker is that it dismisses and overlooks other markers as well as the dynamics of complex identity. Berry (2001: xxvi) mentions that social identities are not static since “identity, like property, is negotiated and contested – shaped and reshaped over time by multiple, sometimes conflicting forces.” Derman, Odgaard and Sjaastad (2007) assert that it is important not to privilege ethnicity over other identities, because identities change and shift with circumstances. Therefore I will treat the Banyamulenge and Ngok Dinka ethnicity not as essentially this or that, but as salient identities in a given context. Some markers may surface more strongly at certain times giving the illusion that a specific criterion is associated with a group. I would like to argue, however, that the other elements do not necessarily disappear, but are latent. There may also be new elements that emerge for a variety of reasons. Groups are creative in their ability to contextually reshape and restructure their identities. Groups are creative and their identities are malleable. This chapter will present the ways in which the collective identities of the Banyamulenge and the Ndok Dinka emerge in relation to land.

Both groups claim attachment to land for several reasons. History shows that they settled on the land at various points in time. Nevertheless, group identity has become entrenched in the land. We cannot measure the attachment to the land by the number of years a group has existed in a place, but through the processes by which groups have entrenched their connection to land. Since these two groups underwent processes of settlement, later generations formed different attachments to land because it was perceived as their place of belonging, as their homeland. As previously mentioned, land is symbolic when it represents meaning to a group. There is also the element of belongingness that solidifies

and validates collective identity. Yet, the meaning of land shifts over time and from one generation to the next. This also implies that the need to belong to a place may be stronger for some generations than others. Therefore, I would like to assert the fluidity of both collective identity and the meaning of land.

The Banyamulenge and the Ngok Dinka entrenched their identities to the land through unique processes. The Banyamulenge adopted a strategy of ‘placing and naming’ to try to claim indigenous rights to land in South Kivu, while the Ngok Dinka underwent a process of political centralization to establish a home base in Abyei among their Arab counterparts. In exchange for permitting land use for the Baqqara groups in the Bahr al-Ghazal the Ngok positioned themselves as intermediaries to protect the Dinka in the South against slave raids by Northerners. The land in Abyei was then shared by the Ngok and Humr-Misseriya to satisfy their livelihoods as pastoralists. In the twentieth century, Chief Deng Majok tried to position himself and the Ngok as intermediaries in the North-South conflict. Historical processes initiated the politicization of identities for both the Banyamulenge and the Ngok. Both groups were minorities within their regions and had to adopt the strategies necessary in legitimizing their claims to land. As the Banyamulenge identity shifted in response to the social/political/historical context, so did the Ngok identity with the influence of political centralization, Christianity and education.

This chapter demonstrates how collective identity has been impacted by group association with land, and in turn by the strategies that groups employ to claim land. It will also look at the impact of historical events and politics on identity and the means taken to assert claims to land. Each group has developed specialized processes to entrench their identities to the land. The first section gives an overview of collective identity and land, examining the dynamics of identity formation and how this connects to the symbolic significance of land. This section will provide insight into collective identity generally before turning to the specific group cases. The second section looks at the Banyamulenge and how their identity emerged through a process of ‘placing and naming’ in South Kivu. The third section will discuss the case of the Ngok Dinka and how their identity was formed

out of the search for security and protection for all Dinka. What developed in Abyei was political centralization for the Ngok.

4.1 Collective Identity and Land

A significant amount of the literature on African identity is presented as ethnic identity (de Vos, 2006; de Vos and Romanucci-Ross, 2006; Eder et al., 2002; Tsuda, 2006) but the elements remain pertinent to collective identity as a whole. I will take some of these concepts from ethnic identity and use them in my analysis of land and identity. These concepts include how groups define themselves, what constitutes group membership, the construction of identity in social situations and the need for a common cause. Eder et al (2002) state that collective identities emerge and are often formed in relation to the other. This has implications for how groups construct their identity to assert land claims when there are other groups competing for the same spaces. The presence of the other pertains to the construction of identity among the Banyamulenge and the Ngok Dinka. As illustrated in Chapter Three, social identity has always been important to claiming and allocating land in African systems of tenure.

Collective identity is connected to the past but is configured through present events. Groups also look to the future to sustain their continuity (de Vos, 2006). The connection of identity to the past, present and future would appear to be a linear process, but this is only part of the formative process. The salient identities of the Banyamulenge and Ngok Dinka at the present time comprised of cultural elements from the past but are highly complex and have contextually reformed in their political environments. Cultural myths from the past may be vital for a group to understand where they came from, but different events occur that necessitate shifts and reformations of identity. In terms of subjective, symbolic or emblematic cultural elements that may include language, religion, ritual and dress. Identities, in whatever form they may be “all exist in relation to each other and are held by all Africans” (Derman, Odgaard and Sjaastad, 2007: 10). An ethnic group is “a self-perceived inclusion of those who hold in common a set of traditions not shared by others with whom they are in contact.” (de Vos, 2006: 4) The traditions are one of the sources of group cohesion and set in place the boundaries of group inclusion and exclusion. Symbolic

boundary markers are the codes of group organization that determine who is included and excluded. Social practices, cultural distinctions and codes of group connection to the sacred are some of the markers that constitute symbolic group identity (Eder et al., 2002). If “belonging to a group... means being aware of group expectations and group regulations” (de Vos and Romanucci-Ross, 2006: 378), we must keep in mind that group regulations and expectations are also subject to change especially if necessary for differentiation.

To discuss collective action as a factor in identity formation Eder et al (2002) introduce the term of identicization, which is “the chain of events through which objective conditions of economic or political grievances become the basis of political claims justified by reference to a collective identity.” (Eder et al., 2002: 17) Identification is a process of action “through which collective identities are constructed, replaced, transformed and institutionalized.” (Eder et al., 2002: 18) Since identification is a practice, it cannot be separated from the political arena or from history as it is under these circumstances that groups learn to advance their goals, including claims to land. As de Vos (2006) highlights, many ethnic groups are in search of territorial or political independence but there are other goals that crystallize group cohesion. A change in group status usually prompts mobilization and can be a source of conflict. Groups can be created to serve expedient purposes, resolve the need to belong or to ensure the access to goods and services provided by the state (Eder et al., 2002; de Vos, 2006). Ethnicity “appears in other ways to become increasingly determinant of political and social life” (Eder et al., 2002: 2) because it can be politicized as it has been among the Banyamulenge and Ngok Dinka.

The literature mentions that boundaries between groups are not necessarily territorial but psychological, and therefore it is important to understand how these boundaries are maintained and transformed (Eder et al., 2002; de Vos, 2006; de Vos and Romanucci-Ross, 2006). What is interesting in the case of the Banyamulenge and Ngok Dinka is how the boundaries of collective identity have been reflected in boundaries of the land. The coupling of psychological and territorial boundaries has enhanced what it means to legitimately belong to a place. The opposition to one’s collective identity can lead to nationalist xenophobia whereby ‘foreigners’ become targets of hostility and violence and are subject to

exclusion (Eder et al., 2002). The ways in which social boundaries are created and maintained vary, and these intricacies will be highlighted with the role of land for both psychological and territorial boundary distinctions.

In Chapter Two, I outlined the spatial and symbolic characteristics of land in Africa as the frontier and how groups came to be in certain places prior to imperialist control. This is one of the reasons why “the border needs to take on a poignant significance as a symbol for understanding the complexities and ambivalences of contemporary African culture.” (Ahluwalia and Zegeye, 2002: ix) It was the control over people that allowed for the Turco-Egyptian powers, the Madhiyya and the Anglo-Egyptian Condominium in Sudan as well as the Belgian regime in Congo to assert dominance over the corresponding territories. Thus, understanding land in group identity for Africa means appreciating that in many cases, group identity emerged out of forced migration and settlement. This is true of the slave based systems that existed in Sudan in the pre-colonial era as well as the forced labour that transplanted many Rwandans to the Eastern Congo during the colonial era. To reproduce European presence, domination and control in the colonial period, “the boundary between civilized self and primitive other became concretized in metaphors of spatiality.” (Ashcroft, 2002: 3) Not only did the colonial administration codify territory but they also codified identity in their civilizing project. They distinguished people by race and ethnicity and established a privileged hierarchical ladder in which only the civilized Europeans who were at the top could be granted full citizenship rights (Mamdani, 1996). People were classified as indigenous if they were on the land at the time of colonial arrival. Imposed definitions of race, subject-race, ethnicity and indigeneity were a means to classify and control people accordingly. These codifications were stronger in the Eastern Congo because when the Anglo-Egyptian Condominium took power in Sudan, identities had already been constructed from the indigenous slave-based system. Some of these codifications, however, continued to impact the post-colonial state and remain pertinent to understanding land and contemporary identity. Groups have had to manoeuvre in these new state systems and structure their identities accordingly. This is the case for the Banyamulenge and the Ngok Dinka, who have reshaped their identities from the pre-colonial to the post-colonial periods in order to advance

their claims to land (see Figure 4-1: Identity Map for the Banyamulenge and Figure 4-2: Identity Map for the Ngok Dinka).

Ashcroft (2002) states that post-colonial societies have indigenized colonial space and maintained borders that are perceived as necessary in modernization. Yet, boundaries have disrupted collective groupings of people and this has contributed to the proliferation of intra-state and inter-state conflict. Within the creation of new boundaries and administrative areas for communal tenure, there has also been the re-structuring of identity. Delineated spaces also have implications for minority groups who have become coupled into new territories with other dominant groups. Furthermore, both Sudan and the Democratic Republic of the Congo have undergone decades of conflict that has caused migration within the country and across borders. Since each communal regime is administered by specific social systems, access to land has been complicated by definitions of indigeneity, which has marginalized several minority groups. “The manner in which immigrant minorities are received in the host society greatly affects their ethnic experiences and identity outcomes.” (Tsuda, 2006: 158) Many ethnicities are accommodated in terms of land allocation in the communal sphere (Derman, Odgaard and Sjaastad, 2007), but the identities of the Banyamulenge and the Ngok Dinka have been marginalized and politicized, which has affected their claims to land. The Banyamulenge are perceived as foreigners in South Kivu so are at a disadvantage in accessing land. The Ngok Dinka live in the contested area of Abyei, and although they have secondary rights to land, this is subject to change depending on the political outcome of the region, whether Abyei falls to Sudan or South Sudan. Therefore the ethnic element has surfaced more strongly than other identity markers and is used to legitimate belonging.

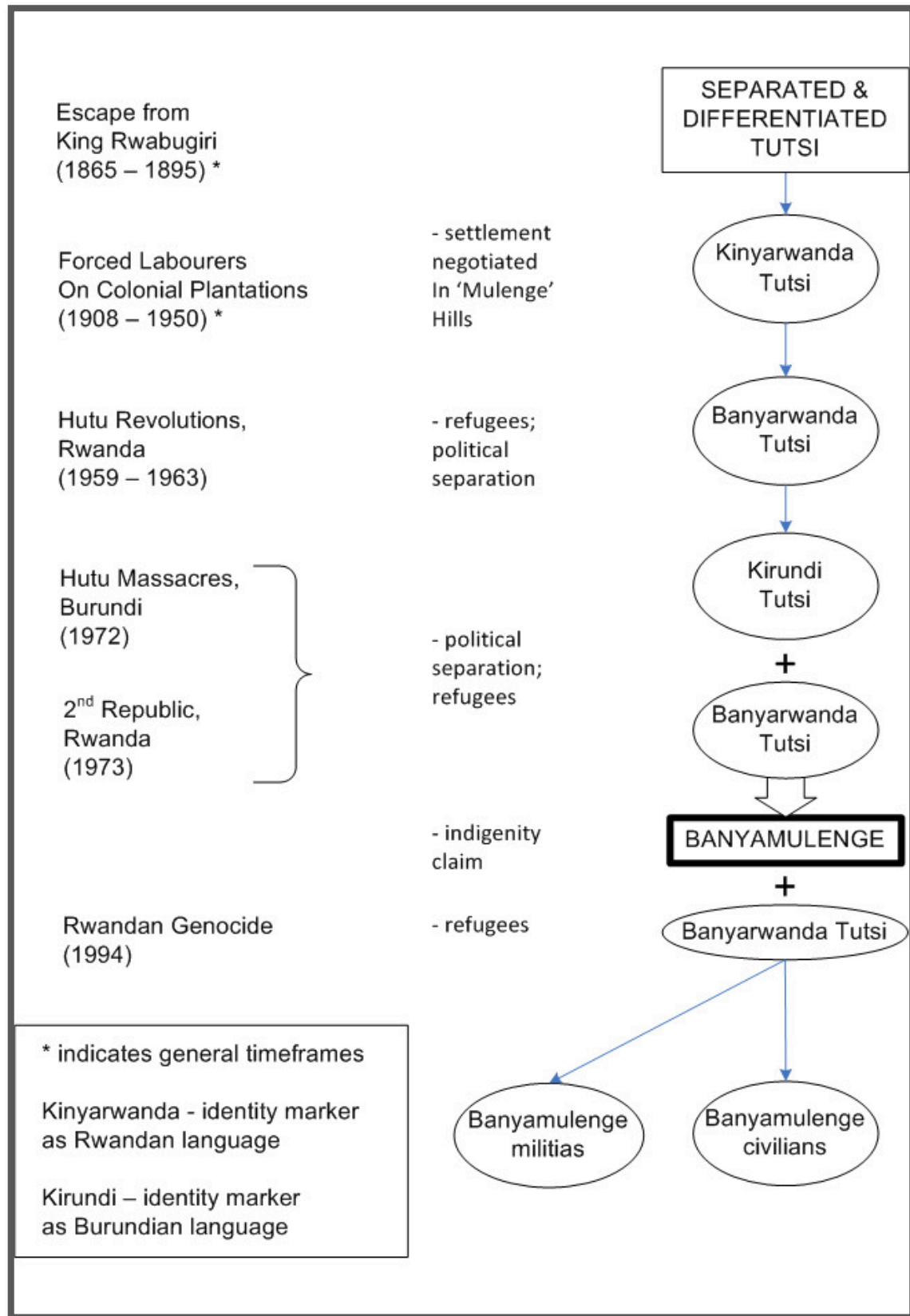
Land has symbolic importance to these groups as it constitutes livelihood, which means more than work, labour or a way of escaping poverty. In development policy, the focus seems to be geared towards finding a way in which poorer populations can gain access to land in communal systems to mitigate poverty. However, several scholars have argued that it is necessary to understand what land means to groups in their traditions and rituals (Toulmin and Quan, 2000; Berry, 2001; Cousins, 2010; Derman, Odgaard and Sjaastad,

2007; Hebinck, 2007). The Ngok Dinka, for example, have a great deal of pride in their pastoralism and their calendar corresponds to their livelihood with cattle. Furthermore,

...in indigenous or traditional Africa, growing food or herding on the land is more than a “job”; it is both a life-style and an occupational source of living for the overwhelming majority of people. It defines social and cultural identity, mode of living, and integration into the environment. (Deng, 1988: 369)

It is important to understand how group identity emerges and is strategized to claim land. “The idea that land adheres more to ‘community values’ oversimplifies the connections between land and identity on the one hand, and tends to narrow rather than open up the discussion of how and why identities are important, on the other.” (Derman, Odgaard and Sjaastad, 2007: 9)

Figure 4-1: Identity Map for the Banyamulenge



4.2 ‘Placing and Naming’: The Banyamulenge of South Kivu

The term Banyamulenge today is used to describe the entire Tutsi diaspora in the Kivu regions who have come from either Rwanda or Burundi (Mamdani, 2002). Although the name did not come into use until later, I will use this name for the purpose of this section as I seek to understand the origins of this group. First, it is important to discuss the identity of Tutsi in Rwanda and Burundi. In the seventeenth and eighteenth centuries, it might have been possible to classify Tutsi as a distinct ethnic group, but there have been centuries of intermarriages with Hutu and Twa²⁷ making Tutsi a fluid identity. Hutu is also a fluid identity but has a different history (Mamdani, 2002; Newbury, 2009). However, recent history, such as the Rwandan genocide of 1994, has shown that Tutsi were polarized against Hutu, causing people to affiliate with one of these identities.

Much of the popular history of these two countries [Rwanda and Burundi] has treated ethnic groups as if they were racial groups, biologically distinct, each with its own history separate from the others. But despite the presence of different physical stocks in this area, two points are worth noting: these ethnic groups are not clearly distinct and internally homogeneous racial categories, as many mental models assume; and, even if they were, such racial categories provide a poor guide to historical understanding. (Newbury, 2009: 298)

An exploration of the history of Tutsi in the Great Lakes region and the system of forced labour in the Eastern Congo allows us to understand the unique way in which the term ‘Banyamulenge’ emerged as a collective identity (see Figure 4-1).

The origin of the Tutsi in the Kivu region remains contested. There is the theory that they originated from Ethiopia and conquered the Hutu but this is difficult to prove and is subject to debate among scholars. Furthermore, if this was the case, Newbury (2009) argues that Rwanda and Burundi would have had similar traditions of origin because the groups are seen to be equivalent in these two other countries. What is known is that the Tutsi were powerful in Rwanda at the time of the Royal Court. It is in this context that the identity of Hutu was generated, through subordination under the court power of the Tutsi. The contemporary clan structure in Rwanda stems from the influence of the Royal Court in the eighteenth century. The 18 official Rwandan clans have emanated in the pre-colonial

²⁷ Twa is another group in Rwanda and Burundi (Newbury, 2009).

frontier, under King Rwabugiri. Newbury (2009) terms the clans of pre-colonial Rwanda as multi-ethnic because descent-based clans included members of different ethnic groups. This multi-ethnic character was a paradox for kin-based units, however, it is perceived as a product of history and the regional spread of people throughout the vast landscapes of the frontier. It was also during the time of Rwabugiri that the first Rwandan Tutsis entered the Eastern Congo, in what is now South Kivu, and when Rwandan Hutu became subjects under the King's rule. Mamdani (2002), on the other hand, asserts that Hutu was never an ethnic identity and that both Hutu and Tutsi should be perceived as political identities that shifted with the changing Rwandan state.

Political identities may be enforced from above but are also shaped from below in the process of state formation. In Rwanda and the Great Lake region these political identities were reproduced by the colonial state and have impacted identity construction in the post-colonial period. The crucial point is that “political identities are the consequence of how power is organized.” (Mamdani, 2002: 22) The access to and the organization of power defines the scope of the political community as to who is ultimately included and who is excluded. It also defines which groups are perceived to legitimately belong to an area. According to Mamdani (2002: 23), the difference between a cultural community and a political community is that “a common cultural community signifies a common past, a common historical inheritance... a political community testifies to the existence of a common project for the future.” Although I appreciate Mamdani's explanation of the two types of community, I would like to assert that they are not so easily distinguished. These identities can easily overlap where the cultural community can draw on the political history and events that have shaped who they are, while political identities can look to the past, to injustices that need to be reversed and use these premises to set the stage for the political future of a state. This is why I argue that political identities are a part of complex identity, and develop from other components. It is these components that become politicized and are thus defined as political identities.

If evidence shows that the Eastern Congo was a frontier zone at the time of Rwabugiri, then the Tutsi who migrated to the South Kivu region would have settled on open

space, taking advantage of an institutional vacuum that allowed them to escape the centralization of state power in Rwanda. Tutsi settlement dates back to the late eighteenth century, a time when the elite Tutsi wanted autonomy from the Rwandan state and the heavy taxation imposed by Rwabugiri. After the King's death, more Tutsi arrived in the Congo to flee the internal power struggles in the Rwandan Court (Newbury, 2009; Mamdani, 2002). The earliest known history of the Banyamulenge is therefore that of Tutsis who wanted to distance themselves from Rwanda at a time of political strife. This is precisely why “regional diversities, ecological transformations, and political particularities” (Newbury, 2009: 302) are more helpful than ethnicity in understanding the history of this region. In the late eighteenth century, identicization with land for the Tutsi in South Kivu stemmed from the political necessity to flee Rwanda and was enhanced by their livelihood as pastoralists (Mamdani, 2002). The high plains of the Kivus became a refuge and the new homeland for an unknown number of Tutsi who escaped the Rwandan state.

During the colonial regime in the Eastern Congo, the Belgians also administered Rwanda. Rwandan Hutu and Tutsi were forced into a brutal system of slave labour in the Eastern Congo to generate revenue for the Belgian state. Approximately two hundred thousand people immigrated to the Kivus during the colonial period (Deng, 2001). With the aid of the colonial administration, they were granted permission to settle on the land by the Bafuliro, a group indigenous to the South Kivu region. Under the communal regime in 1924, the chief of the Bafuliro allowed for settlement on the high plateau of the Mulenge Hills (Mamdani, 2002; Deng, 2001; Prunier, 2009). It is said that from 1925 to 1929, labour recruitment from Rwanda and Burundi numbered over seven thousand (Mamdani, 2002). New arrivals of Banyamulenge settled among those who had been established on the land since the 1880s. In communal tenure, groups had their own authorities who were defined, by colonial powers via native authority, along the lines of ethnic similarity; however the ethnic groups had to be deemed indigenous to the area. The chiefs were the authorities who could deem whether a group was indigenous. Since the civil sphere was defined on the basis of race, the colonial authorities had to further distinguish the communal sphere by ethnicity because they needed to break down the population into smaller, more manageable groups to exercise control. Since the majority of the population were subjected Africans, grouping

people by race alone would have threatened the minority of European citizens. Therefore a system of both racial and ethnic classification allowed the Europeans to exercise complete control over the subject population in the bifurcated state (see Table 4-1).

Table 4-1: The Colonial State

	Direct Rule	Indirect Rule
<i>Two Realms:</i>	<i>Civil Sphere</i>	<i>Communal/Customary Sphere</i>
Governance:	Colonial Authorities	Native Authority
Laws:	Civil Laws	Customary Laws
Identities:	Racial distinction -Europeans (citizens) -subject-classes (virtual citizens) -subjects	Racial & Ethnic distinction -indigenous -non-indigenous (ethnic stranger)
Access to Land:	Appropriated by citizens	Communal Tenure granted by Customary Authority

Source: (Mamdani, 1996)

In North Kivu, the Banyarwanda had a traditional authority in the communal realm, but this was never as secure for the Banyamulenge in South Kivu (Mamdani, 2002). Therefore, access to land for the Banyamulenge meant negotiating with local indigenous authorities and having to assert their identity in such a way that it earned them a piece of the land. However, because the colonial regime needed the labour force it transplanted people under its regional control to the designated plantations and forced the settlement of groups. In a way, the colonial authorities aided the Banyamulenge and Banyarwanda in gaining access to land within the communal realm, because the need for labour was so great. The forced settlement provided a safety-net for land access for a period of time, as ultimately the Europeans were in control. The remainder of the population was forced to behave according to what was imposed. Throughout the seventy-five years of Belgian control, people were not only relocated but different groups were forced to coexist in the same areas. Over time, the interconnectedness of different groups forged new identities as they developed social relations and engaged in intermarriages. These shifting social identities were also impacted by the Banyamulenge's new homeland of the Eastern Congo.

I have stated that colonial powers codified identities by institutionalizing race and ethnicity which brought about the politicization of identities. In Rwanda, the Tutsi were perceived to be a superior race by the Belgians due to their power in the state prior to colonial arrival and due to the Hamitic Hypothesis. This hypothesis gave Tutsi a superior status from the belief that they came from elsewhere. Under the colonizing project, ruling groups had to originate from elsewhere to give Africa some degree of organized state life. Mobile groups were considered to be Hamites and because they came from elsewhere, they were the qualified assistants in the colonizing project. This was a cornerstone of the imperial mindset. They became the subject-races while the Hutu were subjects (see Table 4-1). The reform of 1920 transferred power from the monarch to the local chiefs who were all Tutsi with power in state administration. After 1920, the Catholic Church played a big role in the civilizing project as it attempted to Christianize the Tutsi (Mamdani, 2002). The Hamitic hypothesis applied to Rwanda and Burundi, but “only in Rwanda was the notion that the Tutsi were a *race* apart from the majority turned into a rationale for a set of institutions that reproduced the Tutsi as a *racialized* minority.” (Mamdani, 2002: 87) The Tutsi in Rwanda were therefore resented by the Hutu majority during the colonial era because they were the privileged minority race. The census of 1933-34 in Rwanda placed the entire population at around 1.8 million, with Tutsi accounting for 14% of the population. It was after the census that these two identities were enforced legally so that their labels held permanently (Mamdani, 2002).

Mamdani (2002) states that Hutu and Tutsi became political identities in Rwanda as it defined who got access to power in the state. However, I argue that their racial and ethnic distinctions became politicized because it was these elements that defined a privileged status.

Political identities exist in their own right. They are a direct consequence of the history of state formation, and not of market or culture formation. If economic identities are a consequence of the history of development of markets, and cultural identities of the development of communities that share a common language and meaning, political identities need to be understood as a specific consequence of the history of state formation. When it comes to the modern state, political identities are inscribed in law... they are legally enforced. (Mamdani, 2002: 22)

Therefore group identity takes on the political dimension to assert and legitimize its claims. When law recognizes people as a member of a specific ethnicity or race, state institutions are configured to treat members of these categories accordingly (Mamdani, 2002). The political identity became a matter of necessity in the context of the Rwandan state, but this does not mean that the other elements of group identity disappeared.

The politicization of Hutu and Tutsi identities in Rwanda also affected how the Tutsi were perceived in the Eastern Congo, particularly after independence. In the Eastern Congo there were no subject-races, so when the Tutsis migrated, the institutional configuration meant that they became non-indigenous strangers (or foreigners) in the communal sphere. In regards to the Banyarwanda,

...the identity experiences of immigrant minorities are also influenced by the racial categories and identities that are imposed on them by the dominant host society. Frequently, these externally ascribed ethnic identities are different from and conflict with their own ethnic understandings that they bring from their home country. (Tsuda, 2006: 158)

It is important to note that the perception towards Hutu and Tutsi in the Eastern Congo also shifted in time, and was impacted by the post-colonial government, institutions and the reconfiguration of state and regional powers. Identities are impacted by how groups perceive themselves and how they are perceived in the socio-political sphere. If there are hostilities towards a group in the host community, members of the targeted group will align their identities in such a way to preserve themselves and gain access to the goods and services of the state. There are often violent repercussions to such moves that will be discussed below.

The three waves of post-independence Tutsi immigration into the Eastern Congo thus far were in 1959-1961, 1963-1964 and 1973. As the Tutsi diaspora²⁸ grew significantly in the Congo the population became strangers without an ethnic home. The diaspora of the 1960s associated their home as Rwanda but as their children were born in the Congo, the later generations associated their home as the Kivus and were determined to maintain this (Mamdani, 2002). This is a clear example of how the meaning of land and what translates into homeland varies from one generation to the next. Land became symbolic to those who

²⁸ There was also an extensive Tutsi diaspora in Uganda and Tanzania (Mamdani, 2002).

were born there. It was these later generations who were more determined to entrench their identity to the land in the Kivus and sought the means to claim indigeneity.

The differences and hostilities between Hutu and Tutsi persisted and erupted in post-colonial violence when the first Hutu Revolution of 1959-1963 in Rwanda generated a mass exodus of Banyarwanda Tutsis into the Eastern Congo. The president of the First Republic in Rwanda was Grégoire Kayibanda who led the Revolution with the objectives of shifting the state from minority to majority rule, social justice and democracy (Mamdani, 2002). This was a two-fold emancipation process for the Hutu whereby they were freed from Belgian rule and then sought to get rid of Tutsi power. Tutsi continued to be defined as a race that was juxtaposed against a Hutu majority. The principles of the Revolution were premised on the Hutu gaining justice at the expense of the Tutsi. Therefore Tutsi were forcibly removed and the resulting diaspora in neighbouring countries remained more political than cultural. During this period, except for the Banyamulenge of South Kivu, in the Kivus, the Banyarwanda did not distinguish themselves as Hutu or Tutsi but as the Kinyarwanda speaking people from Rwanda. Another influx of Tutsi refugees from Rwanda occurred in 1973 when Major General Juvénal Habyarimana carried out a bloodless coup on July 5 to start the Second Republic. In this period, Hutu and Tutsi were redefined as ethnic identities to be protected under the state but this did not prevent the fear of more violence against the Tutsi population. The ethnic element of these two groups was highlighted once again. Although Habyarimana was committed to protecting all the people of Rwanda he emphasized that the protector had to be a Hutu. Tutsi were a minority in Rwanda but were allowed to participate in the political sphere again. Similarly hostilities prevailed in Burundi but in 1972 there was a massacre of Hutus (Jackson, 2006; Mamdani, 2002). Burundian Tutsis fled into South Kivu and settled among the Banyarwanda Tutsi. With the neighbouring violence, the Tutsi population wanted to separate itself from the politics in its country of origin.

It is assumed that the term ‘Banyamulenge’ emerged during these internal political struggles in the two countries (Deng, 2001; Jackson, 2006; Mamdani, 2002). Jackson (2006) introduces the terms ‘autochthon’ and ‘allochthon’ to distinguish between the indigenous and

native Congolese and the non-indigenous foreigners. The term autochthony is Greek and “means ‘from the soil itself’ and implies intimate, aboriginal connection with the territory.” (Jackson, 2006: 98) The term has come to mean ‘sons of the soil’ which is a direct claim to indigeneity. Among ethnic identities of the Eastern Congo, the name of groups is derived from the place in which they live, the *collectivité*. The Banyamulenge resided in an area that covered three different territorial administrations that constituted three different indigenous Congolese groups (Mamdani, 2002: 248):

- 1) the territoire Mwenga that was inhabited by the Balega,
- 2) the territoire Fizi inhabited by the Babemba, and
- 3) the territoire Uvira inhabited by the Bavira and the Bafuliro.

Since some of these areas constitute more than one *collectivité*, the Banyamulenge paid homage to the chiefs of the different *collectivités* to gain access to the land. Moreover, the Banyamulenge employed this name to link their identity to the Mulenge Hills in South Kivu and to attempt to claim indigeneity.²⁹ It was a means for individuals in the Tutsi diaspora in South Kivu to differentiate themselves from the political violence occurring in their countries of origin. Additionally, the communal realm remained highly ethnicized and the Tutsi in South Kivu still lacked the sufficient representation of a Native Authority to ensure them access to land.

Table 4-2: The Postcolonial State

	Civic Sphere	Ethnic Sphere	
		Indigenous (autochthon)	Non-indigenous (allochthon)
Citizenship	Civic	Ethnic (indigenous)	Contingent on state
Rights:	Member of state -political and civil rights; individually based	Membership in Native Authority -group-based rights -social and economic rights; right to land as livelihood	Dependent on recognition of group and right to belong -non-secure
Access to Land	Market transaction -purchase and property transaction; inheritance	Recognized ethnic group that is governed by own Native authority	Very minimal -subject to decision of customary authority

Source: (Mamdani, 2002; Jackson, 2006)

²⁹ There were other Tutsis who tried to claim place-based identities in different regions, for example the Banyatulamo and Banyaminembwe. Like the Banyamulenge, they moved into areas and attempted to entrench their identity to the land to be seen as indigenous. See Mamdani (2002).

Indigeneity is the key to obtaining land rights within the political, social and cultural sphere of the Eastern Congo. The formation of identity was tied to territory and was based on gaining rights. “The claim to shift identity from the ethnic (the Banyarwanda) to the territorial (the Banyamulenge) must, in this context, be seen as an attempt to define a more inclusive basis of rights, based on residence rather than ethnicity.” (Mamdani, 2002: 249) Jackson (2006) states that the chief of the Bavira peoples was later killed for treason by his own people for selling land in South Kivu to Tutsi. The Bavira people claim that the chief sold both the name and the area to the Banyamulenge. The strategy of ‘placing and naming’, of shifting and negotiating identity, is how the term ‘Banyamulenge’ came to be.

Under the post-colonial governance of Mobutu in Zaïre, there were different citizenship decrees that were passed to unify the Congolese people and differentiate between those who were indigenous Congolese and those who were not. The Congolese state distinguished between the former arrivals of Banyarwanda and the later ones, such that “the former were considered *nationals*, but the latter were divided into colonial-era *migrants* and postcolonial *refugees*.” (Mamdani, 2002: 236, italics in original) The nationals had a right to native authority whereas the two other categories were considered ethnic strangers or foreigners. The nationals only had a right to a native authority so long as they were recognized as indigenous (see Table 4-2). In order for the Banyarwanda and Banyamulenge to maintain access to land, they needed to be recognized as nationals or citizens, and so the means by which the Banyamulenge entrenched their identity to land was impacted by the meaning of citizenship in the Congo.

The current citizenship crisis in the Congo dates back to the 1960s and has played a significant role in the ways in which the Banyamulenge have tried to assert their identity and legitimize their belonging in South Kivu. The 1964 constitution emphasized one Congolese nationality and stated that from the date of independence in 1960, all those people who had an ancestor or tribe member established on the territory of Congo before the 18th October 1908 were to be considered Congolese. Since many indigenous Congolese expressed doubt as to there being any Rwandans there before 1930, the Banyarwanda and Banyamulenge were easily excluded from nationality (Jackson, 2006).

Amongst Mobutu's strategies for building a powerbase was to rise to prominence representatives of ethnic groups that could not threaten him "because of the fact of their numerical weakness and the ambiguity of their political and social status" (Jackson, 2007: 485). Mobutu turned to the tiny, but influential, Congolese Tutsi community and appointed a Banyarwanda Tutsi, Barthélemy Bisengimana, who is said to have influenced the new law of 1971. This law stated that all Rwandans and Burundians in Congo as of 30 June 1960 were to have Congolese Nationality because of the ongoing disputes and ill treatment of these people in their host countries. Shortly after article 17 of the 1972 Law shifted the qualifying citizenship dates back to those Rwandans and Burundians that were on Congo territory before 1 January 1950 (Jackson, 2006; Mamdani, 2002). The 1972 Law discounted all of those who arrived between 1950 and 1960. The key dates that marked citizenship corresponded with dates that were significant during the colonial regime. Another citizenship law in 1981 pushed the qualifying date back from 1908 to August 1, 1885. The Congo witnessed growing tensions in the 1980s with provincial elections and "Rwandophone elites withdrew from active politics, concentrating instead on economic preeminence, particularly on the vast agricultural concessions – coffee plantations, and cattle ranches – amassed under Bisengimana's patronage." (Jackson, 2006: 105) The Banyarwanda of North Kivu benefitted from Mobutu's policies but this created resentment among indigenous Congolese. Although the 1981 Law was passed, it was not implemented until 1992, when the Conférence Nationale Souveraine (CNS), an internal opposition party to Mobutu, surfaced. The CNS used the rhetoric of 'foreigner' against the Banyarwanda of North Kivu especially because of their land holdings. This term was quickly used to define the Banyamulenge as well. In 1995, all rights of citizenship for the Banyarwanda and Banyamulenge were withdrawn by Anzuluni Mbembe.

The Rwandan genocide of 1994 forced over a million Tutsi and moderate Hutu over the borders of the Eastern Congo, mostly into North and South Kivu, when the Rwandan Patriotic Front (RPF) invaded Rwanda. This caused tensions between Kivu and Rwanda and within Kivu society (Mamdani, 2002). There were several dynamics at play that influenced identity markers. First, indigenous Congolese did not distinguish between the longstanding Banyarwanda and Banyamulenge of the Kivus and the new refugees, and this heightened the

divide between indigenous and foreigner, or autochthon and allochthon. To the Congolese, allochthon means someone who is not entitled to have presence in the Congo and they are identified through derogatory, dehumanizing language (Jackson, 2006).³⁰ While the rhetoric of ‘foreigner’ was applied to all Banyarwanda and Banyamulenge, the Banyamulenge were less favoured, as I discuss below. Second, the aftermath of the genocide carried over to the Congo where recent Hutu and Tutsi immigrants from Rwanda now coexisted. With citizenship rights revoked for the Banyarwanda and Banyamulenge, who had been present in the Kivus for decades before the genocide, and the arrival of new refugees from Rwanda, the identity markers of Hutu and Tutsi were salient and applied to the entire Rwandan and Burundian diaspora, despite their length of time spent in the Congo itself.

The post-colonial period has not provided a basis of security for the Banyarwanda and less so for the Banyamulenge. Amidst the politics in Rwanda, the indigenous Congolese have been more favourable to the Hutu, with whom they have allied in the Congo Wars against the Tutsi and with whom they share a common Bantu heritage. For the Banyarwanda Hutu population, “with respect to the national scale, they are Rwandophone, allochthon, other. With respect to the regional, however, they are Bantu, familiar, autochthon.” (Jackson, 2006: 113) The treatment of the Hutu by the Congolese has been preferential. From the Hamitic Hypothesis,

the ‘Bantu’ – a megaethnicity including such groups as Nande, Nyanga, Hunde, and Hutu – were deemed the autochthon population bloc of Central Africa. ‘Nilotes’ – supposedly the Tutsi in Rwanda, Burundi, and Congo... – were depicted as historical invaders and dispossessors all the way from the Horn of Africa: allochthons par excellence for the entire region. (Jackson, 2006: 107)

The notion of historical invader depicts notions from the frontier and here the importance of firstcomer legitimated who was considered indigenous. Firstcomer seems to be synonymous with autochthony. Since the Tutsi were painted as invaders, they did not qualify for the same rights and privileges as the Bantu (see Table 4-2). These elements predate the colonial period and relate more closely to the African frontier. When the colonial administrators

³⁰ The language that has been used in the Congo since 1996 depicts Rwandophones in derogatory terms, calling them anything from vermin, insects or cockroaches. See Jackson (2006).

codified the identities racially; the hostilities between now racialized groups existed prior to European interference, but not to the extent of sparking a genocide as we witnessed in 1994.

The resentment towards the Tutsi that accumulated during the colonial period persisted even in the aftermath of genocide. The Banyarwandan Tutsi after 1994 connected with the Banyamulenge because of their common Tutsi identities (Jackson, 2006; Mamdani, 2002). The attitude of the indigenous Congolese towards the Banyamulenge in the Eastern Congo is very hostile and those that were once second or third generation immigrants are identified under one umbrella with the new arrivals. Thus the entire Tutsi diaspora in the Eastern Congo became known as Banyamulenge. In 1995 there was a census of the Eastern Kivus to determine who was indigenous. When the Banyamulenge submitted historical and ethnographic evidence for their presence in South Kivu, the state retaliated by appointing a Sub-Commission to qualify Rwandophones as “autochthons from before 1885,” “transplantees”, “refugees” or “clandestines” (Jackson, 2007: 487). All of these classifications are discriminatory and were mandated by the same politicians who wanted to adopt democratic principles within Mobutu’s state. These strategies point to a duplicitous political culture.

In South Kivu, in 1995, the district commissioner of Uvira demanded an inventory of all property and landed owned by the Banyamulenge which was followed by evictions. Many Banyamulenge were deported to Rwanda and Burundi in 1996 by the HCR while others were subject to attack by government-supported indigenous ethnic militias. In October of 1996 the deputy governor of South Kivu announced that all Banyamulenge had a week to relocate to temporary camps. Violence against Tutsi escalated drastically in the Eastern provinces forcing many to flee over the borders, where border officials confiscated their Zairean identity cards (Manby, 2009). It was these hostilities that prompted the Banyamulenge and three other ethnic groups to form the AFDL under Laurent Désire Kabila. With the AFDL the Banyamulenge began their militarized tactics which have lasted to the present time.

The Congolese see the Banyamulenge as allochthons whereby “the toponym *Banyamulenge* is nothing but a transparent attempt at faking autochthony in order to stake a primordial claim to Congolese territory.” (Jackson, 2006: 108, italics in original) The perception of the other is historically defined by mistrust, ill-treatment and resentment. Perceptions and understandings of identity are manifested through language:

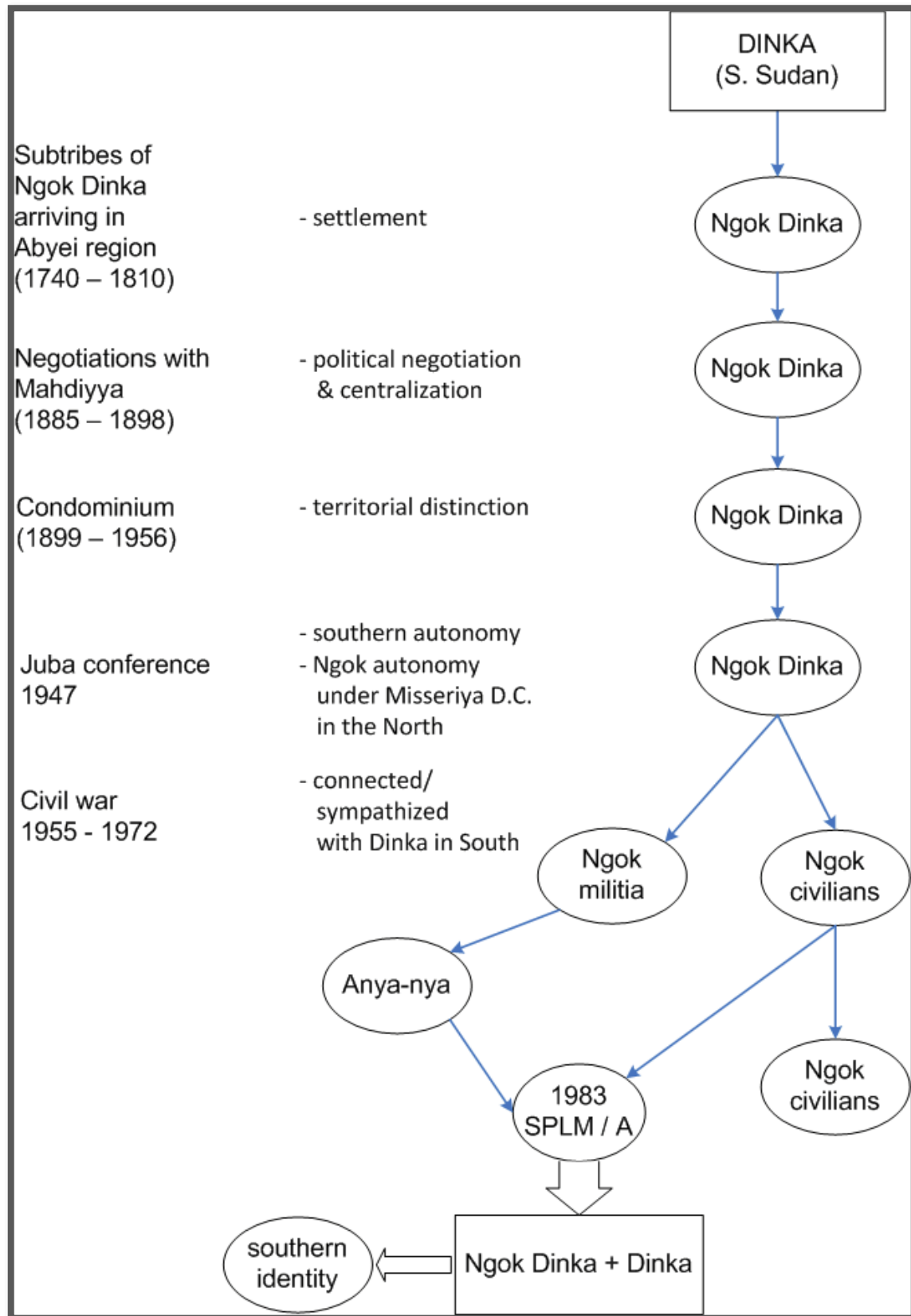
Though declaratory and seemingly certain of itself, the language of autochthony, whether exhibited in tracts, in ordinary conversation, or in public political discourse, retains an indistinctness and evasiveness that allows it to distribute its meaning across multiple scales. (Jackson, 2006: 110)

The language contributes to how the other is perceived and has negative effects for the Banyamulenge and their struggle to legitimize their claims to land. It is a language that is obsessed with the notion of ethnic purity. When this purity cannot be achieved, Jackson (2006) says that a state of paranoia is created. Identities are polarized where the Banyamulenge are viewed as the impurity that threatens the future of the Congolese people.³¹

As allochthons and in the absence of a Native Authority, the Banyamulenge are disadvantaged. As Tutsi, they are antagonized by the Hutu diaspora and militia groups, the indigenous Congolese and now, the Congolese state. Banyamulenge is not an ethnic identity. It was contextually created to secure indigenous rights to land. It is now an identity that unites the Tutsi diaspora, and I will even be so bold to state that this collective identity has become a means to survival and security amidst a militarized and hostile environment within South Kivu. The identity of the Banyamulenge has shifted in time and as Newbury (2009) asserts, broad identities emerge where ethnic identity and class identity overlap. They also emerge out of social and political necessity.

³¹ This notion of purity relates closely to the work by Appadurai in ‘Fear of Small Numbers’. The minority becomes the blemish in the ethos, and there is the need to purify the ethos, as minorities excite rage in a globalizing world and cause the anxiety of incompleteness for the pure ethos. When citizens feel threatened about their own identities, they become defensive and identify themselves against the ‘other’. It is the fear of losing identity, and therefore a sense of belonging, that slowly starts to construct these identities. The fear channels into the need for a ‘national ethos’ which implies a wholly pure nation. Violence stems from this segregation of identities as violence creates a certainty against uncertainty, a full attachment to the national ethos in light of social uncertainty (Appadurai, 2006).

Figure 4-2: Identity Map for the Ngok Dinka



4.3 ‘Political Centralization’: The Ngok Dinka of Abyei

The history of Sudan for the past five hundred years³² can be understood in terms of the Arab North versus the resistant African South. Since the Ngok Dinka lived among Baqqara Arabs in the North, it is necessary to examine how the identity of the Ngok was constructed with their larger Dinka counterparts as well as in relation to the Baqqara Arabs (see Figure 4-2). This entails examining both the Dinka identity of the South in relation to the Islamic identity of the North, and how these two identities influenced and were influenced by the political sphere. In Sudan, there was a historical process of separation that favoured the assimilation of Arab religion and culture. The Arabs had the advantage of wealth which lured the Northerners, such that the Northern Sudanese people became Arab-African through intermarriage. Since Islam follows the patriarchal line, all offspring assumed the Arab identity, which protected them from slave capture (Deng, 1995). Religion was then crucial in determining rights of the Sudanese. The privileged classes were the Arabs and Arab-Africans of the North who had assimilated to the religious and cultural vision of the united Sudan. Furthermore, in Sudan,

...identity is seen as a function of how people identify themselves and are identified in race, ethnicity, culture, language, and religion and how such identification determines or influences their participation in the political, economic, social, and cultural life of their country. (Deng, 1995: 14)

Identity determined who was recognized by the Arab-Sudanese state prior to the Condominium and in the post-colonial period. This is not to say that the religious divide did not affect the Anglo-Egyptian rule, but under colonization, the Southerners were protected and safe-guarded against forced assimilation by the British. If identity was the qualifying factor for political, economic, social and cultural participation in the country post-independence, then identity was politicized to align with the Arab-Sudan of the North or with the African South.

Prior to the split of North and South Sudan, the Dinka were the largest group in the entire country with numbers approximating 2-3 million (Daum, 2007). Dinka settlements are

³² Christianity dominated Sudan for a thousand years prior to the establishment of Islam in most of the North around the fourteenth and fifteenth centuries. See (Wolfers, 1981).

spread over about one tenth of the area of Sudan but the group is sparsely populated and there are several miles between villages or clusters of huts (Deng, 2009).

Large in numbers, widespread in settlement, and segmented by the topography of their land, the Dinka are a conglomerate of some twenty-five independent groups that are also segmented by autonomous subgroups, all of which share a striking pride in their race and culture. All this makes for a paradoxical combination of individualism and exclusiveness of interests with an equal emphasis on communalism and a collective sense of purpose. (Deng, 2009: 23)

The Ngok Dinka live in Abyei, which was once part of South Kordofan in the North but is now contested between the two countries. There has not been a reliable census for the South of Sudan since 1956. The name ‘Dinka’ was given to the group by outsiders and “educated Dinkas today prefer to be called *Jieng* (the word indicating their language).” (Daum, 2007: 345, italics in original) The religion of the Dinka needs to be discussed to understand their identity. It is a monotheistic religion and they believe that they have been created by God and that the spirit of God has been transmitted and reincarnated through some of the Dinka generations. The generations that trace their origin directly to heaven are known as the ‘spear master-priests’. The Ngok trace their Pajok lineage to the spear master-priests. The Dinka also believe that they were given the choice to live in eternal paradise which also meant no work and an abundance of food (Daum, 2007). Yet, paradise was dark so the group chose a life on land under the sun so their livelihood as pastoralists is seeded in sacred traditions.

For the Dinka, religious power is derived from nature and that is why there is an intimate connection to the land and its animals. In Islam, religious power is derived from the Qur’an which influences the political and legal cultures (Beswick, 1994). Since religious beliefs are drawn from two different environments and religion is central to the two groups, it only deepened the cleavage between the North and South.

Part of Islamic religious authoritarianism includes the study of theology, which forms a great part of a Muslim child’s life. Most male children are expected to read and learn the Qur’an by rote memorization. However, the Dinka do not teach their children theology, rather, they observe their elders administering religious rituals, absorbing the lessons of life at their own pace. The Dinka understanding of the powers of the universe are learned by instinct and unstructured observation, rather than by rote – as it is done in Islamic religious schools. (Beswick, 1994: 181)

The fundamental differences of religious beliefs have made it difficult for the Northerners and Southerners to understand one another. These factors have impacted Southern resistance to Northern dominance and Islamicization.

The culture of the Dinka is dominated by cattle but they also engage in agriculture and grow a variety of crops, which include sorghum, millet, maize, sesame, beans, groundnuts, pumpkins, okra and tobacco (see Table 4-3). The group has an extreme love for its land despite the harsh environmental conditions. Their land lacks material resources like iron or stone and for six months of the year, the conditions are so dry that the dark clay soil resembles a cracked pavement. For the other six months, the rainy season makes the land incredibly lush and suitable for agricultural purposes (Deng, 2009). The Dinka calendar is based around the dry and rainy seasons and the economic activities that are necessary to sustain their livelihood. With the exception of Abyei, this group did not favour permanent settlement in one area. The connection to the land was not in a fixed place but in the ability to move into different areas as the seasons changed. The Ngok Dinka settled permanently in Abyei for strategic purposes, and this will be discussed below. It is why their identity is unique from their fellow Dinka of the South.

Table 4-3: Economic seasons and corresponding activities of the Ngok Dinka

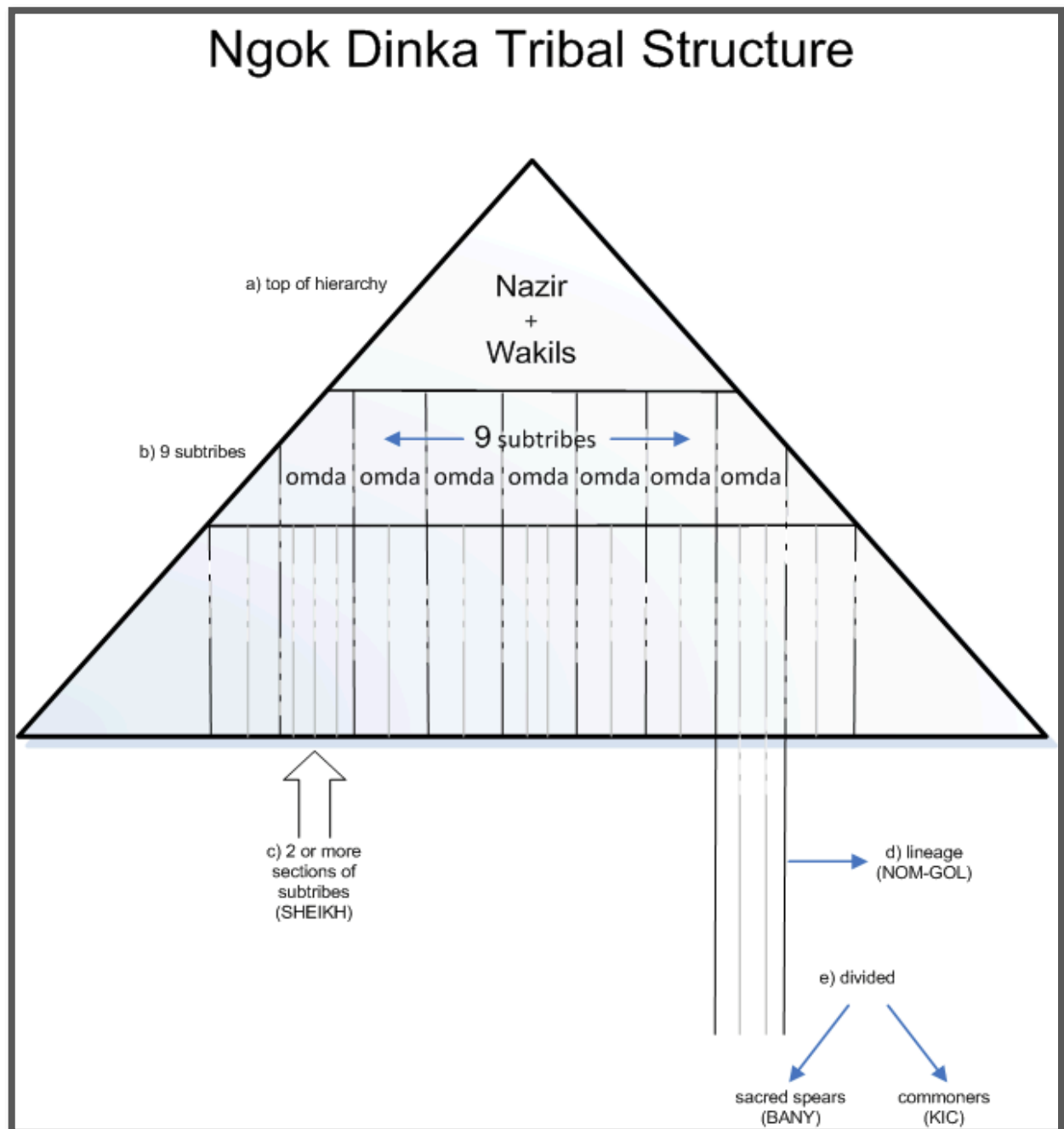
Name of Season	Time of Year	Type of Season	Activities
Ker	May to early July	Rainy (early rains)	Fields planted; cattle return to camp near villages
Ruel	July to October	Rainy (heavy rains)	Permanent settlement in villages; Mosquitoes abundant so cattle protected in the cattle-byres of villages over night; most agricultural work takes place; harvest
Rut	November to February	Dry (coldest time of year)	Pasture exhausted so cattle taken out in small herds to graze farther away; second crop harvested in the middle of season
Mai	February to May	Dry (hottest time of year; highest rates of disease)	Distant camps grow as little pasture left in the permanent villages; water supplies scarce so wells are dug near permanent villages

Source: (Deng, 2009)

Among scholars, there is no unanimity as to whether the Dinka are hierarchical in nature or not. Deng (2009) argues that The Ngok Dinka divided into nine subtribes are the most hierarchical of all Nilotic groups (see Figure 4-3). The Ngok Dinka also believe they are the descendents of the spear master-priests, which makes their identity sacred. Beswick (1994: 177), on the other hand, says that the Dinka are not hierarchical because “society is egalitarian, and societal decisions are worked out at the grass-roots level in a consensual fashion. The primary reason for Nilotic egalitarianism is that their economy is based on ownership of cattle.” In comparison to Islamic culture, the Dinka do appear to be less hierarchical politically and socially. However, within their group, there is a system of hierarchy that is adhered to. The family is the foundation of society where the purpose is to continue the male lineage. Every Dinka is a member of an age group which is determinant of status (Beswick, 1994). There are markers of age categories, for example, the transition to adulthood is celebrated by marriage (Salih, 1994). The age group structure is an indicator of the hierarchical nature within Dinka groups.

Leadership of the Dinka is through a chief, which is much like other African groups. In this case, however, the chief traditionally did not exercise the measure of control that has been apparent in other parts of Africa. The chief of the Ngok holds both the land and the group together through a degree of power and authority, but more importantly through his ability to ensure peace, security and prosperity. A Dinka chief traditionally is a “spiritual leader whose power rests on divine enlightenment and wisdom.” (Deng, 2009: 38) Historically, leadership entailed minimum authority and chiefs only used a limited amount of control over their people. In contrast, law and political language in Islamic society comes directly from the Qur’an which is both

written and immutable... Dinka law is fluid and is not written; disputes are settled by consent... Instead there existed a body of customary rules which might be termed a law of remedies... Regulation and redress of behavior in Dinka society is achieved by means of rules specifying rights and obligations, rather than through the authority of a chief or a state. (Beswick, 1994: 176)

Figure 4-3: Ngok Dinka Hierarchical Group Structure

Source: (Deng, 2010)

Traditionally, the role of the chief was more of a spiritual authority rather than a political authority. Towards the end of the Anglo-Egyptian Condominium, however, Chief Deng Majok of the Dinka involved himself in political affairs. The Dinka lineage retains leadership through primogeniture, where the most senior son of the most senior wife

succeeds the deceased leader. Among the Ngok, there have been exceptions to this rule in recent history. While Deng (2005) states that the degree of intermarriage among the Dinka is rare, Salih (1994) argues that there are few pure Dinka because there have been intermarriages among other Nilotic groups of the South, and with few Baqqara people. Overall, there has been little marital integration between the North and the South (Beswick, 1994).

Table 4-4: Paramount Leaders of the Ngok Dinka (in chronological order)

Name	Timeframe/ Period	Description
Bulabek	(unknown)	N/A
Dongbek	(unknown)	N/A
Kwoldit	1745 – (unknown)	Leader who is believed to have settled in Abyei
Monydhang	(unknown)	N/A
Allor	(unknown)	N/A
Biong	~1800s	Witnessed the slave-raids in this time frame when his people were captured
Arob Biong	(unknown – 1905); Turco-Egyptian Regime – Mahdiyya	Established relations with Mahdi, then support overturned with resumption of slave raids; sought protection from central government
Kwol	1905 – 1942; Anglo-Egyptian Condominium	Sought protection from central government; mediator between Dinka and Arabs
Deng Majok	Anglo-Egyptian Condominium – President Nimeiri in post- independence (1942 – death in 1969)	Cultivated stronger ties with Arab groups and Paramount Chief Babo Nimir of the Humr-Misseriya; sought to maintain peace
Monyyak (Abdalla)	1969 ~ 1970	Assassinated
Kwol (Adam)	1970 ~ 1971	Suspected for involvement with murder of Monyyak, his brother, so he was ritually severed from the family; deposed by President Nimeiri ³³
Kwol (Adol)	(unknown)	

Source: Deng (1995; 2010)

In the precolonial period, there were different degrees of Arab assimilation in the North which produced groups that were more Arabized than others. The process of converting to Islam is simpler than that to Christianity, which partially explains the extent of

³³ In the early 1970s, prior to the Addis Ababa Agreement of 1972, there was a tragedy in Abyei where five of Deng Majok's family were murdered. Adam was not trusted by many of his people and there were even accusations that he conspired in the murder of his brother, Chief Monyyak, so Nimeiri abolished the institute of chieftainship. It was reinstated a few years later (n.d.).

assimilation. The Arabs have had hundreds of years of history in the Sudan, and have developed ties to the region which has been pioneered through religious values. The Arabized and Islamicized vision for the country meant having to assert this ideology upon the Southerners, who have resisted throughout history. The Turco-Egyptian regime was politically and ideologically Islam but the Northerners resented them because of their oppression and corruption. “The Turco-Egyptian administration in the Sudan was a good example of a rapacious penetration aimed at a one-sided benefit for the government without any return in protection, services, and development activities.” (Deng, 1995: 48) This government imposed heavy taxation which increased the need and demand for slaves. South Sudan was richer in resources than the North and was also the source for slaves. A long history of intrusion from the North prompted the high degree of Southern ethnocentrism in the face of threat (Salih, 1994). Slavery is antithetical to Dinka values. Nonetheless many slaves in the North converted to Islam and thus gained a privileged status (Deng, 1995).

The Mahdi was Muhammad Ahman ibn ‘Abdallah, a Sufi reformer from Sudan, who claimed he had visions of being appointed the mahdi, the holy one, by the Prophet Mohammed. In Islam, mahdi means “an inspired holy man who will come at the End of Time to bring justice and revive the glory of Islam.” (Collins, 2008: xxii) Through his charismatic messages, he pioneered revivalism that attracted a mass following and the regime became the Mahdiyya.

Sufist Islam is closer to the traditional African concept, but it is less tolerant of diversity than the traditional system, while orthodox Islam tends to be centralized and is more rigidly authoritarian. The politicization of Islam has, however, tended toward favoring orthodoxy over the Sufist tolerance in the Islamic doctrine. (Deng, 1995: 45-46)

The Mahdi was seen as the Messiah and his principle support came from the Baqqara, who were the slave-raiders in the South. The principle objective of the Mahdiyya was to bring the country under Islam and this continued under his successor, the Khalifa (Deng, 1995; Collins, 2008). The Southerners resented the Arab regimes of the North until the time of the Mahdiyya. The Dinka saw the Mahdi as manifesting the spirit of their God and were inspired by his message and believed the Mahdists to be the Arab aggressors who could protect the South. According to Deng (1995; 2000; 2009; 2010), Chief Arob Biong of the

Ngok Dinka negotiated peace and protection for the Dinka with the Mahdi. Arob wanted the protection of the Dinka from slave raids and in exchange, granted the Baqqara Arabs access to the lands in the lush region of the Bahr al-Ghazal. The Ngok Dinka managed to negotiate with the Mahdiyya but in a matter of a few years slave-raids resumed in the South and the Dinka came to see the two regimes as those that ruined their world and their land.

Presently, the Arab-African identity is strong in the north from the historical assimilation. Although Northerners claim themselves as Arab, theirs is not a strict Arab identity, but a configuration of the historical cultural exchange between the Arabs and Africa. Nevertheless, they see themselves as superior to the African indigenous Southerners. The “passage into the superior category was characterized by an eclectic process, which embraced elements of the preexisting identity, both racial and cultural, but camouflaged them with the garb of the honored identity.” (Deng, 1995: 64) According to the 1955-56 census, only 39% of the population of Sudan reported they were Arab by language and could claim Arab genealogy and racial identity. This indicates the fictional notion of Arabism among Northerners as most are Arab-African (Deng, 1995). The Northerners benefitted from greater wealth, development and dominated state control. Islam trickled into all aspects of life, from the social and political institutions to education such that the ideology of Arabization was followed and supported by the Arab-Africans of the North. Religious identity in Sudan defined the privileged class.

The Southerners are mostly agriculturalists, who live in the equatorial region and parts of the Bahr al-Ghazal. There are also semi nomadic pastoralists, who are mostly the Nilotics in Bahr al-Ghazal and the Upper Nile regions, including the Ngok Dinka. Nilotic peoples do not believe in imposing their beliefs on others unlike Islam as

the ethnocentrism of Nilotic self-image is based on feelings of distinctiveness as a people rather than on assumptions of domination and superiority over others, except insofar as they take themselves as the standard of what is normal in God’s creation of humankind and its dignity. (Deng, 1995: 200)

Although many scholars (Daly, 1991; Kevane and Stiansen, 1998; Spaulding and Kapteijns, 2002) emphasize the slave based systems that separated the country historically, Southern identity was also a product of resistance protecting indigenous beliefs and identity. Although

few Arabs settled in the South, the Nilotic people did not want to assimilate to a different religion and belief system. The Dinka perceived both the regimes of the Turco-Egyptians and the Mahdiyya as ones that spoiled the world and their land (Deng, 1995).

Southern identity emerged in the face of hostility and exploitation from the North, and the degree of resistance extended to aspirations of political independence of the South. Southern ethnocentrism may have been enhanced through narratives of suffering and victimization, as Zivkovic (2000) discusses for the Serbian population. These narratives impact upon identity and can be used in “political instrumentalization” (Zivkovic, 2000: 79). There are several elements that contributed to the rise of a Southern identity over the years that mobilized the population politically. The Dinka created songs that spoke of Arabs spoiling the land, because the land was central to their livelihood as pastoralists (Deng, 1995). Song is a powerful force in capturing narrative and for the Dinka, grievances over land were highlighted. This highlights the importance of land to their collective identity and meaning as a group. The land is a source of pride and satisfaction and is therefore central to their existence. Although I have only come across documented songs (Deng, 1995) from the Dinka, land is central to the livelihoods of other pastoralists and transhumant groups of the South. For the Dinka, it is certain that land is the space for their spiritual and religious connection. The resistance led to decades of conflict which disproportionately affected the people of the South as well as the non-Arabized elements within the North.

The Anglo-Egyptian Condominium introduced Southern Policy in 1919 to encourage the development of the region along African, indigenous lines. The Northerners continued to perceive the South as being primitive and inferior, to justify Islamicization and the imposition of sharia law, but the British presence safeguarded the South (Deng, 1995). However, the Southern Policy had an adverse affect on the economy because of the rigid control of trade, a control that favoured the North over the South. (Sawant, 1998). In terms of education, the South benefitted from the presence and teachings of Christian missionaries. Children were introduced to the Christian Western norms but the South was never entirely Christian. Missionaries recognized the hierarchical age structure and leadership structure within Dinka society so used chiefs to spread education and Christian values (Deng, 1995).

Later generations became the educated elites that were significant in political manoeuvring within the Arab-Sudanese state. Therefore, Christian missionaries and the British colonial authorities can be seen as two crucial forces strengthening Southern resistance to the Muslim North.

Southerners recognized the importance of education in negotiating with Northerners as it was the educated elites that spear-headed the various groups that blossomed in the South. During the second civil war, the Sudan People's Liberation Army (SPLA) recruited the educated youth as officers and to fill political positions (Deng, 1995; Johnson, 2011). Deng (1995: 188) describes a transformed southern identity in the 1990s as follows:

Nilotic elites now pervade the modern Sudanese system in rural and urban contexts, having joined various political, economic, social, and cultural organizations that have nothing in common with their cattle-dominated traditional economy. But the liberation movements that have emerged since independence have radically changed and reorganized southern society and in a manner that both preserves and develops the integrity of southern identity.

Southerners faced huge injustices, inequality and discrimination from the North. It was education that helped Southerners politicize their cause for equality to the extent that they did during the two civil wars. It can also be said that the Christian influence in education shifted the Southern and Dinka identity from traditional beliefs, to modern notions of justice. This shift came out of necessity in advancing claims to Khartoum, as the educated elites employed strategies that would be effective in the political context. Inequalities within the South prevailed between the traditional elders and the educated generations that followed. Since the North was the obstacle to rights, freedom and justice of the South, the North acted as the force that re-asserted and unified Southern identity as the Nilotic people believed they were fighting the aggressors (Deng, 1995). While fractures persisted within the South, there have been several historical examples of Southern unity against the North.

Within this North-South divide, the Ngok Dinka settled in Abyei from as early as 1740. The Ngok Dinka remained in Abyei to foster peaceful relations with the Arabs and protect their brotherhood in the South. Abyei was also inhabited by the Humr-Misseriya, the transhumant pastoralists who used the land for half of the year. Since the contact was limited

to a set period of the year, that the Ngok Dinka “have remained so culturally similar to the main Dinka groups farther South is itself indicative of both the physical constraints on their contact and the cultural restraints in their cross-cultural adaptation and assimilation.” (Deng, 1995: 263) Until the 20th century Dinka settlements remained dispersed, but a centralized Dinka political structure emerged in Abyei with the dawn of the Anglo-Egyptian Condominium (Beswick, 1998). Historically, political centralization was not typical of the Dinka. This phenomenon, along with the history of cooperation with the Arabs, is why Deng (1995; 2009) refers to them as an anomaly that have challenged the religious divide of the country. Their legacy in Abyei, from the time of the Mahdiyya and arguably until recent history, was of intermediaries that sought to foster peaceful coexistence in a united Sudan within which Dinka were protected. With long Ngok-Humr history of coexistence, many Ngok have adopted Arab dress, have learned Arabic and some have even converted to Islam, but their identity remained Dinka. There are also Humr that have adopted some of the Dinka ways but remain Arab (Deng, 1995).

In his work, Deng (1995; 2000; 2009; 2010) speaks optimistically of the Ngok and their role as peacemakers in the microcosm of Sudan. The Ngok Dinka sought to build a bridge of unity between the North and South and demonstrate that the Dinka and Arabs are capable of living side by side in peaceful coexistence. Most of the literature on the Ngok Dinka is from Francis Deng, who is not only a Dinka, but the son of Deng Majok. Chief Kwol Arob made contact with the Anglo-Egyptian administration in 1899 to affirm the Ngok Dinka’s commitment to peaceful relations with the Arabs, and to legitimize their right in Abyei. Kwol was perceived as the chief of all Dinka and was supported by the British, the Dinka and the Arabs. The British had an interest in maintaining peace in Sudan. With separate policy and governance for the South, nine Ngok chiefdoms were transferred to South Kordofan in 1905. Prior to this point in time, there is no record of these chiefdoms being under any formalized administration. It was during this time that the Ngok formed a proto-state in Abyei (Beswick, 1998). There were even Catholic schools in Abyei during the Condominium but these disappeared in the 1950s. The next Ngok chief, Deng Majok, ruled by principles of justice and fairness for all peoples, was popular with the British

administration as well as local groups and was highly respected by the Baqqara Arabs because he believed in shared rights to land.

The British arranged the Juba Conference of 1947 to develop an all Sudanese assembly that included the South. The goal of the conference was to discuss how to ensure Southern autonomy within a unified framework for the entire country. The council approved the legislative assembly for the country along with safeguards for the South to ensure the steady development of Southerners (Akol, 2007; Sawant, 1998). It was at this time that the British asked Deng Majok if he wanted to relocate to the South and Deng chose to stay in Abyei. He felt that he had an important role to play in bridging the divide of the country and that the Ngok also had a northern identity. Additionally, “Deng Majok chose to remain in the North on the basis of full equality with the Arabs and refused to be relegated to the junior position of a minority leader.” (Deng, 2000: 144) This statement indicates that the element of power and authority was favoured by the chief as he chose to remain in Abyei and be governed under the Misseriya District Council in the North. The council was dominated by Humr-Misseriya but the Ngok received autonomy within the Abyei district.

In accordance with a special order by the governor-general, Ngok courts were governed by the Chiefs’ Courts Ordinance, which applied to the southern provinces, and not by the Native Courts Ordinance, which applied to the North. In the South appeals from chiefs were heard by their own peers through an elaborate intertribal court system, but the Ngok paramount chief was virtually the final authority in matters of customary law and a very powerful ruler, whose decisions were rarely challenged. (Deng, 1995: 281)

Also significant is that the role of the chief shifted from that of limited authority in the traditional sense to a more powerful political figure. Political centralization for the Ngok was evident in large scale settlement in Abyei (in comparison to the sparse and disperse settlements that are characteristic of the Dinka) as well as the increased power and authority of the chief. This authority went beyond the ritual, but was employed in local and regional politics. Deng Majok became the symbol for peace and unity and as such was a leader for all Dinka. This veneration by the Dinka perpetuated and entrenched a spiritual association to their land in Abyei. Additionally, with the Ngok protostate in South Kordofan, the Ngok identity became political.

The history of the Ngok Dinka and Humr-Misseriya was not always peaceful. Most of the conflicts in history were over land and grazing rights. The issue of land is what necessitated the Ngok Dinka's strategies of negotiation with the Arabs. The economy of the Humr-Misseriya is also based on cattle. The Humr-Misseriya – Ngok Dinka relations were further impacted by the civil wars. In 1955, when tensions between the North and South escalated into the first civil war, many Ngok Dinka joined the rebel movement Anya-nya in the South (Deng, 1995). At the end of the Condominium, North and South Sudan were already at war. The British retreated before Southern autonomy could be established within a legal and political framework and before the South was represented in administrative positions. This created a volatile environment for the Ngok in Abyei. The conflict between the North and South affected Ngok-Humr relations as each group sympathized with a separate side. Deng Majok and Babo Nimir worked hard to maintain peaceful relations but with the conflict surrounding them, it was difficult for either group not to be lured towards an adversarial position. All of the above establishes that the history of conflict in Sudan is complex and saturated with details of political positioning and the various measures that intentionally disadvantaged the South and non-Arabs of the North. Therefore, I will proceed to highlight some of the events that I believe impacted the Ngok Dinka the most and are important for understanding the implications for identity and rights.

The Anglo-Egyptian Agreement signed in February of 1953 outlined the provisions for self-government and the first step were elections for a Sudanese parliament. The National Unionist Party (NUP) won the majority of seats and the leader, Ismail al-Azhari, was required by law to appoint two Southerners as members of his cabinet. Al-Azhari who was supported by Egypt did not believe in continuing the safeguards for the South. With Sudan preparing for independence, the British cooperated with al-Azhari with dissatisfaction brewing in the South. There was a Southern uprising in 1955 to which al-Azhari responded by sending in Northern troops to crush the rebellion. These actions hindered the relationship with Egypt and caused tension within the NUP as a state of emergency was issued in August of 1955. This was the beginning of the seventeen year civil war. Al-Azhari became the first president of independent Sudan in 1956 with a weakened NUP (Akol, 2007). There was a special committee put together to draft a new constitution and a new southern Federal Party

was established in 1958. The southern Federal Party, with 3 out of the 43 seats, declared its objectives as “the recognition of Christianity as a state religion on par with Islam, and the recognition of English as a state language on par with Arabic” (Sawant, 1998: 352). This proposal was rejected by the committee drafting the new constitution. Shortly after, a military coup led by General Ibrahim Abboud seized power in 1958 and this government exercised repressive measures for the South. The Anya-nya³⁴ formed in 1963 and went to war with the North (Sawant, 1998). It was against this bloodshed that many Ngok Dinka aligned themselves with the Southern movement, against the oppressive policies of Kordofan.

In 1965, a war broke out between the Ngok and Humr in Abyei as a result of the brooding tensions between the North and South. The Ngok wanted to move their administration from Kordofan to Bahr al-Ghazal which resulted in some of the bloodiest clashes³⁵ between the two groups in history. The dispute extended to their subsequent broad identities in the North and South (Deng, 1995). This prompted a peace conference in Abyei in the same year that included Deng Majok and Babo Nimir. The agreement reached in Abyei

called for the termination of acts of violence; restriction on the display of arms; guarantee of the safety of members of each group in the territory of the other; return of all property captured during fighting; preparation of an inventory of persons and property lost during the hostilities; the administration of oath taking by each group according to its beliefs, the Muslims on the Koran and the Dinka on the sacred spears; and cooperation with the local authorities in maintaining peace and security. (Deng, 1995: 294-95)

At the conference, the Arabs for the first time claimed that part of Ngokland was theirs which outraged the Dinka. The land claiming of these groups was amplified in the conflict with the two groups adopting measures to entrench their identity to territory out of fear of

³⁴ The name Anya-nya is derived from two separate words, both of which come from indigenous South Sudanese groups. First, *inyanya* is a Madi word which means the fatal poison that is extracted from a river snake, a poison feared by the people of eastern Equatoria, whom the Anya-nya attacked. It is also taken from the Moru name, *manyanya* which means army ant (Collins, 2008: 79-80).

³⁵ It is the first known large-scale massacre of the Dinka by nomadic Arab groups, where an unknown number of Dinka men, women and children were burned alive while in police custody in present-day South Kordofan (Reeves, 2011).

being pushed off the land. Deng Majok continued to defend his people and their right to land.

In a matter of days after this peace conference, the Dinka filed a complaint stating that the Arabs violated the agreement and violence broke out once again. Then the Ngok demanded that a separate rural council be established in Abyei. Until this time, the Ngok were subjects under the Misseriya administration and this arrangement worked when the two sides were able to cooperate and share the rights to land. However, conflict created an arena of mistrust and deceit. The process for peace was derailed by

the control of the central government by the northern Arab-Muslim elite, bent on Arabization and Islamization of the South; the intensification of the conflict resulting from southern resistance; the assumption of Ngok leadership by the educated Christian and southern-oriented Ngok youth; and the increasing nationalist aspirations of the South, which resulted from the first two factors. (Deng, 1995: 299)

Suddenly the north-south bridge of unity turned into a conflict zone which deteriorated the Ngok-Humr relations further. In Chapter Two, I discussed the nature of borders as negotiable, not fixed but flexible. Nonetheless when it came to Abyei, the border between the North and South was constructed to represent difference.

In 1966 civilian government was restored in Sudan for a brief period but this was overturned in 1969 by the military junta led by Jafar Nimeiri (n.d.; Sawant, 1998). The rule of Nimeiri was significant as he was originally anti-Islamist. Committed to restoring peace to Sudan, “he proposed to establish a secular, socialist state within which the South would enjoy regional autonomy.” (Duany and Duany, 2000: 174) The Addis Ababa Accord of 1972 brought together Nimeiri and the South Sudan Liberation Movement (SSLM) to discuss regional autonomy for the South. At first Nimeiri supported autonomy for the Ngok Dinka in Abyei, but the issue of Abyei was only discussed but not resolved in 1972 (Deng, 2000). After peace was achieved in 1972, the SSLM did not want to jeopardize the arrangement by discussing the matter of the Ngok Dinka in Abyei. Nevertheless, the provisions of Addis Ababa stated that there would be a referendum giving the people of Abyei the choice of whether to be administered by the North or the South. At this point in time, the Ngok aligned themselves even more strongly with their Southern brothers and this

prompted the Southerners to feel as though Abyei should belong to the South. After Deng Majok's death in 1969, cooperation between the Humr and the Ngok faltered drastically, and none of Deng's successors were able to fill his role. Additionally, there was turmoil and tragedy within Deng Majok's family that resulted in the assassination of six family members and one of the son's joining the Anya-nya II³⁶ (Deng, 1995). Therefore, the Ngok Dinka solidified their allegiance with the South and Abyei shifted from being a place of cooperation to one of contestation.

After Addis Ababa, the Ngok lost their privileged position of being part of the North. The educated Ngok favoured the policy of autonomous development for Abyei in the 1970s within Kordofan. There were certain development provisions in the mid to late 1970s set out to extract Abyei's potential as a microcosm for peaceful relations in Sudan. The HIID in cooperation with international aid agencies attempted to renew the cooperation that had once existed in the region. With the initial support of the central government, the autonomy of Abyei was pioneered by Justin Deng, who was appointed on Francis Deng's recommendation as the head of administration of Abyei (Deng 2000, 2010). Justin was successful in promoting Dinka identity and cultural pride within a modernist framework, but he was seen suspiciously by the Arabs in the region who believed he was allied with the South and was therefore a separatist.

For the Arab authorities, the primary issue was about claiming the prime pastoral and agricultural land so they claimed that Ngokland was Kordofan. Since Justin was appointed by Khartoum, his privileged position threatened the Arabs. Ngok autonomy was supported by the central government but opposed by the regional administration. Additionally, if the Ngok wanted the land, the area and people to be annexed to the South, there had to be a collective decision involving all the people of Kordofan, the Dinka and the Arabs. With the measures taken for Abyei, it was not the voices of the rural pastoralists that were heard in these deliberations over the years, but the voices of the educated elites each representing specific sides putting forth their perceptions of their peoples' claims to land (Deng 1995). It

³⁶ The Anya-nya II was formed after 1972 as the re-emergence of the Anya-nya. Anya-nya II was a group whose objective was separation of the South from Sudan, which differed from John Garang's vision for Sudan with the SPLM/A. See (Collins, 2008; Akol, 2007; Deng, 1995). The SPLM/A is discussed later in this section.

can be argued that in these negotiations and peace agreements following the death of the Dinka chief, Deng Majok, the voices of the masses were not represented. Instead, claims were pitted against each other under politicized identities.

The referendum for Abyei promised by Nimeiri never happened. Under the Addis Ababa Agreement, the people were to have the right to choose their destiny with regards to Abyei. There were three significant developments in the late 1970s and the early 1980s that prompted the re-emergence of civil war in 1983. First, in 1979 oil was discovered in Bentiu, Southern Sudan and Nimeiri tried to shift the borders between the North and South so that the oil would fall to the North. A refinery was never built in Bentiu but instead a pipeline was constructed to deliver oil to the North (Chavunduka and Bromley, 2011). Second, after the South gained regional autonomy, in 1983 Nimeiri officially decreed the division of the South into three regions: the Bahr al-Ghazal, Equatoria and Upper Nile (Deng, 1995; Sawant, 1998). Third, Nimeiri was under pressure from right-wing Islamists within parliament, the National Islamic Front (NIF), to unify Sudan by Arabization and Islamicization. He proceeded to impose Islamic Sharia laws on the entire population (Chavunduka and Bromley, 2011; Duany and Duany, 2000). In 1983 these events triggered the re-arming of the South and the formation of the Sudan People's Liberation Movement/Army (SPLM/A) under John Garang, a group that favoured unity and not separation³⁷. Garang was a Dinka so therefore the Dinka constituted the majority in the SPLA. Both men and women from Abyei were actively involved with the SPLM/A (Deng, 1995). As the Ngok identity shifted to be part of the broader identity of the South it was politicized accordingly. The presence of oil in Abyei added a new dimension to the conflict. It also gave the GoS and the SPLA another reason to fight for Abyei.

Another development of 1983 was the involvement of Deng Majok's sons in peaceful resolution for Abyei (Deng, 2000). Their objective was to secure the people in the area while still committing to work within the framework of Kordofan. The issue at stake was equal citizenship rights for the Ngok Dinka. As long as these rights were actualized, the sons

³⁷ The manifesto of the SPLM outlines characteristics of the movement and their objectives. There are calls for an intensive nationalist tendency; radical mood; anti-capitalism; the ideology is a moralistic celebration of the virtues of the masses; and socialism. See (Salih, 1994).

were committed to remaining in Kordofan and continue the legacy of their predecessors. These talks only managed to bring temporary calm to the region. It was a little too late as the country was swept up in a turbulent conflict in which both sides had positioned their identities accordingly.

The intervention of the government, with centralizing notions of Arabism and orthodox Islam as bases for building the Sudanese national identity and determinants of who should get what or occupy what status in the system, introduced stratification along racial, cultural and religious lines. This, combined with the partisan use of state power in favor of the Arabs against the Dinka, tilted the balance that had sustained coexistence and cooperation in the national interest of both sides. (Deng, 2000: 165)

Full and equal citizenship rights for the Ngok Dinka in Southern Kordofan were never actualized. The contestation of Abyei has been one of the threads that weaved through the conflict and posed to be a hot issue for both sides. This was true at Addis Ababa and has remained so up to the present.

Nimeiri was overthrown by a military coup led by General Suwwar al-Dhabab in April 1985 after the country's upset with how Nimeiri handled the war with the South. The South's stagnant economy declined further as natural resources were exploited by the North to finance the war (Duany and Duany, 2000). With oppressive conditions in the North coupled by harsh environmental conditions in Abyei, many Dinka joined the SPLM/A. In reference to the Dinka in the 1980s, "those who remain in the villages and cattle camps of Dinkaland live under constant fear of attack by the Sudanese army, the Baqqara militia or hostile southern ethnic groups" (Salih, 1994: 190). The Ngok Dinka aligned themselves with the collective identity of the SPLA to fight against the discrimination of Southerners. Duany and Duany (2000) say that the SPLA was armed by the Ethiopian leader, Mengistu Haile Mariam, while the North used oil revenue to fight the war. There were still backdoor negotiations between the North Sudanese Democratic Unionist Party (DUP) and the SPLA occurring and the two parties signed an agreement on the 16 of November 1988 for provisions for the unity of Sudan. The issues in this agreement were the abolition of the Sharia laws, abrogation of any military agreements between Sudan and other countries that hindered sovereignty of Sudan; lifting of the state of emergency; cease-fire between the North and South; and convening a Constitutional Conference. No sooner was the agreement

adopted by the GoS that right wing Islamic members of Parliament objected to it. A Holy War (jihad) was launched by the NIF against the South Sudanese Rebels in May 1989, followed by another military coup that brought General al-Bashir to power on 30 June 1989. Negotiations resumed in 1992 with the SPLA in Abuja Nigeria. A first round of negotiation in 1992 known as Abuja I was followed in 1993 by a second round of negotiation known as Abuja II. However, the GoS insisted that the unity of Sudan had to come through sharia (Duany and Duany, 2000).

At the same time, there were tensions within the SPLA because of the dominance of Dinka and the leadership of Garang. Many Sudanese saw the SPLM/A as a Dinka movement and other Southern groups within the SPLM/A have complained of discrimination by higher ranks using them as “ethnic tokens” (Salih, 1994: 198). In 1991 the SPLA split and the Southern Sudan Independence Movement/Army (SSIM/A) was formed under the leadership of Riek Machar (Sawant, 1998). The Ngok Dinka remained loyal to the SPLA. John Garang envisioned unity for the whole of Sudan but elements within the SPLA did not agree. The ‘Washington Declaration’ took place in October 1993 to bring peace within Southern Sudan. Garang and Riek Machar agreed on the principles of this agreement (Duany and Duany, 2000). The South, ravaged by decades of conflict and poverty stricken, witnessed a humanitarian disaster. The Intergovernmental Authority on Drought and Desertification (IGADD) was trying to find ways of delivering aid to the South Sudanese population (Duany and Duany, 2000).

The GoS has undergone policies of forced acculturation since independence. There has been no constitutional resolution to the differences between the North and South.

Forced acculturation is a policy designed to rid the Sudan of any form of diversity or cultural pluralism through abusive practices, notably the abduction and detention of children who are then forcibly converted to Islam, indoctrinated with political extremism, and subjected to military training. (Duany and Duany, 2000: 180)

In Sudan, Islamicization and Arabization politicized identities such that if a person was deemed to be Arab, he/she was recognized by the state and granted the corresponding rights and freedoms. Those who identified themselves as Africans were subject to oppression and

discrimination. The South has resisted these policies in decades of armed struggle. Non-Arab people within the North, such as the Ngok Dinka, allied with the South on the basis of identity. The Ngok Dinka of Abyei positioned themselves as intermediaries and were able to coexist alongside the Arabs for only so long. Additionally, the Ngok identity was politicized from their settlement in Abyei and their involvement in the local affairs within South Kordofan. Eventually, the conflict positioned the Ngok Dinka and Humr-Misseriya groups against one another where they aligned with their broader identities, Arab or Dinka. This is evident of the cohesion of collective identity crystallizing in the face of threat.

Yet, these groups possess complex identities. Their classification as either Northerners or Southerners politicized their identities and polarized them over the rights to land in Abyei. Their home of Abyei was pulled into a contest between the North and the South, one that has not yet been resolved, despite the provisions of the CPA in 2005 and the secession of South Sudan in July 2011. As the status of Abyei remained undecided after the 1972 Addis Ababa Agreement, history repeated itself in 2005 with the CPA. Abyei is home to the Ngok Dinka and this factor has led to the South legitimizing this claim. The lands of Abyei, once shared among different pastoralist and semi-nomadic groups, could be the factor that initiates an international war. The Dinka and Baqqara have shared land usage for centuries in the Bahr al-Ghazal and South Kordofan where there had been times of peaceful coexistence and other times of conflict. Yet with the creation of international boundaries the prospect for sharing land has changed.

4.4 Understanding Land and Collective Identity

Mamdani speaks of political identities, whereas other scholars emphasize either ethnic or religious identities. I have asserted that the identities of the Ngok Dinka and the Banyamulenge are salient insofar as they are a combination of the ethnic, racial, religious, and cultural, and some of these elements have become politicized in conflict. These identities have formed through complex historical processes and continue to shift today. I chose not to categorize identity in strict terms, but to envision identity in its fluidity, subject to change and shift. These identities have proven to be malleable and subject to change in

order to be contextually relevant. Today, the identities reflect positions in the ongoing conflicts. Banyamulenge has become a term to identify the entire Tutsi diaspora that lives in the Eastern Congo while the Ngok Dinka are largely associated with the SPLA and the Dinka as a whole. The land in Abyei has shifted from being termed Ngokland to Dinkaland, thus demonstrating how the dynamics of land and identity have been altered by conflict.

CHAPTER 5: THE POLITICS OF LAND, IDENTITY AND CITIZENSHIP

“Inasmuch as it is a plural space of interaction and enunciation, the State does not exist beyond the uses made of it by all social groups, including the most subordinate.”
(Bayart, 1993: 252)

The role of the state in perpetuating conflict in the Kivus and Abyei regions has been significant, and for decades the populations of the Banyamulenge and the Ngok Dinka did not retaliate against the central government. However, this changed. The symbolic significance of land has shifted historically for the two groups and the strategies they adopt to assert their claims have changed depending on the context. If rules governing the control and allocation of customary land were fluid and negotiable, groups learned to employ different strategies necessary to acquire land. How land is allocated and how groups strategize to assert their claims change depending on the social relations for access, the resources available and the group dynamics. Within both groups, in the context of well-identified collective objectives, some took up arms and joined militia groups, while others remained civilians and vulnerable within the conflicts.

The claim of firstcomer still holds immense authority for these two groups struggling to claim recognition of rightful belonging. As discussed in Chapters Three and Four, a pressing issue for claiming land in the customary realm is the notion of indigeneity. Groups are capable of constructing their perceived places of legitimate belonging but this does not mean they will be recognized by other groups in the same or neighbouring vicinities. So we come to the question of who belongs where. We also need to ask who constructs the right to belong in order to grapple with the “modes of belonging” (Rutherford, 2008) and how groups align themselves to fit into these structures.

Modes of belonging are not reducible to these wider forms of governmentality and hegemony. Rather, modes of belonging emerge from, energize and are entangled with ‘social projects’, which are organized aims and efforts of action. When such social projects become routinized forms of control over specific localities, they can become modes of belonging themselves. In turn, new social projects are enervated by, cross through, or even oppose such

modes of belonging at various, potentially overlapping, scales of action.
(Rutherford, 2008: 80)

As such, some of the other groups that reside in these regions have been discussed and it is critical to examine their perceptions of the Banyamulenge and the Ngok Dinka. An analysis of citizenship, local power structures and the perception of neighbouring groups is relevant in understanding how these groups are recognized and therefore, if and how they are able to claim access to land.

Citizenship is defined by *jus soli* and *jus sanguinis* but for the DRC and Sudan, it is defined primarily by ancestry and ethnic belonging, *jus sanguinis*. Additionally, those born within *jus sanguinis* states have to apply for citizenship and the process of naturalization in these countries is precarious and subject to the approval of government officials. Thus, national consolidation in the DRC and Sudan has never been possible as “naturalization procedures and the operational codes implicit in the different approaches to citizenship have not been used in the best way” (Herbst, 2000: 245). National consolidation has been challenged in both states by ethnic plurality. There is a long history in both areas of power and privilege being granted on the basis of ethnic association, but there has also been political loyalty that transgresses the ethnic dimension. Those who are politically allied with the state, regardless of their ethnic identity, have always been in positions to benefit their own religious/ethnic or cultural affiliates. Political elites have been able to alter citizenship laws to benefit certain groups.

The DRC has come out of an international war while conflict persists in its Eastern regions, and Sudan’s conflict on the border is ongoing. Different parties claiming territory has perpetuated conflict, which in turn has enhanced the polarization of identities in their claims to land. Groups become hardened in their antagonistic positions to claim land such that parties are pitted against one another. Moreover, “both ethnic and class self-definitions can constitute a challenge to the state, since loyalty to either one may transcend national boundaries.” (de Vos, 2006: 16) This is true for both the Banyamulenge who have had allegiances with the Tutsis in Rwanda, and the Ngok Dinka who are allied with the Dinka of South Sudan.

This chapter tackles the intersection of land, identity, citizenship and the role of the state since 1996 up to the present. It will discuss and problematize the role of the state and the nature of citizenship in defining who belongs where and who ultimately should and should not be recognized in terms of land allocation. This has major implications on how groups restructure their identities to have their land claims recognized. The first section examines the Banyamulenge in what I call ‘The Crisis of Recognition’ in South Kivu. The second section looks at the Ngok Dinka in ‘The Abyei Conundrum’. The third section compares the two groups and develops an overall framework for understanding identity and land claims in highly contested spaces.

5.1 The Crisis of Recognition: The Banyamulenge

The conflicts that plagued the Eastern Congo from the Rwandan Genocide in 1994 until 2003 put the Great Lakes region in the spotlight for ‘Africa’s World War’. Made up of three consecutive conflicts, this war necessitated numerous attempts at reaching peaceful settlement. Ongoing human rights abuses, deaths, discrimination and violence due to various militias indicate that the conflict is far from over, in fact, it is recurring under groups who have renamed themselves since 2004. Exclusion in territorial rights as well as being able to define who is recognized as Congolese has been at the heart of the conflict while disputes pertaining to the law are at the core of wider debates (IRRI, 2010; Manby, 2009). In 2000, it was estimated that at least several hundred thousand Banyarwanda in the Eastern Congo were stateless.³⁸ The denial of citizenship rights is indicative of the degree of discrimination that persisted in the region (Deng, 2001) as well as the role of the state in manipulating citizenship (Jackson, 2007). The citizenship law was changed again in 2004 but it yet to be determined whether or not or how effective it will be in addressing the status of the

³⁸ According to UNHCR, it is difficult to get accurate statistics of stateless people, because of the lack of identity documentation and people living on the fringes of society. In the Eastern DRC, people are often in isolated areas trying to protect themselves from armed militias, and therefore are hard to track (UNHCR, 2012). The tropical rainforests, the lack of roads and the outbreaks of violence make it very difficult to know where people are. Additionally, NGOs and IOs lack the monitoring capacity to track IDPs and refugees accurately. Human Rights Watch (2010) claims that IDPs will collect packages and then disappear again because of the insecure conditions that persist in their home areas. Lastly, whether or not organizations perceive the Banyarwanda as IDPs or refugees will affect the definition of stateless.

Banyamulenge. In this section I overview the citizenship crisis, determinants of belonging and the recurring violence.

The Crisis of Recognition and the Crisis of Citizenship: Which one comes first?

The precarious nature of citizenship in the DRC is such that any new law passed is subject to being reversed, as has been demonstrated throughout the postcolonial period. Those of Tutsi decent have had to abide by the provisions of *jus sanguinis* but when the Congolese/Zairian state has repeatedly altered the dates of ancestry, the Tutsi population has struggled to gain citizenship rights. The fighting that broke out in 1996 in Eastern Congo that led to the overthrow of Mobutu was “partially prompted by Tutsis who wanted above all to be Zairois citizens, but having been denied that opportunity, were forced to form alliances with the Tutsi government in Rwanda.” (Herbst, 2000: 238) The citizenship question has created an uncertain and volatile scenario for the Banyamulenge who are dubbed ‘foreigner’, ‘allochton’ or ‘vermin’ among other derogatory terms. Exclusion from the Congolese state has prompted the Tutsi population to take up arms to enforce their rights of belonging as well as to defend themselves in the militarized societies of the Kivus.

History has also shown how tightly connected the granting of ethnic or civic citizenship is to indigenous chiefs or political elites. When Bisengimana, a Banyarwanda Tutsi, was a member of Mobutu’s cabinet, the citizenship decree was favourably reversed for the Banyarwanda, yet when Mbembe, an indigenous Congolese, was a political force in the 1995, the law was negated (see Table 5-1).

Table 5-1: DRC Citizenship Laws and *jus sanguinis* for Banyarwanda

Date of Citizenship Law/Provision	Date at which Ancestral Connection established under Citizenship Law/Provision
1964 Constitution	1908 – date when the Congo Free State was transferred to the Belgian State
1971 Citizenship Decree	1960 – date of independence
1972 Provision	1950
1981 Citizenship Decree (implemented in 1991)	1885 – Berlin Conference
1995	All citizenship rights for Banyarwanda revoked
2004 Citizenship law	1960

The Banyamulenge do not have their own customary authority and never have, which means they are subject to the whims and fancies of indigenous chiefs, who represent populations which project hate language towards the group. Citizenship Law has been used as a political tool to gain the support of the Banyarwanda population when it came to ensuring support for Mobutu in the 1970s but since the 1980's it is used against the group, as a form of ethnic marginalization. In the early 1990s, weakened from international pressure and the withdrawal of US support of his government Mobutu was forced to agree to a multi-party state. Therefore, the prospects for elections and new political parties prompted ethnic mobilization for control of the political sphere. The Banyarwanda were excluded from the CNS because Mobutu stated that "delegates should represent only provinces where they could be considered 'indigenous'." (Manby, 2009: 73) When indigenous sentiments towards the Banyarwanda and Banyamulenge soured, Mobutu's opposition, the CNS used these sentiments to initiate the revocation of all of their citizenship rights.

The 2004 National Law attempted to settle the question of who was to be deemed indigenous but the ambiguities within the citizenship law continue to pose insecurity for the Banyarwanda and Banyamulenge. Jackson (2007) claims the stipulation that ethnic groups are Congolese if associated to Congolese territory is subject to debate because it lacks legal clarity. With these ambiguities it continues to be possible for the groups to be denied rights. Therefore, "it is likely that the question of precisely what groups are 'authentically Congolese' will be allowed to remain as indeterminate as it has always been." (Jackson, 2007: 491) The 2004 National Law recognizes the rights of naturalized citizens but excludes from naturalization those who are guilty of economic crimes or who have worked for foreign states (Manby, 2009). These accusations are used against the Banyarwanda and Banyamulenge as they were allied with Rwanda during the Congo wars, so they do not qualify for naturalization. Additionally, applications for naturalization are strict and must pass through the Council of Ministers, then the National Assembly and finally receive the presidential decree. The applicant must be deemed to be an asset to the state and be recognized for distinguished service (Manby, 2009; Jackson, 2007). Given the hostile environment that exists for the Banyamulenge, it is highly doubtful that they will be 'recognized' at all, let alone for any type of service. Given the disharmonious history

between Kabila and the Tutsi, it is not inconceivable that naturalization applications would become items of political manipulation. Therefore, it is difficult to see how the citizenship crisis for Banyamulenge and Banyarwanda will be resolved.

The aftermath of Rwanda in 1994 propelled the distinction of Hutu and Tutsi in the Kivu regions and challenged belonging for the Banyarwanda and Banyamulenge, regardless if they were resident in the DRC prior to the genocide. Between 1997 and 2003, there were two wars in Eastern Congo which included half a dozen countries and resulted in millions of casualties.³⁹ In this period, alliances shifted generating even more mistrust and uncertainty amongst the population (see figure 5-1). Conflict in the Kivu provinces between 2004 and 2009 involved the CNDP, the Congolese Army and the FDLR. This conflict generated a multitude of IDPs who were especially vulnerable to abuses. According to Human Rights Watch (2010: 23),

IDPs in eastern DRC are often in circumstances that can make them especially vulnerable to rights abuses and create specific protection and assistance needs. These circumstances include complete isolation while displaced in the forest; encounters with armed groups while on the move, or in spontaneous sites and camps; and prolonged periods without livelihoods, shelter, and humanitarian aid, while displaced and after returning to insecure villages with limited state presence and rule of law.

There is also the phenomenon of Congolese Tutsi being discriminated against by indigenous Congolese. The Banyamulenge are not recognized as Congolese yet they are also affected by the ongoing violence, including reported attacks by the Congolese army and its allies. Congolese Tutsi militia groups have also attacked civilians under accusations of them supporting the FDLR.

The DRC is obligated under the African Union Convention for the Protection and Assistance of Internally Displaced Persons to protect civilians and IDPs from human rights abuses (HRW, 2010: 26). These protocols are endorsed by the governments of the Great Lakes region as well as by the United Nations. When provisions are taken to protect

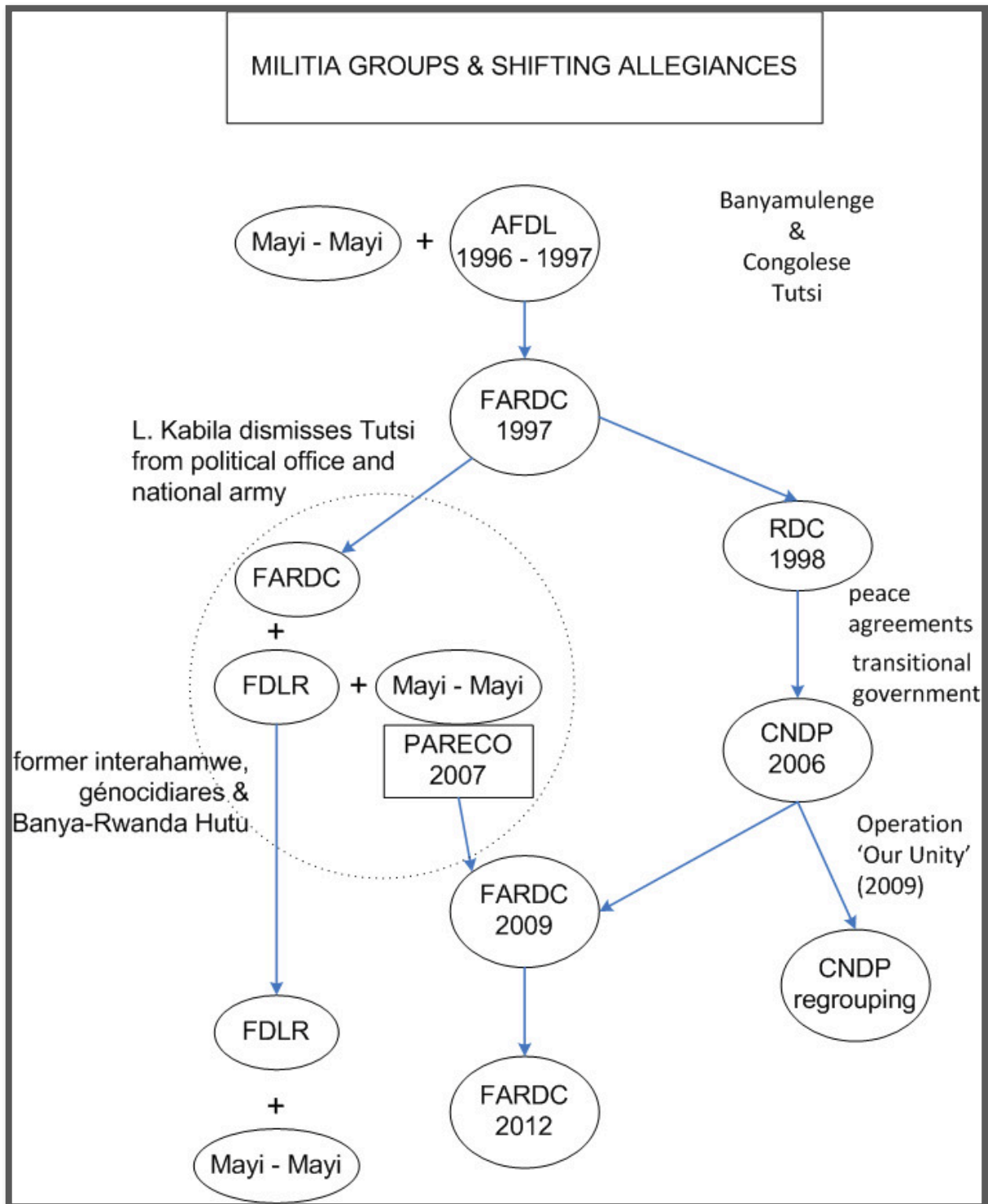
³⁹ I am purposely leaving out a lot of detail about the Congo wars as the various international allegiances and strategies for conflict resolution are beyond the scope of this project. See the Who's Who section to refer to groups and parties.

civilians, where do the 'allochthons' fit in? The Banyamulenge are not completely recognized as citizens by the DRC. Do they get further marginalized and victimized in the process, despite the provisions in the African Union Charter, or the UNHCR, or the Congolese State for that matter, to protect civilians from violence and relocate IDPs and refugees to land in the Kivus? This raises the question of what happens to the hundreds of thousands of Banyamulenge who have sought refuge in Rwanda or are IDPs within the Kivus. The hate language that resonates at the local level among indigenous Congolese of the Kivus does not leave one feeling optimistic about the Banyamulenge being recognized as belonging to the region, let alone as being citizens rightful claims to land.

Underneath the surface of the rhetoric about ethnicity is a deeper issue in which inclusion and exclusion are defined by whether or not a person is seen to be truly Congolese in spite of the recent clarification in the law. Trans-national ethnic identities – in this context, Hutu and Tutsi – are seen to obscure or confuse national allegiance and to be the cause of violence that has been exported from Rwanda. (IRRI, 2010: 27-28)

The violence in the Kivus continues to foster hostilities against the Banyarwanda Tutsi by the indigenous Congolese and jeopardizes any claims of belonging.

Figure 5-1: Shifting Allegiances in the Eastern DRC



Patterns of Violence

In 2004 and 2005 there were hundreds of cases of violence against Banyamulenge who attempted to resettle in the Kivus. New inhabitants refused to accommodate the Banyamulenge. Local tensions among militia “greatly impeded the peaceful return of refugees and displaced persons because those in control of the land after the war threatened to use force to avoid giving it up.” (Autesserre, 2006: 15) These tensions involved civilians as well as local militia groups. The ongoing outbreaks of violence challenge resettlement and the overall safety of groups are evidence of the pervasive tensions that continue to exist. The UN estimates that over one million IDPs returned to North and South Kivu in 2009 in response to Operation Umoja Wetu, the peace agreement reached between Kabila, president of the DRC and Kagame, president of Rwanda. While an international agreement was being conducted, Bosco Ntaganda⁴⁰, military chief of the CNDP, came to a peace deal with a member of the Congolese government, Dr. Desiré Kamanzi. Peace agreements and military initiatives were also being formulated locally and members of the CNDP were incorporated into the FARDC. The joint alliances were formed to carry out a short term military operation, Kimia I, in March 2009 to disarm the FDLR in North Kivu, but the mission did not fulfill its objectives and the FDLR dispersed and regrouped (IRRI, 2010). The Stabilization and Reconstruction Plan for Areas Emerging from Armed Conflict (STAREC) was launched by the Congolese government in June 2009 to stabilize former conflict zones and facilitate the return and reintegration of IDPs and refugees (HRW, 2010). Then in July 2009, Kabila launched Operation Kimia II in South Kivu to attack the FDLR. Kimia II was strictly pioneered by Kabila as he had refused further cooperative measures with Kagame after the first operation. However, the FARDC retained the newly incorporated CNDP members, including the Congolese Tutsi and Banyamulenge who had not been part of the Congolese army since 1998, when they had been dismissed by Laurent Kabila.

Tens of thousands of IDPs returned in 2009, however, approximately 1.35 million were still displaced in December 2009 and feared the safe return home. There was no monitoring during Kimia I and II to track whether IDPs returned to their original homes and found durable solutions or were actually re-displaced. It was claimed that many moved onto

⁴⁰ Bosco Ntaganda took over power from Laurent Nkunda, who launched the CNDP (IRRI, 2010).

secondary displacement sites “when they realized that their villages were still insecure or that others now occupied their land.” (HRW, 2010: 59) In an interview with Human Rights Watch, a former CNDP officer said the operations in the Kivus were intended to terrorize and kill indigenous populations “so that the land would be cleared for the return of Congolese Tutsi refugees.” (HRW, 2010: 68) This is not conducive to peaceful resettlement and reconciliation, but to further violence and exclusion. The land question remains unresolved and appears to be as volatile as the idea of rightful belonging. Recently, MONUSCO has announced new collaborative measures with the government of South Kivu to classify conflicts according to “land issues, customary power, or the struggle for natural resources.” (Likota, 2012) It is hoped that the new approach to conflict management can enhance MONUSCO’s capacity in bringing stability to the region.

Ultimately it is the Congolese government who is responsible for protecting its population and resolving the internal displacement in Eastern Congo. The Congolese government, in collaboration with the UN and other international partners, has committed to finding and ensuring durable solutions for displaced persons. However, reports from the ground indicate that the environment remains ethnically hostile, members of the Congolese army saying that return for some groups is at the expense of others. Allegiances are constantly shifting between the FARDC and groups containing Hutu and indigenous Congolese, and between the FARDC and Congolese Tutsi. Who then is recognized in resettlement and land allocation when alliances to the state are so uncertain? What happens to the Banyamulenge civilians in these agreements and ‘peaceful provisions’? Since the Eastern DRC has a history of shifting alliances with different ethnic groups, I question the motives of Kabila’s cooperation with Kagame for peace and stability. Hostilities between Banyarwanda and indigenous Congolese have painted the landscape for generations, while the tensions between indigenous Bantu groups and Congolese Tutsi have escalated in the aftermath of Rwanda. Therefore, I believe that it is highly suspicious that former members of the CNDP were incorporated into the FARDC almost immediately after they were fighting one another. Additionally, civilians cannot begin to trust security provisions when former rebel militia men are being incorporated into the Congolese army. “The plethora of groups involved in the conflict, and the fact that all have been involved in committing atrocities

against the civilian population, has created a situation in which people are unsure who they can trust or look to for protection.” (IRRI, 2010: 25-26) Moreover, the human rights abuses are continuous. In this context it is extremely difficult for the Banyamulenge to secure rights to land. I agree with Jackson’s statement on the probability of citizenship regulations continuing to be as precarious as it has always been.

Kabila’s re-election in the December 2011 election was met with an outcry from the Congolese population nationally and internationally. Many feel that the elections were rigged and that the rightful president should be Étienne Tshisekedi, the veteran opposition leader who discounted the election results (Nossiter, 2011). There were gunshots fired in the capital to silence Tshisekedi’s supporters. Furthermore,

Mr. Kabila had taken steps that the crisis group and other observers suggested might lead to suspicion that he was easing his path to re-election: eliminating a second round of voting, in a change to the Constitution earlier this year, for instance, and appointing through his party a majority of those on the electoral commission, which is led by a close ally of the president. (Nossiter, 2011)

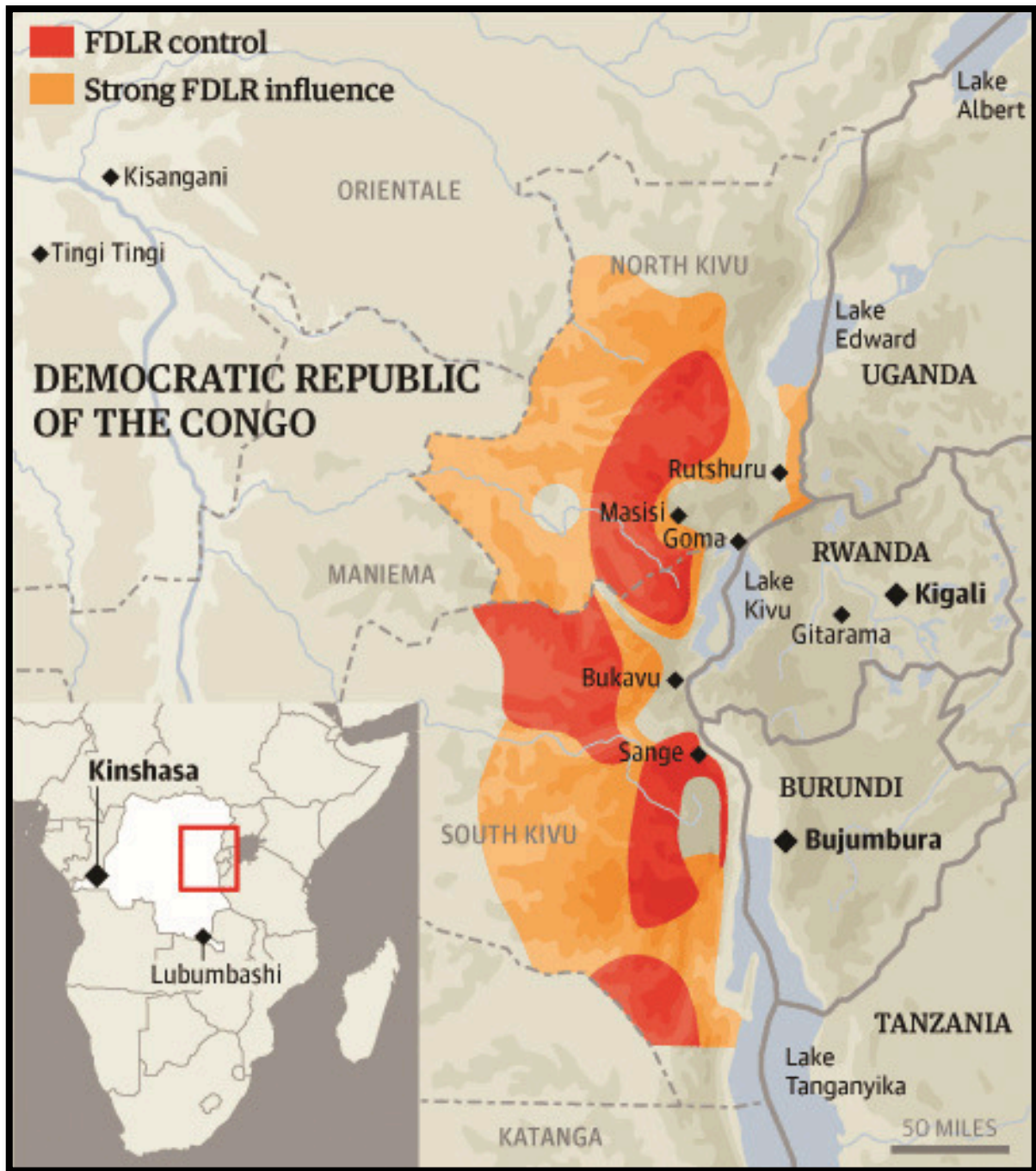
These measures are not consistent with democratic principles. They also raise anxiety about other state provisions, such as the 2004 Citizenship Law. If corrupt practices prevail, there is no guarantee that the citizenship law will not be reversed or manipulated.

Shortly after his re-election, Kabila passed a new law that targeted the land. The law on the ‘Fundamental Principles of Agriculture’ stipulates that “titles to land may be held only by a person of Congolese nationality or by a legal entity of which the state and/or Congolese hold a majority of shares.” (Africa-Confidential, 2012) This has massive implications for the Banyamulenge if they are not recognized as nationals. It means that land in the customary realm will not be granted to them. Kabila has attempted to prevent Congolese land and resources from being exploited by foreigners; however this does not mean that nationals will not continue resource exploitation and engage in transnational linkages with foreign entities. The law is almost a *déjà-vu* of Mobutu’s policy of ‘Zaïrianisation’ in 1973 that sought to internalize all foreign owned business, which meant that businesses were snatched up and distributed among the president’s political allies (*Mobutu: Roi du Zaïre*, 1999). It was a classic example of what Bayart (1993) called ‘the politics of the belly’ or power through

wealth accumulation. The policy in 1973 destroyed the economy and sent Zaïre into massive debt while it made few elites extremely wealthy. We have yet to see whether Kabila will follow suit. What is certain is that in the current citizenship law, there is no provision for the Banyamulenge to be recognized as nationals.

In the past 15 years, members of the Banyamulenge have moved from the AFDL in 1996 to being incorporated in the new Congolese Army of the DRC, the FARDC (see Figure 5-1). In 1998, after being kicked out of the FARDC, the RCD-Goma was formed, which included Banyamulenge and Banyarwanda Tutsi. In 2004, the RCD was dismantled, after MONUSCO, international partners, the governments of the Great Lakes and the Congolese state executed DDRRR provisions for stabilization in the region. Then, in 2006, the former Banyamulenge members along with Congolese Tutsi became the CNDP which until 2009 fought against the FARDC and the FDLR. The 2009 agreement between Kabila and Kagame signalled a sudden shift of allegiance between Banyarwanda (Congolese) Tutsi and the Congolese state, a cooperation that had not existed for over 10 years. Since 2009, former members of the CNDP have been incorporated within the FARDC. In current reports of South Kivu, the FARDC has been fighting against the FDLR as well as the Mayi-Mayi (OCHA, 2012). The Mayi-Mayi are ethnic militias used as surrogates to serve national and foreign factions. The groups control areas rich in resources. The largest Mayi-Mayi group is the Coalition des patriotes résistants congolais (PARECO), which was created in March 2007 and was comprised of Congolese Hutu, Hunde and Nande people. PARECO cooperated with the FDLR in 2007 and 2008, but in 2009, many were incorporated into the FARDC. The ones that refused to join the Congolese army formed an offshoot group and have continued to ally themselves with the FDLR (HRW, 2010; IRRI, 2010). It is unclear which ethnic group the Mayi-Mayi currently operating in South Kivu represent, but from my research and the nature of recent allegiances, I can only assume they are Hutu or indigenous Congolese.⁴¹ How else can we make sense of these shifting allegiances other than by viewing them as short-term opportunism? It is very difficult to assess the objectives of the Congolese state otherwise. The Banyamulenge who did not join militias are the civilians within the Kivus who have been most vulnerable to the violence and human rights abuses.

⁴¹ I base this conclusion on the fact that the FARDC is currently fighting against the FDLR and the Mayi-Mayi.

Map 5-1: The FDLR Presence in the DRC, 2008

Source: (McGreal, 2008)

As of March 22, 2012, the most insecure areas of South Kivu are the High Plateau, Uvira and Itombwe, which encompass the region where the Banyamulenge originally settled in the nineteenth century and where they tried to claim indigeneity in the 1970s. Between 18 February and 8 March 2012, around 24,000 people were displaced in this region from

ongoing conflict (OCHA, 2012). From the recent reports, I can suggest that there are ongoing hostilities towards the Banyamulenge civilians by the militias of the FDLR and the Mayi-Mayi, which has prompted counter-attacks by the FARDC. Another concern is that members of the CNDP refused to integrate into the FARDC in 2009. There is speculation that they could regroup and retaliate against the FARDC (IRRI, 2010).

Shifting allegiances have caused a great deal of anxiety among civilians as no one can be sure who to trust and the violence against civilians by armed groups has not ceased (HRW, 2010). In the ongoing conflict, the militarized tactics have enforced ethnic cohesion:

Rifts within and between communities have been underscored by the way in which both FDLR and CNDP have used ethnicity as a basis for securing power – and simply survival: they have drawn upon allegiances between Rwandan and Congolese Hutu on the one hand (in the case of the FDLR/*interahamwe*), and Rwandan and Congolese Tutsi on the other (in the case of the CNDP). Whether such allegiance was based on a sense of shared identity or was simply forced, the outcome has been the same: communities have become increasingly divided along ethnic lines, and notions of difference have been underscored through violence. (IRRI, 2010: 22, italics in original)

The division among ethnic lines has also amplified hostilities among group, thus leading to the dehumanizing language used by Bantu Congolese to describe the Congolese Tutsi.

In recent reports by NGOs there has been a shift from identifying the group as Banyarwanda Tutsi to Congolese Tutsi. This identification demonstrates a degree of recognition, albeit from the international community. The recognition that is most crucial, however, is that of the Congolese state, local, regional and national institutions and local communities. Implementing legal citizenship is not enough as people need to feel Congolese through recognition (IRRI, 2010). The Banyamulenge have to feel as though they are accepted and secure, that their rights will be protected and respected and finally, that their land will not be taken by other actors. As I have outlined, the region remains insecure, the military and group alliances uncertain, and the communities divided by volatile ethnic groups. From the state, there have been measures to address the new Citizenship Law, however ambiguous, but from the local populations, the rhetoric remains discriminatory. Given the corrupt history of citizenship laws, the new policies on land ownership, the palpable hostilities that have polarized ethnic identities in the Eastern DRC and the lack of

representation for the Banyamulenge within the communal realm, I predict that land claims for the Banyamulenge will continue to be jeopardized by the crisis of recognition.

5.2 The Abyei Conundrum: The Ngok Dinka

The conflict occurring on Sudan and South Sudan's borders is in its acute stage and it is possible that it will only worsen. Since it is very challenging to put together an accurate portrait of the Ngok Dinka's situation in Abyei, I draw on recent news analyses to assess the situation. Abyei has been called "Sudan's Kashmir" (Johnson, 2007) as it is a contested area between two countries, and if not handled appropriately, could be the catalyst of an international war. Since the Ngok Dinka aligned themselves with the South during the civil war, the SPLM/A and the Government of South Sudan assert that Abyei rightfully belongs to them. What was once called 'Ngokland' in South Kordofan is now claimed as 'Dinkaland'. Belonging to land has been politicized in Abyei as there are two groups that arguably have similar claims, but these groups belong to two separate states. These claims have been impacted by the existence of oil in Abyei which was one of three unresolved issues from the 2005 CPA. In July 2005, shortly after the signing of the CPA, John Garang died and was succeeded by Salva Kiir, who became the new leader of the SPLM/A, and later the president of South Sudan. Several scholars (Johnson, 2007; Winter, 2007; Chavunduka and Bromley, 2011) have highlighted the criticality of Abyei, and I expand upon the volatility of this small region by examining the politics of land, identity and citizenship. I will first highlight the Abyei Protocol, the Abyei arbitration at the PCA and the final award (see appendices). Then I will discuss the recent developments, the ongoing conflict and the humanitarian catastrophe in Abyei.

The Abyei Protocol, the Abyei Boundaries Commission (ABC) and the Permanent Court of Arbitration (PCA)

Following provisions from the CPA, the Abyei Protocol was established along with the Abyei Boundaries Commission (ABC), who was to determine the precise definition and demarcation of the Abyei area. The Abyei Protocol was not drafted by the warring parties, but by a US envoy, John Danforth, who was a former senator. Under pressure from the US

government, the SPLM and the Government of Sudan (GoS or NCP) signed the protocol in 2004. Abyei had proven to be one of the difficult issues to address during the CPA negotiations, which was not surprising as it had been problematic since the Addis Ababa Agreement of 1972. The Abyei Protocol stipulated that at the end of an interim period of five years, there was to be a referendum for Southern Sudan along with a separate referendum for Abyei residents to decide whether to maintain the special administrative status in the North or become part of Bahr al-Ghazal, a province in the South (Böckenförde, 2010). The panel of experts under the ABC sought to determine the amount of land that constituted the nine Ngok Dinka chiefdoms that were transferred to Kordofan in 1905 under the Anglo-Egyptian Condominium.

In 2007, in violation of the CPA, the GoS rejected the Abyei Protocol and accused the ABC experts of exceeding their mandate. The interpretation of boundaries had implications for who was to have greater control over the oil-rich region. The Protocol suggested a wealth-sharing arrangement for the Abyei oil fields. The agreement was developed so that the government of Sudan would receive 50% of revenue from Abyei, the Government of South Sudan 42%, and Bahr al-Ghazal State, Southern Kordofan, the local Dinka and the Misseriya would each receive 2%. If Abyei was to be demarcated as to the specifications of the ABC, the NCP would be obliged to share half of the oil. (Chavunduka and Bromley, 2011). The issue of Abyei was then turned over to the PCA.

In 2008, the GoS and the SPLM/A signed the ‘Arbitration Agreement on Delimiting the Abyei Area’ where they each agreed to submit their disputes as to whether or not the ABC experts exceeded their mandate in identifying the boundaries. Article 2 of the Arbitration Agreement outlined the issues that were to be determined by the Tribunal of the PCA in The Hague:

- (a) Whether or not the ABC Experts had, on the basis of the agreement of the Parties as per the CPA, exceeded their mandate which is ‘to define (i.e. delimit) and demarcate the area of the nine Ngok Dinka chiefdoms transferred to Kordofan in 1905’ as stated in the Abyei Protocol, and reiterated in the Abyei Appendix and the ABC Terms of Reference and Rules of Procedure.
- (b) If the Tribunal determines, pursuant to Sub-article (a) herein, that the ABC Experts did not exceed their mandate, it shall make a declaration to that effect

and issue an award for the full and immediate implementation of the ABC Report.

(c) If the Tribunal determines, pursuant to Sub-article (a) herein, that the ABC Experts exceeded their mandate, it shall make a declaration to that effect, and shall proceed to define (i.e. delimit) on map the boundaries of the area of the nine Ngok Dinka chiefdoms transferred to Kordofan in 1905, based on the submissions of the Parties. (PCA-CPA, 2009: 1-2)

The area of Abyei was to consist of the nine Ngok chiefdoms that were transferred to Kordofan in 1905. The GoS formally submitted that the ABC exceeded its mandate and identified borders that were further north than what they should have been, as the area north of the Bahr al-Arab was always considered Kordofan. According to the SPLM/A, the ABC had not exceeded its mandate. In the Abyei Award (see Appendix A), the Tribunal declared that the ABC Experts did not exceed their mandate in terms of interpretation but they did exceed in terms of implementation. Based on scholarly evidence and documentation, the Tribunal found that the region around the Bahr al-Arab was the traditional home of the Ngok Dinka as well as the seasonal grazing area of the Humr-Misseriya. However, the GoS never submitted the official maps of the Ngok chiefdoms in 1905. The Tribunal decided that the ABC experts did not exceed their mandate in terms of the boundaries to the north and south, but they exceeded their mandate on the boundaries east and west, so therefore this was re-defined in the Final Award. This meant that the area of Abyei decided at the PCA was slightly less than what the ABC experts put forth. The Tribunal based its decision on the boundaries that were defined at independence on 1 January 1956, as they did not have the cartographic evidence from 1905.

Furthermore, the Tribunal issued its decision in terms of Grazing and other Traditional rights that would apply to the Ngok Dinka and Humr Misseriya.

1. In respect of the ABC Experts' decision that "[t]he Ngok and Misseriya shall retain their established secondary rights to the use of land north and south of this boundary," the ABC Experts did not exceed their mandate.
2. The exercise of established traditional rights within or in the vicinity of the Abyei Area, particularly the right (guaranteed by Section 1.1.3 of the Abyei Protocol) of the Misseriya and other nomadic peoples to graze cattle and move across the Abyei Area (as defined in this Award), remains unaffected. (PCA-CPA, 2009: 9)

In a final statement, the Tribunal advised the following:

In arriving at its decision, the Tribunal emphasizes that its mandate was limited by the Parties' agreement in the Arbitration Agreement. The Tribunal acknowledges the possibility that the boundary lines may inadvertently lead to the partition of an inhabited permanent settlement, such as a village or town, in a manner that causes manifest impracticability to the inhabitants. In this regard, the Tribunal urges the Parties to begin immediate discussions with a view to reaching express agreement to mitigate hardships on the ground and to facilitate resolutions to such problems. (PCA-CPA, 2009: 10)

These measures were to be taken prior to secession; however, Abyei was never resolved and is now contested between two states. The Tribunal's proposal on shared rights and secondary tenure to land in the northern part of the district is challenged by the ongoing violence. Also, the final award was not accepted by al-Bashir and the National Congress Party (NCP), so the NCP continued to violate the terms of the CPA. The Tribunal was criticized for finding a solution for both parties at the expense of legal consistency. However, this was necessary in order to pull the parties back from the brink of war along the north-south border (Böckenförde, 2010). Currently, it appears as though the parties are once again at the brink of war and Abyei could be the trigger.

Violence, Oil and a Humanitarian Catastrophe

Winter (2007: 61) states that the NCP "is controlled by an intellectually capable, radically committed, conspiratorial, and compassionless nucleus of individuals, long referred to as the National Islamic Front." They propelled Arabization and Islamicization to the extent that genocide occurred in Darfur and some analysts fear that a similar situation will occur in Abyei. In 2008, Kristof, working for The New York Times, reported that the Misseriya appointed their own officials to create a government in Abyei and they threatened to arm men in order to install it. Approximately 16,000 militia members were seen on the north side of Abyei backed by artillery units that appeared to be ready to invade. Furthermore, it was stated that the Misseriya elders of the region were trying to resolve the dispute peacefully, but Khartoum continued to propagate that there were attacks on Arabs of the region, which inflamed tensions (Kristof, 2008). This is a clear example of how the GoS has used false information to justify the presence of troops in Abyei and secure its hold on the region. Manipulating information has enabled the GoS to gain the support of Northerners

and in May 2008, fighting broke out between the SAF and the SPLA, displacing over 50,000 people and almost destroying the town of Abyei (Chavunduka and Bromley, 2011). Among those displaced were Ngok Dinka.⁴²

For the Ngok Dinka, the land in Abyei is sacred because of the connection to their chiefs who negotiated rights to remain on the land with the Mahdi during the Mahdiyya, the British during the Anglo-Egyptian Condominium and the Misseriya District Council of Southern Kordofan during the post-colonial years. The likelihood of conflict and dispute increases “if a local community places a high value on the site for political reasons.” (Hassner, 2009: 33) For the GoS, most of Abyei lies over an oil field, and because 75-80%⁴³ of the oil is located in the South, the oil in Abyei accounts for most of Sudan’s revenue (see map 5-2). This revenue has been used to finance the North’s war against the South and Darfur (Winter, 2007).⁴⁴ Since the Misseriya are Arab, the GoS has also used their Arabic identity to legitimate their claims to Abyei. The GoS has also armed the Baqqara Arabs to fight the Southern insurgency. Furthermore, oil fields, roads and the pipeline have disrupted the livelihoods of several groups by obstructing their access to water and land. “While boundary demarcation created tensions among groups that had traditionally cooperated, oil exploration created serious resentment because of associated systematic destruction and forced removal of people and their animals.” (Chavunduka and Bromley, 2011: 911-12)

⁴² There are currently no statistics for how many of the displaced were Ngok Dinka.

⁴³ The percentage is varied among scholars and news reports.

⁴⁴ In 2002, government oil revenues in Sudan were estimated at \$1 billion a year (Chavunduka and Bromley, 2011).

Map 5-2: Oil in the Sudans

Source: <http://www.bbc.co.uk/news/world-africa-12115013>

Since the end of May 2011, the non-Arab groups from the North have been fleeing to the South. After an outbreak of violence in Abyei in May 2011, an international response effort was launched to meet the needs of 110,000 people who fled the Abyei area. The SAF entered Abyei town on May 21, 2011 and took control of most of the region up to the Bahr al-Arab/Kiir River. Houses were set on fire after the fighting and it was documented that local Misseriya groups were responsible for looting (OCHA, 2011). On June 20, 2011 an agreement was signed between the two rival governments in Addis Ababa to withdraw the

SAF troops and the SPLA from the disputed town of Abyei (BBC, 2011). The Security Council Resolution 1990 followed (see appendix B). The Resolution expressed concern over the continued presence of the SAF in and around Abyei, which posed a threat for Humr-Misseriya groups to access their land and prevented Ngok Dinka from accessing their home. The UN peacekeeping mission for Abyei (UNISFA) was deployed, initially for six months (UN, 2011). Abyei was to be demilitarized and stabilized under the mandate of UNISFA. The resolution called for 4200 military personnel, 50 police personnel and an appropriate amount of civilian support.

On June 6 2011, approximately 200,000 people were affected or displaced from the fighting in Southern Kordofan (OCHA, 2011). The violence continued after the secession forcing the UN to extend its mandate in November 30, 2011 with Resolution 2032 (see Appendix C). UNISFA was to continue for another five months and “monitor the flashpoint border between north and south, and is authorized to use force in protecting civilians and humanitarian workers in Abyei.” (UN, 2012) The resolution also authorized UNISFA to secure the region’s oil infrastructure. On 8 December 2012 “South Sudan’s foreign minister warned that the North and South were on the "brink of war" following fighting near the Jau region, along the South Kordofan and South Sudan.” (IRIN, 2011) On March 6, 2012, Ban Ki-moon issued a press release (Appendix D) on the situation in Abyei:

The Security Council deeply deplores the continued failure of the Sudanese and South Sudanese security forces to redeploy from the Abyei Area in accordance with the 20 June 2011 Agreement on Temporary Arrangements for the Administration and Security of the Abyei Area... The Council urges the parties to agree on a map that will outline the area of operations for the Safe Demilitarized Border Zone and the area of operations for border monitors. The Council demands that the two countries accelerate implementation of the 20 June 2011 Agreement and the immediate establishment of the Abyei Area Administration, and work actively toward a long-term political resolution of Abyei’s final status. The Council demands that the Governments of Sudan and South Sudan facilitate the safe and dignified return of persons displaced from Abyei to their homes, and grant full, safe, and unhindered humanitarian access to the Abyei Area. The Council emphasizes the need for a safe and cooperative migration season. (UN, 2012: 2)

The statement also acknowledged the importance of oil settlements and financial arrangements “as a critical element of the two countries’ security, stability and prosperity as

viable states.” (UN, 2012: 2) Oil has added a new dimension to the border conflict, and magnifies the contestation of the region. As a result, the GoS and the SPLA have tightened their grips on Abyei. President Al-Bashir has declared that Sudan will not surrender Abyei, while the SPLA insists it will not surrender Dinkaland.

In the current situation South Sudan refuses to turn over royalties for using Sudan’s pipelines. According to officials in Khartoum, the south owes almost \$1 billion in pipeline fees, money which is needed to prevent an economic collapse in Sudan (Gettleman, 2012). In January 2012, in a drastic move, the South shut off all the oil wells which will deprive it of 98% of its revenue (The-Economist, 2012). The amount of oil in South Sudan’s reserves is unknown (Africa-Confidential, 2012; The-Economist, 2012). Sudan responded by blocking the movement of humanitarian aid. In an ugly political game, both parties are blaming the other for damaging their welfare, and responding with increased devastation. The South is looking for concessions from Khartoum and has admitted to using the oil as a means to an end. Abyei is one of the issues and the South wants the GoS to acknowledge the provisions of the Tribunal (Gettleman, 2012). Meanwhile, President Salva Kiir is looking to build a new pipeline that will run southward to Lamu, a port on the Indian Ocean.

Citizenship rights for the Abyei population remain precarious. The Ngok Dinka in Abyei struggled for equal citizenship rights as that of their neighbours, the Misseriya groups, in Southern Kordofan. Until the first civil war from 1955-1972, the Ngok were able to negotiate their claims with their neighbours under the Condominium. After the Addis Ababa Agreement of 1972, Abyei had a special administrative status under the office of the president (Böckenförde, 2010). However, conflict polarized the Arab identity of the North against the African identity of the South. Under Nimeiri (1969-1985), the government supported autonomy for the Ngok in Abyei, but it was never supported by regional or local power structures. It was a short time later that the second civil war erupted and many Ngok joined the SPLM. The ones who stayed in Abyei were subject to abuse and hostility. During the interim period after the CPA, Ngok Dinka of Abyei were considered citizens of both Kordofan and Bahr al-Ghazal and were represented in the legislature of both states. In the wake of secession, citizenship arrangements were discussed again.

Following discussions in Addis Ababa, the parties have agreed that there will be no bilateral agreement on citizenship between the two new states. Each country will apply its own laws and regulations on the issue of nationality. The parties also agreed to respect the “four freedoms” of each other’s nationals – namely to travel, reside, work and own property. Though the parties agreed in Addis Ababa on a transitional period of nine months to allow new citizenship arrangements to take effect, no formal announcement has yet been made to this effect. (OCHA, 2011: 2)

Since Abyei is protected by UNISFA and continues to have a special status, citizenship rights will be difficult to determine until the conflict has dissipated and the status of the region is decided.

Reports from March 18, 2012 indicate that there are 114,631 displaced people in Agok and in Warrap state in South Sudan. Agok is in the southern part of Abyei which is south of the Bahr al-Arab river. The SAF took control of the area of Abyei which is north of the river in May 2011. The total number of returns north of the river is approximately 4,800 persons. However, these figures have yet to be verified (OCHA, 2012: 3).

The risk of landmines, continued presence of SAF, the lack of basic services and food security concerns are preventing any major returns to areas north of the river, according to humanitarian organisations on the ground. UN agencies are unable to verify returns, as many routes to return villages have not been cleared by UN security due to the risk of landmines. (OCHA, 2012: 3)

The UN Mine Action Service (UNMAS) has deployed mining teams to the villages east of Abyei town within the last two weeks. According to Johnson (2011: 50), the “insecurity of land tenure for displaced and war-affected populations throughout the Sudan constitutes one of the most serious challenges confronting relief and development programmes.” (Johnson, 2011: 50) How land issues will be resolved in Abyei is another challenge. The land rights of the Humr, Ngok and pastoralists are recognized by the international community, but not by the GoS. Sudan’s harsh climate forces pastoralists to move south, but this is challenged by the border conflict and the new infrastructure built to accommodate the production of oil.

The situation in Abyei remains tense and the GoS continues to use propaganda to save face among international governments. They recently claimed “that the Sudan People’s Liberation Front/Army-North (SPLM/A-N), backed by its former comrades in Juba,

launched an unnecessary war in South Kordofan and Blue Nile when negotiations were under way” (Africa-Confidential, 2012). The SPLM/A-North comprises the non-Arab groups in the North who associate themselves with the Southern identity and the SPLM/A. Although China supplies arms to the North and refuses to suspend its trade, it has recently asked the North to stop bombing Southern Kordofan. The Sudans are teetering on the edge of an all-out war as any sensitive issue could be the cause of sheer destruction. Abyei has been one of these areas of sensitivity and volatility since the first civil war of 1955-1972. If the Abyei award is not handled extremely carefully, this flashpoint could easily ignite.

5.3 In the Crossfire of Land, Identity, the State and Citizenship: The Banyamulenge and the Ngok Dinka

For the two cases, collective identity, recognition and belonging to land have been politicized. Land policy has direct implications for citizenship and belonging and the converse is also true. Politics are shaped at the local, regional and national levels in both cases and politics is closely intertwined with perceptions of belonging. Land, collective identity, citizenship and belonging are not exclusive entities but are interrelated in the ongoing violence of the Kivus and Abyei. The two conflicts are different in some ways but surprisingly similar in others. The Sudans have a religious element that has pitted the Northern Arabic identity against the non-Arab Africans, who are primarily in the South. However, as evidenced by the formation of the SPLM/A-North, the non-Arab groups in the North are connected with the Southerners in the recent conflict. The Northern Arabic identity has been polarized against the African indigenous Southerner since the slave trade of the pre-colonial period. Groups have continued to fight under these broad allegiances in the present day. The Eastern DRC, on the other hand, the political and military allegiances between people who identify broadly as Bantu and Tutsi, have shifted at different points in time. These shifts have not occurred in the Sudan. The ongoing violence in the Congo is as much a product of internal ethnic discrimination as it is the spill-over effect from Rwanda and Burundi.

Sudanese Unity has been underscored by policies of Arabization and Islamization that has enforced the division of identity. In the DRC, there has not been a historical continuity in regards to the unanimity of Congolese nationality. This is most evident in the shifting citizenship laws. There have been periods of recognition for Banyarwanda as Congolese nationals, but this recognition has been quickly reversed even under the same leadership. During most of the post-colonial period in Sudan, a national was an Arab, where nationality was never as explicitly accepted in the DRC. Although identity is fluid, certain elements are emphasized in conflict, as these elements can be politicized.

In order to address the citizenship issues, Manby (2009) states that citizenship laws should not be based on laws that privilege race, ethnicity or the so-called inherited connection to land. However, resolution of these conflicts will not depend on citizenship alone. Laws must ensure equal access to goods and services provided by the state as well as “equitable methods to adjudicate competing claims to land and provide secure tenure for the future.” (Manby, 2009: 160) The state, in collaboration with communal authorities, needs to find a way to accommodate a plurality of groups competing for land rights in a system that does not favour or discriminate against anyone. In the DRC, the Banyamulenge and Banyarwanda populations need to be recognized by the state and the communal realm, otherwise protectorate measures for IDPs and refugees will continue to marginalize these groups. Recognition as citizenry is only one mode of belonging so groups need to be recognized by institutions at the local, regional and national levels.

One of the most difficult challenges for African states is controlling access to the land. According to Herbst (2000), both Sudan (prior to separation) and the DRC have geographies that challenge the consolidation of power. Since the two countries have two of the largest land masses on the continent, there has been significant reliance on regional authorities and chiefs. The power that rests with chiefs includes their authority to allocate land in the customary realm. The lack of consolidated power also leaves room for chiefs to act autonomously and for groups to manoeuvre around loopholes in the customary rules. As Berry (2001) stated, land allocation in the customary realm is fluid and negotiable, and one reason comes from the lack of consolidated power structures. During colonization, European

authorities ruled through a “decentralized despotism” (Mamdani, 1996) whereby the communal sphere was governed by traditional authorities. This decentralization has persisted to this day.

The message of the new anthropology and history, therefore, is twofold. Colonial Africa was much more like postcolonial Africa that most of us have hitherto imagined. And its dynamics have continued to shape postcolonial society. It is only when this message has been digested that we can establish what the real peculiarities of postcolonial Africa are. (Ranger, 1996: 280)

States may have sovereign authority but the control over land in outlying areas is challenging. Leaders in the contemporary period know that it is not possible to rid traditional authority as they are needed for governance in regions that are far from the capital. Chiefs also have legitimacy among their populations because of their position in ritual traditions, which is an element many official leaders lack (Herbst, 2000). Moreover, “the institutional separation of customary law can have the unintended effect of increasing the gap between official government conceptions and the realities of local affairs enabling a degree of local autonomy.” (Peters, 2004: 273) The locally significant distinction between autochthon and allochthon seems to get amplified in land claims. In the communal sphere, these modes of identification directly impact and legitimate belonging.

Both the governments of the DRC and of (North) Sudan do not explicitly recognize customary tenure practices (Herbst, 2000), which makes the Banyamulenge and Ngok Dinka vulnerable in their claims if they lack state support. The state is capable of undermining their rights to land as well as their rights to belong. Although land tenure may be difficult for government of Sudan or the DRC to control because of the geographical distance and power of chiefs, governments are able to exercise control over who qualifies for citizenship rights. Where citizenship rights have been granted along lines of ethnicity, as in the Eastern DRC, this has restricted political rights, the freedom of movement and the right to land holdings (Manby, 2009; Deng, 2001). For Abyei, the region is plagued with conflict and since the GoS refused to accept the Final Award at the PCA, shared land rights and secondary tenure are completely insecure. Climate cycles in Sudan generated the nomadic movements so shared land rights is crucial for livelihood. Furthermore, the conflict has generated an

exodus of refugees to South Sudan. These people are the non-Arab groups of the North, including the Ngok.

Thus, while the role of the state is critical in land rights and in instigating conflict, it cannot be separated from other elements that are significant at the local and regional levels. Peters (2004) states that state intervention has been overly centralized and it has influenced inclusion and exclusion policies, yet groups have used these policies for their own benefit as well. How land is granted has been at the root of many social conflicts in Africa. Since land is used for both accumulation and subsistence and is a symbolic entity for livelihood, political authority with control over land and patronage is extremely important. Groups learn to align themselves within these networks of patronage through mobilization of collective identities. Claims to land in the Eastern DRC and Abyei are further problematized by the existence of natural resources. Natural resources undoubtedly add a new dimension to the importance of land and increase the amount of players who want access. Therefore the state and various other actors have an interest in securing their grip over these places.

Finally, Both the Banyamulenge and the Ngok Dinka have shifted in their identities depending on what elements would bond the groups more cohesively in a given context. The Banyamulenge, for instance, were initially differentiated and separated Tutsis from Rwanda who sought to secure their identity in a place on communal lands in a neighbouring country. This expanded as it included Burundian Tutsis leading this larger group to attempt to be recognized as indigenous to legitimize their place on the land. These groups had in common that they were escaping political turmoil in their places of origin. After the Rwandan genocide, ethnic distinctions were enhanced which deepened local and regional group distinctions. The conflict that occurred in the DRC post Rwandan genocide was as much a spill-over effect from Rwanda as it was about groups trying to entrench their right to belong in the Congo. Everyday life was militarized and because the ethnic divide was so significant, many Banyamulenge took up arms and joined militia groups.

For the Ngok Dinka, their arrival in Abyei meant they had centralize political authority to negotiate among their Arab neighbours to gain rights to land and protect their fellow Dinka of the South from slave-raiders. In Abyei, a long history of cooperation and accommodation between the Arabs and Dinka shows that they were able to recognize each other for shared land rights and belonging. This tolerance never existed for the Banyamulenge, except maybe to a degree during the Colonial period when groups were forced to cooperate as labourers for the Belgians. The colonial era forced groups to co-exist in the same place in the Kivus. In contrast, in Abyei the Ngok chose to remain under Northern administration. Prior to the civil war, they were accepted by their Arab neighbours. Cooperation and negotiation between groups was localized and was an anomaly for Sudan. The pastoralist and semi-nomadic traditions were commonalities that grounded the strategies of sharing rights to land. When the civil war enhanced the identity divide between North and South, the Ngok began to associate more closely with their Southern counterparts and joined their militia.

Thus, the crossfire of collective identity, land, the state and citizenship in the Kivus and Abyei is an intersection of violence and conflict. Uncertainty prevails as to how to settle these two regions and what other measures can be adopted. What is evident is that there are deep systemic differences that are prevalent among the parties of the regions. The differences present themselves in identities, are highlighted in perceptions of rightful claims to land and legitimate belonging and are further complicated by citizenship rights.

CONCLUSION

There is no single all-encompassing approach to deal with the ‘Land Question’ in Africa, let alone the Kivus and Abyei. Deng (1998) calls for an interdisciplinary approach to studying land tenure in Africa that goes beyond a technical understanding. Peters (2004) calls for land policy that is more ‘human-centred’, while Platteau (2000) stresses the importance of community-based solutions. Scholars state that mechanisms need to be in place for communal land tenure that protects the rural poor from losing their land (Deng, 1988; Peters, 2004; Huggins, 2010). Additionally, Huggins (2010), Plateau (2000) and Cleaver (2003) say that an integrative approach, that involves local, regional, national and international actors, is needed to make land tenure more secure. In all these recommendations for securing land tenure, there is little mention of whose claims are recognized in the first place and why. It is one thing to speak of securing tenure, but crucial to ask who benefits from these arrangements and who is excluded. There has been other research that addresses recognition and belonging specifically (IRRI, 2010; Rutherford, 2008). In the same vein this project has examined claims that have not been recognized or justly acknowledged, as is the case for the Banyamulenge in South Kivu. We need to be willing to look at how belonging is constructed to address the deep systemic issues that have prolonged conflict.

The cases of the Eastern DRC and Abyei have highlighted the complexity of land tenure and collective identity, how these factors both impact and are impacted by conflict. Looking at the continent of Africa, it would appear as though land is plentiful when in reality many areas are prone to severe droughts or experience climate change. Areas with lush, cultivatable land are not as plentiful as it may seem. These areas exist in the Kivus and Abyei. Exponential population growth in the post-colonial period has added to the growing scarcity of land. “As the central natural resource along with water in Africa, it makes intuitive sense to expect increasing competition or declining quality to lead a range of conflicts.” (Derman, Odgaard and Sjaastad, 2007: 2) Access to land is at the heart of social, political and economic life in most of Africa. Access to land became part of the dynamics of these two conflicts, what reinforced them and what must therefore be addressed in

peacebuilding (Huggins, 2010). In the DRC, displacement over land has sustained the conflict, while in Abyei the unresolved competition for the area has sparked renewed violence over the past few years. Abyei is subject to extreme climate change which is why it became a place where Baqqara groups travelled to during the dry season in the North. Sudans' border conflict causes insecurity of land tenure for several groups, particularly the Humr-Misseriya and the Ngok Dinka.

I discussed land as a symbolic and sacred entity in Chapter 2 and examined how people came to be in certain places. The territorialisation of groups led to the codification of land in the colonial period. Demarcation defined new areas of space and belonging and forced certain groups to co-exist in the same places while separating others from their broader affiliates. New connections and attachments to land emerged as a result and the land became symbolic for both the Banyamulenge and Ngok Dinka. Abyei can be considered a sacred place for the Ngok while the Mulenge Hills of South Kivu contain a sacred dimension for the Banyamulenge. I have argued that land claims of these two groups have been impacted by their connections to place. In Chapter 3 I demonstrated how the ways of claiming land shifted by means of complex socio-cultural, historic, economic, political and localized processes. The designation of territory mattered in the pre-colonial period when localized and regional social networks were extremely important. Africa's history based in oral tradition coupled with the dynamics of social relations is laden with ambiguities, and the ambiguities persist today in current systems of customary land tenure.

In Chapter 4, I examined not only how the collective identities of the Banyamulenge and Ngok were entrenched in the land but how at different points in time they employed various strategies to claim land. Land as identity markers for these groups also intensifies their land claims to entrench their right to belong in South Kivu and Abyei. The meaning of land shifted for groups from one generation to the next. I also demonstrated that collective identity is fluid and subject to shifts. To this day the two groups believe they rightfully belong in these places. Chapter 5 outlined the intersection of land, identity, citizenship and the state. In the current conflicts, these factors are all interconnected. We cannot understand land claims in the contemporary period without recognizing the politics of identity and

citizenship. The two groups have been creative in their strategies to advance their claims, but the strategies shifted according to context. Collective identity is malleable and certain markers can be used at different times to legitimate claims. These markers have also been politicized as they determine who gets access to what, where and how. Within their regions, as a result of the ongoing violence, the Banyamulenge and Ngok Dinka have pitted their identities against other groups. Identity is thus used as a tool to legitimate land claims.

As scholars, I believe it is important to look beyond the existing rules and norms that govern communal land tenure and consider more closely the multiplicity of claims that exist within them. Land tenure reform must address the claims of groups that have been excluded and marginalized. While I agree about fostering community-based solutions, we cannot assume that the institutions and actors at the local level do not practice favouritism in granting land. Favouritism in granting land along cultural, ethnic, and religious lines is pervasive at all levels in Africa. Social relations have always impacted land allocation. Exclusion and marginalization is a side-effect of the social favouritism that exists in the communal realm. South Kivu is a prime example of ethnic exclusion and marginalization. Abyei is an example of the state exerting socio-religious based favouritism. State intervention has been subject to a lot of negative criticism; however local actors have their roles in complicating land claims. We cannot afford to be limited to prioritizing community-based solutions for policies to secure land tenure. This is not enough.

The approach to addressing land tenure needs to be all-inclusive and address the multiplicity of rights that exist as well as the outstanding number of claims that have not been properly addressed. If the numerous elements that exist and formulate the complexity of communal land tenure are not acknowledged, access to land will continue to be a catalyst for conflict. As long as the Banyamulenge and Ngok Dinka, who have asserted claims to land, are told by other groups that “this land is not yours”, conflict should come as no surprise. As long as their claims are not recognized, the Kivus and Abyei will continue to be theatres of violence. As long as the state and communal realm continue to practice policies of social favouritism, these groups’ access to land will be compromised.

In this project, I set out to examine the dynamics that have led to conflict and have sustained conflict. I wanted to understand some of the elements that may have been overlooked or under-researched. The number of deaths and the extent of displacement provoked the need to query further. It is my hope that by putting forth a lens of land and identity, we can better address the deep-rooted nature of both conflicts, and have a better understanding of conflicts in Africa. The conflicts cannot be attributed to one cause. It is not the existence of natural resources, the power struggles, the religious or ethnic elements or the competition over land alone that have provoked, sustained and increased violence, but the interconnectedness of several factors that weave together to produce the crises.

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PCA PRESS RELEASE

ABYEI ARBITRATION: FINAL AWARD RENDERED

THE HAGUE, July 22, 2009

In the matter of an arbitration pursuant to the Arbitration Agreement between the Government of Sudan and the Sudan People's Liberation Movement/Army on Delimiting Abyei Area, the Presiding Arbitrator rendered and communicated, on behalf of the Tribunal, its Final Award on July 22 at the Permanent Court of Arbitration, the Peace Palace, The Hague.

A summary of the proceedings and of the Final Award is set forth below. It must be emphasized that the summary contained in this Press Release, though approved by the Tribunal as an accurate summary of the principal features of the Award, is not an official text. The Final Award, including its *Dispositif*, is the authentic statement of the Tribunal's final and binding decision.

History of the proceedings

On July 7, 2008, the Government of Sudan ("GoS") and the Sudan People's Liberation Movement /Army ("SPML/A") signed the "Arbitration Agreement between The Government of Sudan and The Sudan People's Liberation Movement/Army on Delimiting the Abyei Area" ("Arbitration Agreement"). In the Arbitration Agreement, the Parties agreed to submit, for final and binding decision, their dispute as to whether or not the experts of the Abyei Boundaries Commission (the "ABC" Experts), established pursuant to the Comprehensive Peace Agreement signed by the Parties on January 9, 2005 ("CPA"), exceeded their mandate.

In accordance with the Arbitration Agreement, on July 11, 2008, the Parties deposited the Arbitration Agreement with the Secretary-General of the Permanent Court of Arbitration. The arbitral tribunal was fully constituted on October 30, 2008, and is composed of the following members:

Professor Pierre-Marie Dupuy (Presiding Arbitrator)
H.E. Judge Awn Al-Khasawneh
Professor Gerhard Hafner
Professor W. Michael Reisman
Judge Stephen Schwebel

In accordance with Article 8.3(i) of the Arbitration Agreement and the schedule set by the Tribunal, the Parties filed their written Memorials on December 16, 2008, their Counter-Memorials on February 13, 2009, and their Rejoinders on February 28, 2009. Oral pleadings, which were open to the public and attended by over 200 representatives of the Parties, were held at the Peace Palace in The Hague from April 18 to April 23, 2009. Under Article 9(1) of the Arbitration Agreement, the final award was to be rendered within ninety days from the closure of submissions, i.e., on July 22, 2009.

Mandate of the Tribunal

Under Article 2 of the Arbitration Agreement, the issues to be determined by the Tribunal were the following:

- (a) Whether or not the ABC Experts had, on the basis of the agreement of the Parties as per the CPA, exceeded their mandate which is 'to define (i.e.

delimit) and demarcate the area of the nine Ngok Dinka chiefdoms transferred to Kordofan in 1905' as stated in the Abyei Protocol, and reiterated in the Abyei Appendix and the ABC Terms of Reference and Rules of Procedure.

- (b) If the Tribunal determines, pursuant to Sub-article (a) herein, that the ABC Experts did not exceed their mandate, it shall make a declaration to that effect and issue an award for the full and immediate implementation of the ABC Report.
- (c) If the Tribunal determines, pursuant to Sub-article (a) herein, that the ABC Experts exceeded their mandate, it shall make a declaration to that effect, and shall proceed to define (i.e. delimit) on map the boundaries of the area of the nine Ngok Dinka chiefdoms transferred to Kordofan in 1905, based on the submissions of the Parties.

The mandate of the ABC Experts was expressed in Section 5.1 of the Abyei Protocol, signed between the Parties on May 26, 2004 and included in the Comprehensive Peace Agreement:

5. Determination of Geographic Boundaries

5.1 There shall be established by the Presidency, Abyei Boundaries Commission (ABC) to define and demarcate the area of the nine Ngok Dinka Chiefdoms transferred to Kordofan in 1905, referred to herein as the Abyei Area.

The Abyei Area was defined in Section 1.1.2 of the Abyei Protocol:

1.1.2 The territory is defined as the area of the nine Ngok Dinka Chiefdoms transferred to Kordofan in 1905.

Applicable Law

Pursuant to the Arbitration Agreement, the Tribunal was required to reach its decision based on the following “applicable law”: the CPA (particularly the Abyei Protocol and the Abyei Appendix), the Interim National Constitution of the Republic of Sudan (2005), general principles of law and practices that the Tribunal deemed relevant, and the Arbitration Agreement itself.

Parties' Positions

The GoS formally submitted that (i) the ABC Experts exceeded their mandate, and (ii) the area of the nine Ngok Dinka chiefdoms transferred to Kordofan in 1905 is the area bounded on the north by the Bahr el-Arab and otherwise by the boundaries of Kordofan as at independence (Figure 17, GoS Memorial).

The SPLM/A formally submitted that the ABC Experts did not exceed their mandate. In the alternative, the SPLM/A formally submitted that if the Tribunal determines that the ABC Experts exceeded their mandate, a declaration be made that the boundaries of the area of the nine Ngok Dinka

Chiefdoms transferred to Kordofan in 1905 are the current boundary of Kordofan and Bahr el-Ghazal to the south extending to 10°35'N latitude to the north and the current boundary of Kordofan and Darfur to the west extending to 29°32'15"E longitude to the east.

Summary of the Decision

In its Final Award, the Tribunal reaches the following decision:

The Tribunal's Task Pursuant to the Arbitration Agreement

At the outset, the Tribunal establishes that Article 2 of the Arbitration Agreement requires the Tribunal to proceed in a contingent two-stage sequence:

- First, the Tribunal must determine, under Article 2(a) of the Arbitration Agreement, whether the ABC Experts exceeded their mandate, which was “to define (i.e. delimit) and demarcate the area of the nine Ngok Dinka chiefdoms transferred to Kordofan in 1905.”
- Second, to the extent that the Tribunal determines that the ABC Experts exceeded their mandate, Article 2(c) of the Arbitration Agreement requires the Tribunal to itself “define (i.e. delimit) on map the boundaries of the area of the nine Ngok Dinka chiefdoms transferred to Kordofan in 1905 based on the submissions of the Parties.”

In the Tribunal's view, the sequence of these two stages in the Arbitration Agreement is important, as it prescribes the methodology to be used by the Tribunal. The Tribunal is to first decide whether or not the ABC Experts exceeded their mandate, i.e., to determine whether or not the Experts' *interpretation* and *implementation* of its mandate was reasonable. If and to the extent that the Tribunal finds that the Experts did exceed their mandate, the Parties require the Tribunal to itself define and delimit the borders of the Abyei Area, based on the submissions of the Parties in these proceedings.

Thus, the Tribunal finds that the sequence of Article 2 requires the Tribunal to conduct a new review of all evidence if, and only if, the ABC Experts were found to have exceeded their mandate. Conversely, for the primary task of determining whether an excess of mandate occurred, the Parties did not expect or authorize the Tribunal to evaluate the evidence in such a manner as to amount to a re-determination of the *correct* boundaries of the Abyei Area in 1905.

The Tribunal notes that this conclusion is also in accordance with the applicable law stipulated by the Arbitration Agreement. The Tribunal, while remaining mindful of the primary importance of deciding the issues presented based on the CPA, the Interim National Constitution, and the Arbitration Agreement, interprets the term “general principles of law and practices” in Article 3 of the Arbitration Agreement to include relevant principles of public international law. Relevant general principles of law and practices of institutional review confirm that the “correctness” of the ABC Experts' decision is beyond the Tribunal's review for purposes of determining an excess of mandate under Article 2(a).

Standard of Review for Determining an Excess of Mandate

To determine whether an “excess of mandate” occurred under Article 2(a), the Tribunal is required to analyze the specific standard of review applicable with respect to both the ABC Experts' *interpretation* and *implementation* of their mandate.

With regard to *interpretation*, the Tribunal is again guided by the sequence of Article 2 of the Arbitration Agreement in determining the applicable standard. The Tribunal finds that it is authorized

by the Parties to make its own determination as to the boundaries of the Abyei Area only under Article 2(c). Thus, it can only proceed to a comprehensive evaluation and delimitation using the available evidence if and when it has found that an excess of mandate occurred and an Article 2(c) determination is thus required. An excess of mandate determination under Article 2(a) cannot extend to a determination of whether the ABC Experts' interpretation of the "Formula" defining their mandate was *correct*. To interpret Article 2(a) as requiring the Tribunal to already decide whether the Experts' interpretation of the mandate was correct would eliminate the distinction between Article 2(a) and 2(c). The Tribunal concludes that its review pursuant to Article 2(a) is limited to determining the reasonableness of the ABC Experts' interpretation of their mandate.

In addition, the Tribunal finds that the ABC Experts were vested with the competence to interpret their own competence (*Kompetenz-Kompetenz*), and were thus empowered to determine the bounds of their own mandate. Legal principles requiring a court or tribunal to defer to the reasonable findings of a primary decision-maker support the Tribunal's conclusion that review pursuant to Article 2(a) is limited to determining the reasonableness of the ABC Experts' interpretation of their mandate.

This approach is also consistent with general principles of international law: as the International Court of Justice ("ICJ") held, in reviewing the findings of a primary decision-maker vested with *Kompetenz-Kompetenz*, the reviewing court or tribunal is not "called upon to pronounce on whether the arbitrator's decision was right or wrong" but merely whether the original decision-maker acted in "manifest breach" of the competence conferred on it by the arbitration agreement.

Moving to the standard of review applicable to the *implementation* of the ABC Experts' mandate, the Tribunal rules that, while it is not authorized under the Arbitration Agreement to review the ABC Experts' decision for "substantive errors," a failure to state sufficient reasons for a decision may amount to an "excess of mandate." The Tribunal finds that the ABC Experts' mandate included the duty to state reasons. This follows from the Parties' shared expectations, which may be inferred from the context in which the ABC Experts were expected to operate and the function that they were assigned within the greater peace process. Moreover, the fact that the ABC Experts' Report was to be "based on scientific analysis and research" as well as the object and purpose of the ABC's constitutive instruments demonstrate that the duty to state reasons was integral to the ABC Experts' mandate.

Based on "general principles of law and practices" regarding the annulment of arbitral decisions as well as the object and purpose of the ABC's constitutive instruments, the Tribunal finds that the Experts were required to sufficiently explain their decisions to allow the readers to understand how these were arrived at. The ABC Experts would have exceeded their mandate if some or all of their conclusions were unsupported by sufficient reasons, if the reasoning was incoherent, or if the reasons provided were obviously contradictory or frivolous.

Reasonableness of the ABC Experts' Interpretation of Their Mandate

Having established that the ABC Experts would have acted in excess of mandate if their *interpretation* of their task must be considered unreasonable, the Tribunal then turns to an assessment of the ABC Experts' interpretation of their mandate. Based on the Parties' arguments before the ABC as well as statements by the ABC Experts in their Report, the Tribunal establishes that the ABC Experts adopted a predominantly "tribal" interpretation of their mandate: the ABC Experts understood their mandate as requiring them to delimit and demarcate the area of the nine Ngok Dinka Chiefdoms as of 1905, i.e., the extent of Ngok Dinka settlements in 1905. This is in contradistinction to the GoS's predominantly "territorial" understanding of the ABC Experts' mandate, which comprehended determining a defined area of land that was administratively transferred by the Anglo-Egyptian Condominium in 1905.

The Tribunal concludes that the predominantly tribal interpretation adopted by the ABC Experts is not unreasonable, on the following grounds:

- The wording of the Formula can be interpreted as supporting either the “tribal” or the “territorial” interpretation, and it was therefore not unreasonable for the Experts to adopt the former.
- The object and purpose of the Formula supports a predominantly “tribal” interpretation. In the Tribunal’s view, the ABC Experts’ Report had a specific and crucial function within the Sudanese peace process: the decision was intended to authoritatively define the boundaries of the Abyei Area, the residents of which would be entitled to decide in a referendum in 2011 whether they should be part of the north or the south of Sudan. As clarified by the “Protocol on the Resolution of the Abyei Area dated May 26, 2004” between the Parties, the Ngok Dinka people were intended to be the main beneficiaries of this referendum. Since the tribal interpretation would lead to a definition of the Abyei Area that encompasses all of the Nine Ngok Dinka Chiefdoms in 1905, it cannot be considered unreasonable.
- The text of the applicable instruments, in particular, the procedural provisions in the CPA and the drafting history of the Protocol, support the reasonableness of the predominantly “tribal” interpretation.
- Finally, the predominantly “tribal” interpretation is reasonable in light of the historic facts of the 1905 transfer. In the Tribunal’s view, the evidence on record can reasonably be interpreted as supporting the following propositions: (1) the provincial boundaries between Bahr el-Ghazal and Kordofan in 1905 were uncertain; (2) there was very limited administration by the Condominium officials in the area in 1905; (3) the Condominium officials had limited knowledge of the extent of territory used and occupied by the Ngok Dinka; and (4) the 1905 transfer was principally effectuated to pacify the area and protect the Ngok Dinka from raids by the Humr.

The Tribunal adds that, since the interpretation made by the ABC Experts is subject to a reasonableness test (rather than a correctness test), its conclusion should not be taken to suggest that the opposite, predominantly territorial, interpretation was less reasonable. Rather, the Tribunal is not required or authorized to decide which out of the two possible interpretations is more “correct.”

The Tribunal therefore finds that the ABC Experts did not exceed their mandate in interpreting their mandate in the manner that Experts did.

Implementation of the ABC Experts’ Mandate

However, the Tribunal decides that the ABC Experts exceeded their mandate in certain areas of its implementation. Specifically, the ABC Experts failed to state sufficient reasons concerning some aspects of their decisions and thus exceeded their mandate with respect to some of their conclusions.

Northern Boundary of the Abyei Area

The Tribunal does not find that there was an excess of mandate with respect to the ABC Experts’ decision to adopt latitude 10°10’N as the northern limit of the Area of permanent Ngok Dinka

habitation transferred in 1905. In the Tribunal's view, the Experts' reasoning regarding the selection of latitude 10°10'N is comprehensible and complete.

However, the Tribunal rules that the ABC Experts did exceed their mandate regarding the drawing of the northernmost limit of the Ngok Dinka and Misseriya's "shared rights" area at latitude 10°35'N (and, by implication, the northern limit of the Abyei Area at latitude 10°22'N) because they did not provide sufficient reasoning. The Tribunal notes that the ABC Experts themselves accepted that the evidence in support of latitude line 10°35'N was "inconclusive." In the absence of other evidence, the ABC Experts' decision relied on the mere observation that the SPLM/A's northernmost claim coincided with the northernmost limit of the Goz. The Tribunal finds that such coincidence does not *per se* amount to the principled decision based on reasons required from the ABC Experts.

Southern boundary

The Tribunal rules that the ABC Experts were not in excess of mandate regarding their decision over the southern boundary of the Abyei Area. The Tribunal recalls that the southern boundary remained uncontroversial during the ABC proceedings as well as the present proceedings.

The Eastern and Western Boundaries of the Abyei Area

The Tribunal finds that the ABC Experts' decisions regarding the eastern and western boundary lines were in excess of mandate for failure to state sufficient reasoning. For the Tribunal, the selection of the western boundary line by the ABC Experts was entirely unreasoned; indeed the ABC Experts made no specific pronouncement regarding the western boundary at all, merely stating in summary fashion that "[a]ll other boundaries ... shall remain as they are." The eastern boundary coincided with the easternmost claim of the SPLM/A and was supported by a sketch map that the ABC Experts themselves regarded as "inconclusive." The Tribunal concludes that it was plainly contradictory for the ABC Experts to draw conclusions from evidence that they themselves considered inconclusive.

Given this excess of mandate by the ABC Experts, the Tribunal therefore turns to the second aspect of its own mandate, namely to define (i.e. delimit) on map the eastern and western boundaries of the Abyei Area in accordance with Article 2(c) of the Arbitration Agreement.

Pursuant to its Article 2(c) inquiry, the Tribunal rules that the eastern boundary of the Abyei Area runs along longitude 29°00'00"E, from latitude 10°10'00"N south to the Kordofan – Upper Nile boundary as it was defined on 1 January 1956. Moreover, the Tribunal rules that the western boundary of the Abyei Area runs along longitude 27°50'00"E, from latitude 10°10'00"N south to the Kordofan – Darfur boundary as it was defined on 1 January 1956. The western boundary of Abyei Area then follows the Darfur-Kordofan boundary until it meets the southern boundary of the Abyei Area.

The Tribunal arrives at these conclusions by looking at the scholarly, documentary, cartographic and oral evidence submitted by the Parties. This evidence demonstrates that Ngok Dinka permanent settlements were mostly located around the Bahr river system and its main watercourses, including the Bahr el-Arab, the Ragaba Umm Biero, and the Ragaba ez Zarga, and concentrated approximately between longitudes 27°50'00"E and 29°00'00"E, up to latitude 10°10'00"N.

With regard to the available evidence, a careful review of the Parties' submissions reveals that the evidence remains scanty. In particular, the evidence does not include any map from 1905, or indeed later years, that provides the specific coordinates of the western or eastern limits of the area occupied by the nine Ngok Dinka Chiefdoms transferred in 1905. The Tribunal notes both Parties' recognition that drawing these limits is not an easy task. Accordingly, the Tribunal emphasizes that it has a duty

to render its decision on the basis of what it considers, after careful review and within the confines of the predominantly tribal interpretation of the mandate, as the best available evidence.

Key to the Tribunal's decision is the evidence provided by anthropological experts, in particular District Commissioner Howell and Professor Cunnison. These specialists were relied upon by both Parties in these proceedings, and the Tribunal finds their work to be particularly cogent. Howell's and Cunnison's extensive experience based on field visits in the region where the Ngok Dinka resided, with Professor Cunnison in particular having lived for more than two years in a Humr camp, has led the Tribunal to place greater reliance on their understanding. The Tribunal also notes that the descriptions by Cunnison match the satellite photographs of the Bahr region submitted to the Tribunal and are consistent with the observations of an expert witness, Professor Allan, regarding the geographic extension of the "Bahr region."

Based on the evidence on record, the Tribunal finds that there has been continuity of Ngok Dinka historic territory, within an unchanged ecology, in the Bahr region. The many scholarly and documentary sources describe the Bahr in the same way, namely the whole of the tributary systems of the Bahr el Arab including to the north and east of the Ragaba ez Zarga. In addition, these sources also consistently refer to the Bahr region as the traditional home of the Ngok Dinka, and as the seasonal grazing area of the Humr Misseriya. Statements by Professor Cunnison make it appear most likely that Ngok Dinka settlements have been continuous from as early as "the beginning of the 20th century, or the end of the Mahdiya."

The Tribunal also considers the seasonal grazing patterns of both the Ngok Dinka and the Misseriya Humr, and how their use of land was affected by the seasonal ecology of the region. All this evidence confirms the conclusion that the Area of the Nine Ngok Dinka Chiefdoms transferred in 1905 extended between longitudes 27°50'00"E and 29°00'00"E.

The Boundary Delimited by the Tribunal Does Not Prejudice Traditional Grazing Rights

The Tribunal emphasizes that the CPA (including the Abyei Protocol), which is part of the Tribunal's applicable law, confirms the Parties' intention to accord special protection to the traditional rights of the people settling within and in the vicinity of the Abyei Area. Most importantly, the Protocol specifically recognizes the need to safeguard the grazing rights of the Misseriya and other nomadic peoples.

The Tribunal also finds that, under relevant principles of international law as applied in boundary disputes, traditional rights have usually been deemed to remain unaffected by any territorial delimitation. The transfer of sovereignty in the context of a boundary delimitation should not be construed to extinguish traditional rights to the use of land.

Finally, the Tribunal stresses that its mandate under Article 2(c) requires it to delimit "on map" the boundaries of the Abyei Area. The Tribunal's attention to territorial boundaries should not, however, be taken to imply that the Parties are entitled to disregard other territorial relationships that people living in and in the vicinity of the Abyei Area have historically maintained.

Dispositif

Having considered all relevant arguments, the Tribunal concludes that:

(a) Northern Boundary

1. In respect of the ABC Experts' decision that "[t]he Ngok have a legitimate dominant claim to the territory from the Kordofan – Bahr el-Ghazal boundary north to latitude 10°10'N," the ABC Experts did not exceed their mandate.
2. In respect of the ABC Experts' decision relating to the "shared secondary rights" area between latitude 10°10'N and latitude 10°35'N, the ABC Experts exceeded their mandate.
3. The northern boundary of the area of the nine Ngok Dinka chiefdoms transferred to Kordofan in 1905 runs along latitude 10°10'00"N, from longitude 27°50'00"E to longitude 29°00'00"E.

(b) Southern Boundary

1. In respect of the ABC Experts' decision that "[t]he southern boundary shall be the Kordofan – Bahr el-Ghazal – Upper Nile boundary as it was defined on 1 January 1956," the ABC Experts did not exceed their mandate.
2. The southern boundary as established by the ABC Experts is therefore confirmed, subject to paragraph (c) below.

(c) Eastern Boundary

1. In respect of the ABC Experts' decision that "the eastern boundary shall extend the line of the Kordofan – Upper Nile boundary at approximately longitude 29°32'15"E northwards until it meets latitude 10°22'30"N", the ABC Experts exceeded their mandate.
2. The eastern boundary of the area of the nine Ngok Dinka chiefdoms transferred to Kordofan in 1905 runs in a straight line along longitude 29°00'00"E, from latitude 10°10'00"N south to the Kordofan – Upper Nile boundary as it was defined on 1 January 1956.

(d) Western Boundary

1. In respect of the ABC Experts' decision that "[t]he western boundary shall be the Kordofan – Darfur boundary as it was defined on 1 January 1956," the ABC Experts exceeded their mandate.
2. The western boundary of the area of the nine Ngok Dinka chiefdoms transferred to Kordofan in 1905 runs in a straight line along longitude 27°50'00"E, from latitude 10°10'00"N south to the Kordofan – Darfur boundary as it was defined on 1 January 1956, and continuing on the Kordofan – Darfur boundary until it meets the southern boundary confirmed in paragraph (b) above.

(e) Grazing and other Traditional Rights

1. In respect of the ABC Experts' decision that "[t]he Ngok and Misseriya shall retain their established secondary rights to the use of land north and south of this boundary," the ABC Experts did not exceed their mandate.
2. The exercise of established traditional rights within or in the vicinity of the Abyei Area, particularly the right (guaranteed by Section 1.1.3 of the Abyei Protocol) of the Misseriya and other nomadic peoples to graze cattle and move across the Abyei Area (as defined in this Award), remains unaffected.

In arriving at its decision, the Tribunal emphasizes that its mandate was limited by the Parties' agreement in the Arbitration Agreement. The Tribunal acknowledges the possibility that the boundary lines may inadvertently lead to the partition of an inhabited permanent settlement, such as a village or town, in a manner that causes manifest impracticability to the inhabitants. In this regard, the Tribunal urges the Parties to begin immediate discussions with a view to reaching express agreement to mitigate hardships on the ground and to facilitate resolutions to such problems.

Final and Binding Nature of the Tribunal's Award

Under the Abyei Road Map, "[t]he parties commit themselves to abide by and implement the award of the arbitration tribunal." The Arbitration Agreement reiterates: "[t]he Parties agree that the arbitration award delimiting the "Abyei Area" through determining the issues of the dispute as stated in Article 2 of this Agreement shall be final and binding."

During the ceremony held at the Peace Palace on July 22, 2009, the Presiding Arbitrator stated:

"The Security Council of the United Nations, which recognizes the importance of this Award to peace and reconciliation in Sudan among all of its peoples, has called upon the Government of Sudan and the SPLM/A to treat the Award as binding and to implement it fully. The Parties are so bound by the terms of their Arbitration Agreement and by the force of international law. The Tribunal has produced an Award which resolves the dispute between the Parties over the validity of the ABC Decision and which, in accordance with the Arbitration Agreement, draws a boundary that reflects the facts and law of the matter. The Tribunal has acted scrupulously within its mandate to prepare an award in whose terms and holdings it has every confidence. It is equally confident that the Parties will abide by and implement the Award in good faith."

Dissenting Opinion

The Chairman also noted that one of the members of the Tribunal, H.E. Judge Awn Al-Khasawneh, has filed a dissenting opinion. (A brief summary of Judge Al-Khasawneh's dissenting opinion is appended hereto as an annex.)

* * *

By agreement, pleadings, transcripts, and other documents relating to these proceedings have also been made public. These are all available at the PCA website (http://www.pca-cpa.org/showpage.asp?pag_id=1306). The oral pleadings were webstreamed live on the PCA website, and a video recording of those proceedings remains available.

* * *

With reference to recent press reports regarding the rendering of an award in the Arbitration between the Government of Sudan and the Sudan People's Liberation Movement/Army, the PCA believes it might be useful to provide a brief background note clarifying the work of the PCA and its role in the settlement of international disputes.

The PCA was established by treaty in 1899 and is the oldest intergovernmental organization devoted to the peaceful resolution of disputes through arbitration in the world. Its seat is the Peace Palace, The Hague, The Netherlands. The PCA provides institutional support for arbitrations and other alternative

dispute resolution mechanisms in which the judicial panel for each case is chosen by the parties on an *ad hoc* basis. Specifically, the PCA's secretariat – the International Bureau – provides registry services and legal support to arbitral tribunals, commissions, and other similar bodies. Members of the International Bureau frequently serve as registrar or administrative secretary to tribunals and other bodies. In this capacity, they provide, *inter alia*, an official channel for communications between parties and tribunals, financial administration, and archival services. The PCA does not, however, itself render awards or decisions. Rather, the arbitral tribunals and other bodies, which are established under the auspices of the PCA, render the award.

Further information on the PCA is available at <http://www.pca-cpa.org>.

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Dissenting Opinion of Judge Al-Khasawneh

Summary

A member of the Tribunal, Judge Awn Shawkat Al-Khasawneh, who is a serving member of the International Court of Justice, appended a dissenting opinion explaining the reasons for his dissent. It is a 69-page document in English.

The main points of the Dissenting Opinion of Judge Al-Khasawneh are as follows:

- The Award and its reasoning are unconvincing, self-contradictory, result-oriented, and are not supported by evidence but rather contradicted by overwhelming evidence.
- The Award is likely to have a profound impact on the Sudan and its future as a State and on the peace and well-being of all its citizens regardless of ethnicity or creed.
- The ABC Experts had a relatively clear mandate: to delimit the area of the nine Ngok Dinka Chiefdoms transferred to Kordofan in 1905. It was not to locate where the Ngok Dinka were in 1905 or at any other date, which is a totally different question.
- In case of doubt, the ABC Experts should have sought clarification of their mandate from the Parties. Instead, they went on a frolic of their own and adopted a new mandate.
- The cornerstone of the misinterpreted mandate is based on the paradigm of “dominant” (Ngok) rights versus “secondary” (Homr) rights. This is discriminatory concept is totally baseless in law and custom of Kordofan. It will make the Homr second-class citizens in their own country.
- The ABC Experts, without supporting evidence, ascribed vast tracts of land to the Ngok in areas where they never had any collective presence in 1905 or indeed in 19065, the year of their maximum expansion to the North.
- The Award is an ill-assorted mélange between two aims:
 - (a) to protect the Experts’ Report from invalidation; and
 - (b) to uphold parts of the Experts’ Report whilst invalidating others but without taking account of the fundamental rights of the Misseriya tribe.
- The delimitation by the Tribunal is based on a misquotation from P. P. Howell (a Condominium official and an anthropologist), who indicated in 1951 that the Ngok lived approximately between 29° E and 27° 50’ E. Even if this was true in 1951, it was not true in 1905, when contemporaneous evidence places the Ngok just to the North of the Bahr el Arab and not as far west as 27° 50’ E. Moreover, all that land was a shared rights area where the Homr behaved on the assumption that it was their ‘dar’ (country), and where they paid ‘tribute’ (tax) to Condominium officials.

- Judge Al-Khasawneh also explained that the Tribunal itself was in excess of mandate on at least two counts:
 - (a) First, it effected a partial annulment of the Experts' delimitation without authority from its own mandate. Moreover, it persisted in effecting this partial annulment despite having impugned so much of the Experts' decision that the remainder is so thin and truncated that it cannot stand on its own.
 - (b) Secondly, it replaced the Experts' unreasoned delimitation lines by equally unreasoned lines of its own. Lack of reasoning is a ground for excess of mandate which applies, following the Tribunal's own reasoning, to the Tribunal's delimitation.
- By dabbling into compromise, the Tribunal lost the logical integrity of its reasoning: the reasoning with which it evaluated the ABC Report. At the same time it could not provide a durable and fair compromise because it failed utterly to take on board the rights of the Misseriya.
- Judge Al-Khasawneh, quoting the great Persian poet Hafiz, who said that "The house of hope is built on sand", concluded by noting that the construct the Tribunal had made was weaker than a spider's web because it disposed of so much on the basis of such meagre evidence.
- He also pointed out the inadequacy of the Tribunal's reasoning:
 - (a) The low standard of "reasonableness" (rather than correctness) cannot be the basis on which to define what could potentially become an international boundary.
 - (b) Reliance on approximate locations and rough areas to delimit a land boundary is an affront to the science of territorial delimitation.
 - (c) Transposing concepts essentially from commercial arbitration was inappropriate. Thus the experts are not entitled to the status of 'preferred arbiters of fact' because of accusations against them of bad faith and because their mandate was purely fact-finding and they had no prescriptive powers.
- Judge Al-Khasawneh came to the conclusion that even on a predominantly tribal interpretation of the ABC Experts' mandate, the extent of the location of the Ngok Dinka was nowhere near that of the area ascribed to them by the Experts or the Tribunal.



Security Council

Distr.: General
27 June 2011

Resolution 1990 (2011)

**Adopted by the Security Council at its 6567th meeting, on
27 June 2011**

The Security Council,

Recalling its previous resolutions and its presidential statements on the situation in Sudan, and noting the priority it attaches to the implementation of the Comprehensive Peace Agreement,

Reaffirming its commitment to the principles of sovereignty and territorial integrity; and to peace, stability and security throughout the region,

Reaffirming its previous resolutions 1674 (2006) and 1894 (2009) on the protection of civilians in armed conflict, 1882 (2009) on children in armed conflict, 1502 (2003) on the protection of humanitarian and United Nations personnel, and 1325 (2000), 1820 (2008), 1888 (2009), and 1889 (2009) on women peace and security,

Welcoming the Agreement between the Government of Sudan and the Sudan People's Liberation Movement on Temporary Arrangements for the Administration and Security of the Abyei Area reached on 20 June 2011 in Addis Ababa, Ethiopia,

Commending the assistance provided to the parties by the African Union High Level Implementation Panel and its chair President Thabo Mbeki, Ethiopian Prime Minister Meles Zenawi and Special Representative of the Secretary-General Haile Menkerios,

Noting the Government of Sudan and the Sudan People's Liberation Movement's request for the assistance of the Government of Ethiopia with regard to this matter,

Noting the readiness of the United Nations and the international community to assist the parties in establishing and implementing mutual security arrangements in support of the objectives of the Comprehensive Peace Agreement,

Bearing in mind the importance of coherence of United Nations assistance in the region,

* Reissued for technical reasons on 29 June 2011.



Deeply concerned by the current situation in the Abyei Area, and by all acts of violence committed against civilians in violation of international humanitarian law and human rights law including the killing and displacement of significant number of civilians,

Reaffirming the importance of full and urgent implementation of the Comprehensive Peace Agreement by both parties,

Calling on all parties involved to provide humanitarian personnel with full and unimpeded access to civilians in need of assistance and all necessary facilities for their operations, in accordance with international humanitarian law,

Urging all parties to facilitate the rapid return of internally displaced persons,

Noting the intent of the parties to establish a special unit of the Abyei Police Service which shall deal with particular issues related to nomadic migration,

Welcoming and encouraging efforts by the United Nations to sensitize peacekeeping personnel in the prevention and control of HIV/AIDS and other communicable diseases in all of its peacekeeping operations,

Calling upon all parties to engage constructively in negotiations towards the final agreement on the status of Abyei,

Recognizing that the current situation in Abyei demands an urgent response and constitutes a threat to international peace and security,

1. *Decides* to establish, for a period of 6 months, the United Nations Interim Security Force for Abyei (UNISFA), taking into account the Agreement between the Government of Sudan and the Sudan People's Liberation Movement on Temporary Arrangements for the Administration and Security of the Abyei Area, and *further decides* that UNISFA shall comprise a maximum of 4,200 military personnel, 50 police personnel, and appropriate civilian support;

2. *Decides* that UNISFA shall have the following mandate, in addition to tasks set out in paragraph 3:

(a) Monitor and verify the redeployment of any Sudan Armed Forces, Sudan People's Liberation Army or its successor, from the Abyei Area as defined by the Permanent Court of Arbitration; henceforth, the Abyei Area shall be demilitarized from any forces other than UNISFA and the Abyei Police Service,

(b) Participate in relevant Abyei Area bodies as stipulated in the Agreement,

(c) Provide, in cooperation with other international partners in the mine action sector, de-mining assistance and technical advice,

(d) Facilitate the delivery of humanitarian aid and the free movement of humanitarian personnel in coordination with relevant Abyei Area bodies as defined by the Agreement,

(e) Strengthen the capacity of the Abyei Police Service by providing support, including the training of personnel, and coordinate with the Abyei Police Service on matters of law and order, and

(f) When necessary and in cooperation with the Abyei Police Service, provide security for oil infrastructure in the Abyei Area;

3. *Acting* under Chapter VII of the Charter of the United Nations, authorizes UNISFA within its capabilities and its area of deployment to take the necessary actions to:

- (a) protect UNISFA personnel, facilities, installations, and equipment,
- (b) protect United Nations personnel, facilities, installations, and equipment,
- (c) ensure the security and freedom of movement of United Nations personnel, humanitarian personnel and members of the Joint Military Observers Committee and Joint Military Observer Teams,
- (d) without prejudice to the responsibilities of the relevant authorities, to protect civilians in the Abyei Area under imminent threat of physical violence,
- (e) protect the Abyei Area from incursions by unauthorized elements, as defined in the Agreement, and
- (f) ensure security in the Abyei Area.

4. *Requests* that the Secretary-General and the Government of Sudan, in consultation with the Government of Southern Sudan or its successor, conclude a status-of-forces agreement immediately after the adoption of this resolution, taking into consideration General Assembly resolution 64/77 on the safety and security of humanitarian personnel and protection of United Nations personnel, and, *acting* under Chapter VII of the Charter of the United Nations, *decides* that, until such an agreement is concluded, the status-of-forces agreement for the United Nations Mission in Sudan (UNMIS) shall apply mutatis mutandis in respect of UNISFA;

5. *Calls on* all Member States to ensure the free, unhindered and expeditious movement to and from Abyei of all personnel, as well as equipment, provisions, supplies and other goods, including vehicles and spare parts, which are for the exclusive and official use of UNISFA;

6. *Underscores* the imperative of expeditious deployment of UNISFA and *urges* the Secretary-General to take necessary steps to ensure rapid and efficient implementation;

7. *Urges* the Government of Sudan and the Government of Southern Sudan or its successor to fully cooperate with each other and provide full support to UNISFA, enabling it to fully implement the mandate;

8. *Stresses* that improved cooperation between the Government of Sudan and Government of Southern Sudan or its successor, is also critical for peace, security and stability and the future relations between them;

9. *Calls upon* the Government of Sudan and the Government of Southern Sudan or its successor urgently to fulfil their commitment under the CPA to resolve peacefully the final status of Abyei, and *calls upon* them to consider in good faith proposals the African Union High Level Implementation Panel shall make to resolve this matter;

10. *Requests* the Secretary-General to ensure that effective human rights monitoring is carried out, and the results included in his reports to the Council;

11. *Requests* the Secretary-General to keep the Council regularly informed of the progress in implementing the Agreement and to report to the Council no later than thirty days after the adoption of this resolution and every 60 days thereafter;

12. *Decides* to review UNISFA's role in the implementation of the Agreement not later than 3 months after adoption of this resolution;

13. *Requests* the Secretary-General to take the necessary measures to ensure full compliance of UNISFA with the United Nations zero tolerance policy on sexual exploitation and abuses and to keep the Council informed if cases of such conduct occur;

14. *Decides* to remain actively seized of matter.



Security Council

Distr.: General
22 December 2011

Resolution 2032 (2011)

Adopted by the Security Council at its 6699th meeting, on 22 December 2011

The Security Council,

Recalling its previous resolutions and its presidential statements on the situation in Sudan and South Sudan, and in particular, resolution 1990 (2011) and resolution 2024 (2011),

Reaffirming its commitment to the principles of sovereignty and territorial integrity; and to peace, stability and security throughout the region,

Affirming the priority it attaches to the full and urgent implementation of all outstanding issues from the Comprehensive Peace Agreement,

Reaffirming its previous resolutions 1674 (2006) and 1894 (2009) on the protection of civilians in armed conflict, 1612 (2005), 1882 (2009), 1998 (2011) on children and armed conflict, 1502 (2003) on the protection of humanitarian and United Nations personnel, and 1325 (2000), 1820 (2008), 1888 (2009), and 1889 (2009) on women peace and security,

Recalling the commitments made by the Government of Sudan and the Government of South Sudan in the 20 June Agreement between the Government of Sudan and the Sudan People's Liberation Movement on Temporary Arrangements for the Administration and Security of the Abyei Area, the 29 June Agreement Between the Government of the Sudan and the Government of Southern Sudan on Border Security and the Joint Political and Security Mechanism, and the 30 July Agreement on the Border Monitoring Support Mission Between the Government of Sudan and the Government of South Sudan,

Welcoming the 9 October meeting of the Presidents of Sudan and South Sudan, and the intentions they expressed to resolve their disputes by peaceful means,

Stressing that both countries will have much to gain if they show restraint and choose the path of dialogue instead of resorting to violence or provocations,

Commending the continued assistance provided to the parties by the African Union High Level Implementation Panel and its chair President Thabo Mbeki, Ethiopian Prime Minister Meles Zenawi, Special Representative of the Secretary-General Haile Menkerios, and Head of Mission for the United Nations Interim Security Force for Abyei (UNISFA) Lieutenant General Tadesse Werede Tesfay,



Noting the continued readiness of the United Nations and the international community to assist the parties in establishing and implementing mutual security arrangements in support of the objectives of the Comprehensive Peace Agreement,

Commending the rapid deployment of UNISFA to the Abyei Area and the efforts of the United Nations and the Government of Ethiopia in that regard,

Urging the Government of Sudan and the Government of South Sudan rapidly to conclude negotiations with the United Nations on a Status of Forces Agreement,

Bearing in mind the importance of coherence of United Nations assistance in the region,

Welcoming and *encouraging* efforts by the United Nations to sensitize peacekeeping personnel in the prevention and control of HIV/AIDS and other communicable diseases in all of its peacekeeping operations,

Deeply concerned by all acts of violence committed in the Abyei Area against civilians in violation of international humanitarian law and human rights law including the killing and displacement of significant numbers of civilians,

Stressing the need for effective human rights monitoring,

Welcoming the meeting of the Abyei Joint Oversight Committee (AJOC) on 13 December, which reaffirmed the urgency of facilitating the delivery of humanitarian assistance to all affected communities in the Abyei area,

Deeply concerned with the continued presence of military and police personnel from Sudan and South Sudan in the Abyei Area, in violation of the 20 June Agreement, which poses a threat to the safe migration of Misseriya nomads and the return of Ngok Dinka refugees to their homes and prevents UNISFA from implementing fully its mandate,

Concerned by delays in the establishment of the Abyei Area Administration,

Noting the lack of progress in establishing the Abyei Police Service, including a special unit to deal with particular issues related to nomadic migration,

Concerned with delays in the clearance of landmines in the Abyei Area, which hinders the safe return of internally displaced persons to their homes,

Expressing its determination that the future status of Abyei shall be resolved by negotiations between the parties in a manner consistent with the CPA and not by the unilateral actions of either party, and *calling upon* all parties to engage constructively in negotiations towards the final agreement on the status of Abyei,

Deeply concerned by the reported build-up of armed forces of Sudan and South Sudan near their mutual border and inflammatory rhetoric from both sides, which increases the risk of direct confrontation between them,

Recognizing that the current situation in Abyei and along the border between Sudan and South Sudan constitutes a threat to international peace and security,

1. *Decides* to extend, for a period of 5 months, the mandate of the United Nations Interim Security Force for Abyei (UNISFA) as set out in paragraph 2 of resolution 1990 (2011) and modified by resolution 2024 (2011), and acting under Chapter VII of the Charter of the United Nations, the tasks set out in paragraph 3 of resolution 1990;

2. *Recognizes* that UNISFA's ability to carry out effectively its mandate will depend on the fulfilment by the Governments of Sudan and South Sudan of the commitments agreed between the two parties and with the United Nations;

3. *Demands* that the Governments of Sudan and South Sudan redeploy all remaining military and police personnel from the Abyei Area immediately and without preconditions, and urgently finalize the establishment of the Abyei Area Administration and the Abyei Police Service, in accordance with their commitments in the June 20 Agreement;

4. *Urges* the Government of Sudan and the Government of South Sudan to make use of the Joint Political and Security Mechanism to resolve outstanding issues related to finalization of the Safe Demilitarized Border Zone, the resolution of disputed border areas, border demarcation, and the mapping of the border zone;

5. *Calls on* all Member States, in particular Sudan and South Sudan, to ensure the free, unhindered and expeditious movement to and from Abyei and throughout the Safe Demilitarized Border Zone of all personnel, as well as equipment, provisions, supplies and other goods, including vehicles, aircraft, and spare parts, which are for the exclusive and official use of UNISFA;

6. *Urges* the Government of Sudan and the Government of South Sudan to cooperate fully with each other, and provide full support to UNISFA, enabling it to fully implement the mandate;

7. *Requests* the Government of Sudan and the Government of South Sudan to facilitate the deployment of the United Nations Mine Action Service as well as the identification and clearance of mines in the Abyei Area;

8. *Calls upon* the Government of Sudan and the Government of South Sudan urgently to fulfil their commitment under the CPA to resolve peacefully the final status of Abyei, and calls upon them to consider in good faith proposals the African Union High Level Implementation Panel shall make to resolve this matter;

9. *Urges* all parties involved to provide humanitarian personnel with full safe and unhindered access to civilians in need of assistance and all necessary facilities for their operations, in accordance with applicable international humanitarian law;

10. *Requests* the Secretary-General to ensure that effective human rights monitoring is carried out, and the results included in his reports to the Council, and *calls upon* the Government of Sudan and the Government of South Sudan to extend their full cooperation to the Secretary-General to this end;

11. *Requests* the Secretary-General to take the necessary measures to ensure full compliance of UNISFA with the United Nations zero tolerance policy on sexual exploitation and abuses and to keep the Council informed if cases of such conduct occur;

12. *Stresses* that improved cooperation between the Government of Sudan and Government of South Sudan is also critical for peace, security and stability and the future relations between them;

13. *Requests* the Secretary-General to continue to inform the Council of progress in implementing UNISFA's mandate in 60 day intervals, and continue to bring to the Council's immediate attention any serious violations of the above

referenced agreements, and to look for and implement ways to strengthen inter-mission cooperation within the region;

14. *Decides* to remain actively seized of the matter.



Security Council

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Statement by the President of the Security Council

At the 6730th meeting of the Security Council, held on 6 March 2012, in connection with the Council's consideration of the item entitled "Reports of the Secretary-General on the Sudan", the President of the Council made the following statement on behalf of the Council:

"The Security Council expresses grave concern about reports of repeated incidents of cross-border violence between Sudan and South Sudan, including troop movements, support to proxy forces, and aerial bombardments, and views the situation as a serious threat to international peace and security. The Council urges the two countries to implement and respect the letter and spirit of their February 10 Memorandum of Understanding on Non-Aggression and Cooperation, which was agreed under the auspices of the AU High-level Implementation Panel (AUHIP).

"The Security Council demands that all parties cease military operations in the border areas and put an end to the cycle of violence. It further demands that the Governments of Sudan and South Sudan take no action that would undermine the security and stability of the other, including through any direct or indirect form of support to armed groups in the other's territory. The Security Council condemns actions by any armed group aimed at the forced overthrow of the government of either Sudan or South Sudan. The Security Council affirms its strong commitment to the sovereignty and territorial integrity of both Sudan and South Sudan.

"The Security Council reiterates that the core objectives of the international community and all stakeholders in Sudan and South Sudan are the peaceful co-existence of two fully viable states, embracing democratic governance, rule of law, accountability, equality, respect for human rights, justice and economic development, in particular the establishment of the conditions for conflict-affected communities to build strong and sustainable livelihoods.

"The Security Council recalls the 28 June 2011 Framework Agreement between the Government of Sudan and the Sudan People's Liberation Movement-North (SPLM-N) on political and security arrangements for Blue Nile and Southern Kordofan states, and urges them to return to direct talks to resolve all political and security issues on the basis of the Comprehensive Peace Agreement and of the agreed principles of the Framework Agreement. The Security Council urges them to resolve the underlying issues that have



fuelled the current conflict in Southern Kordofan and Blue Nile, to end all violence, and to agree to an immediate cessation of hostilities. The Security Council strongly supports the efforts of the AUHIP and the UN to assist in this regard. With regard to the humanitarian situation, the Security Council emphasizes the grave urgency of delivering humanitarian aid to avert a worsening of the serious crisis in Southern Kordofan and Blue Nile, and demands that the Government of Sudan and the SPLM-N cooperate fully with the United Nations and other humanitarian agencies and organizations, and ensure, in accordance with international law, including applicable international humanitarian law, and guiding principles of emergency humanitarian assistance, the safe, unhindered and immediate access of United Nations and other humanitarian personnel, as well as the delivery of supplies and equipment, in order to allow such personnel to efficiently perform their task of assisting conflict-affected civilian populations in Southern Kordofan and Blue Nile States. The Security Council welcomes the tripartite proposal by the UN, AU, and League of Arab States in this regard, welcomes its acceptance by SPLM-N, and encourages the Government of Sudan to do the same.

“The Security Council deeply deplores the continued failure of the Sudanese and South Sudanese security forces to redeploy from the Abyei Area in accordance with the 20 June 2011 Agreement on Temporary Arrangements for the Administration and Security of the Abyei Area (S/2011/384) and the 8 September 2011 decision of the Abyei Area Joint Oversight Committee (S/2011/593). The Security Council welcomes the decision of the Joint Political and Security Mechanism to establish and move forward with the Joint Border Verification Monitoring Mechanism, in accordance with the 29 June 2011 Agreement on Border Security and the Joint Political and Security Mechanism. The Council urges the parties to agree on a map that will outline the area of operations for the Safe Demilitarized Border Zone and the area of operations for border monitors. The Council demands that the two countries accelerate implementation of the 20 June 2011 Agreement and the immediate establishment of the Abyei Area Administration, and work actively toward a long-term political resolution of Abyei’s final status. The Council demands that the Governments of Sudan and South Sudan facilitate the safe and dignified return of persons displaced from Abyei to their homes, and grant full, safe, and unhindered humanitarian access to the Abyei Area. The Council emphasizes the need for a safe and cooperative migration season.

“The Security Council regards the settlement of oil and financial arrangements between the Governments of Sudan and South Sudan as a critical element of the two countries’ security, stability and prosperity as viable states. The Council affirms that any unilateral action related to the oil sector is detrimental to the security, stability, and prosperity of both states. The Security Council strongly urges both states to work within the framework of the AUHIP’s January 2012 comprehensive proposal in order to reach mutual agreements without delay on transitional financial arrangements and commercial oil arrangements.

“The Security Council urges the Governments of Sudan and South Sudan to ensure that clear procedures for acquiring nationality in the respective states are in place, together with relevant documentation regarding residency or right to employment. If such arrangements are not in place before the end of the

April 8 transition period, the Council urges both states to agree on an extension.

“The Security Council strongly urges the Governments of Sudan and South Sudan to reach agreement on the status of disputed areas along the Sudan/South Sudan border, and to agree on and swiftly implement a process and timeline for demarcation of the border under the facilitation of the AUHIP.

“The Security Council reiterates its full support to UN peacekeeping missions in Sudan and South Sudan. It calls on Sudan and South Sudan to cooperate fully with the UN missions to ensure them free access throughout their areas of operation and to ensure unhindered and expeditious movement of all personnel, including by swiftly granting visas and travel permits, as well as of equipment, provisions, supplies and other goods, including vehicles, aircraft and spare parts, which are for the exclusive and official use of UN missions.

“The Council strongly urges Sudan and South Sudan to continue working within the context of the AUHIP-facilitated negotiations process to reach agreement on all outstanding issues as soon as possible, and encourages the continued partnership among the AUHIP, the UN and other key international stakeholders to combine their efforts in support of those negotiations.

“The Security Council reaffirms its commitment to a peaceful and prosperous future for the people of Sudan and South Sudan. The Council expresses its gratitude and full support for the continuing work of the AU High-level Implementation Panel for Sudan and its Chair, President Thabo Mbeki, as well as of Special Representative of the Secretary-General Haile Menkerios, and stresses the collaborative partnership between the UN and the AU in this regard. The Council calls on the Governments of Sudan and South Sudan to extend their full cooperation to the AUHIP.”
