



---

# 'Land belongs to the community'

Demystifying the 'global land grab' in Southern Sudan

by David K. Deng

---

Paper presented at the International Conference on  
**Global Land Grabbing**  
**6-8 April 2011**

Organised by the Land Deals Politics Initiative (LDPI) in collaboration with the Journal of Peasant Studies and hosted by the Future Agricultures Consortium at the Institute of Development Studies, University of Sussex

# **'Land belongs to the community'** **Demystifying the 'global land grab' in Southern Sudan**

David K. Deng  
April 2011

Sudan is among the global 'hotspots' for large-scale land acquisitions. Although most of this investment activity was thought to be focused in the Northern part of the country, recent research indicates that a surprising number of large-scale land acquisitions have taken place in the South as well in recent years. Now that Southern Sudanese have opted for independence in the 2011 referendum on self-determination, it is likely that investment activity will increase further. This paper presents preliminary data concerning large-scale land acquisitions in two of the 'Green Belt' states of Southern Sudan: Central Equatoria and Western Equatoria. It explores the concept 'land belongs to the community', a statement that has been taken up by communities in their demand for greater involvement in decision-making regarding community lands. It also examines processes of company-community engagement and the extent to which rural communities are being involved in investment projects. Finally, the paper presents a number of case studies that illustrate the complex interplay between cultural sovereignty, conflict, and post-war reconstruction in Southern Sudan. It concludes with recommendations for the government moving forward.

'People live in poverty not because they are poor, but because they don't have land to sustain their livelihoods. We should not use this resource that we have in such abundance so as to create the same poverty for ourselves.'

Hon. Bukulu Edward Mandeson,  
Speaker, Western Equatoria State Legislative Assembly

## **1 Introduction**

Flying over Southern Sudan, one is struck by its sheer size. Miles upon miles of lush, fertile land and untouched forest pass by underneath as the Nile River and its tributaries flow in their journey north. A few thatched-roof huts, or *tukuls*, dot the landscape, but from 18,000ft they are almost indistinguishable from the surrounding grassland. At this height, it is easy to conclude that Southern Sudan is an undiscovered Eden just waiting to be brought into productive use. But a grounded view depicts a far more complex reality.

Southern Sudan is home to some 65 ethnic groups whose territories span the entire region (United Nations Office for the Coordination of Humanitarian Affairs (UN OCHA) 2009). There is almost no *terra nullius*, or no man's land, in Southern Sudan. Virtually all land in the region is owned, in the sense that one or more communities retain the right to regulate its usage under customary law (Rolandsen 2010: 5). Areas that appear unoccupied may in fact be designated for seasonal use by people and livestock. Many communities also practice shifting cultivation, and an area that looks like natural forest may actually be a

field that is left fallow for a number of years, sometimes up to a decade or more, until it is ready to be planted again.

Nonetheless, it is hard to shake the feeling that land in Southern Sudan is being underutilised, particularly when one takes into account the widespread poverty and food insecurity that pervades the region. According to the World Food Program (WFP) (2010), nine in ten people live on less than a dollar a day and 3.3 million people, more than a third of the population, are moderately or severely food insecure. High levels of displacement contribute to the problem. In 2009 and 2010, more than 600,000 people were displaced as a result of inter-tribal fighting, attacks by the Ugandan Lord's Resistance Army (LRA), and extensive flooding across several Southern states (Internal Displacement Monitoring Centre (IDMC) 2010: 6). Rural infrastructure is almost nonexistent. Until recently, there was only about seven miles of paved road in all of Southern Sudan. Increased private investment in land and forests is seen by some as a way to diversify the oil-dependent economy, enhance food security, and stimulate rural development. Proponents of large-scale land acquisitions assert that there are large areas of unused land in Southern Sudan and that by amassing these areas into large-scale mechanised farms, Southern Sudan can produce enough food to not only feed its own population but also export food for sale on international markets.

One should scrutinise these claims. When operating in a fragile post-conflict context such as Southern Sudan, the transfer of large areas of land to private individuals or businesses could undermine local land rights, accelerate the concentration of land ownership, and have unpredictable effects on conflict dynamics. Dispossessing communities of their homelands risks throwing them into increased competition with neighboring communities over the remaining natural resources. With the proliferation of small arms in Southern Sudan, this competition often takes the form of violent conflict. Yet, by the same token, a timid acceptance of the status quo is not tenable. It is becoming increasingly urgent to increase food production and stimulate rural economies, and to treat customary claims as sacrosanct is to risk the continued suffering of local populations. The task for the government is not to insulate customary lands from the outside world, but rather to attract the kind of investment that builds constructive relationships between companies and host communities and prioritises the development needs of the local population.

It is in this context that this paper examines community participation in large-scale land investments. It explores the various loci of decision-making that are involved in land investments in Southern Sudan and the extent to which rural communities are being involved in the process. Section Two lays out the context in more detail. It gives a brief overview of the current political situation in Southern Sudan and examines the government's approach to building the agricultural sector. Section Three describes the legal framework, full with the ambiguities of the post-conflict setting. It examines the textual support for community land ownership in various sources of law in Southern Sudan and provides an analysis of the 2009 Land Act. Section Four explores the principle, 'land belongs to the community', a statement that has been taken up by communities in their demand for a more central role in decision-making around issues involving community land. Section Five presents preliminary data on several large-scale land acquisitions in two of the 'Green Belt' states of Southern Sudan: Central Equatoria and Western Equatoria. The paper concludes with a number of practical considerations for the country to take into account moving forward.

## 2 Context

African farmland has come under increasing pressure from commercial land-based investments in recent years. The Food and Agriculture Organization (FAO) estimates that from 2007-10, foreign interests acquired 20 million hectares of land in Africa (Graham, A., Aubry, S., Rolf Künnemann, R. and Sofía Monsalve Suárez, S.M 2010: 5). Some analysts see opportunities in the trend, maintaining that if African states are able to enact certain regulatory reforms, they can harness this surge in foreign investment to provide jobs and development for rural communities (World Bank 2010). Others are more skeptical. Critics have dubbed it the 'global land grab', asserting that land acquisitions on this scale stand to deny millions of land users access to vital natural resources, undermine food security, and exacerbate tenure insecurity. They criticise efforts to put in place a voluntary code of conduct for 'whitewashing' the problem and diverting attention away from alternative development pathways that may be more beneficial for rural populations, such as building the productive capacity of smallholder farmers. The real problem, these critics assert, lies in the global industrial food and energy complex which deprives rural populations of their land in order to provide cheap food and energy production for the developed world (Borras and Franco 2010: 515).

Sudan is among the global 'hotspots' for these large-scale land acquisitions (Cotula, Vermeulen, Leonard, and Keeley 2009: 17). According to a recent study by the World Bank (2010: 44), from 2004 to 2009, Sudan transferred nearly four million hectares of land to private investors, more than any other country surveyed.<sup>1</sup> With the unpredictability of the current transitional period in Southern Sudan, most of this investment activity was thought to be concentrated in the North. However, a recent study by the author demonstrates that there have also been a surprising number of large-scale land-based investments in Southern Sudan in recent years (Deng 2011). In just four years, from the start of 2007 to the end of 2010, foreign interests sought or acquired an estimated 4.92 million hectares of land for projects in the agriculture, biofuel, carbon credit, forestry, and ecotourism / conservation sectors. That is 7.6 percent of Southern Sudan's total land area. In theory, this influx of investment could provide a sorely needed source of development for the new nation. However, with the nascent state of government, a society still reeling from years of conflict, and the legal ambiguity of the current transitional period, there is also a real danger that that it will serve to undermine livelihoods.

The following subsections provide general background information on Sudan and offer a critique of the government's approach to building the agricultural sector. The section concludes with a discussion of obstacles to partnerships between the private sector and smallholder farmers in Sudan.

### **2.1 Sudan and the Comprehensive Peace Agreement (CPA)**

Sudan is geographically the largest country in Africa. At 2.5 million square kilometers, it is the size of the United States east of the Mississippi River. Southern Sudan covers roughly one-third of that area, or 640,000 square kilometers, and is the size of Austria, Belgium, Denmark, Holland, Germany and Portugal combined. In addition to hosting the Nile River, the longest river in the world, Sudan is home to what has been dubbed as 'the largest farm in the world' in the Gezira irrigated cotton scheme and 'the world's largest sugar-producing complex' in the Kenana project (Ahmed 2004: 138).

---

<sup>1</sup> This was in addition to the 12.5 million hectares already under private or government commercial lease prior to 2005 (Wily 2010a: 21).

Sudan also spent most of its post-colonial history embroiled in civil war. The second North-South civil war lasted from 1983 to 2005 and was the longest running civil conflict of its time. It pitted the Southern-led Sudan People's Liberation Movement and Army (SPLM/A) against the Northern government, controlled by the National Congress Party (NCP) in Khartoum. By the time peace was reached in 2005, the war had claimed approximately 2.5 million lives and displaced four million people. Some of the displaced remained in Sudan as internally displaced persons (IDPs) while others sought refuge in countries around the world.

The rebellion in the South was fueled by a sense of discrimination and marginalisation among the population in Southern Sudan. When the British colonial government handed power to a small Arab-Islamic elite at independence, it perpetuated a pattern in which the government used state resources to benefit a privileged few in Khartoum at the expense of local populations in the peripheries (Cockett 2010). Indeed, the two projects mentioned above—the Gezira scheme and the Kenana project—are both based in the North and offer little if any benefit to Southern Sudanese. Other investment projects in Northern Sudan show a similar indifference to the development needs of the peripheries.<sup>2</sup>

The Comprehensive Peace Agreement (CPA) brought an end to the war in 2005. The CPA is based on a 'One Country, Two Systems' model. The South has regional autonomy in the Government of Southern Sudan (GoSS) and the President of Southern Sudan serves as the Vice-president of the Republic of Sudan. The SPLM, the majority party in the GoSS, has representation in the newly created Government of National Unity (GoNU), controlled by the NCP in Khartoum. National elections that were held in April 2010 were meant to provide an opportunity for the democratic transformation of the country. However, they failed to significantly alter power balances in either North or South.

The cornerstone of the CPA is its provision for Southern self-determination. From 9-16 January 2011, Southern Sudanese voted in a referendum to decide whether Southern Sudan would remain united with the North or secede and become an independent nation. Despite numerous delays in preparing for the vote and vitriolic rhetoric from officials on both sides, the referendum in the South proceeded relatively smoothly. As expected, the vote was overwhelmingly in favor of secession. Yet the situation remains very tense. A separate referendum that had been scheduled for the disputed oil-rich border region of Abyei has been postponed indefinitely. As voters took to the polls in the South, clashes broke out between Northern and Southern affiliated groups in Abyei, resulting in dozens of casualties. There continues to be a real danger that violence along the border could lead to a larger conflict. Rebellions by high-level military leaders in the South have also added another layer of complexity to the situation. Meanwhile, a host of post-referendum issues remain outstanding, from border demarcation, to citizenship, to the sharing of oil revenue, to the allocation of national debt, adding pressure to an already tense relationship between North and South.

---

<sup>2</sup> The mechanised farming schemes of the 1970s, for example, were initially designed to include 40 to 60 percent local persons as beneficiaries. However, according to Liz Alden Wily (2010a: 5), this practice fell away within several years, and 'local communities found that thousands of hectares of their traditionally owned lands were taken by the Khartoum Administration and leased out to ...northern businessmen, officials, politicians and foreign companies from the north, and from Egypt, Palestine and other foreign countries...'

## **2.2 The Private Sector's Response**

The private sector is responding to these circumstances in several ways. On the one hand, the unpredictability of the situation is having a 'chilling effect' on private sector investment. If the war were to resume, any immoveable assets in the region, including land, would become extremely vulnerable. Those investors that have acquired land are mostly waiting to see the outcome of the referendum before devoting additional resources towards developing their property. As a result, even though agreements may be in place, there is often no visible evidence of investment activity on the ground. On the other hand, the nascent state of government and the ambiguity of the prevailing law also seem to be encouraging speculative investments. In some cases, powerbrokers have begun acquiring vast tracts of land to secure access to natural resources and position themselves for the rising demand that would presumably accompany a stable and independent South Sudan. These acquisitions typically involve vague promises to invest money into developing the property, though their main purpose seems to be focused on obtaining a colorable claim to the land and waiting to see if land values rise as events unfold in the country.

One such highly publicised project involves a U.S. investment firm called Jarch Management Group. This investment is somewhat atypical when compared to the other investments featured in this paper in that it involves a transaction between two private companies without any official government involvement. According to reports from the Financial Times (Blas and Wallis 2009), Rolling Stone Magazine (Funk 2010), and numerous other media outlets, Jarch has leased approximately 400,000 hectares of land in Unity State by buying a majority interest in a company owned by Gabriel Matip, the son of the deputy commander-in-chief of the SPLA, Paulino Matip. A deal for another 400,000 hectares is reportedly in negotiation. Jarch has ostensibly acquired the land in order to implement a joint agricultural venture, although a report from the Small Arms Survey (McEvoy and LeBrun 2010: 36) speculates that the firm is really interested in exploiting oil resources in the area.

Jarch's interest in Unity State dates back to the years before the CPA. In 2004, the firm entered into contracts with the South Sudan Defense Forces (SSDF), a Khartoum-allied militia led by Paulino Matip, to explore for oil in Unity State. At the time, the SSDF was providing security for the oilfields in the area on behalf of the NCP in Khartoum. The situation changed dramatically after the signing of the CPA. In 2006, Paulino Matip signed the Juba Declaration with the Southern government, disbanding the SSDF and providing for its integration into the SPLA. Paulino Matip was simultaneously promoted to the position of deputy commander-in-chief. In May 2008, Jarch issued a press release indicating that they still expected to exploit natural resources in Unity State, despite the fact that the national government had refused to recognise the firm's contract with the SSDF. The press release proclaimed that Jarch expected 'to lift the light, sweet crude from areas in [Unity] state once South Sudan secedes from Khartoum'. The firm also planned to mine the minerals, including uranium deposits, in the area (JMG 2008). A mere six months later Jarch entered into the agreement with Gabriel Matip for the joint agricultural venture.

Despite the media attention that has been devoted to this investment, there is little evidence that the lease between Heilberg and Matip is anything more than agreement between two companies, neither of which appears to be the legal owner of the land. As discussed further in Section Three below, the policy of the new GoSS is that 'land belongs to the community,' and an individual company should not be able to unilaterally claim

ownership over such a large area of community land. Robert Lado, chairman of the Southern Sudan Land Commission, emphasised this point in an interview with Reuters:

‘Our land is communal in southern Sudan. An individual can only sell it when there is consensus among members of that community... Even if he is leasing this land on behalf of his family, there are other members of the family. Even if on behalf of his clan, there are other members of the clan.’

(Wheeler 2009)

Furthermore, the County Commissioner in Mayom County where the land acquisition is supposed to have taken place has never even heard of Jarch Management. According to the prevailing practice regarding land allotments, the land where the investment is to be located would have to be surveyed and registered with state authorities prior to transfer, and this could not proceed without the knowledge of the county commissioner. Nor is there any sign of investment activity on the ground. Indeed, statements from Phil Heilberg, the CEO of Jarch Management, indicate that he is relying more on the influence of his business partners in the military,<sup>3</sup> rather than on the legality of the acquisition process itself, to guarantee his investment. However, until Jarch secures some sort of official backing of the government, it is difficult to see how the investment could proceed. In an interview with the author, the governor of Unity State expressed skepticism concerning the validity of the deal, although he also said that the government would be open to having Jarch invest in Unity if the company were to follow the appropriate procedures. The difficulty of discerning fact from fiction with regard to this particular investment reflects the lack of transparency associated with large-scale land acquisitions in Southern Sudan more generally.

### **2.3 The GoSS’s Approach to Large-scale Land Acquisitions**

For a time, before the outbreak of war in 1983, Sudan had a reputation internationally as a model of Afro-Arab unity. Supported by loans from the World Bank, the government embarked on ambitious large-scale irrigation projects and encouraged private investments in mechanised agriculture. With its considerable amounts of fertile land, Sudan was promoted as the potential ‘breadbasket’ of the Arab world (Kaikati 1980). Yet, even with these massive investments, the country was still plagued by extreme food shortages and famines in the 1970s, 1980s, and 1990s (Ahmed 2004: 139). From the mid-90s until the early 2000s, the war in the South intensified and agricultural production in the country stagnated. When Sudan started exporting oil in 1999, its economy became increasingly dependent on oil to the detriment of other sectors. According to the World Bank (2009: 10), the average annual growth rate of the agricultural sector between 2000 and 2008 was only 3.6 percent, a fraction of the 10.8 percent growth rate of the previous decade.

Despite the lackluster performance of the agricultural policies of the past, the ‘breadbasket’ rhetoric of the 1970s and 80s has resurfaced in contemporary times. In an October 2010 address, the President of Southern Sudan, Salva Kiir (2010), declared his government’s ambitious plans to increase agricultural production in the country: ‘I urge investors worldwide to come and invest in Southern Sudan. In terms of agriculture, it will be the breadbasket of the region and the world.’ Policy statements from the GoSS Ministry of Agriculture and Forestry suggest that it also sees large-scale land acquisitions as a

---

<sup>3</sup> According to Sudan Tribune (2010), Jarch’s advisory board includes both Paulino Matip, the deputy commander-in-chief of the SPLA, as well as Gabriel Tanginye, a former Khartoum-backed militia leader. Heilberg is also quoted as saying Jarch has ‘close ties’ with Peter Gadet, who at various times fought for and against the SPLA.

prominent driver of private investment in Southern Sudan. The 2006 Food and Agriculture Policy Framework of the GoSS Ministry of Agriculture advises that 'the Government should quickly start... allotting large plots of uninhabited farmland to private investors for commercial agriculture' (GoSS MAF 2006). Paul De Wit (2008: 13), a policy analyst who has studied the link between land and conflict in Southern Sudan, warns that the acquisition of large land areas by private investors may serve to marginalise customary rights:

'[T]he new Ministry of Agriculture and Forestry turned into a de facto player, albeit in the more traditional role of promoting activities such as the allocation of big areas for private investment without too much consultation. This complicates rather than resolves deep-rooted problems. A strongly renewed emphasis on the promotion of private, including foreign investment in the agricultural sector represents a clear shift from a community rights-based to a private sector investment-based approach, with the role of local communities and their legitimate rights over land once again becoming secondary.'

The government's support for large-scale land acquisitions is apparently premised on the idea that there are large areas of unused land in Southern Sudan, and that by bringing these areas into productive use the country can begin to meet the challenge of feeding its own people. From this perspective, there is an argument to be made that large-scale land acquisitions are viable in Southern Sudan, given the region's large size and low population density. However, while plantation farming carries certain advantages in terms of lowered costs, it can also produce undesirable social and environmental externalities that are often borne disproportionately by host communities (World Bank 2010). The loss of land-based livelihoods that results from dispossession of community lands is often not compensated for by the generation of local employment opportunities (Vermeulen and Cotula 2010: 87). Large-scale land investments are also susceptible to elite capture, and risk centralising the benefits of development in much the same way that the Gezira scheme and Kenana project have done for the elite in Khartoum. Critics already accuse the GoSS of devoting too much of its resources to its ministries in Juba while neglecting local administrations in the ten states of Southern Sudan. This has led at least one author to question whether Juba in the South will turn into a 'one-city state' like Khartoum in the North (Cockett 2010). The concentration of land in the private sector would likely serve to exacerbate the uneven and inequitable pattern of development in the region.

## **2.4 Alternatives to the Large-scale Land Acquisition Model**

On the international level, human rights advocates, farmers' movements, and agrarian reform activists have begun promoting alternative approaches to large-scale commercial farming operations such as those proposed by the GoSS. Olivier De Schutter, the United Nations Special Rapporteur on the right to food, counsels that governments and investors should first consider models that take advantage of existing networks of smallholder farmers before transferring large portions of land to investors to undertake commercial farming. According to the Special Rapporteur:

'[I]nvestors should be encouraged to establish and promote farming systems that are labour-intensive rather than focused on achieving the highest productivity per hectare. This requirement will ensure that investment agreements contribute to the fullest extent possible to reinforcing local livelihood options and in particular provide access to a living wage for the local population involved.'

(De Schutter 2009: 8)

The International Institute of the Environment and Development (Vermeulen and Cotula: 2010) is also promoting a number of inclusive business models that seek to build collaborative partnerships between smallholders and the private sector. It advises that in certain circumstances, various forms of contract farming, joint ventures, and models that maximise upstream and downstream business links may be preferable to the more centralised large-scale land acquisitions.

Despite the advantages of alternative business models such as these, investment projects that seek to work through smallholder farmers would face a number of challenges in the Southern Sudanese context. Farming cooperatives are virtually non-existent in much of the region. Where they do exist, they are often underdeveloped and poorly organised. Investors may be wary to invest in such organisations, particularly if the investor has to carry the initial risk of providing agricultural inputs before realising his return at harvest time. The legacy of food aid in Southern Sudan has also given rise to a sense of entitlement among some local producers. By virtue of their dealings with the United Nations and various INGOs, people at the local level sometimes see assistance from outsiders as a right, rather than viewing it as a business relationship in which both sides are obliged to perform on their promises. Furthermore, labor productivity in rural areas is often quite low. Young people prefer to pursue education and employment opportunities in the towns and are sometimes reluctant to commit themselves to the 'drudgery' that is often associated with farm work. The war has left a traumatised population in Southern Sudan, and those individuals who are willing to work on farms in rural areas may be less productive than their counterparts in other contexts. These obstacles, while not insurmountable, significantly increase the risk for investors and may cause them to gravitate towards the more centralised large-scale land acquisition model.

Southern Sudan is too large and diverse a region to propose a one-size-fits all solution to developing the agricultural sector. As noted above, the region's large size and low population density may allow for some degree of large-scale mechanised production. However, by placing too much of an emphasis on commercial farming the GoSS may be missing an opportunity to develop the agricultural sector in a way that will produce the most benefits for local communities.

### **3 The Ambiguity of Post-CPA Legal Framework**

Post-independence national land legislation in Sudan was based on the colonial model, which strongly favored state ownership of land. The Anglo-Egyptian colonial administration had put in place laws creating a rebuttable presumption that unregistered land was government property. The 1905 Land Settlement Ordinance (LSO), and its successor, the 1925 Land Settlement and Registration Ordinance (LSRO), both stipulated that 'waste, forest, and unoccupied land shall be deemed to be the property of the government, until the contrary is proved' (LSO, § 7(ii); LSRO, § 16(c)).

In 1970, the Nimeiri regime took the state ownership of land one step further with the Unregistered Land Act (ULA), declaring that all unregistered land of any kind, occupied or unoccupied, belonged to the state and was deemed to be registered in the name of the state (ULA, § 4(1)). Since virtually none of the lands held by communities in the peripheries of the country had been registered with the central lands registry in Khartoum, the ULA effectively eliminated any legal claims that communities may have had to their

community lands (Kon Bior, Akinyi-Nzioki and Odhiambo, n.d.). As the FoodFirst Information Action Network (FIAN) (2000: 12) characterised it, 'In a single legislative act, the Sudan Government took legal hold of all smallholders' land throughout Sudan.' Although the ULA has been formally repealed, subsequent national legislation has reaffirmed government ownership of unregistered land.<sup>4</sup>

Laws such as these enabled the national government in Sudan to dispossess rural communities from their homelands at will under color of law. The displacements were particularly pronounced in the Nuba Mountains of Southern Kordofan state, along the North-South border, where community land was taken in order to establish large-scale mechanised farms (De Wit 2004: 4). According to Liz Wily (2010a: 5), by 1990 the national government had allocated 5.5 million hectares of customarily owned lands in Southern Kordofan and Southern Blue Nile to non-local investors for mechanised farming. Local elites and investors in turn acquired another 10 million hectares. This resulted in forced evictions, displacement, the loss of livelihoods, and outmigration to Khartoum and Southern Sudan (*id.*). The destabilising effect of these land investments also contributed to the conflict in the South, as the SPLA found new allies among the Nuba of Southern Kordofan and the Ingessana of Southern Blue Nile. African Rights (1995: 48) chronicled the events in a 1995 report: 'Nuba farmers resisted the merchant farmers and their tractors. Many burned the barrels of diesel, others threatened the labourers. Ultimately, many turned to the SPLA.'

For its part, the SPLM/A rejected these Northern laws in areas under its control and all matters were handled according to customary law (Kuol 1997). When the GoSS was established in 2005, there was initially some question about the status of the Northern laws. A July 2006 opinion letter, circulated by the Ministry of Legal Affairs and Constitutional Development (MOLACD) (2006b), indicated that the GoSS would recognise all non-*shari'a* national laws in Southern Sudan. According to the letter:

'The application of the National Laws in the former Government of Sudan held areas and the application of New Sudan laws in the former SPLM/A held areas created a massive confusion, uncertainty, and lack of confidence in the law enforcement agencies and the administrator of justice in Southern Sudan.'

The circular was intended to address this confusion and uncertainty, and build confidence in the law enforcement agencies in Southern Sudan. However, the effect was the opposite, and the letter caused a stir as it seemed to imply that national laws such as the ULA, which rendered all land outside the urban centers as state property, would be given effect in the liberated South.

A month later, in August of 2006, MOLACD (2006a) clarified its position in a second opinion letter, stating that 'pending the enactment of a Southern Sudan land law,' non-*shari'a* based national laws 'with the exception of land laws such as the Unregistered Land Act, 1970' would be given force in Southern Sudan. Although it was still unclear exactly which national laws would be given effect, the August opinion letter did render Southern Sudan's interim land laws more consistent with the CPA and ICSS. But this declaration from MOLACD did not completely resolve the legal ambiguity of the prevailing law. While GoSS had rejected the national laws that put all land in the hands of the state, the

---

<sup>4</sup> The 1984 Civil Transactions Act, which repealed the ULA, reaffirmed government ownership of unregistered land (Bruce 1998).

institutions that administered land in the South still used processes that were based, to varying extents, on pre-CPA Northern laws.

Meanwhile, while this question of applicable law is being sorted out, people are returning to the South, the region is developing, and investors are flocking to access new opportunities in the region. Ambiguity over fundamental issues such as land ownership and jurisdictional boundaries between the GoSS and the state-level governments is causing complications for land administration systems throughout the South. John Luk, the current Minister of Legal Affairs, noted the implications for potential investors:

‘We are being swarmed by a lot of people who want to invest. And they are curious about what they read in the [Comprehensive Peace] agreement, which says that land belongs to the communities. Now, as a government of South Sudan, how do we respond?’

(Deng 2010: 202)

To address this legal uncertainty and provide a legal foundation to the ideas espoused in the CPA and the ICSS, the Southern Sudan Legislative Assembly passed three key pieces of legislation in 2009: the Land Act, the Local Government Act, and the Investment Promotion Act. The Land Act reinforces the government’s recognition of customary land tenure in the CPA and ICSS, stating that ‘Customary land rights including those held in common shall have equal force and effect in law with freehold or leasehold rights...’ (ch. II, § 8(6)). It allows community land to be allocated for investment purposes so long as the investment activity ‘reflect[s] an important interest for the community’ and ‘contribute[s] economically and socially to the development of the local community’ (ch. IX, § 63(1)-(2)). It also requires that state authorities provide approval for land acquisitions above 250 *feddans* (105 hectares), and calls for regulations to be put in place that prescribe a ceiling on land allocations.

Both the Land Act and the Local Government Act require that the government consult with local communities and take into consideration their views on decisions related to community land (Land Act, ch. IX, § 63(3); LGA, ch. IX, § 89). The Land Act gives special protection to pastoralists, stating that ‘no person shall without permission... carry out any activity on the communal grazing land which may prevent or restrict the residents of the traditional communities concerned from exercising their grazing rights’ (ch. X, § 67). It also requires project proponents to conduct environmental and social impact assessments (ESIAs) prior to engaging in any activities that might affect the people or the environment (ch. XI, § 70(3)). Upon completion of the investment, it states that leased land ‘shall revert back to the community’ (ch. VI, § 27(7)).

Though the Land Act allows for long-term leases of up to 99 years (ch. IV, § 14), the Investment Promotion Act explicitly limits foreign investments in agriculture and forestry to renewable terms of 30 and 60 years, respectively (Second Schedule (3)). Assuming that leases constitute investment property and can therefore be considered to be investments in their own right, any agricultural lease longer than 30 years and any forestry lease longer than 60 years would thus seem to be inconsistent with this provision of the Investment Promotion Act. Due to the poor uptake of these laws, however, many government institutions are not aware of this restriction and 99-year leases for foreign investments in agriculture and forestry are relatively common.

Although, in theory, these statutes provide rural communities with certain protections

against unilaterally imposed land acquisitions, they have very poor exposure, even within institutions of government themselves. Attempts to put their provisions into practice are likely to encounter a number of obstacles. Land registries dating back to colonial times exist in a handful of towns in Southern Sudan, but they are hopelessly backlogged and unable to cope with the increased demand for land. Government officials tightly control access to information in the registries, and the information itself sometimes does not correspond with existing property arrangements. Even if state governments are able to expedite the survey and demarcation of landholdings for transfer to foreign and domestic investors, drawing boundaries on such large areas are likely to give rise to any number of border disputes with neighboring communities. In some cases, investors are acquiring land before it has even been registered as community land. Many of the long-term investments are already in danger of becoming full alienations of the land, and the lack of registration prior to transfer only further endangers communities' reversionary interests.

There is also an unresolved question of how the government will define the boundaries of community land. If one accepts that there is no *terra nullius* in Southern Sudan, the definition of community lands based on communities' own understanding of their territorial boundaries would result in communities owning virtually the entire region with the same rights as individuals holding freehold title. If, on the other hand, the government extended formal customary rights only to lands that community members occupy and use on a regular basis, it would result in much smaller communal landholdings. Consequently, even though the Land Act made strides towards a system that recognises community land ownership, there are still a number of issues that need to be resolved before communities can begin relying on many of the law's protections. In the meantime, communities will have to rely on the broad aspirations in support of customary land tenure in the CPA and ICSS to justify a more prominent role in decision-making regarding investments on community land. The next section examines some ways in which communities have begun to do so by virtue of the GoSS's 'land belongs to the community' policy.

#### **4 'Land Belongs to the Community'**

A strong theme of community participation permeates all land issues in Southern Sudan. Its basis lies in the principle, 'land belongs to the community', a statement intended to convey the idea that the various communities of Southern Sudan should be the primary decision-makers on matters relating to land in their communities. Although there is some question about the legal foundation of the concept, there is no doubt that 'land belongs to the community' has played a central role in shaping public opinion concerning relationships between the 'state' and the 'community' on the issue of land. The following subsections delve further into the legal basis of 'land belongs to the community' and highlight some of the ways in which it is coming to resemble a kind of consent-based standard.

##### **4.1 *The constitutional pedigree of 'land belongs to the community'***

The origins of the phrase, 'land belongs to the community', can be traced to the public statements of the late Dr. John Garang, leader of the SPLM/A throughout the 22-year civil war, who used it to rally support for the SPLM/A during the war. As the peace talks that would eventually culminate in the CPA got underway in Naivasha, Kenya, 'land belongs to the community' became a key component of the SPLM/A's negotiating posture. By asserting community ownership of land, the SPLM/A set itself in direct opposition to the state-centric policies of the Northern government, which strongly favored government

ownership of land. In addition to its popular appeal among Southern Sudanese, community land ownership also served as a means of impeding the Northern government's claim to natural resources in the South.

Perhaps as a result of this high-profile support, there is a common misconception among Southern Sudanese that the principle 'land belongs to the community' was enshrined in the CPA and the interim constitutions. Though the texts strongly favor community participation in land issues and the right of communities to share in the wealth created from land investments, they do not explicitly provide for community land ownership. In fact, the wealth sharing protocol of the CPA clearly states that the agreement is not intended to address ownership of land (CPA, ch. III, § 2.1).

Despite the lack of a textual basis for the assertion, many communities continue to demand a central role in decision-making on matters relating to community land. Complaints have arisen from administrators that communities are attempting to claim back land that had previously been designated for urban development, impeding the orderly expansion of several towns in the South. Communities are also placing high demands on government's access to community land for investment. Much of this opposition can be traced to misappropriations of community land in the administrative confusion that accompanied the establishment of the GoSS in 2005. This has fueled mistrust of the GoSS at the local level, and communities in some areas are reluctant to provide land for government-led investment projects.

While it is true that the phrase 'land belongs to the community' does not appear in the CPA or the ICSS, there are a number of factors that lend support to placing the central locus of decision-making on land in the communities. First, according to the CPA and ICSS, land administration is to be a concurrent competence, regulated at the appropriate level of government (CPA, ch. III, § 2.3; ICSS, pt. 12, ch. 2, § 180(1)). In situations of conflict, the principle of 'subsidiarity', which in practice means devolution to the lowest level, is among the factors to be considered in deciding which level of government shall be in charge of a particular issue (CPA, pt. 5, Schedule F). This would seem to suggest that the land administration system should be embedded primarily at the local level, with a more limited role for the GoSS in providing uniformity and general policy guidelines. Second, the focus on the text of the CPA and the ICSS overlooks the fact that community ownership of land can be inferred from the formalisation of customary law. A fundamental principle of many Southern Sudanese customary land tenure systems is that land is owned by the community in its collective capacity and that decisions regarding that land must be done through consensus decision-making processes within the community. Full recognition of customary law would thus presumably empower communities with a central role in decision-making processes.

Some of these arguments in favor of community land ownership were taken up by the Southern Sudan Land Commission (SSLC) in its work to develop Southern Sudan's first regional land policy. In February 2011, after a lengthy consultative process that involved a series of workshops in each of the ten states of Southern Sudan, the SSLC and its international partners formally handed over the draft land policy to the GoSS Ministry of Legal Affairs. The draft land policy seeks to articulate the broad goals for land administration in Southern Sudan moving into the post-referendum period. It emphasises the importance of access to land as a 'social right', a feature of customary land tenure systems that allows community members to access land irrespective of wealth or economic status. The draft policy also specifically identifies the risks associated with 'land

grabbing', which it defines as 'the acquisition of land without regard for the interests of existing land rights holders'. According to the draft policy:

'In some jurisdictions, community land used in common—for forest products, grazing and water supply—has been alienated by central and state level authorities for public use or for sale or lease to private investors without taking account of the ownership interests of communities in the land and its associated natural resources. This has occurred despite the fact that historically and customarily communal land has fallen under the ownership of communities, and its use has been regulated by traditional or other community-level authorities.'

The policy statement makes clear that land ownership is vested with the community and that communities, not government, should be the primary parties that enter into investment agreements with investors (SSLC 2011: 22).

Although the draft policy must still pass through the council of ministers and the legislative assembly before it comes into force, these policy prescriptions demonstrate continued support for community land ownership among some sectors of society. However, one should not overstate the normative influence of the 'land belongs to the community' principle. As the above quote suggests, many rural communities are still sidelined in decision-making concerning the allocation of community land for investment purposes. In fact, Southern Sudanese routinely complain that the government allocates land to companies without consulting the community. Nonetheless, once companies start to become more active and host communities begin to feel the impact of their presence more acutely, demands for local involvement are likely to increase. That is when the normative influence of 'land belongs to the community' would be tested. As a member of an agricultural development committee in Unity State commented: 'Let me give some advice to these companies. Please don't start from the government and come down to the community. You are starting another war. And it will be more serious than the one with the Arabs.'

#### **4.3 Community Consent in Practice**

With the heightened requirements of 'land belongs to the community', large-scale land investments in many areas of the South are not be viable in the face of strong community opposition. Community consent may even be demanded of investments on government-owned land. For example, in 2007, the GoSS entered into a 32-year lease with the Equatoria Teak Company to harvest teak from 18,640 hectares of government-owned forest reserves in Nzara County, Western Equatoria State (WES). The British and Finnish governments are the primary shareholders. The company seems to enjoy a relatively good relationship with its neighboring communities, despite some early disagreements. According to the Paramount Chief in Nzara County (pers. comm. 2010), the GoSS and Equatoria Teak entered into their concession agreement without involving the state government or local communities. The community objected, asserting that since 'land belongs to the community' the investment could not proceed without their being involved, even though the concession agreement had already provided for the establishment of a social fund to finance development projects in affected communities.<sup>5</sup> As a result of the

---

<sup>5</sup> Equatoria Teak has deposited 123,908 GBP in the social fund and is supposed to deposit an additional 6.20 GBP for every cubic meter of sawn board exported. It also made a 185,861 GBP refundable deposit with the government and pays the government 61.95 GBP in royalties for every cubic meter of sawn board it exports. Officials in the WES Ministry of Agriculture and Forestry complain that these figures grossly undervalue the teak.

local opposition, the WES legislative assembly held hearings on the matter, and the company undertook a stakeholder engagement process in which they informed the community about their plans and how the community would benefit from the investment.

The procedural innovation has since been incorporated into WES's land acquisition process, where large-scale land acquisitions now require approval by both the legislative assembly and the council of ministers prior to finalisation. If consistently applied, requirements such as these should help to foster transparency and accountability in investment projects. However, without a coherent national policy that lays out procedural requirements of land investments, there is a danger that regulatory variations could spur a race to the bottom as states compete to attract investment. An Indian company called the M.A.J Foundation has already put its efforts to obtain a forest concession in WES on hold in order to pursue an agreement in Western Bahr-el-Ghazal State where the regulatory requirements are more lax. By setting a floor on regulatory standards, the GoSS could discourage states from proceeding with potentially harmful deregulation in an attempt to attract investment. Of course, any such regulatory standards would have to be flexible enough to allow for the kind of experimentation that led WES to adopt its new procedural requirements in the first place.

In the Southern Sudanese context, some degree of consultation and consent is typically deemed necessary, even for projects being implemented on government-owned land, but the requirements for how those consultations are to be carried out are poorly defined. For instance, consultations rarely take place prior to the negotiation of the investment agreement. Community consultation is often seen as a formality to be undertaken only after the government and the investor have already come to an understanding on the important elements of the investment. Of the ten agricultural and forestry investments surveyed in this study, only two conducted community consultations prior to finalising the investment agreement. Some communities demand that they be consulted when the company undertakes activities that are particularly visible to the community, but the parties rarely provide for more systematic community participation in investment decision-making.

Whether these shortcomings in consultations are attributable to lesser normative standards or whether they instead reflect the fact that communities are often forced to settle for whatever level of participation they are able to secure for themselves is debatable. With a government currently unable to provide services in much of the region, the benefits promised by the investor are some of the few sources of development available to rural communities, and they tend to be reluctant to turn investors away, even if the benefits of the investment are sharply skewed in favor of the investor. Yet, as illustrated by the Equatoria Teak example, if the government and the investor ignore affected communities or otherwise fail to obtain their consent, communities in many parts of the region have proven remarkably effective at impeding the investment plans and forcing the parties to acknowledge their presence.

## **5 Preliminary Observations on Large-scale Land Investments in Southern Sudan**

This section provides an overview of large-scale land investments planned or underway in two states in Southern Sudan: Western Equatoria State (WES) and Central Equatoria State (CES). WES and CES comprise two of the three 'Green Belt' states of Southern Sudan.<sup>6</sup> Due to the fertile soils, high levels of rainfall, and abundant forests across these

---

<sup>6</sup> Eastern Equatoria State is the third 'Green Belt' state.

states, they are likely to become central locations of agricultural and forestry investment as the region develops. The preliminary data in the table below was compiled from government institutions at the central GoSS and state-levels, community leaders, and when possible, outreach to the companies themselves<sup>7</sup>:

	Company Name	Nationality	Business Sector	Size (ha)	Location (county)	Land Owner	Lease Period (yrs)	Stage of Implementation
CES	Canadian Economic Development Assistance for Southern Sudan (CEDASS)	Canadian	Agriculture (sorghum)	12,180 (trial planting underway on 105 ha)	Juba	Gov't	No acquisition involved	Finalised
	Madhvani Group	Ugandan	Agriculture (sugar)	To be determined (TBD)	Terekeka / Juba	Gov't	TBD	MOU
	Nile Trading and Development	American	Agriculture, forestry and biofuels	600,000 (with right to extend to 1,000,000)	Lainya	Comm.	49	Finalised
	Central Equatoria Teak Company	British / Finnish	Forestry (teak)	1,845 (plus 50,000 ha of natural forest)	Lainya	Gov't / Comm.	32	Finalised
	Green Resources	Norwegian	Forestry (timber, carbon credit, conservation)	179,000	Terekeka	Comm.	99	Awaiting final authorisation
WES	Eyat Oilfield Services	Northern Sudanese	Agriculture (fruit)	161,874	Ezo / Tambura	Comm.	99	Memorandum of understanding (MOU)
	Joint Aid Management (JAM) and African Commercial Development (ACD)	South African / American	Agriculture (fruit / vegetables)	24,281	Yambio	Comm.	32	MOU
	Blue Lakes Limited	Kenyan	Forestry (teak)	562	Yambio	Gov't	30	Finalised
	Comde Teak	Indian	Forestry (teak)	8,015	Nzara / Ezo	Gov't	32	Awaiting final authorisation
	Equatoria Teak Company	British / Finnish	Forestry (teak)	18,640	Nzara	Gov't	32	Finalised

Due to the legal ambiguity of the transitional context, there is currently no uniform procedure for managing large-scale land acquisitions. Applications for land are managed through *ad hoc* procedures at various levels of government, contributing to a lack of transparency and accountability with regard to many deals. As a result, this data cannot claim to comprise a comprehensive listing of all land investments in the two states. Nonetheless, it does make possible some preliminary observations. First, these investments implicate a surprisingly large area of land. Even excluding the Madhvani deal for which the government has not yet determined the size of the land parcel, the ten land deals featured here cover nearly 1.5 million hectares of land in these two states alone. The amount of investor interest is somewhat alarming given the uncertainty of the current transitional context.

Second, the investments in the forestry sector are significantly more developed than those in the agriculture sector. This may be attributable, at least in part, to the illicit timber trade by the NCP and the SPLM/A during the civil war. As a parliamentarian with the Southern Sudan Legislative Assembly, explained in an interview with researcher Elizabeth Ashamu (2010: 18):

<sup>7</sup> For a comprehensive listing of investments in Southern Sudan, see Deng (2011).

‘Elsewhere, there were blood diamonds. For the North, there was blood petroleum—GoS [Government of Sudan] was drilling in the South to purchase weapons from Korea, China, Iraq and the Soviet Union. For us [in the SPLM/A], there was blood teak.’

As a result of these experiences, the GoSS was already familiar with many aspects of timber extraction and could therefore begin harvesting its forest reserves immediately upon assuming power. Agricultural investments, by contrast, often require several years of financial inputs before they begin producing commercially viable yields.

Third, there is a serious deficiency in the extent to which communities are being involved in decision-making on investments. Several of the investments are located in highly populated areas where thousands or even tens of thousands of people rely on the land for their basic livelihoods. However, in only two of the ten investments were there community consultations prior to the negotiation of the investment agreement. In the other investments, the consultations were held (or are planned to be undertaken) only after the fact, as a means of notifying the community of what to expect without giving them an opportunity to influence the design of the investment in any substantial way. Similarly, none of the companies carried out environmental and social impact assessments prior to finalising the investment agreement. Three companies undertook impact assessments after they had begun operations and others reportedly had plans to do so in the near future, but none of the investments evidence the extensive *ex ante* community engagement and shared decision-making associated with a robust approach to community engagement.

Finally, the leases of government-owned land are structured with much shorter lease periods than those involving community land. This may reflect the stronger negotiating power of government institutions brokering deals for government land, contrasted with communities, which may have less negotiating power in brokering deals on community land. Although government institutions are typically also involved in the negotiation of deals on community land, they may have less of an incentive to protect communities’ reversionary interests since the government’s involvement with the investment would theoretically terminate when the land reverts back to the community. The following subsections explore two of these investment projects in more detail, providing relevant background information to better situate the investment within its local context.

### **5.1 The Madhvani Group**

A Ugandan conglomerate called the Madhvani Group has begun preliminary negotiations with the GoSS over a proposed sugar plantation and processing facility in Mangala *Payam*, located along the Nile about 70km north of Juba. (A *payam* is the Southern Sudanese equivalent of an administrative district.) The Madhvani Group, owned by Ugandans of Indian descent, is among the largest companies in Uganda, at one time accounting for 10 percent of the country’s gross domestic product (GDP) (Madhvani 2010). It operates across a wide variety sectors, from agriculture and agro-processing to media and information technology.

The company has signed a memorandum of understanding (MOU) with the GoSS Ministry of Agriculture and Forestry regarding the establishment of the plantation and is pursuing an MOU with the Ministry of Commerce and Industry for the processing facility. These MOUs are the first steps in a process that the parties hope will culminate in a transfer of

leasehold rights to the company. According to the Undersecretary in the Ministry of Agriculture, the parties have not yet discussed lease terms in detail, and therefore information regarding the area of land that is implicated, the length of the lease period, and what will be given in exchange for the land is not yet available.

This case study highlights a number of problematic issues common to large-scale land acquisitions in Southern Sudan: The first concerns the questionable basis of the government's claim to land in certain areas. According to the GoSS, land that had been owned by the Northern government prior to the CPA passed to the GoSS when it assumed power in 2005. However, there are arguments to be made that the Khartoum government never lawfully owned the land in the first place. There is a growing body of jurisprudence maintaining that customary claims cannot be extinguished by statutory decree alone (Wily 2010b: 14). The argument is that customary rights can only be extinguished through procedures that comply with basic standards of due process, such as registration of the community's land under freehold title or expropriation for a public purpose and with the payment of fair compensation. When the Khartoum government passed the Unregistered Land Act in 1970, decreeing that all unregistered land was government property, it did not compensate communities for the taking. Therefore, the argument goes, since the original taking was not lawful, the GoSS's claims to these lands are similarly invalid. When one adds to this the fact that in many cases communities proceeded to reoccupy government lands during the period of the civil war, the government's claims to the land becomes all the more tenuous.

In addition to this question of ownership, the case study also sheds light on the complexity of conflict dynamics in Southern Sudan and how they can become inextricably intertwined with land claims. When investments are proposed in these types of environments, they risk feeding into the conflict by contributing to power imbalances among the various groups. Lastly, the case study illustrates how affected groups at the local level can be marginalised in decision-making about investments. Despite the normative influence of the 'land belongs to the community principle', such allocations of land without prior consultation are all too common in the Southern Sudanese context.

The proposed investment in Mangala is part of a broader GoSS initiative to revive old agro-industrial complexes across the South through public-private partnerships with companies such as the Madhvani Group. The factory in Mangala dates back to the mid-1970s, when the Khartoum government began construction on an agro-industrial complex in the area. For a while, before the outbreak of war in 1983, the factory was producing a variety of products, including pasteurised dairy products, canned fish, and sugar. The sugarcane was sourced from a nearby plantation. When the war reached Mangala in 1985, the factory and plantation were abandoned. The local community has since established residences in the area where the plantation once stood. Despite the community's occupation of the land throughout the civil war and continuing into the current post-conflict period, the government asserts that ownership of the land passed to the GoSS when it took over administration of the South from the Khartoum government in 2005. The community, on the other hand, maintains that the land belongs to them.

While the government and the company seem committed to following through with the land acquisition, the investment is currently on hold due to a number of overlapping crises in Mangala. The first concerns a border dispute between the Juba and Terekeka County authorities over which county owns the land in question. There are two administrations currently operating in the area, often referred to as Mangala-Juba and Mangala-Terekeka.

According to Anthony Leju, a field officer with UN OCHA, when the administration of Mangala-Juba tried to erect a signpost for a police station that identified the area as part of Juba County, it provoked a number of physical confrontations between the Bari and Mundari communities residing in the area. As a result, a number of Bari households were displaced to villages further south. These events transpired during the election season of 2010, and since then the dispute has become heavily politicised. The CES Governor reportedly petitioned the GoSS to step in to resolve the matter, however the GoSS declined to get involved, stating that it was a state issue and should be handled by state authorities.

This dispute has caused a great deal of political tension within CES and reflects deteriorating relations between the Bari and the Mundari groups, whose traditional homelands are found in Juba and Terekeka respectively. In addition to the border dispute, Mangala has also been at the center of a number of localised conflicts in recent years. These crises arose from movements of communities of IDPs through the area. When displaced Dinka Bor communities moved through Mundariland with their cattle, conflicts began to flare up, instigated by acts of cattle raiding and perpetuated by various underlying historical grievances. These conflicts led to a number of violent confrontations between the local Mundari community and the SPLA. According to the UN OCHA (2010), 4,179 people were displaced by these conflicts in Mangala and Gemeiza, the *payam* lying to the north of Mangala. Many residents have sought refuge on islands in the Nile and fear to return home due to the prevailing insecurity. If the investment moves ahead as planned and the local community is permanently displaced from the land being leased by the company, it could further undermine livelihoods that have already been severely affected by conflict-related displacement.

Judging by the way that the project has progressed thus far, it does not seem likely that the local community will play a meaningful role in the negotiation of the investment agreement. The paramount chief in the area has had only minimal interactions with representatives of the Madhvani Group, who have visited the site twice since 2007. According to Sultan Abut Ladu, the Mundari paramount chief, several 'Indians' came to Mangala in 2007 asking to be shown where the sugar plantation and processing facility used to stand. The chief did not know that they represented the Madhvani Group. The 'Indians' took several soil samples and told the chief that they were interested in leasing a large piece of land in the area. When the chief asked what would happen to the people living on the land, he was reportedly told that they would have to be moved. According to the chief, no representatives of the Madhvani Group or government officials have returned to the area to discuss their investment plans since this initial interaction.

The lack of community involvement may be linked to the fact that the government asserts ownership of the land in question. In negotiating deals for government land, government officials may feel entitled to forgo community consultations until the investment reaches a stage where the local community's cooperation is absolutely necessary. Indeed, according to an official at the GoSS Ministry of Agriculture, the Ministry is not likely to begin considering issues of consultation and compensation until it becomes apparent that people will need to be relocated from the land. While this approach may save the GoSS and Madhvani from some of the *ex ante* transaction costs that would arise from a three-way negotiation involving the local community, it also sets the stage for more serious obstacles further down the line. The community is already disillusioned with the government as a result of the clashes with the SPLA, and by bringing the community into the picture only as a formality at the end of the negotiations, the government risks further

entrenching their resentment. The tensions between the Bari and Mundari groups in the area also add to the complexity of the situation, and the GoSS and the Madhvani Group would have to proceed carefully in defining affected groups for the purposes of community engagement to avoid contributing to the conflict.

Despite having only minimal interactions with representatives of the Madhvani Group, the paramount chief claims that his community would welcome the investment project. However, he also notes that they would reject outright certain arrangements, such as 99-year leases or the transfer of title to the company with nothing given to the community in return. If the government and the company had allowed for more robust community involvement, it could have helped to ensure that the investment is designed in a way that addresses these concerns. Indeed, good relations between the investor and the host community will be indispensable if the investment is to be successful. Aside from the insecurity in the area, land use patterns in Mangala are also likely to conflict with an agricultural project on this scale. The community in Mangala traditionally follows an agro-pastoralist lifestyle, and residents require access to large areas of land to graze their cattle. This land use would be in direct competition with a sugar plantation for land and water resources. Sustained engagement with the community could help to address challenges such as these and find solutions that reduce the social and economic risk associated with the investment.

## **5.2 Green Resources**

A Norwegian company called Green Resources SA is pursuing a 99-year lease for 179,000 hectares of land in CES in order to establish a tree plantation, forest conservation project, and carbon credit scheme. The company was created in 1995 and owns plantations in Mozambique, Tanzania, and Uganda. The Southern Sudan project would cover most of the area in Tindilo *Payam*, Terekeka County. It is being implemented by a wholly owned subsidiary of Green Resources called TreeFarms Sudan. Green Resources first came to Southern Sudan in 2007, and as of September 2010, the company had spent more than two years pursuing its lease. At this writing, the investment agreement was with the CES Governor, awaiting his final approval of the project. Green Resource has meanwhile begun trial planting of 250 hectares of teak, mahogany and eucalyptus in Tindilo.

Despite the strides that have been made towards putting in place a system that recognises customary land rights, this case study highlights the difficulty of operationalising community land ownership in the Sudanese context. Unlike the Madhvani Group's investment in Mangala, the Green Resources project is without question located on community-owned land. Nonetheless, the text of the investment agreement is somewhat ambiguous on the question of ownership, stating in the preamble that the CES government owns the land in question and stating elsewhere that the company will pay Tindilo community for the use of the land. This case study also shows how poor information flow between community representatives and the larger community can lead to misunderstandings and unfulfilled expectations. With the national elections of 2010, the government has also encountered difficulties in keeping incoming office holders informed about investment activity in their areas. Finally, the Green Resources investment demonstrates how community engagement alone may not be enough to safeguard the interests of the local community, particularly when operating in a legally ambiguous and highly fractured context such as Southern Sudan.

On the Sudanese side, there were two main facilitators of the investment: the CES Ministry of Agriculture and Forestry and a local development committee. The CES Ministry was the lead facilitator for the government. Green Resources has a close relationship with both the GOSS and CES Ministries of Agriculture and Forestry. Officials from both Ministries are on the TreeFarms' board of directors, and the CES Ministry seconded one of its foresters to work as a plantation manager with the company. The forester is originally from Tindilo Community and was thus able to assist the company in building its relationship with the community. For its part, the development committee was responsible for conveying information back and forth between the company and the community. It was chaired by a parliamentarian from the CES legislative assembly who came from Tindilo community, along with a number of other community members based in Juba. Judging by how the negotiations proceeded, the development committee seemed to be empowered with a considerable amount of decision-making authority by the local community. As Sultan Romano Akob Fulo, the Tindilo paramount chief, put it, 'The people here [in Tindilo] are relying on their sons in Juba to follow up on things with the company.'

According to the TreeFarms plantation manager, the company undertook an extensive consultation process that lasted more than a year. It included a series of three public consultations that took place in Tindilo Community between 2007 and 2009. These consultations were supplemented by using the traditional leadership structure of chiefs, sub-chiefs, elders, and clan headmen to pass information to and from the local level. The community was initially hesitant to consent to the investment project due to a suspicion of government proposed investment projects. To assuage these fears, company representatives assured the community that Green Resources was a private company and the CES government would merely be playing a supporting role. Each of the five chieftainships, or *bomas*, in Tindilo then proceeded to identify the unused portions of land in their *boma* to lease to the company. As a result, the company asserts, no community members will have to be displaced to make way for the investment project.

Despite the community involvement, there are elements of the investment agreement that indicate an imbalance of benefits in favor of Green Resources. In exchange for the 99-year lease, Green Resources has agreed to pay an annual rental payment of 7,744 GBP (CHRGJ 2010: 56). In addition to agriculture and forestry related support, Green Resources will also undertake a number of development projects in the community, including building a primary school, health facilities, and a village office, and drilling a number of boreholes. However, it is not clear whether the 7,744 GBP would be used to finance these development projects or whether they are to be an additional benefit provided by the company. The investment agreement does not clarify the issue, though members of the local community were of the understanding that they would manage the development projects using the 7,744 GBP rental payments. According to the terms of the investment agreement, all able men and women in the community are also obliged to volunteer two days of unpaid work per year rehabilitating the road to Juba for the first five years of the project. The obligations above are to be fulfilled in the first 25 years of the investment, at which point responsibility for infrastructure development shifts to the government.

Green Resources also plans to establish a community-based forest management plan, intended to protect existing forest stocks and rehabilitate degraded forest areas. The company says that it will plant indigenous fruit trees and high value hardwoods in degraded forest areas to enhance the nutritional safety net that the forest provides to the local community during poor harvests. It also plans to support community members in

establishing alternative livelihood activities to replace incomes derived from charcoal production, with an initial focus on shea butter and gum Arabic enterprises. However, the investment agreement does not contain any provisions detailing such an arrangement. With the influx of returnees, population growth, and the increased demand being made on forest resources, there is no guarantee that the area set aside for the community will be sufficient to satisfy the demands of the local population.

Despite the apparent imbalance of benefits, the local community appears to be supportive of the investment. According to the paramount chief, not a single person in his community opposes the investment project. The rationale underlying the community's acceptance of these terms becomes clear when one appreciates the fragility of their situation. Tindilo Community is located in a remote rural area far from any urban center and is plagued by an alternating abundance and scarcity of water. During the rainy season, the road to Tindilo turns to mud and is virtually impassable by car. For the past few years, Green Resources has donated the use of its tractor to ferry supplies in and out of the community. During the dry season, water becomes extremely scarce and many parts of the community are forced to rely on water deliveries from the county capital in Terekeka. Due to abnormally low rainfall in recent years, the community has had to grapple with high levels of hunger. The precariousness of their situation was emphasised by the Country Manager of TreeFarms Sudan in an interview with researcher Elizabeth Ashamu (Center for Human Rights and Global Justice (CHRGJ) 2010: 57): 'Investors are not lining up to come to Tindilo. They [the Tindilo Community] are forgotten by everyone...'

The paramount chief's main complaint was that Green Resources had not yet delivered on any of its promises. He was apparently of the understanding that since Green Resources had built a compound and begun trial planting in Tindilo, it would also begin delivering on its promises of development. This misunderstanding reflects the poor information flow between the development committee and the local community. Most of the committee members live in Juba and only visit the community on occasion. The community does not get cell phone reception, and can only receive incoming calls from satellite phones. As a result, the development committee has not been able to keep community members properly informed about the details of the investment. Indeed, the local community did not appear to understand basic facts about how carbon credit schemes operate, despite its being a fundamental aspect of the investment agreement.

In addition to the poor information flow between the development committee and the community, there were also information gaps on the government side. After the April 2010 elections, the Terekeka County Commissioner and the representatives of Tindilo *Payam* in the CES parliament were both voted out of office. However, they failed to inform their successors about the lease agreement with Green Resources. Consequently, for their first six months or so in office these new politicians knew next to nothing about the details of the investment agreement with Green Resources.

It remains to be seen how the Green Resources' investment project will ultimately impact the local community in Tindilo. The paramount chief indicates that the company is already having a positive impact by providing employment opportunities and various other forms of informal assistance to the local population. However, the vague commitments outlined in the investment agreement place the risk squarely on the shoulders of the host community, increasing the likelihood of adverse impacts further down the line. Whether the inequities of this investment can be traced to positions taken by any of the parties, or whether it is instead a reflection of the difficulty of operating in a fractured and legally ambiguous

environment, the result is the same: unfilled expectations, unjustified risks to livelihoods, and seemingly unsustainable investment.

## 6 Conclusion

The preliminary data outlined above suggests that Southern Sudan is on the verge of a large increase in land acquisitions. Whether this happens or not will depend, in large part, on the political fallout from the 2011 referendum. If the country once again devolves into a state of war, all indications are that it will be a humanitarian disaster. Fueled by the country's oil wealth, the two sides have built considerable military forces and an outbreak of war at this point would mean massive loss of life and destruction from which it would take generations to rebuild. Although some investors, especially in the extractive industry sector, might weather the difficult conditions to capitalise on the natural resources of Southern Sudan, an outbreak of full-scale war in the country would effectively terminate most large-scale agricultural investments. If, on the other hand, peace is consolidated and the country moves forward with its plans for developing the region, many of the land acquisitions currently being processed are likely to be quickly approved. A stable and independent South would presumably attract considerable investor interest, given the region's large and sparsely populated land areas and its wealth of natural resources.

However, as currently conceived, large-scale land acquisitions in Southern Sudan risk further undermining livelihoods that have already been sorely affected by conflict. Meaningful company-community engagement, in which host communities are permitted to influence the design of investments and participate in an on-going manner in processes of shared decision-making, is rare or nonexistent in Southern Sudan. Though the lack of community involvement may contribute to investment agreements that strongly favor of the investor, communities rarely withhold consent since the benefits promised by the investor are some of the few sources of development available to rural populations. In those few circumstances in which consent is withheld, it is usually done as a negotiating tactic designed to get the community some small benefits, such as a school, a health center, or a few boreholes, rather than a demand for more sustained participation in the investment. There are also worrying signs that certain deals may require large relocations of the local population. Even if compensated for their loss, such relocations would be a major setback for individuals and families seeking to rebuild their lives after the long conflict. Government officials and investors increase the risk of negative impacts when they exclude communities from investment planning.

The ambiguity of the prevailing law in Southern Sudan only adds to the uncertainty. The Land Act, passed in 2009, is a step in the right direction, but many of its protections are still out of reach for affected communities. When fully implemented, the recognition of customary land tenure and the collective registration of community lands would offer communities a powerful bargaining chip in their negotiations with investors and the government. The provisions regarding impact assessments and community consultations could also help to formalise these requirements and contribute to their being done in a more systematic and coherent manner. However, the preliminary data suggests that community consultations and impact assessments are being carried out in an *ad hoc* manner, or in some cases are not being implemented at all, and are thus in violation of the requirements of the Land Act. This not only affects the allocation of benefits among the parties to the investment, but also undermines the establishment of a broader regulatory framework for land investments more generally.

In the absence of enforceable law, communities have turned to the 'land belongs to the community' concept to secure for themselves a more central position in decisions regarding the use of community land. Despite being excluded from decision-making while under the administration of the national government, in post-CPA Southern Sudan communities are beginning to expect and demand that they be included in investment planning. Policy-makers could strengthen homegrown initiatives such as these by exploring connections with established conceptual frameworks, such as the free, prior, and informed consent (FPIC) standard applied to tribal and indigenous peoples' rights under international law. Although community demands for increased participation have not yet reached the level of a robust FPIC process, if communities consolidate their position, FPIC and other related standards can offer a means of operationalising community consent in large-scale land investments.

To avoid potentially catastrophic outcomes, the GoSS should consider placing limits on large-scale land acquisitions until government institutions have had an opportunity to better establish themselves. With the independence of the South now imminent, the GoSS has its hands full trying to maintain the peace and resolve a long list of post-referendum issues. It does not have the time or resources to devote to the timely development of a responsible investment framework. Foreign and domestic investors have already secured millions of hectares of land with very little oversight. Several options are open to the government. It could pass the regulations already called for in the Land Act to prescribe the precise land ceilings for the various levels of government. Alternatively, it could announce a temporary moratorium on large-scale land acquisitions altogether, in order to allow the institutions of government time to better situate themselves.

The key to any such action would be mobilising the necessary political will. This would be difficult given the public's current orientation. Judging by official statements from government officials, one gets the impression that many of them are advocating for a 'more is better' approach to foreign investment. In the agriculture sector, this translates into an emphasis on large-scale mechanised production and the large-scale land acquisitions it often entails. Communities too are reluctant to oppose investment projects in their areas. Due to extreme poverty and hunger, community leaders are sometimes even willing to give away more land than they have in their communities, based only on vague and illusory promises from companies and government institutions. It is still too early to talk of impacts, and predictions of how large-scale land investments will affect host populations in Southern Sudan remain somewhat speculative. Generally speaking, communities are not yet feeling either the benefit or the harm of land investments in any tangible way, and the issue of the 'global land grab' has not yet become a common topic of conversation in the region. If the land deals that are currently under consideration move ahead as planned, public opposition to 'land grabs' could arise very quickly. This would have unpredictable effects on conflict dynamics in the region.

It remains to be seen whether communities or the government will win in this battle for land. On the one hand, the vast majority of Southern Sudanese seem to accept the legitimacy of the concept, 'land belongs to the community', albeit often with caveats about unreasonably withheld consent. If support for community land ownership continues to influence the development of the region, perhaps in time this influence that communities wield will translate into increased benefits for rural populations. However, even if communities are given a central role in managing land investments and even if FPIC is established as the legal standard and proposals from investors are carefully vetted for

environmental and social impacts and means are provided for local benefits, there is still a real risk that large-scale land acquisitions will continue to be structured as one-sided deals in which a few 'transnational elites' benefit at the expense of local populations. The GoSS should take advantage of this brief opportunity that they now have in the wake of the region's referendum on self-determination, to consider how they will avoid such an outcome and harness the influx of foreign investment to enhance, rather than undermine, livelihoods in Southern Sudan.

## References

- African Rights (1995) *Facing Genocide: The Nuba of Sudan*, July, available at <http://www.justiceafrica.org/publishing/online-books/facing-genocide-the-nuba-of-sudan/> (accessed 4 April 2011).
- Ahmed, A. (2004) 'Challenges of agricultural technology transfer and productivity increase in the Sudan,' *International Journal of Technology, Policy and Management* 4.2.
- Ashamu, E. (2010) *Post-conflict Forest Governance in Southern Sudan*, August, unpublished work, New York University School of Law.
- Blas, J. and Wallis, W. (2009) 'U.S. investor buys Sudanese warlord's land,' *Financial Times*, 9 January, available at <http://www.ft.com/cms/s/0/a4cbe81e-de84-11dd-9464-000077b07658.html> (accessed 4 April 2011).
- Borras, S. and Franco, J. (2010) *From Threat to Opportunity? Problems with the Idea of a "Code of Conduct" for Land-Grabbing*, *Yale Human Rights and Development Law Journal*, Vol. 13, pp. 507-23.
- Bruce, J. W., (1998) *Country Profiles of Land Tenure: Africa, 1996*, Research Paper No. 130, Land Tenure Center, University of Wisconsin-Madison, December, available at <http://minds.wisconsin.edu/handle/1793/21869> (accessed 4 April 2011).
- Center for Human Rights and Global Justice (CHRGJ) (2010) *Foreign Land Deals and Human Rights: Case Studies on Agricultural and Biofuel Investment*, New York: University School of Law.
- Cockett, R. (2010) *Sudan: Darfur and the Failure of an African State*, New Haven and London: Yale University Press.
- Commission on Human Rights (2004), Sub-Commission on the Promotion and Protection of Human Rights, Working Group on Indigenous Populations, Twenty-second session, 19 - 13 July.
- Cotula, L., Vermeulen, S., Leonard, R. and Keeley, J. (2009) *Land Grab or Development Opportunity? Agricultural Investment and International Land Deals in Africa*, Food and Agriculture Organization of the United Nations (FAO), International Fund for Agricultural Development (IFAD), and the International Institute for Environment and Development (IIED), available at [http://www.ifad.org/pub/land/land\\_grab.pdf](http://www.ifad.org/pub/land/land_grab.pdf) (accessed 4 April 2011).
- De Schutter, O. (2009) *Addendum to Report of the Special Rapporteur on the right to food, Olivier De Schutter: Large-scale Land Acquisitions and Leases: A Set of Minimum Principles and Measures to Address the Human Rights Challenge*, delivered to the 13th Session of the Human Rights Council, U.N. Doc. A/HRC/13/33/add.2, 28 December, available at [http://www.srfood.org/images/stories/pdf/officialreports/20100305\\_a-hrc-13-33-add2\\_land-principles\\_en.pdf](http://www.srfood.org/images/stories/pdf/officialreports/20100305_a-hrc-13-33-add2_land-principles_en.pdf) (accessed 4 April 2011).
- De Wit, P. (2008) *Land Policy Development in Post-Conflict Sudan: Dealing with Delicate Balances in a Fluid Environment*, Communication to the World Bank Conference on New Challenges for Land Policy and Administration Session 'Land administration in post

disaster and conflict environments,' Washington, 14-15 February.

De Wit, P. (2004) *Land and Property Stud in Sudan, Interim Report: Scoping of Issues and Questions to be addressed*, Norwegian Refugee Council (NRC), UNHCR and FAO, August.

Deng, D. K. (2011) *The New Frontier: Large-scale land-based investment in Southern Sudan*, a baseline survey completed for Norwegian People's Aid (NPA), March, available at [http://www.npaid.org/en/News\\_Archive/?module=Articles;action=Article.publicShow;ID=17086](http://www.npaid.org/en/News_Archive/?module=Articles;action=Article.publicShow;ID=17086) (accessed 4 April 2011).

Deng, D. K. (2009) *Land Administration in Juba: The complexity of land in a growing post-conflict capital city*, January (unpublished).

Deng, F. M. (2010) *Customary Law in the Modern World: The Crossfire of Sudan's War of Identities*, Routledge.

Foodfirst Information Action Network (FIAN) (2000) *FIAN Parallel Report: The Right to Adequate Food in Sudan*, submitted as a parallel report to the 23rd session of the Committee on Economic, Social and Cultural Rights, available at <http://www.fian.org/resources/documents/others/the-right-to-adequate-food-in-sudan/pdf> (accessed 4 April 2011).

Funk, M. (2010) 'Capitalists of Chaos,' *Rolling Stone*, 27 May.

Government of the Republic of Sudan (GoS) & the Sudan People's Liberation Movement and Army (SPLM/A) (2005) Comprehensive Peace Agreement.

Government of Southern Sudan (GoSS) (2005) Interim Constitution of Southern Sudan.

Government of Southern Sudan (GoSS) (2009) Land Act.

Government of Southern Sudan Ministry of Agriculture and Forestry (GoSS MAF) (2006) *Food and Agriculture Policy Framework*.

Graham, A. Aubry, S., Rolf Künnemann, R. and Sofia Monsalve Suárez, S.M. (2010) *Land Grab Study: CSO Monitoring 2009-2010 "Advancing African Agriculture" (AAA): The Impact of Europe's Policies and Practices on African Agriculture and Food Security*, FIAN.

Internal Displacement Monitoring Centre (IDMC) (2010) *Sudan: Durable solutions elusive as southern IDPs return and Darfur remains tense*, 23 December, available at [http://www.internal-displacement.org/8025708F004BE3B1/\(httpInfoFiles\)/C9B873923D6EBB13C1257802004C5B5C/\\$file/Sudan\\_Overview\\_Dec2010.pdf](http://www.internal-displacement.org/8025708F004BE3B1/(httpInfoFiles)/C9B873923D6EBB13C1257802004C5B5C/$file/Sudan_Overview_Dec2010.pdf) (accessed 4 April 2011).

Jarch Management Group (JMG) (2008) *Jarch Oil Group Congratulates New Governor of Unity State*, 30 May, available at [http://www.sudantribune.com/spip.php?page=imprimable&id\\_article=27345](http://www.sudantribune.com/spip.php?page=imprimable&id_article=27345) (accessed 4 April 2011).

Kaikati, J. G. (1980) 'The Economy of Sudan: A Potential Breadbasket of the Arab World?' *International Journal of Middle East Studies* 11:1, February, pp. 99-123.

Kon Bior, W.; Akinyi-Nzioki, E. and Odhiambo, M. (n.d.) *Land Tenure Study in Southern Sudan Phase 1: Report of a preliminary survey of land tenure systems in parts of Southern Sudan*, a report for the Secretariat for Agriculture and Animal Resources (SAAR) with support from Norwegian Peoples' Aid (NPA) (unpublished).

Kuol, M. A. (1997) *Administration of Justice in the SPLA/M Liberated Areas: Court Cases in War-Torn Southern Sudan*, Refugee Studies Program, University of Oxford, February.

McEvoy, C. and LeBrun, E. (2010) *Uncertain Future: Armed Violence in Southern Sudan*, Small Arms Survey, April, available at <http://www.smallarmssurveysudan.org/pdfs/HSBA-SWP-20-Armed-Violence-Southern-Sudan.pdf> (accessed 4 April 2011).

Ministry of Legal Affairs and Constitutional Development (MOLACD) (2006a) *Ministerial Circular No. 4, 2006: Amendment No. 1/2006 of Ministerial Circular No. 2*, 28 August.

— (2006b), *Ministerial Circular No. 2*, 15 July.

Rolandsen, O. (2010) *Why is violence escalating in Southern Sudan?*, Norwegian Peacebuilding Centre, Noref Policy Brief, No. 2, February.

Southern Sudan Land Commission (SSLC) (2011) *Draft Land Policy*, February.

United Nations Declaration on the Rights of Indigenous Peoples (2007), G.A. Res. 61/295, U.N. Doc. A/Res/61/295, 2 October.

United Nations Office for the Coordination of Humanitarian Affairs (UN OCHA) (2010) *Inter-agency Rapid Assessment Report for Conflict Affected Population in Mangala Payam, Terekeka County, Central Equatoria State*, dates of assessment: 28<sup>th</sup> July and follow up from 12<sup>th</sup> – 14<sup>th</sup> August 2010 (unpublished).

— (2009) *Map Showing Ethnic Groups in Sudan*, available at [http://www.unsudanig.org/library/mapcatalogue/south/data/population/SS\\_0132a\\_Ethnic\\_Groups\\_A1\\_20091224\\_300\\_1.pdf](http://www.unsudanig.org/library/mapcatalogue/south/data/population/SS_0132a_Ethnic_Groups_A1_20091224_300_1.pdf) (accessed 4 April 2011).

Vermeulen, S. and Cotula, L. (2010) *Making the Most of Agricultural Development: A survey of business models that provide opportunities for smallholders*, International Institute for Environment and Development (IIED), International Fund for Agricultural Development (IFAD), the Food and Agriculture Organization (FAO), and the Swiss Agency for Development and Cooperation (SDC).

Wheeler, S. (2009) 'South Sudan Looking into US Land Deal,' *Reuters*, January 27, available at <http://af.reuters.com/article/commoditiesNews/idAFHEA72861320090127> (accessed 4 April 2011).

Wily, L. A. (2010a) *Making Peace Impossible? Failure to Honour the Land Obligations of the Comprehensive Peace Agreement in Central Sudan*, a resource paper, September.  
MORE INFO NEEDED

Wily, L. A. (2010b) *Whose land are you giving away, Mr. President?*, paper presented to the Annual World Bank Land Policy & Administration Conference, Washington D.C., 26<sup>th</sup> - 27<sup>th</sup> April.

World Bank (2010) *Rising Global Interest in Farmland: Can it yield sustainable and equitable benefits?*, available at [http://siteresources.worldbank.org/INTARD/Resources/ESW\\_Sept7\\_final\\_final.pdf](http://siteresources.worldbank.org/INTARD/Resources/ESW_Sept7_final_final.pdf).

World Bank (2009) *Sudan: Toward Sustainable and Broad-Based Growth*, Report No. 52514-SD, December.

World Food Programme (WFP) website, *Sudan: Ten Hunger Facts* (accessed 23 October 2010), available at <http://www.wfp.org/stories/sudan-10-hunger-facts-nation-goes-vote>.