



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

David K Deng

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by David K Deng

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*'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.'*

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

## **Abstract**

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, investment activity will likely 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.

## **About the author**

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## Acronyms

CES	Central Equatoria State
CHRGJ	Center for Human Rights and Global Justice
CPA	Comprehensive Peace Agreement
FAO	Food and Agriculture Organization
FIAN	FoodFirst Information Action Network
FPIC	free, prior and informed consent
GoNU	Government of National Unity
GoS	Government of Sudan
GoSS	Government of Southern Sudan
ICSS	Interim Constitution of Southern Sudan
IDMC	Internal Displacement Monitoring Centre
IDP	internally displaced person
IFAD	International Fund for Agricultural Development
IIED	International Institute for Environment and Development
JMG	Jarch Management Group
LGA	Local Government Act
LRA	Ugandan Lord's Resistance Army
LSO	Land Settlement Ordinance
LSRO	Land Settlement and Registration Ordinance
MOLACD	Ministry of Legal Affairs and Constitutional Development
NCP	National Congress Party
SPLM/A	People's Liberation Movement and Army
SSDF	South Sudan Defense Forces
SSLC	Southern Sudan Land Commission
ULA	Unregistered Land Act
UNOCHA	United Nations Office for the Coordination of Humanitarian Affairs
WES	Western Equatoria State
WFP	World Food Program

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## 1. Introduction

Flying over Southern Sudan, its sheer size strikes one. Miles upon miles of lush, fertile land and untouched forest pass by underneath as the Nile River and its tributaries flow north. A few thatched-roof huts, or *tukuls*, dot the landscape but from 5 500m, 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. A grounded view depicts a far more complex reality.

Southern Sudan is home to about 65 ethnic groups whose territories span the entire region (UNOCHA 2009), almost none of which is no-man's land. Virtually all land in the region is owned, in the sense that one or more communities retain the right to regulate its use 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 left fallow for a few 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 under-used, particularly as widespread poverty and food insecurity pervade 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, inter-tribal fighting, attacks by the Ugandan Lord's Resistance Army (LRA), and extensive flooding across several southern states displaced more than 600 000 people (IDMC 2010: 6). Rural infrastructure is almost nonexistent; until recently, there was only about 11km of paved road in all of Southern Sudan.

Some see increased private investment in land and forests as a way to diversify the oil-dependent economy, enhance food security and stimulate rural development. Proponents of large-scale land acquisitions assert that by amassing large areas of unused land into large-scale mechanised farms, Southern Sudan can produce enough food to feed its population and export food to international markets.

However, such claims deserve further scrutiny: when operating in a fragile post-conflict context such as Southern Sudan, transferring large areas of land to private individuals or businesses could undermine local land rights, accelerate concentrated land ownership and have unpredictable effects on conflict dynamics. Dispossessing communities of their homelands can increase competition between neighbouring communities over remaining natural resources, and with the proliferation of small arms in Southern Sudan, such competition is often violent. Yet, timidly accepting the status quo is not tenable: increasing food production and stimulating rural economies is becoming increasingly urgent and treating customary claims as sacrosanct runs the risk of continued suffering for local populations. The government's task is not to insulate customary lands from the outside world, but rather to attract investment that:

- builds constructive relationships between companies and host communities; and
- prioritises the local population's development needs.

In this context (further explored in *Section 2.1*), we examine community participation in large-scale land investments, exploring the various loci of decision-making in Southern Sudanese land investments and the extent to which rural communities are involved in the process. The legal framework (discussed in *Section 2.2*) is full of the ambiguities of post-conflict settings, but provides textual support for community land ownership — particularly in the 2009 Land Act. In demanding a more central role in decision-making about communal land, communities have taken up the principle that the 'land belongs to the community' (as analysed in *Section 2.3*). Preliminary data on several large-scale land acquisitions in two 'Green Belt' states — Central Equatoria and Western Equatoria — are highlighted in *Section 3*. 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 to 2010, foreign interests acquired 20 million hectares of African land (Graham et al 2010: 5). Some analysts see opportunities in the trend, arguing that provided African states enact certain regulatory reforms, they can harness the surge in foreign investment to provide jobs and develop rural communities (Deininger et al 2011). Critics (e.g. Borras&Franco 2010: 515), however, have dubbed it the 'global land grab', asserting that:

- The scale of land acquisitions could deny millions of land users' access to vital natural resources, undermine food security and exacerbate tenure insecurity.
- Efforts to create a voluntary code of conduct 'whitewash' the problem and divert attention from alternative development pathways that may benefit rural populations more, e.g. improving smallholder farmers' productive capacity.
- The global industrial food and energy complex deprives rural populations of land to provide cheap food and energy for the developed world.

### 2.1 The politics of Sudan

Sudan is a global 'hotspots' for large-scale land acquisitions (Cotula et al 2009: 17). According to a recent World Bank (2010: 44) study, from 2004 to 2009, Sudan transferred nearly 4 million hectares to private investors — more than any other country surveyed<sup>1</sup>. With the current unpredictable transitional period in Southern Sudan, investment activity was thought to be concentrated in the North, but a recent study (Deng 2011) shows several large-scale land investments in Southern Sudan in recent years. From January 2007 to December 2010, foreign interests sought or acquired about 4.92 million hectares for agriculture, biofuel, carbon credit, forestry and ecotourism/ conservation projects — 7.6% of Southern Sudan's total land area. In theory, investment influx could provide sorely needed development for the new nation, but the nascent state of government, a society still reeling from years of conflict, and the legal ambiguity of the current transition, create real danger that such investment could undermine livelihoods.

#### *Sudan and the Comprehensive Peace Agreement*

Sudan is the largest country in Africa, covering 2.5 million km<sup>2</sup>; Southern Sudan covers 640 000 km<sup>2</sup>. Besides hosting the world's longest river, the Nile, Sudan is home to the world's largest farm in Gezira irrigated cotton scheme and 'the world's largest sugar-producing complex', the Kenana project (Ahmed 2004: 138), but these projects in Northern Sudan little benefit the southern Sudanese — like other Northern investment projects<sup>2</sup>.

Sudan spent most of its post-colonial history embroiled in civil war after the British handed power to a small Arab-Islamic elite at independence, perpetuating a pattern of state resources benefiting a privileged few in Khartoum at the expense of periphery populations (Cockett 2010). The second North–South civil war lasted from 1983 to 2005 — the longest running civil conflict of its time, with the southern-led Sudan People's Liberation Movement and Army (SPLM/A) pitted against the northern National Congress Party (NCP)-controlled government in Khartoum. The south's sense of discrimination and marginalisation fuelled the rebellion. By the time peace was agreed in the Comprehensive Peace Agreement (CPA) in 2005, about 2.5 million people had died and 4 million people were displaced, some still in Sudan as internally displaced persons (IDPs) and others having taken refuge in other countries.

<sup>1</sup>12.5 million hectares were already under private or government commercial lease before 2005 (Wily 2010a: 21).

<sup>2</sup> Government initially designed mechanised farming schemes in the 1970s to include 40–60% of local persons as beneficiaries, but according to Wily (2010a: 5), this practice quickly fell away, 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...'

The CPA was based on a 'one country, two systems' model — giving the south self-determination and regional autonomy in the Government of Southern Sudan (GoSS). The GoSS president serves as vice-president of the Republic of Sudan. SPLM/A, the main GoSS party, has representation in the newly created Government of National Unity (GoNU), controlled by the NCP in Khartoum. National elections held in April 2010 were to create an opportunity for democratic transformation, but did not significantly alter the power balance. From 9–16 January 2011, Southern Sudan held a referendum to decide whether it 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 proceeded quite smoothly. As expected, the vote overwhelmingly favoured secession, but the situation remains very tense.

A separate referendum scheduled for the disputed oil-rich border region, Abyei, has been postponed indefinitely. As southern voters took to the polls, clashes broke out between northern- and southern-affiliated groups in Abyei, resulting in dozens of casualties. Violence along the border could still lead to a larger conflict; rebellion by high-level southern military leaders further complicate the situation. Meanwhile, a host of post-referendum issues remain unresolved — border demarcation, citizenship, sharing oil revenue, allocation of national debt — adding pressure to an already tense relationship.

### *The private sector's response*

The unpredictable situation has a 'chilling effect' on private sector investment: if war were to resume, any immovable assets in the region, including land, would be extremely vulnerable. Investors who acquired land are mostly waiting to see the outcome of the referendum before devoting more resources to property development, so even when agreements exist, evidence of investment activity is not visible on the ground. However, the nascent state and the ambiguity of prevailing law also seem to encourage speculative investments. In some cases, powerbrokers have begun to acquire vast tracts of land to secure access to natural resources and be in position for any rising demand that would presumably accompany a stable, independent South Sudan. Such acquisitions usually include vague promises to invest money in property development, but they mainly seem to claim land and wait to see if land values rise.

For example, a US investment firm — Jarch Management Group — ostensibly acquired land to implement a joint agricultural venture, but a Small Arms Survey (McEvoy&LeBrun 2010: 36) speculates that the firm is really interested in exploiting the area's oil resources. This somewhat atypical investment involves a transaction between two private companies with no official government involvement. The Financial Times (Blas&Wallis 2009) and Rolling Stone Magazine (Funk 2010) and other media outlets, reported that Jarch leased about 400,000 hectares in Unity State by buying a majority share in a company owned by Gabriel Matip, son of SPLA deputy commander-in-chief Paulino Matip; more land is reportedly in negotiation.

Jarch's interest in Unity State predates the CPA: in 2004, it signed 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 provided oilfields security in the area on behalf of the NCP. The peace deal changed the situation dramatically as Paulino Matip and the southern government signed the 2006 Juba Declaration, disbanding the SSDF and providing for its integration into the SPLM/A; Paulino Matip was simultaneously promoted to 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 national government refusing to recognise the firm's contract with 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 minerals — including uranium deposits, in the area (JMG 2008). Just six months later, Jarch made the agreement with Gabriel Matip for the joint agricultural venture.

Despite media attention devoted to this investment, the lease between Heilberg and Matip seems to be nothing more than agreement between two companies, neither of which seems to be the legal landowner. The new GoSS policy 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. Chairperson of the Southern Sudan Land Commission Robert Lado emphasised this point in an interview with Reuters (Wheeler 2009):

*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.*

The Mayom County Commissioner where the land acquisition supposedly took place has never heard of Jarch Management, yet prevailing practice regarding land allotments requires that proposed investment be surveyed and registered with state authorities prior to transfer, which could not proceed without the county commissioner knowing, nor is there any sign of investment activity on the ground. Jarch Management CEO Phil Heilberg's statements indicate that he is relying more on the influence of military<sup>3</sup> business partners than on the legality of the acquisition process to guarantee his investment. However, until Jarch secures official government backing, it is difficult to see how the investment could proceed. The Unity State governor expressed scepticism about the validity of the deal but also said the government would be open to Jarch investing in Unity if the company followed proper procedures. The difficulty of discerning fact from fiction in this investment reflects the lack of transparency associated with large-scale land acquisitions in Southern Sudan more generally.

### *The GoSS's approach to large-scale land acquisitions*

Before war broke out 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 investment in mechanised agriculture. With its large tracts of fertile land, Sudan was promoted as a potential 'breadbasket' of the Arab world (Kaikati 1980). Despite massive investments, extreme food shortages and famines still plagued the country in the 1970s, 80s and 90s (Ahmed 2004:139). From the mid-90s until the early 2000s the war in the south intensified and agricultural production stagnated, while from 1999 the Sudanese economy became increasingly dependent on oil exports to the detriment of other sectors. According to the World Bank (2009: 10), between 2000 and 2008 the agricultural sector only grew annually by 3.6%, a fraction of the 1990s 10.8% growth rate. Despite the lacklustre performance of past agricultural policies, the 'breadbasket' rhetoric of the 1970s and 80s has resurfaced. In an October 2010 address, President of Southern Sudan Salva Kiir (2010) declared his government's ambitious plans to increase agricultural production:

*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 GoSS Ministry of Agriculture and Forestry suggest it also sees large-scale land acquisitions as a prominent driver of private investment in Southern Sudan. The Food and Agriculture Policy Framework (GoSS 2006) advises 'the Government should quickly start ... allotting large plots of uninhabited farmland to private investors for commercial agriculture'. Policy analyst Paul De Wit (2008: 13) who 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*

<sup>3</sup> According to Sudan Tribune (2010), Jarch's advisory board includes Paulino Matip and former Khartoum-backed militia leader Gabriel Tanginye. Heilberg also said Jarch has 'close ties' with Peter Gadet, who at various times fought for and against the SPLM/A.

*investment-based approach, with the role of local communities and their legitimate rights over land once again becoming secondary.*

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Government support for large-scale land acquisitions is apparently premised on the idea that large areas of unused land exist in Southern Sudan, and that bringing these areas into productive use can help meet the challenge of feeding the population. From this perspective, one could argue that large-scale land acquisitions are viable in Southern Sudan, given the region's size and low population density. However, while plantation farming may lower costs, it can have undesirable social and environmental consequences, often borne disproportionately by host communities (Deininger et al 2011), and local employment opportunities generated often do not compensate for land-based livelihood loss resulting from dispossession (Vermeulen&Cotula 2010: 87). Large-scale land investments are also susceptible to elite capture and risk centralising development benefits in a similar way to the Gezira scheme and Kenana project in Khartoum. Critics already accuse the GoSS of devoting too many resources to ministries in Juba while neglecting local administrations in the ten states, leading at least one author to question whether Juba will turn into a 'one-city state' like Khartoum in the North (Cockett 2010). Concentrating land in the private sector is likely to exacerbate uneven and inequitable development patterns in the region.

### *Alternatives to the large-scale land acquisition model*

At international level, human rights advocates, farmers' movements and agrarian reform activists promote alternative approaches to large-scale commercial farming operations. United Nations Special Rapporteur on the Right to Food Olivier De Schutter (2009:8) counsels governments and investors to first consider models that take advantage of existing smallholder farmer networks before transferring large portions of land to investors for commercial farming:

*[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.*

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The International Institute of the Environment and Development (Vermeulen&Cotula 2010) also promotes inclusive business models that seek to build collaborative partnerships between smallholders and the private sector. It advises that various forms of contract farming, joint ventures and models maximising up- and downstream business links may be preferable to more centralised large-scale land acquisitions.

Despite the advantages of alternative business models, investment projects seeking to work with smallholder farmers would face several challenges in Southern Sudan, as farming cooperatives are virtually non-existent. Investors may be wary to invest in the underdeveloped and poorly organised organisations that do exist, particularly if they have to carry the initial risk of providing agricultural inputs before realising a return at harvest time. The legacy of food aid in Southern Sudan has also created a sense of entitlement among some local producers. By virtue of their dealings with the United Nations and various International NGOs, local people sometimes see outside assistance as a right, not a business relationship where both sides are obliged to meet their promises. Rural labour productivity also often quite low, as young people prefer to pursue education and employment opportunities in towns rather than commit to the 'drudgery' associated with farm work. War has left a traumatised population in Southern Sudan and individuals willing to work on farms may be less productive than their counterparts elsewhere. Such obstacles, while surmountable, increase investor risk and may cause them to gravitate towards more centralised large-scale land acquisitions.

Southern Sudan is too large and diverse a region to propose a one-size-fits all solution to agricultural development. The region's size and low population density may allow for some large-scale mechanised production, but by placing too much emphasis on commercial farming the GoSS may miss agricultural development opportunities that will produce more benefits for locals.

## 2.2 The ambiguous post-CPA legal framework

Post-independence, national land legislation based on the colonial model strongly favoured state land ownership. Anglo-Egyptian colonial administrators created laws based on a rebuttable presumption that government owned unregistered land. The 1905 Land Settlement Ordinance (LSO) and 1925 Land Settlement and Registration Ordinance (LSRO) 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 state ownership a step further with the Unregistered Land Act (ULA), declaring all unregistered land of any kind, occupied or unoccupied, to be state property, deemed to be registered in the name of the state (ULA: 4(1)). Since virtually no community land was registered in Kartoum’s central lands registry, the ULA effectively eliminated any legal claims communities may have had to community lands (Kon Bior et al n.d.). As the FoodFirst Information Action Network (FIAN) (2000: 12) described it, ‘In a single legislative act, the Sudan Government took legal hold of all smallholders’ land throughout Sudan.’ Although the ULA was formally repealed, subsequent legislation reaffirmed state ownership of unregistered land<sup>4</sup>.

Such laws enabled the state to dispossess rural communities of their homelands at will. In Nuba Mountains, Southern Kordofan state along the north–south border, displacement was particularly with community land seized to establish large-scale mechanised farms (De Wit 2004: 4). According to Wily (2010a: 5) by 1990 in Southern Kordofan and Southern Blue Nile the state had allocated 10 million hectares to local elites and investors and 5.5 million hectares to non-local investors for mechanised farming, resulting in forced evictions, displacement, loss of livelihoods, and outmigration to Khartoum and Southern Sudan. Destabilisation contributed to conflict in the south, as the SPLM/A found new allies among the Nuba of Southern Kordofan and Ingessana of Southern Blue Nile, as African Rights (1995: 48) chronicled: Nuba farmers resisted the merchant farmers and their tractors. Many burned the barrels of diesel, others threatened the labourers. Ultimately, many turned to the SPLM/A.

For its part, the SPLM/A rejected northern laws in areas under its control and handled all matters according to customary law (Kuol 1997). When the GoSS was established in 2005, there was initially some question about the status of northern laws. An 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 intended to address confusion and uncertainty, and build confidence in Southern Sudanese law enforcement agencies, but instead caused a stir, as it seemed to imply that national laws like the ULA would be given effect in the liberated south. A month later 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 Interim Constitution of Southern Sudan (ICSS), but did not completely resolve legal ambiguities. While the GoSS rejected national laws that put all land in state hands, southern land administration institutions still used processes based, to varying degrees, on pre-CPA northern law.

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

While this question is still unresolved, people are returning south, the region is developing and investors are flocking to access new opportunities. But ambiguity on fundamental issues (like land ownership and jurisdictional boundaries) between the GoSS and the state create complications for southern land administration systems. Minister of Legal Affairs John Luk 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?*

Source: Deng 2010: 202

Seeking to address legal uncertainty and provide a legal foundation for ideas espoused in the CPA and ICSS, the Southern Sudan Legislative Assembly passed three key pieces of legislation in 2009: the Land Act, the Local Government Act (LGA), and the Investment Promotion Act. The Land Act (2009: ch II, 8(6)) reinforces government recognition of customary land tenure: 'Customary land rights including those held in common shall have equal force and effect in law with freehold or leasehold rights.' Community land can be allocated to investors as long as 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 approve land acquisitions above 250 feddans (105 hectares) and create a regulated ceiling on land allocations.

Both the Land Act (ch. IX, 63(3)) and the LGA (2009: ch. IX, § 89) require government to consult local communities and consider their views in decisions about community land. The Land Act (2009: ch X 67) gives pastoralists special protection: '[N]o 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'. Project proponents must also conduct environmental and social impact assessments (ESIAs) before undertaking any activity that might affect people or the environment (ch. XI, 70(3)). When an investment is complete, leased land 'shall revert back to the community' (ch. VI, 27(7)).

Though the Land Act (ch. IV, 14), allows long-term leases up to 99 years, the Investment Promotion Act explicitly limits foreign investments in agriculture and forestry to renewable terms of 30 and 60 years, respectively (Second Schedule (3)). As leases constitute investment property and can therefore be considered investments in their own right, any agricultural lease longer than 30 years and any forestry lease longer than 60 years would be inconsistent with the provisions of the Investment Promotion Act. Due to the poor uptake of these laws, however, many government institutions are unaware of the restriction and 99-year leases for foreign investments in agriculture and forestry are fairly common.

Although, in theory, these statutes protect rural communities from unilaterally imposed land acquisitions, they have poor exposure even in institutions of government. Efforts to put provisions into practice are likely to encounter several obstacles:

- Land registries dating back to colonial times exist in a few Southern Sudanese towns, 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, which sometimes does not correspond with existing property arrangements.
- Even if state governments are able to expedite the survey and demarcate landholdings for transfer to foreign and domestic investors, drawing boundaries on such large areas is likely to create border disputes with neighbouring communities.
- In some cases, investors are acquiring land before it has even been registered as community land. Many long-term investments are already in danger of becoming full alienations of the land, and the lack of registration prior to transfer further endangers communities' reversionary interests.

Government methods for deciding the boundaries of community land are still undefined. If one accepts that no-man's land does not exist in Southern Sudan, the definition of community land based on communities' own understanding of their territorial boundaries would result in communities owning virtually the entire region with the same rights as individuals who have 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. Hence, even though the Land Act made strides to recognise community land ownership, government must still resolve many issues before communities can rely on legal protections. Meanwhile, communities must rely on broad aspirations in support of customary land tenure in the CPA and ICSS to justify a more prominent role in decision-making about investments on community land.

### 2.3 'Land belongs to the community'

A strong theme of community participation permeates all Southern Sudan's land issues, based on the principle 'land belongs to the community' — a statement intended to convey the idea that communities should be the primary decision-makers about land in their communities. The idea has played a central role in shaping public opinion about relationships between the 'state' and the 'community' on the issue of land. Given the origin of the idea, its legal basis is unresolved, but the idea is being used in ways that resemble a consent-based standard.

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

The phrase 'land belongs to the community' can be traced to public statements of the late SPLM/A leader Dr John Garang who, throughout the 22-year civil war, used it to rally support for the SPLM/A. As peace talks that eventually culminated in the CPA got underway in Naivasha, Kenya, 'land belongs to the community' was a key component of SPLM/A's negotiating posture. By asserting community ownership of land, the SPLM/A set itself in direct opposition to state-centric land ownership policies of the northern government. In addition to its popular appeal in Southern Sudan, community land ownership also served as a means to impede the northern government's claim to natural resources in the south.

Perhaps because of high-profile support, the Southern Sudanese commonly held the misperception that the CPA and interim constitutions enshrined the principle. Though the texts strongly favour community participation in land issues and the right of communities to share wealth created by land investments, they do not explicitly provide for community land ownership. In fact, the CPA wealth sharing protocol (ch. III, 2.1) clearly states that the agreement is not intended to address land ownership.

Despite lacking a textual basis for the assertion, many communities continue to demand a central role in decision-making about community land. Administrators complain that communities are trying to claim back land previously been designated for urban development, impeding the orderly expansion of several southern towns. Communities are also place high demands on government access to community land for investment. Such opposition can be traced back to misappropriation of community land in the administrative confusion when the GoSS was established in 2005, which fuelled local level mistrust of the GoSS. Therefore, some communities 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, several factors lend support to placing the central locus of decision-making about land in the communities: According to the CPA and ICSS, land administration should be a concurrent competence, regulated at a suitable level of government (ch. III,2.3; ICSS, pt. 12, ch. 2, 180(1)). When conflict arises 'subsidiarity' (in practice devolution to the lowest level) must be considered in deciding which level of government shall be in charge of a particular issue (CPA, pt. 5, Schedule F), suggesting that land administration systems should be embedded primarily at the local level, with the GoSS role limited to providing uniformity and general policy guidelines.

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 about land must be reached through consensus decision-making processes in the community. Full recognition of customary law would thus presumably empower communities with a central role in decision-making processes.

Arguments in favour of community land ownership were taken up by the Southern Sudan Land Commission (SSLC) in developing 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, the SSLC and its international partners formally handed over a draft land policy to the GoSS Ministry of Legal Affairs. The draft land policy seeks to articulate the broad goals of land administration in Southern Sudan moving into post-referendum period. It emphasises 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 risks associated with 'land grabbing', which it defines as 'the acquisition of land without regard for the interests of existing land rights holders'. It argues:

*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.*

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The policy statement makes clear that land ownership is vested in communities and communities, not government, should be the primary parties that enter into agreements with investors (SSLC 2011: 22): Although the draft policy must still pass through the council of ministers and legislative assembly before it comes into force, the policy prescriptions show continued support for community land ownership in some sectors of society. However, despite the normative influence of the 'land belongs to the community' principle, many rural communities are still sidelined in decision-making concerning community land allocation to investor. Southern Sudanese communities routinely complain that government allocates land to companies without consulting them. When companies become more active and host communities begin to feel the impact of their presence more acutely, demands for local involvement are likely to increase, which would test the normative influence of 'land belongs to the community'. 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.*

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### *Community consent in practice*

With the greater requirements of 'land belongs to the community', large-scale land investments in many southern areas are not viable in the face of strong community opposition. Community consent may even be demanded for investment on state land. For example, in 2007, GoSS agreed to a 32-year lease for Equatoria Teak Company (in which the British and Finnish governments are primary shareholders) to harvest teak in 18,640 hectares of government-owned forest reserves in Nzara County, Western Equatoria State (WES). According to the Paramount Chief in Nzara County (pers. comm. 2010), GoSS and Equatoria Teak agreed on the concession without involving state government or local communities. The community objected, asserting that since 'land belongs to the community' the investment could not proceed without involving them, even though the concession agreement made provision for a social fund to finance

development projects in affected communities<sup>5</sup>. Local opposition resulted in the WES legislative assembly holding hearings on the matter and the company undertook stakeholder engagement to inform the community about their plans and benefits to the community.

WES has since incorporated the procedural innovation into its land acquisition process; large-scale land acquisitions now require, before finalisation, approval from the legislative assembly and the council of ministers. If consistently applied, such requirements should help to foster transparent and accountable investment projects, but without a coherent national policy detailing procedural requirements, regulatory variation could spur a race to the bottom as states compete to attract investors. For example, an Indian company, the MAJ Foundation, put efforts to obtain a forest concession in WES on hold instead pursuing an agreement in Western Bahr-el-Ghazal State where regulations are more lax. By setting base regulatory standards, the GoSS could discourage states from proceeding with potentially harmful deregulation in an effort to attract investment. Of course, such regulatory standards must be flexible enough to allow for experimentation like that which led WES to adopt its new procedural requirements in the first place.

In Southern Sudan, some degree of consultation and consent is typically deemed necessary, even for projects on government-owned land, but consultation processes are poorly defined, and consultations rarely take place before government negotiates investment agreements. Consultation is often seen as a formality, undertaken only after the government and investor have reached an understanding on important elements of the investment. Of the ten agricultural and forestry investments surveyed in this study, only two conducted community consultations before finalising the investment agreement. Some communities demand consultation when the company undertakes particularly visible activities, but negotiating parties rarely provide for more systematic community participation in investment decision-making. Such shortcomings may be attributable to lesser normative standards or may instead reflect the fact that communities are often forced to settle for whatever level of participation they can to secure for themselves. With government currently unable to provide services in much of the region, benefits promised by investors are one of the few sources of development available to rural communities so they tend to be reluctant to turn investors away, even if investment benefits are sharply skewed in favour of the investor. Yet, as the Equatoria Teak case shows, if government and investors ignore affected communities or fail to get their consent, communities have proven remarkably effective at impeding investment plans and forcing the parties to acknowledge them.

### 3. Large-scale land investment 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 in Southern Sudan<sup>6</sup>. Due to fertile soils, high rainfall and abundant forests in these states, they are likely to be central locations of agricultural and forestry investment as the region develops. Due to legal ambiguity during the transition no uniform procedure for managing large-scale land acquisitions currently exists. Various levels of government manage applications using ad hoc procedures, so many deals lack transparency and accountability and comprehensive data is not available. Preliminary data (see *Table 1*) were collected from government institutions at GoSS and state-level, community leaders, and where possible, investment companies<sup>7</sup>.

<sup>5</sup> Equatoria Teak deposited £123,908 in a social fund and is meant to deposit another £6.20 for every cubic meter of sawn board exported. It also made a £185,861 refundable deposit to government and pays government £61.95 royalties for every cubic meter of sawn board exported. WES Ministry of Agriculture and Forestry officials complain that these figures grossly undervalue the teak.

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

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

**Table 1: Preliminary data on large-scale land investments CES and WES**

	Company	Nationality	Sector	Size (ha)	Location (county)	Land owner	Lease period (years)	Implementation stage
<b>CES</b>	Canadian Economic Development Assistance for Southern Sudan (CEDASS)	Canadian	Agriculture (sorghum)	12,180 (trial planting underway on 105)	Juba	Government	No acquisition involved	Finalised
	Madhvani Group	Ugandan	Agriculture (sugar)	TBD	Terekeka/ Juba	Government	TBD	MOU*
	Nile Trading and Development	American	Agriculture, forestry & biofuels	600,000 (&right to extend to 1,000,000)	Lainya	Community	49	Finalised
	Central Equatoria Teak Company	British/ Finnish	Forestry (teak)	1,845 (&50,000 natural forest)	Lainya	Government / Community	32	Finalised
	Green Resources	Norwegian	Forestry timber, carbon credit, conservation)	179,000	Terekeka	Community	99	Awaiting final authorisation
<b>WES</b>	Eyat Oilfield Services	Northern Sudan	Agriculture (fruit)	161,874	Ezo/ Tambura	Community	99	MOU
	Joint Aid Management (JAM) & African Commercial Development (ACD)	South African/ American	Agriculture (fruit/ vegetables)	24,281	Yambio	Community	32	MOU
	Blue Lakes Limited	Kenyan	Forestry (teak)	562	Yambio	Government	30	Finalised
	Comde Teak	Indian	Forestry (teak)	8,015	Nzara / Ezo	Government	32	Awaiting final authorisation
	Equatoria Teak Company	British / Finnish	Forestry (teak)	18,640	Nzara	Government	32	Finalised

\*Note: MOU= Memorandum of Understanding; TBD= To be determined

The investments implicate a surprisingly large area; even excluding the Madhvani deal where government has not yet determined the size of the land parcel, the ten land deals in Table 1 cover nearly 1.5 million hectares in these two states alone. Such large investor interest is alarming given the uncertain transitional context. Forestry investments are also significantly more developed than agricultural investments, perhaps partly due to the illicit timber trade the NCP and SPLM/A conducted during the war. As a parliamentarian in the Southern Sudan Legislative Assembly explained in an interview (Ashamu 2010: 18):

*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.*

Based on these experiences, the GoSS was already familiar with many aspects of timber extraction and could start harvesting forest reserves immediately upon assuming power. Agricultural investment, by contrast, often requires several years of financial input before it produces commercially viable yields.

Community involvement in the investments is seriously deficient; several investments are in highly populated areas where thousands or even tens of thousands of people rely on the land for basic livelihoods. However, in only two of the ten investments were communities consulted before the parties negotiated the investment agreement. In the other eight investments, consultations were held (or are planned to be held) only after agreement, simply to notify the community about what to expect with no opportunity to influence the investment design in any substantial way. Similarly, no company undertook an ESIA before finalising the investment agreement. Three companies conducted an ESIA after starting operations and others reportedly planned to do so in soon, but no investors evidence shared decision-making associated with robust community engagement.

Finally, leases periods on government-owned land are shorter than those involving community land, reflecting government's stronger negotiating power when brokering deals for government land, compared to the lesser negotiating power communities may have in brokering deals on community land. Although government institutions are typically also involved in negotiating deals on community land, the incentive to protect communities' reversionary interests is limited since the government's involvement with the investment would theoretically end when the land reverts back to the community. The two case studies below explore investment projects in more detail.

### 3.1 The Madhvani Group

Madhvani Group, a Ugandan conglomerate, and the GoSS have preliminary negotiations GoSS over a proposed sugar plantation and processing facility in Mangala *payam*<sup>8</sup>, on the Nile River about 70 km north of Juba. The group is one of the largest companies in Uganda — at one time accounting for 10% of Uganda's gross domestic product (GDP) (Madhvani 2010). It operates in various sectors, from agriculture and agro-processing to media and information technology.

Madhvani and the GoSS Ministry of Agriculture and Forestry have signed a MOU to establish the plantation; the group is now pursuing an MOU with the Ministry of Commerce and Industry for the processing facility. The MOUs are the first steps in a process planned to 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, so information about the implicated land, the lease period, and what will be given in exchange for the land is not yet available.

The government's land claim in the area is questionable as, according to the GoSS land owned by the northern government prior to the CPA passed to the GoSS when it assumed power in 2005. However, some argue that the Khartoum government never lawfully owned the land in the first place; a growing body of jurisprudence maintains that customary claims cannot be extinguished by statutory decree alone (Wily

<sup>8</sup> A *payam* is the equivalent of an administrative district.

2010b: 14), but only by procedures that comply with basic standards of due process, e.g. registering community land under freehold title or expropriation (with fair compensation) for a public purpose. When the Khartoum government passed the Unregistered Land Act in 1970, decreeing all unregistered land to be government property, it did not compensate communities. Therefore, some argue that since the original taking was not lawful, the GoSS's claims to these lands are similarly invalid. As many communities reoccupied this land during the war, the government's claim to the land is all the more tenuous.

The case study also sheds light on how the complex conflict dynamics in Southern Sudan inextricably intertwined with land claims. When investments are proposed in such environments, they risk feeding into conflict by contributing to power imbalances among 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 Southern Sudan.

The proposed investment in Mangala is part of a broader GoSS initiative to revive old agro-industrial complexes across the south, establishing public-private partnerships with companies like the Madhvani Group. The Mangala factory dates back to the mid-1970s, when the Khartoum government started constructing an agro-industrial complex in the area. For a while, before the outbreak of war in 1983, the factory produced various products, including pasteurised dairy products, canned fish and sugar (sugarcane was sourced from a nearby plantation). When war reached Mangala in 1985, the factory and plantation were abandoned and the local community later established residences in the area where the plantation once stood. Despite the community's land occupation throughout the civil war and continuing into the current post-conflict period, government asserts that land ownership passed to the GoSS when it took over southern administration from the Khartoum government in 2005. The community, however, maintains that the land belongs to them.

While the government and the company seem committed to finalising the land acquisition, investment is currently on hold due to several overlapping crises in Mangala., including a border dispute between Juba and Terekeka County authorities over which county owns the land in question. Two administrations currently operate in the area, often referred to as Mangala-Juba and Mangala-Terekeka. According to Anthony Leju, a field officer with UNOCHA, 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 physical confrontations between the Bari and Mundari communities who live in the area, so several 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 as it was a state issue, state authorities should handle the matter.

This dispute caused much political tension in CES, reflecting 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, several recent local conflicts have centred on Mangala . When displaced Dinka Bor communities moved through Mundariland with their cattle, conflicts began to flare up, instigated by acts of cattle raiding and perpetuated various underlying historical grievances. According to the UN OCHA (2010), 4 179 people were displaced by these conflicts in Mangala and Gemeiza, the payam in northern Mangala. Many residents 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, already severely affected by conflict-related displacement.

Judging by the way the project has progressed thus far, it seems unlikely that the local community will play a meaningful role in negotiating the investment agreement. Area paramount chief Sultan Abut Ladu had only minimal interaction with representatives of the Madhvani Group, who only visited the site twice after 2007. He said several 'Indians' came to Mangala in 2007 asking to be shown where the sugar plantation

and processing facility once stood. The chief did not know they represented the Madhvani Group, but they took several soil samples and told him that they wanted to lease a large piece of land in the area. When the chief asked what would happen to people living on the land, they reportedly told him they would have to move. According to the chief, no representatives of the Madhvani Group or government officials have returned to the area to discuss their investment plans after the initial interaction.

Poor community involvement may be linked to government asserting ownership of the land in question. In negotiating deals for government land, officials may feel entitled to forgo community consultation until the investment reaches a stage where local community cooperation is necessary. Indeed, according to a GoSS Ministry of Agriculture official, the Ministry is unlikely to consider consultation or compensation until it clearly needs to relocate people. While this approach may save the GoSS and Madhvani from some ex ante transaction costs that could arise from three-way negotiation, it also sets the stage for more serious obstacles later. The community is already disillusioned with government due to clashes with the SPLM/A; by waiting to the end of negotiations to bring the community into the picture, the government risks further entrenching resentment. Tensions between the Bari and Mundari groups in the area add to the complexity of the situation, so the GoSS and the Madhvani Group would have to proceed carefully in defining affected groups for community engagement to avoid increased conflict.

Despite minimal interactions with representatives of the Madhvani Group, the paramount chief claims his community would welcome the investment project, but also notes that they would reject outright arrangements such as 99-year leases or transferring title deeds to the company with no compensation. If the government and company had allowed for more robust community involvement, it could have helped ensure the investment is designed in a way that addresses these concerns. Indeed, good relations between the investor and host community will be indispensable for a successful investment. Aside from insecurity in the area, land use patterns in Mangala are likely to conflict with an agricultural project on this scale. The Mangala community traditionally follows an agro-pastoralist lifestyle, so residents need access to large cattle grazing areas. Such land use would directly compete with a sugar plantation for land and water resources. Sustained community engagement could help to address such challenges and find ways to reduce social and economic risks associated with the investment.

### 3.2 Green Resources

A Norwegian company, Green Resources SA, is pursuing a 99-year lease for 179 000 hectares of land in CES to establish a tree plantation, forest conservation project, and carbon credit scheme. The company — created in 1995 — owns plantations in Mozambique, Tanzania and Uganda. The Southern Sudan project, being implemented by a wholly owned subsidiary of Green Resources called TreeFarms Sudan, would cover most of Tindilo *payam*, Terekeka County. 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 the time of writing, the investment agreement was with the CES Governor, awaiting final approval. Green Resource has meanwhile begun trial planting of 250 hectares of teak, mahogany and eucalyptus in Tindilo.

Despite strides made in creating a system that recognises customary land rights, this case study highlights the difficulty of operationalising community land ownership in Sudan. Unlike the Madhvani Group's investment in Mangala, Green Resources' project is unquestionably located on community land, but the text of the investment agreement is somewhat ambiguous on the question of ownership. The preamble states that the CES government owns the land, but elsewhere in the agreement says the company will pay Tindilo community to use 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 also encountered difficulties in keeping incoming office holders informed about investment activity in their areas. Finally, the Green Resources investment shows that community engagement alone may not be enough to safeguard local community interests, particularly in a legally ambiguous and highly fractured context.

On the Sudanese side, the CES Ministry of Agriculture and Forestry and a local development committee mainly facilitated the agreement. The CES Ministry lead facilitation for the GoSS ministry, both of whom have officials on the board of directors and a close relationship with Green Resources. The CES Ministry also seconded a forester to work as plantation manager with the company. The forester is originally from Tindilo Community and therefore helped the company build a relationship with the community. The development committee (made up of Juba community members and chaired by a parliamentarian from the CES legislative assembly who came from Tindilo) was responsible for conveying information back and forth between the company and the community. Judging by how the negotiations proceeded, the development committee seemed to have considerable decision-making authority; as Tindilo paramount chief Sultan Romano Akob Fulo 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 extensive consultation lasting more than a year, including:

- three public consultations that took place in Tindilo Community between 2007 and 2009; supplemented by
- traditional leadership structures of chiefs, sub-chiefs, elders, and clan headmen to pass information to and from the local level.

The community initially hesitated to consent to the investment project due to 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 only play a support role. The five Tindilo chieftainships, or bomas, identified unused portions of land to lease to Green Resources, so the company claims the project will displace no community members.

Despite community involvement, elements of the investment agreement clearly benefit Green Resources. In exchange for the 99-year lease, Green Resources will pay £7 744 annual rent (CHRGJ 2010: 56), support agriculture and forestry and undertake several development projects such as drilling boreholes and building a primary school, health facilities and village office. However, the agreement does not clarify if the £7 744 rent will finance the development projects or if they are additional benefits provided by the company, although the community understood the agreement to mean they would manage development projects using rental payments. The investment agreement also obliges all able men and women in the community to volunteer two days of unpaid work a year to rehabilitate the road to Juba for the first five years of the project. The company must fulfil the above obligations for the first 25 years of investment; thereafter government will again take responsibility for infrastructure development.

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 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 help community members establish alternative livelihood activities to replace incomes from charcoal production, initially focussing on Shea butter and gum Arabic enterprises. However, the investment agreement does not detail the arrangements. With the influx of returnees, population growth and increased demand on forest resources, there is no guarantee that enough land has been set aside to satisfy long-term population demands.

Despite the apparent imbalance of benefits, the local community seems to support the investment. According the paramount chief, no one in the community opposes the investment project. The extent of the community's acceptance probably results from their fragile situation. Tindilo is in a remote rural area and is plagued by an alternating abundance and scarcity of water: in the rainy season, the road to Tindilo turns to mud and is virtually impassable by car; for several years, Green Resources has donated the use of its tractor to ferry supplies in and out of the community. In the dry season, water becomes extremely scarce and many community members rely on water deliveries from the county capital in Terekeka. Abnormally low rainfall in recent years resulted in high levels of hunger. The Country Manager of

TreeFarms Sudan (CHRGJ 2010: 57) explained that Tindilo is vulnerable because 'investors are not lining up to come to Tindilo. They [Tindilo] are forgotten by everyone...'

However, the paramount chief complained that Green Resources had not yet delivered on any of its promises, which according to his understanding should have begun when Green Resources built a compound and began trial planting in Tindilo. This misunderstanding reflects the poor information flow between the development committee and the local community: most committee members live in Juba and only visit the community occasionally and there is no cell phone reception and only satellite phones for incoming calls. Therefore, the development committee was unable to keep community members properly informed about the details of the investment. The community did not even seem to understand basic facts about how carbon credit schemes operate, despite it being a fundamental aspect of the agreement. In addition to the poor information flow, April 2010 elections ousted the Terekeka County Commissioner and Tindilo payam's CES parliamentary representative, and neither official informed their successors about the lease agreement with Green Resources. So for their first six months in office the new officials had no details about the investment agreement.

While the paramount chief claims the project is already creating jobs and delivering other help to the local community, the long-term impact is uncertain, given that the vague commitments in the investment agreement place risk squarely on the shoulders of the host community and increasing the likelihood of adverse impacts in future. Whether inequities in the agreement are traceable to particular positions taken by stakeholders or to difficulties operating in a fracture and legal ambiguous situation, the result is the same: unfulfilled expectations, unjustified risks to livelihoods, and seemingly unsustainable investment.

#### 4. Conclusion

Preliminary data suggests that Southern Sudan is on the verge of a large increase in land acquisitions, although the future of such acquisitions depends on the political fallout from the 2011 referendum. If the country devolves into a state of war, all indications are that it will be a humanitarian disaster. Fuelled by oil wealth, the two sides have considerable military forces and war would mean massive loss of life and destruction, and generations more needed to rebuild. Although some investors, especially in extractive industries, might weather the difficult conditions to capitalise on South Sudan's natural resources, full-scale war would effectively terminate most large-scale agricultural investments. But if peace is consolidated and the country moves forward with plans to develop the region, many land acquisitions currently being processed are likely to be quickly approved. A stable and independent south would likely attract much investor interest to its large, sparsely populated land and its wealth of natural resources.

However, as currently conceived, large-scale land acquisitions in Southern Sudan risk further undermining livelihoods already sorely affected by conflict. Meaningful company–community engagement, in which host communities influence investment design and participate in on-going processes of shared decision-making, are rare or nonexistent. Although poor community involvement contribute to investment agreements that strongly favour the investor, communities rarely withhold consent since the benefits promised by investor's are one of a few sources of development available to rural populations. When consent is withheld, it is usually a negotiating tactic designed to win small benefits, such as a school, a health centre, or a few boreholes, rather than a demand for sustained participation in the investment. Indications are that some deals may require mass population relocations, which would —even if compensated for their loss — set back individuals and families who are trying to rebuild their lives after the war. Officials and investors increase the risk by excluding communities from investment planning.

The ambiguity of the prevailing Southern Sudanese law 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, recognising customary land tenure and collectively registering

community lands would give communities a powerful bargaining chip when negotiating with investors and government. Provisions for impact assessments and community consultations could also help to formalise requirements and contribute to a more systematic and coherent approach to land acquisition. However, preliminary data suggests that community consultations and impact assessments are either non-existent or only ad hoc, thus violating the Land Act, affecting the allocation of benefits among the parties to the investment, and undermining efforts to set up a broad regulatory framework for land investments.

In the absence of enforceable law, communities have turned to the 'land belongs to the community' concept to secure a more central position in decisions about community land use. 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 their inclusion in investment planning. Policy-makers could strengthen such homegrown initiatives by exploring connections with existing conceptual frameworks like the 'free, prior and informed consent' (FPIC) standard applied to tribal and indigenous peoples' rights under international law. While 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 way to operationalise community consent in large-scale land investments.

To avoid potentially disastrous outcomes, the GoSS should consider limits on large-scale land acquisitions until government institutions have a chance to establish themselves. With independence of the South imminent, the GoSS has its hands full trying to maintain peace and resolve a long list of post-referendum issues. It does not have the time or resources to devote to timeously developing a responsible investment framework. Foreign and domestic investors have already secured millions of hectares of land with very little oversight. Government should explore several options open to it, for example:

- pass regulations already called for in the Land Act to prescribe precise land ceilings for various levels of government.; or
- announce a temporary moratorium on large-scale land acquisitions altogether, to give government institutions time to better situate themselves.

Mobilising such actions requires political will, which is difficult given the public's current orientation. Judging by official statements, many advocating for a 'more is better' approach to foreign investment. In the agriculture sector, this places emphasis on large-scale mechanised production and the large-scale land acquisitions this entails. Communities are also reluctant to oppose investment projects; due to extreme poverty and hunger, community leaders are sometimes willing to give away more land than they have, based only on vague and illusory promises from companies and government institutions.

It is too early to assess impacts and predict how large-scale land investment will affect host populations in Southern Sudan. Communities are not yet feeling any tangible benefit or harm from land investments, and the issue of the 'global land grab' is not yet a common topic of conversation. If land deals currently under consideration move ahead as planned, public opposition to 'land grabs' could rise very quickly, which 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. Most Southern Sudanese seem to accept the legitimacy of 'land belongs to the community', albeit with caveats about unreasonably withheld consent. If support for community land ownership continues to influence regional development, this might increasingly influence communities to wield more power and translate investment into increased benefits for rural populations. Even if communities gain a central role in managing land investments, FPIC becomes the legal standard, proposals from investors are carefully vetted for environmental and social impacts, and means are provided for local benefits, large-scale land acquisitions could still be one-sided deals in which a few 'transnational elites' benefit at the expense of local populations. The GoSS should take advantage of the brief opportunity in the wake of the referendum on self-determination, to consider how they will avoid such negative outcomes and harness the influx of foreign investment to enhance, rather than undermine, livelihoods in Southern Sudan.

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## LDPI Working Paper Series

A convergence of factors has been driving a revaluation of land by powerful economic and political actors. This is occurring across the world, but especially in the global South. As a result, we see unfolding worldwide a dramatic rise in the extent of cross-border, transnational corporation-driven and, in some cases, foreign government-driven, large-scale land deals. The phrase 'global land grab' has become a catch-all phrase to describe this explosion of (trans)national commercial land transactions revolving around the production and sale of food and biofuels, conservation and mining activities.

The Land Deal Politics Initiative launched in 2010 as an 'engaged research' initiative, taking the side of the rural poor, but based on solid evidence and detailed, field-based research. The LDPI promotes in-depth and systematic enquiry to inform deeper, meaningful and productive debates about the global trends and local manifestations. The LDPI aims for a broad framework encompassing the political economy, political ecology and political sociology of land deals centred on food, biofuels, minerals and conservation. Working within the broad analytical lenses of these three fields, the LDPI uses as a general framework the four key questions in agrarian political economy: (i) who owns what? (ii) who does what? (iii) who gets what? and (iv) what do they do with the surplus wealth created? Two additional key questions highlight political dynamics between groups and social classes: 'what do they do to each other?', and 'how do changes in politics get shaped by dynamic ecologies, and vice versa?' The LDPI network explores a range of big picture questions through detailed in-depth case studies in several sites globally, focusing on the politics of land deals.

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

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 a surprising number of large-scale land acquisitions in the south as well in recent years. Now that Southern Sudanese have opted for independence in the 2011 referendum on self-determination, investment activity is likely to increase further. This paper presents preliminary data concerning large-scale land acquisitions in two 'Green Belt' states in Southern Sudan: Central Equatoria and Western Equatoria. The case studies illustrate the complex interplay between cultural sovereignty, conflict and post-war reconstruction in Southern Sudan. Exploring the concept that 'land belongs to the community' (a statement taken up by communities to demand greater involvement in decision making about community lands), the paper examines processes of company–community engagement and the extent to which rural communities are being involved in investment projects.



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