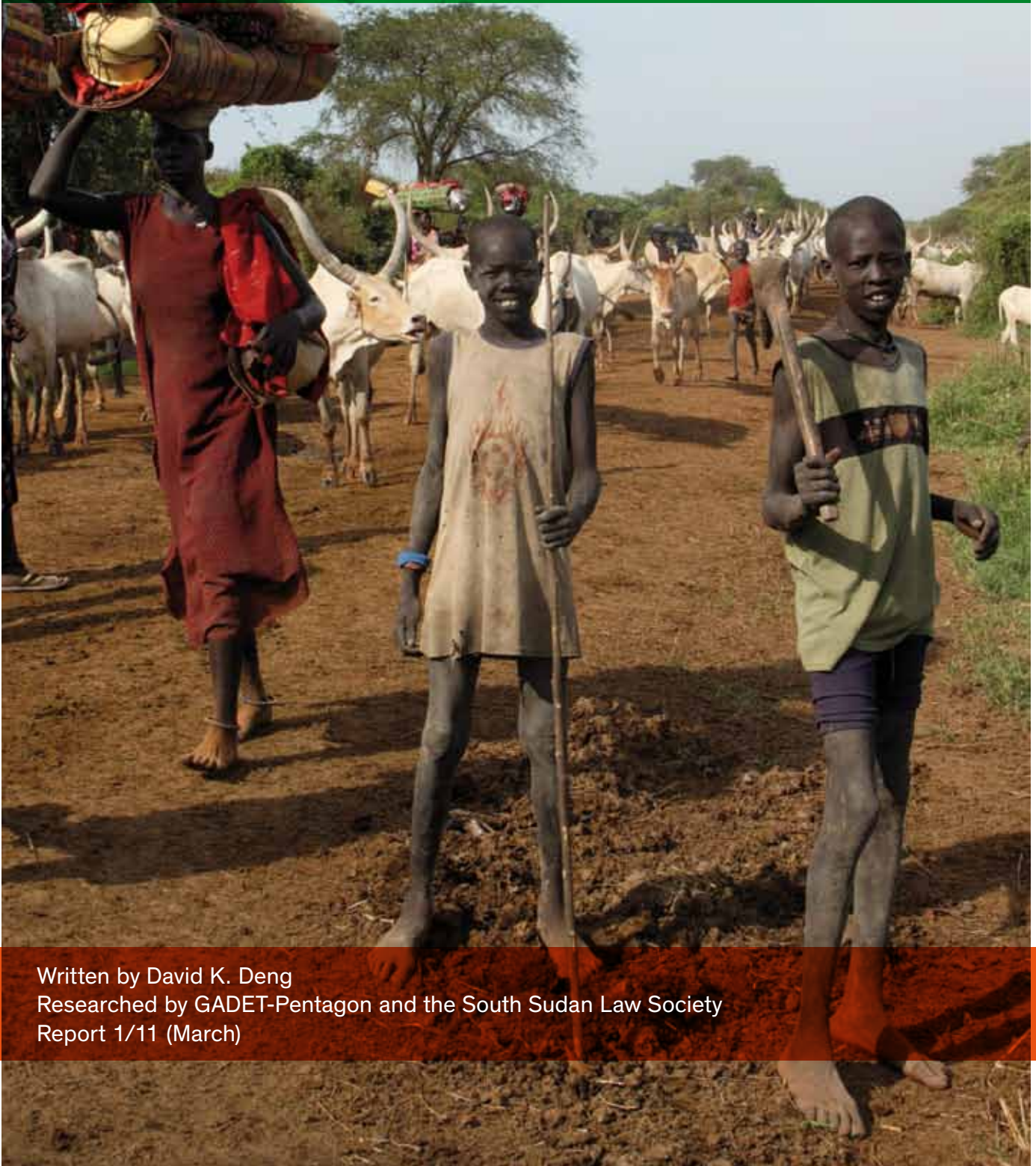




THE NEW FRONTIER

A baseline survey of large-scale land-based investment in Southern Sudan



Written by David K. Deng
Researched by GADET-Pentagon and the South Sudan Law Society
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About GADET-Pentagon

Generation Agency for Development and Transformation-Pentagon (GADET-Pentagon) is a Southern Sudanese civil society organization based in Juba. Its mission is to promote the progressive transformation of justice, development and literacy in Southern Sudan in order to create a more informed, developed and conscious society. GADET-Pentagon is involved with projects in a variety of areas, ranging from civic education, election monitoring and capacity-building for the youth, to mediation of land disputes, promotion of human rights and the development of rule of law. GADET-Pentagon's research team was comprised of Taban A. Christopher, Oci Geoffrey, and Koma James Luwala.

About the South Sudan Law Society

The South Sudan Law Society (SSLS) is a civil society organization that was founded in 1994 by lawyers from Southern Sudan. It now has 90 members from all the marginalized areas of Sudan, including the regions of Blue Nile, Nuba Mountains and Darfur. In addition to its main offices in Juba, the SSLS has branch offices in Yei, Torit, Yambio, Rumbek and Malakal. The SSLS's mission is to strive for justice in society and observation of human rights and the rule of Law in Sudan. It manages projects in a number of areas, including legal aid clinics and paralegal training centers, human rights awareness-raising, and capacity-building for traditional authorities. The SSLS's research team was comprised of David K. Deng and Morris Ladu.

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ACRONYMS

ACD	African Commercial Development
CEDASS	Canadian Economic Development Assistance for Southern Sudan
CES	.....	Central Equatoria State
CETC	.....	Central Equatoria Teak Company
CHRGJ	.....	Center for Human Rights and Global Justice
CPA	.....	Comprehensive Peace Agreement
DfID	.....	Department for International Development (UK)
EES	.....	Eastern Equatoria State
ESIA	.....	Environmental and Social Impact Assessment
EU	.....	European Union
FAO	.....	Food and Agriculture Organization
Finnfund	.....	Finnish Fund for Industrial Cooperation
GADET-Pentagon	.....	Generation Agency for Development Transformation-Pentagon
GoS	.....	Government of Sudan [national]
GoSS	.....	Government of Southern Sudan [regional]
GTZ	.....	Deutsche Gesellschaft für Zusammenarbeit
ICSS	.....	Interim Constitution of Southern Sudan
JAM	.....	Joint Aid Management
MAF	.....	Ministry of Agriculture and Forestry [either GoSS or state-level]
MOLACD	.....	Ministry of Legal Affairs and Constitutional Development (GoSS)
MOU	.....	Memorandum of Understanding
NBEG	.....	Northern Bahr-el-Ghazal State
NGO	.....	Non-governmental organization
NPA	.....	Norwegian People's Aid
SEAC	.....	Sudan Egyptian Agricultural Company
SSLS	.....	South Sudan Law Society
SPLM/A	.....	Sudan People's Liberation Movement and Army
SSCCSE	.....	Southern Sudan Centre for Census, Statistics and Evaluation
SSRC	.....	Southern Sudan Referendum Commission
WBEG	.....	Western Bahr-el-Ghazal State
WES	.....	Western Equatoria State

EXECUTIVE SUMMARY

This report is part of a baseline survey of large-scale land-based investment in Southern Sudan prepared for Norwegian People's Aid (NPA). It presents data on 28 foreign and domestic investments planned or underway across the ten states of Southern Sudan. In just four years, between the start of 2007 and the end of 2010, foreign interests sought or acquired a total of 2.64 million hectares of land (26,400 km²) in the agriculture, forestry and biofuel sectors alone. That is a larger land area than the entire country of Rwanda. If one adds domestic investments, some of which date back to the pre-war period, and investments in tourism and conservation, the figure rises to 5.74 million hectares (57,400 km²), or nine percent of Southern Sudan's total land area. While in theory, this influx of investment could provide development opportunities for rural communities, without the appropriate procedures in place there is a danger that it will serve to undermine livelihoods. Below are a series of recommendations that may help the Government of Southern Sudan (GoSS), its international partners, civil society, companies, investors, and rural communities in Southern Sudan to address the risks and opportunities of large-scale land investments moving forward:

1. Adopt a presumption in favor of disclosure for all documents associated with large-scale land-based investments;
2. Develop clear jurisdictional roles for public institutions at all levels, including an appropriate balance between central oversight and state-level flexibility, and providing a role for the legislative branch in approving large-scale land allocations;
3. Consider establishing a graduated land ceiling in which the authorization of successively higher levels of government is required as the size of land allocations increases;
4. Consider a temporary moratorium on all land acquisitions above a certain size in order to allow time for the appropriate procedures to be put in place;
5. Establish a technical committee to review all existing contracts to ensure that they comply with relevant provisions of the 2009 Land Act, the 2009 Local Government Act, and the 2009 Investment Promotion Act;
6. Promote alternative business models that better account for the needs of local populations, such as giving communities an equity stake in the venture or maximizing the links between companies and smallholder producers living on or around the project area;
7. Explore opportunities for constructive engagement with companies that demonstrate a willingness to adhere to regulatory standards and prioritize the development needs of host communities.

I. INTRODUCTION

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 land in Africa (Graham *et al.* 2010). Some analysts see opportunities in this trend, asserting 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. For decades, the agricultural sector in sub-Saharan Africa has been neglected in both domestic public policies and development cooperation. If done responsibly, proponents argue, the influx of foreign investment can increase public revenues and improve farmers' access to technology and credit, leading to a revitalization of agriculture. Others are more skeptical. Critics have dubbed it the 'global land grab', warning 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 criticize international 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. 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.¹ 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, as this report demonstrates, there have also been a surprising number of large-scale land-based investments in Southern Sudan in recent years. The baseline data in this report indicates that from 2007 to 2010, foreign companies, governments and individuals have sought or acquired at least 2.64 million hectares (26,400 km²) of land for projects in the agriculture, biofuel and forestry sectors. That is larger than the entire country of Rwanda. If one adds domestic investments, the pre-war mechanized agriculture schemes of Upper Nile State, and investments in tourism and conservation, the figure rises to 5.74 million hectares (57,400 km²), or nine percent of the total land area of Southern Sudan. This influx of investment could provide a sorely needed source of development for the region. However, with the nascent state of government, a society still reeling from years of conflict, and the legal ambiguity of the transitional period, there is also a danger that this influx of investment, if left unchecked, may serve to undermine livelihoods.

This report was prepared as part of a baseline survey of large-scale land-based investment in Southern Sudan for Norwegian People's Aid (NPA). It presents data on 28 foreign and domestic investments planned or underway across the ten states of Southern Sudan. Its purpose is to introduce policy-makers, academics and civil society in Southern Sudan to some of the salient aspects of land investments. The data may also provide insights for the design of initiatives to address the challenges of commercial land-based investments moving forward. Section One lays out basic background information on the region. Section Two outlines relevant legal provisions, which in theory are meant to regulate large-scale land investments in Southern Sudan. Section Three summarizes the research methodology. Section Four presents the baseline data, and Section Five offers a series of preliminary observations. Section Six concludes with recommendations for stakeholders involved with large-scale land investments in Southern Sudan to consider moving forward.

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

II. BACKGROUND INFORMATION

Geography – 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-quarter of that area, or 640,000 square kilometers, and is the size of Austria, Belgium, Denmark, Holland, Germany and Portugal combined.

Population – The 2009 census estimated Southern Sudan's population at 8.26 million. To give some perspective, that is roughly one-quarter the population of Uganda spread across a land area that is approaching three times the size of Uganda. Eighty-three percent of this population is thought to reside in rural areas (SSCCSE 2010a).

People – Southern Sudan is home to some 65 ethnic groups whose territories span the entire region (UN OCHA 2006). Seventy-eight percent of families rely on small-scale farming or animal husbandry as their primary source of livelihood (SSCCSE 2010a). Sudan as a whole has the world's largest number of pastoralists, with a population of seven million.²

Conflict – Sudan has suffered through two civil wars since independence in 1956. The second North-South civil war lasted from 1983 to 2005 and was the longest running civil conflict of its time. It killed an estimated 2.5 million people and left 4.5 million displaced. The 2005 Comprehensive Peace Agreement (CPA) brought the 22-year civil war to an end, yet conflict between the national government and rebel groups persists in parts of Northern Sudan. Southern Sudan too has experienced high levels of localized conflict in recent years. In 2009, approximately 2,500 people were killed and 350,000 displaced by conflict in the South, exceeding the death toll in Darfur for that year (Crockett 2010). The high levels of violence subsided in 2010, but rebellions by high-level military officers have since added another layer of complexity to the situation.

Government – The CPA established the Government of Southern Sudan (GoSS) in 2005. The GoSS is the highest level of authority in Southern Sudan and sits above the state-level governments in the federal hierarchy. Local government rests under the state, and is comprised of the county, *payam*, and *boma* administrations. *Payams* and *bomas* roughly correspond to the district and village levels, respectively.

Economy – Sudan's economy is dominated by oil. Revenue from oil accounts for 98 percent of the annual budget in the South and 60 to 70 percent of the annual budget in the North. Since Sudan first started exporting oil in 1999, agricultural production in the country has steadily declined. 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.

Livelihoods – High levels of poverty and food insecurity are found throughout Southern Sudan. 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. The highest levels of poverty are concentrated in the border states of Northern Bahr-el-Ghazal, Warrap, and Unity (SSCCSE 2010a).

2 It is tied with Somalia in this regard.

Land ownership – There are essentially three types of landowners in Southern Sudan: (1) ethnic communities, (2) government at the GoSS, state, and local levels, and (3) private leaseholders. Communities are by far the largest landowners in the sense that they retain the right to regulate the usage of community land under customary law. The three-levels of government also own a considerable amount of land in the form of protected areas (e.g. national parks, game reserves, forest reserves) and pre-war agro-industrial complexes. Most of these areas were gazette by either the British colonial administration or the central government in Khartoum after independence. Privately held leaseholds are mostly found in and around urban areas. However, in recent years, foreign and domestic companies have acquired large amounts of rural land through leases with communities and government institutions.

The way forward – From 9-14 January 2011, Southern Sudanese voted in a referendum on self-determination to decide whether to remain united with the North or to secede and form an independent nation in the South. As expected, voters opted overwhelmingly for independence, with 98.8 percent of the electorate voting in favor of secession (SSRC 2011). Yet the situation remains tense. North and South must still resolve a host of post-referendum issues, from citizenship to border demarcation to wealth sharing to the status of the contested oil-rich border region of Abyei, before Southern Sudan declares its independence on 9 July 2011. The South too has its own internal challenges. The Sudan People's Liberation Movement (SPLM) has dominated the Government of Southern Sudan (GoSS) since it was established in 2005. In order to consolidate the peace in Southern Sudan, the SPLM has begun trying to open political space in the South and provide for the meaningful participation of opposition groups. The litmus test for these efforts to create a more inclusive government will be the upcoming constitutional review process, culminating in a new transitional constitution to guide the country into the post-independence period.

III. RELEVANT LEGAL PROVISIONS

Since its establishment in 2005, the Government of Southern Sudan (GoSS) has enacted laws covering a range of issues, yet large gaps in the regulatory framework remain. As a result, the day-to-day practice of government institutions is still governed, to a large extent, by a combination of pre-CPA national laws, preexisting practice, and discretionary decision-making. Nonetheless, efforts are underway by a variety of governmental, non-governmental and civil society actors to promote the new laws, and it is expected that in time they will begin to have more of an influence over institutional practice in Southern Sudan. The table below highlights some key legal provisions pertaining to land:

Table 1: Relevant Laws

LAW	SECTION	PROVISIONS
Comprehensive Peace Agreement (CPA)	Ch. III, § 2.1	'Without prejudice to the position of the Parties with respect to ownership of land and subterranean natural resources, including in Southern Sudan, this Agreement is not intended to address the ownership of those resources.'
Interim Constitution of Southern Sudan (ICSS)	Ch. II, § 180(1)	'The regulation of land tenure, usage and exercise of rights thereon shall be a concurrent competence, exercised at the appropriate level of government in Southern Sudan.'
	Ch. II, § 180(2)	'Rights in land owned by the Government of Southern Sudan shall be exercised through the appropriate or designated level of government in Southern Sudan, which shall recognize customary land rights under customary land law.'
	Ch. II, § 180(4)	'All lands traditionally and historically held or used by local communities or their members shall be defined, held, managed and protected by law in Southern Sudan.'
	Ch. II, § 180(6)	'Communities and persons enjoying rights in land shall be consulted and their views duly taken into account in decisions to develop subterranean natural resources in the area in which they have rights; they shall share in the benefits of that development.'
	Ch. II, § 180(1)(d)	'[T]here shall be established a Southern Sudan Land Commission that shall... make recommendations to the appropriate level of government concerning land reform policies and recognition of customary rights or customary land law...'

LAW	SECTION	PROVISIONS
Land Act (2009)	Ch. II, § 8(6)	'Customary land rights including those held in common shall have equal force and effect in law with freehold or leasehold rights...'
	Ch. IV, § 14	'[I]ndividual or collective foreign entities may acquire leasehold or other interest in Land for a specified period and not freehold in land in Southern Sudan...'
	Ch. V, § 15(5)	'Any allocation of a piece of land beyond 250 feddans [105 hectares] for commercial, agricultural, forestry, ranch, poultry or farming purposes shall be approved by the Concerned Ministry in the State after transmission by the County Land Authority or the Payam Land Council.'
	Ch. V, § 15(6)	'...any allocation shall be based on a land ceiling that shall be prescribed by regulations.'
	Ch. VI, § 18(2)	'The contract of lease shall not be more than 99 years.'
	Ch. VI, § 27(1)	'Subject to consensus between members of the community, Traditional Authority may recommend the grant to a person or company, whether national or foreigner, a right of leasehold in respect of a portion of community land to the appropriate land administration.'
	Ch. VI, § 27(7)	'Upon completion of the leasehold contract, and in the absence of renewal, the leased land shall revert back to the community.'
	Ch. VII, § 46	'The County Land Authority shall... (7) Advise the local community on issues related to land tenure, usage, and exercise over land rights; (8) Chair the consultation process between community and State Government if required...'
	Ch. VII, § 50	'The functions of the Payam Land Council shall be as follows... (4) Protection of customary land rights of communities...'
	Ch. IX, § 63(1)	'The activity to be carried out by the investor shall reflect an important interest for the community or people living in the locality.'
	Ch. IX, § 63(2)	'[The activity to be carried out by the investor] shall contribute economically and socially to the development of the local community.'
	Ch. IX, § 63(3)	'The Concerned Ministries in the Government of Southern Sudan and the State and the Investment Authority shall consult with the Community concerned on any decision related to the land that the investor intends to acquire and the view of the Community shall duly be taken into consideration.'
	Ch. X, § 67	'[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'.
Ch. XI, § 70(1)	'Any allocation of land for investment purposes shall be subject to a social, economic and environmental impact assessment to ensure that the social, economic and environmental implications of the activities on the land are taken into account before any decision is made thereon.'	

LAW	SECTION	PROVISIONS
Local Government Act (2009)	Ch. II, § 12	'The objectives of the Local Government shall be to... (10) consult and involve communities in decision making relating to the exploitation of natural resources in their areas...'
	Ch. II, § 13	'The following principles of local governance shall be the basis for decentralisation and democratisation of the Local Government Authority system in Southern Sudan: (1) Principle of subsidiarity, where decisions and functions shall be delegated to the lowest competent level of Government... (5) Transparency, to build mutual trust between government and citizens through the provision of information and guaranteed access to information...'
	Ch. VI, § 52	'The County Commissioner shall be the head of the Local Government in the County and shall, inter alia, exercise the following functions and duties... (i) coordinate the activities and functions of the government, nongovernmental organizations, private sector and community ventures within the County...'
	Ch. IX, § 88(2)	'The distribution and allotment of the Local Government Council land, for various uses, shall be planned and managed by the Council concerned, in consultation with the community of the respective area.'
	Ch. IX, § 88(3)	'The planning and management of the Local Government Council land shall be in accordance with the Land customs, traditions and norms of the Communities, policy guidelines, the Land Act, 2009, Rules and Regulations thereof.'
	Ch. IX, § 89	'The procedure for acquiring community land within a Local Government Council area for Government and other uses, shall be the function of the respective Council, save that the concerned Council shall: (a) respect the existing customary practices, protect local heritage and observe international trends and practices in land acquisition; (b) consult the community concerned on the Land acquisition or usage as the case may be...'
	Ch. IX, § 91(3)	'Without prejudice to the provisions of the Land Act, 2009, the functions and duties of the Council Land Committee or Authority, inter alia, shall be as follows... (g) mediation of consultation processes of land lease between the community and other investors...'
	Ch. IX, § 92(1)	'Local Government Councils shall enact by laws to regulate land management on... (b) land acquisition, allotment and withdrawal systems; (c) land lease and land rights transfer systems...'
Investment Promotion Act (2009)	Ch. X, § 42	'Without prejudice to the provision of this Act, the Authority shall... (a) protect the interest of the communities in whose areas investments shall take place...'
	First Schedule (A)	'Investment in the following fields shall be deemed a priority of the Government of Southern Sudan... (1)(a) Agriculture: food and cash crops, farm mechanization, seeds and agricultural tools industry, livestock and dairy development; fisheries and fish processing and preservations, and apiculture (bee-keeping); (b) Agro-business, textiles, leather industries and food processing such as flour milling, oil pressing mills, sugar processing, fruits and vegetable canning, meat and fish processing, animal feeds and fertilizers, abattoirs and hides (value addition)... (6) Forestry, afforestation, reforestation and wood processing industry... (11) Tourism attraction and hotel industry development.'
	Second Schedule (3)	'[T]he following conditions shall be deemed included in the decisions on investment in the priority areas listed in the First Schedule: (a) general investments in agriculture – other than forestry and paper wood – shall not exceed 30 years for a foreign investor subject to renewal by mutual consent by the parties; (b) a foreign investor who wishes to invest in plantation forestry and depending on periods of harvest, shall not exceed 60 years subject to renewal by mutual consent by the parties...'

IV. METHODOLOGY

The preliminary data in this report was compiled through field visits to the ten states of Southern Sudan. Two research teams were sent to cover five states each. The research was conducted over the course of four months, from mid-October 2010 to mid-February 2011. Team One was from a Sudanese civil society organization called Generation Agency for Development Transformation-Pentagon (GADET-Pentagon). It covered the states of Eastern Equatoria, Lakes, Warrap, Western Bahr-el-Ghazal, and Northern Bahr-el-Ghazal. Team Two was from another Sudanese civil society organization called the South Sudan Law Society (SSLS). It covered the states of Central Equatoria, Western Equatoria, Upper Nile, Unity, and Jonglei.

The data was gathered through a combination of interviews with key informants, field observation, and a review of primary and secondary source material. The primary sources included: (1) interviews with government officials at the GoSS, state, and local levels; (2) interviews with individuals in affected communities; (3) outreach to companies; and (4) a review of documents associated with investment agreements. The researchers targeted the following government institutions:

- GoSS Ministry of Agriculture and Forestry;
- State-level Ministries of Agriculture and Forestry;
- GoSS Ministries of Wildlife;
- State-level Ministries of Wildlife
- State-level Ministries of Physical Infrastructure;
- State Governors' offices; and
- County Commissioners' offices at the local government level.

In order to obtain firsthand information from community leaders and other residents, the research teams undertook field trips to visit the communities where large-scale land investments were planned or underway. In several cases, such visits were not possible due to insecurity, impassable roads, or time constraints. It also proved difficult to contact many of the companies involved with the land investments. Most companies are still in the early stages of the project cycle and do not yet maintain a regular presence in Southern Sudan. Many company representatives also left the country during the referendum period out of a concern that the voting process would result outbreaks of violence. As a result, the researchers were only able to talk to representatives of six of the foreign-owned investment projects.

The teams used a questionnaire outlining certain basic information about investments to guide their inquiries. A copy is included in the Appendix. The questionnaire defines as 'large-scale' any investment that implicates 500 hectares or more of land, and covers investments in agriculture, biofuels, forestry, carbon credits, and tourism / conservation. It excludes projects in the extractive industries since they are of a somewhat *sui generis* nature and are not commonly associated with the recent rush for African farmland. The questionnaire tended to work best for projects that had already begun operations. For projects in which investors had merely expressed interest, the teams were rarely able to get anything more than a nationality or a company name. In order to obtain the most accurate information possible, the research teams made a practice of asking to see documents associated with investment projects (e.g. memorandums of understanding (MOUs), leases, concession agreements, investment agreements, environmental and social impact assessments, etc.). In many cases, this was not possible, either because the documents were treated as confidential material, copies were not kept on-hand, or they were otherwise lost or misplaced. In these circumstances, the researchers crosschecked the information gathered through in-person interviews with a review of secondary sources (e.g. media reports, internet searches, academic articles, NGO reports, etc.).

V. PRELIMINARY DATA

Table 3 at the end of this section presents baseline data on 28 large-scale land investments that are either planned or underway across the ten states of Southern Sudan. It provides quantitative and qualitative data organized under the following headings:

Table 2: Headings for Table Three

HEADING	DESCRIPTION
Project Proponents	Lists the name of the public or private entities involved with the land acquisition. Some investments involve multiple companies in a variety of relationships, e.g. parent-subsidiary, financier-contractor, joint venture, etc. For such projects, the name of each company is provided.
Nationality	Lists the nationality of the project proponents. For projects in which multiple investors are involved, it gives the nationality of the majority shareholders.
Government Signatory	Lists the institution that signed the investment agreement on behalf of the government. For several projects there is either no written agreement or no official government involvement. Those projects are indicated as such. For investments that are entirely government-owned, we left this column blank.
Business Sector	Lists the primary business sectors in which the investments are being made. The table covers investments in agriculture, biofuel, forestry, carbon credits, and tourism / conservation.
Size	Indicates the area of land that is being leased in hectares. Often these figures are converted from other units of measure, e.g. acres (1 acre = 0.40 ha), feddans (1 feddan = 0.42 ha), km ² (1 km ² = 100 ha), mi ² (1 mi = 259 ha), etc, accounting for the odd figures in places. Figures in the table are rounded to three significant digits to simplify the arithmetic.
Location	Lists the county (or counties) in which the investment is located. The state is listed in the left margin.
Landowner	Indicates whether the community or the government owns the land that is being leased. In some cases, the leased area implicates both community and government land. This may be because the project has gradually expanded over the years to incorporate community owned lands or because the leaseholder obtained rights over surrounding community lands.
Lease Period	Indicates the length of the lease in years. For projects that do not involve leases (e.g. permanent expropriation of community land, government investments on government-owned land, etc.), 'no lease' is written in this column.
Lease Amount	Indicates the payment that is provided in exchange for the lease. In some cases, payments are rather straightforward and made directly to either the community or government landowners. In other cases, the payment may be made to the government who is then meant to provide services to community members.
Prior Consultation	Indicates whether the company and government institution involved with the investment project consulted with affected communities prior to finalizing the investment agreement. We only indicated that prior consultation had taken place if it involved a large cross-section of the affected community and if the community's feedback was incorporated into the design of the investment. If we received conflicting information, or were not otherwise able to confirm whether or not consultation took place, we indicated 'not available' (or N / A) in this column.
Environmental and Social Impact Assessments (ESIAs)	Indicates whether the parties have conducted environmental and social impact assessments (ESIAs) for project activities. None of the companies we came across carried out ESIAs prior to finalizing their leases, as required by the Land Act (see Ch. XI, § 70(1)). Therefore, we simply indicate whether ESIAs have been done or not, without indicating whether they were done prior to the lease.
Stage	Indicates whether the lease has been finalized or not. For projects in which the company and the landowner have signed a preliminary memorandum of understanding (MOU), that is also indicated in this column. An MOU is merely an expression of intent to enter into a business partnership and does not give rise to legal obligations.
Date Started	Indicates the year when the proponent of the investment project first applied for its lease.
Market	Indicates whether the investment is producing for local markets, export markets, or mixed local and export markets.
Displacement	Provides a qualitative description of whether the investment project will involve any displacement of local populations, either from residential, agricultural, pasture, or forage land.

Table 3: Baseline Data on Large-scale Land Investments in Southern Sudan

	PROJECT PROPONENTS	NATIONALITY	GOV'T SIGNATORY	BUSINESS SECTOR	SIZE (HA)	LOCATION (COUNTY)	LAND-OWNER	LEASE PERIOD (YRS)	LEASE AMOUNT (USD)
CES	Canadian Economic Development Assistance for Southern Sudan (CEDASS)	Canadian	CES MAF	Agriculture	12,200 (trial planting on 105 ha)	Juba	Gov't	No lease	No lease
	Central Equatoria Teak Company (CETC)	British (DfID) Finnish (Finnfund)	GoSS MAF	Forestry	1,850 (plus 50,000 ha of natural forest in Lainya)	Lainya, Yei	Gov't, Comm.	32	\$200,000 for social fund plus \$155 per m ³ of teak exported.
	Green Resources TreeFarms Sudan (subsidiary)	Norwegian	CES MAF	Forestry, Carbon credit, Conservation	179,000	Terekeka	Comm.	99	\$12,500 per year
	Madhvani Group	Ugandan	GoSS MAF	Agriculture	TBD	Terekeka, Juba	Gov't	TBD	TBD
WES	Nile Trading and Development	American	CES Ministry of Phys. Infra.	Biofuels, Carbon credit	600,000 (plus extension up to 1 million ha)	Lainya	Comm.	49	Approx. \$25,000 in fees for CES gov't. Local co-op gets 40-50% of profits.
	Blue Lakes Limited	Kenyan	WES MAF	Forestry	560	Yambio	Gov't	30	\$200,000 for social fund plus \$110 per m ³ of teak exported.
	Equatoria Teak Company	British, Finnish (same owners as CETC)	GoSS MAF	Forestry	18,600	Nzara	Gov't	32	\$200,000 for social fund plus \$110 per m ³ of teak exported.
	Eyat Oilfield Services	Northern Sudanese	WES MAF	Agriculture	162,000	Ezo, Tambura	Comm.	99	\$250,000 to be paid to state gov't.
	Joint Aid Management (JAM) African Commercial Development (ACD)	South African American	WES MAF	Agriculture	24,300	Yambio	Comm.	32	TBD
EES	M.A.J. Foundation Comde Teak (subsidiary)	Indian	WES MAF	Forestry	8,020	Nzara, Ezo	Gov't	32	\$200,000 for social fund plus \$100 per m ³ of teak exported.
	Imatong Nat'l Park (EES Ministry of Wildlife)	Southern Sudanese	—	Tourism / Conservation	13,200	Ikotos, Magwi	Comm.	Permanent expropriation to establish reserve area. The gov't plans to provide the community with certain services in exchange for the land.	
	Loile Nat'l Park (EES Ministry of Wildlife)	Southern Sudanese	—	Tourism / Conservation	280,000	Kapoeta East	Comm.	Permanent expropriation to establish reserve area. The gov't plans to provide the community with certain services in exchange for the land.	
	Al Ain Wildlife	Emirati	GoSS Ministry of Wildlife	Tourism / Conservation	2,280,000	Pibor, Pochalla, Kapoeta East	Gov't	30	No payment

PRIOR CONSULT'N	ESIAs	STAGE	DATE STARTED	MARKET	DISPLACEMENT
Yes	No	Finalized	2009	Local	Possibly more than 100 people displaced from family farms. Exact figures unconfirmed.
No	N / A	Finalized	2007	Export	There is a plan to move some families off of the forest reserves.
Yes	No	Last stages	2007	Mixed	Large population on targeted land but no plans for relocations.
No	No	MOU	2007	N / A	Would involve considerable relocations. Exact figures not available.
No	No	Finalized	2008	Mixed	Large population in targeted area. No info on whether relocation req'd.
No	Yes	Finalized	2008	Export	There are people living on the reserve. No known displacement.
No	Yes	Finalized	2007	Export	There are several villages located on the leased land. No known displacement.
No	No	MOU	2010	N / A	Large population lives in targeted area. Considerable relocations may be required.
N / A	No	MOU	2010	N / A	Large population in targeted area. No info on whether relocation is req'd.
No	No	Last stages	2008	Export	N / A
Yes	No	Initial stages, no MOU yet	2010	—	The parties have not yet discussed relocations.
Yes	No	Initial stages, no MOU yet	2010	—	The parties have not yet discussed relocations.
No	No	Finalized	2008	—	There are a number of communities living in the park. The gov't plans to consult them to see if they would be willing to relocate.

	PROJECT PROPONENTS	NATIONALITY	GOV'T SIGNATORY	BUSINESS SECTOR	SIZE (HA)	LOCATION (COUNTY)	LAND-OWNER	LEASE PERIOD (YRS)	LEASE AMOUNT (USD)
Jonglei	Jonglei MAF (mixed gov't and private initiative)	Southern Sudanese	–	Agriculture	40,000	Some land from every county in the state.	Comm.	No lease	No lease
	Yen Thumb Group	Southern Sudanese	Jonglei MAF	Agriculture	3,000	Bor, Duk, Twich East	Comm.	TBD	TBD
Lakes	Fenno Caledonian	Finnish	Lakes MAF	Forestry	160,000 (proposed by gov't)	Wulu	Gov't, Comm.	TBD	TBD
WBEG	Egyptian Irrigation Scheme	Egyptian ¹	WBEG MAF	Agriculture	16,800	Jur River	Comm.	TBD	TBD
	M.A.J. Foundation	Indian	WBEG MAF	Forestry	N / A	Wau, Jur River	Gov't	TBD	TBD
NBEG	Aweil Rice Scheme (NBEG MAF w/ donor funding from EU, GTZ implements)	Southern Sudanese	–	Agriculture	6,300 (trial planting on 344 ha)	Aweil West	Gov't	No lease	No lease
Warrap	Tonj East Agricultural Cooperatives	Southern Sudanese	No written agreement.	Agriculture	1,260	Tonj East	Comm.	No lease	No lease
	Gogrial East Farmers' Union	Southern Sudanese	No written agreement.	Agriculture	840	Gogrial East	Comm.	No lease	No lease
	Toch Chol Crop Production	Southern Sudanese	No written agreement.	Agriculture	2,730	Gogrial West	Comm.	No lease	No lease
Unity	Jarch Management Group	American	No gov't approval	Agriculture	800,000	Mayom	Comm.	N / A	N / A
	Leac for Agriculture (joint venture)	Southern Sudanese							
	Prince Budr Bin Sultan	Saudi Arabian	State gov't	Agriculture	105,000	Gwit	Comm.	25	\$125,000 per year to state gov't.
Upper Nile	Citadel Capital (equity firm)	Egyptian	State gov't	Agriculture, Carbon Credits	105,000	Gwit, Pariang	Comm.	25	\$125,000 per year to state gov't.
	Sudan Egyptian Agricultural Company (SEAC)	Egyptian							
	Concord Agriculture	Australian							
Upper Nile	[Numerous private individuals]	Mainly Northern Sudanese	Upper Nile MAF	Agriculture	294,000 (and growing)	Renk	Gov't, Comm.	The gov's acquires land from local communities and then proceeds to lease it out in 1000 ha parcels to private individuals, mostly Northern Sudanese, for mechanized farming.	
	[Numerous private individuals]	Mainly Northern Sudanese	Upper Nile MAF	Agriculture	147,000 (and growing)	Manyo	Gov't, Comm.		
	[Numerous private individuals]	Mainly Northern Sudanese	Upper Nile MAF	Agriculture	29,400 (and growing)	Melut	Gov't, Comm.		

Key: CES = Central Equatoria State; WES = Western Equatoria State; EES = Eastern Equatoria State; WBEG = Western Bahr-el-Ghazal State; MAF = Ministry of Agriculture and Forestry [GoSS or state-level]; NBEG = Northern Bahr-el-Ghazal State; N / A = Information is not available; TBD = Information has yet to be determined; MOU = Memorandum of understanding.³

³ According to the WBEG Ministry of Agriculture, the Egyptian government is seeking to lease this land for rice production.

PRIOR CONSULT'N	ESIAs	STAGE	DATE STARTED	MARKET	DISPLACEMENT
Yes	No	Under neg.	2010	Local	The authorities report that the land is not being used.
Yes	No	Will start farming pending issuing of lease.	2010	Local	N / A
No	No	MOU	2010	TBD	Approx. 1,300 households may be relocated.
No	No	Initial stages, no MOU yet.	2008	Mixed	People will likely be displaced but no info on scale.
No	No	Initial stages, no MOU yet.	2008	Export	Authorities report that there are no residential areas on the land, although communities may lose pastureland and fuelwood.
Yes	No	Finalized	2008	Local	Land gazetted by the colonial gov't in the 40s. Authorities report that no one lives there and it's not used for grazing.
Yes	No	Finalized	2007	Mixed	No known displacement.
Yes	No	Finalized	2010	Local	No known displacement.
Yes (pastoralist groups not consulted)	No	Finalized	2010	Local	Unknown number of pastoralists may lose access to pastureland.
No	No	Not clear. No visible activity.	2009	N / A	Large population living in the targeted area. No info on whether relocation req'd.
No	No	Finalized	2010	N / A	Large population living in the target area. No plan for relocation.
No	Yes	Finalized	2009	Priority to local markets in short term. May export in the future.	Large population living on the target area. No plan for relocations.
In the past, there was no consult'n for these acquisitions. Now the gov't says that it first consults first with communities before expropriating their land. No info on how extensive these consultations are. No ESIAs are done.		The mechanized schemes of northern Upper Nile first started in the 1970s.		Primarily North and South Sudan.	As the schemes expand, communities may lose access to residential, agricultural, and pasture land.

VI. PRELIMINARY OBSERVATIONS

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, we cannot claim that the data in the preceding section constitutes a comprehensive listing of all large-scale land investments in Southern Sudan. Nonetheless, it does enable a number of preliminary observations, which we have detailed in the subsections below.

In order to facilitate different kinds of comparisons, we refer to three different data sets, each of which organizes the investments in different ways (see Table 4).

Table 4: Data Sets

DATA SET	DESCRIPTION
Post-CPA foreign investments in agriculture, biofuels and forestry	This data set excludes pre-CPA projects (e.g. mechanized farming schemes of Upper Nile), projects by Sudanese nationals (e.g. projects by farmers' groups in Warrap), investments by GoSS or state-level governments (e.g. Aweil Rice Scheme in NBEG), and projects in tourism and conservation (e.g. Al Ain Wildlife's investment in Boma National Park). This allows us to target the more recent foreign land deals that are associated with the current global rush for African farmland. The mechanized farming schemes of Upper Nile and Boma National Park also involve very large areas of land that could skew aggregate figures.
Post-CPA foreign investments in all sectors	This data set is the same as the previous one except that it includes Boma National Park. The lease of land for conservation purposes is often cited among the drivers of the global land rush.
Foreign and domestic investments, pre- and post-CPA, in all sectors	This data set includes all 28 projects from the table in Section Four. It provides a more accurate total area targeted for investment, although it should be noted that the Aweil Rice Scheme and the mechanized farming schemes of Upper Nile have their origins in the pre-war period and do not fit neatly into the more recent 'global land grab' narrative.

A. Size

Taken as a whole, these investments implicate a surprisingly large area of land. Even excluding those deals for which the parties have not yet determined the size of the land parcel (e.g. Madhvani Group in CES, or M.A.J. Foundation in WBEG), the total land area designated for post-CPA foreign investments in agriculture, biofuels and forestry is 2.64 million hectares (26,400 km²). That is larger than the entire country of Rwanda. If one includes all large-scale land investments, foreign and domestic, pre- and post-CPA, in all business sectors, the figure rises to 5.74 million hectares (57,400 km²), or nine percent of Southern Sudan's total land area. The amount of investor interest is remarkable given the uncertainty of the current transitional context.

There are a number of strikingly large deals. Below is a list of the top three:

Table 5: The Three Largest Land Deals

PROJECT	LOCATION	SIZE
Al Ain Wildlife	Jonglei, EES	An Emirati company called Al Ain Wildlife has reportedly leased the entire area of Boma National Park at 2,280,000 hectares (22,800 km ²).
Nile Trading and Development	CES	An American company called Nile Trading and Development has reportedly leased 600,000 hectares (6,000 km ²) of land in Lainya County about 75 km outside Juba with a right to extend its landholding to 1,000,000 hectares (10,000 km ²).
Jarch Management	Unity	An American investment firm called Jarch Management has reportedly leased 400,000 hectares (4,000 km ²) from a Sudanese company called Leac for Agriculture, Ltd. A deal for another 400,000 hectares is in the process of negotiation.

In general, the larger deals tend to be located on community land. The average size of foreign investments on community-owned land is 271,000 hectares, whereas the corresponding average for projects on government-owned land is 8,250 hectares. This is consistent with the fact that communities own most of the land in Southern Sudan. Figure 1 disaggregates post-CPA foreign investments in agriculture, biofuels and forestry to show the amount of community-owned land designated for investment versus the amount of government-owned land.

B. Geographic Distribution

The land areas covered by investment projects vary widely from state to state. CES and Unity have the most land devoted to post-CPA foreign investments in agriculture, biofuels, and forestry (see figure 2). The pre-CPA mechanized agricultural schemes in Upper Nile and Al Ain Wildlife's investment in Boma National Park also cover very large land areas (see figure 3).

Figure 1: Land Area Disaggregated by Landowner

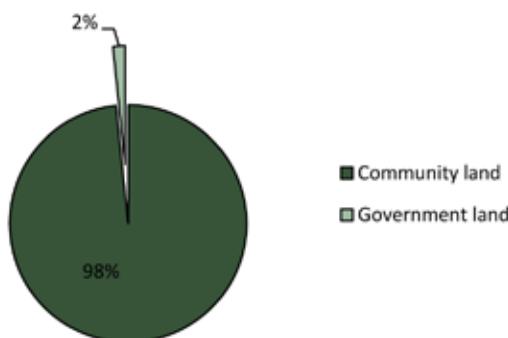


Figure 2: Post-CPA Foreign Investments in Agriculture, Biofuels, and Forestry According to State

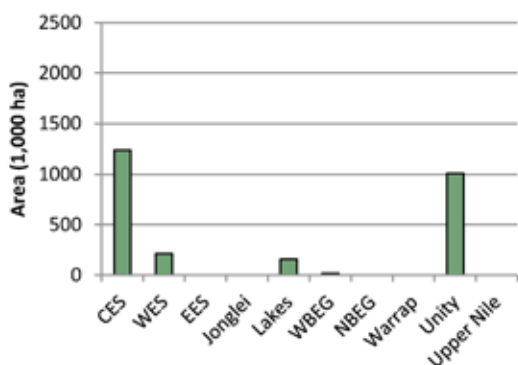
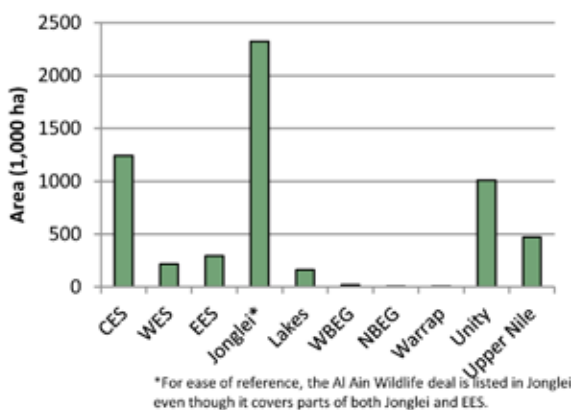
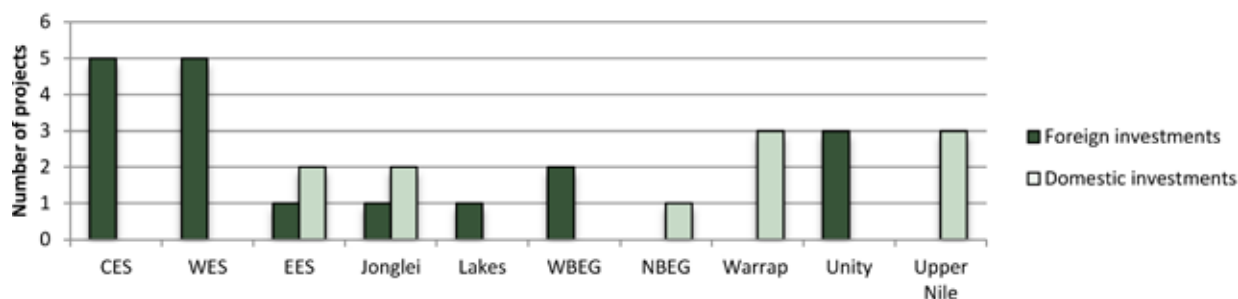


Figure 3: Foreign and Domestic Investments, Pre- and Post-CPA, in All Sectors According to State



Due to the unusually large size of several of the projects, an assessment of land area alone can distort the picture of investment activity at the state level. Comparing the number of projects in each state may provide a more accurate measure. Figure 4 below shows the number of foreign and domestic investments planned or underway in each state:

Figure 4: Number of Foreign and Domestic Investments per State



According to this criterion, the three states with the most foreign investment are CES, WES and Unity. Figure 5 superimposes this data with the six agro-ecological zones of Southern Sudan. It shows that state-to-state variations in investment activity mirror variations among the agro-ecological zones. This can be attributed to differences in their agricultural potentials. For instance, CES and WES lie in the Green Belt, which has some of the most fertile soil, highest rainfall, and abundant forests in Southern Sudan. Unity State lies in the Nile and Sobat Corridor, which has ample water supplies to support irrigated farming. Unity State's large petroleum deposits may also play a role in encouraging land speculation, in which the investor's main purpose is to capture rents from rising land values, rather than investing capital into developing the productive capacity of the land.

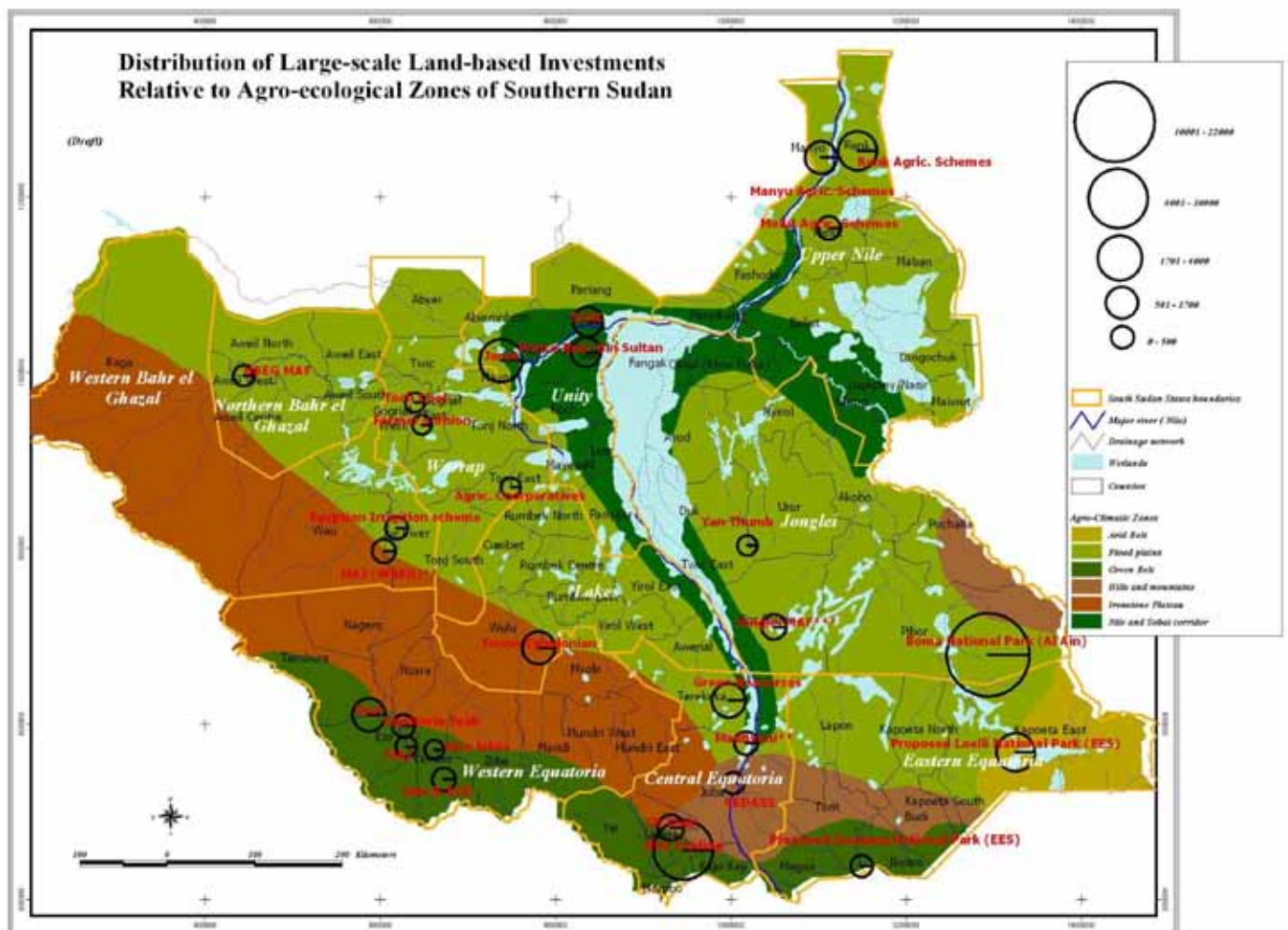
Table 6 shows the number of agricultural, forestry and biofuel investments in each agro-ecological zone and the percentage of the agro-ecological zone that they cover. With 25 percent of its total area covered by investments, the Green Belt has the most investment activity. It is followed by the Nile and Sobat Corridor, which has 13 percent of its total area covered by investment. Domestic investments seem to be clustered in the Floodplains. Only two percent of the Floodplains total area is covered by investment, reflecting the smaller relative size of domestic investments. The Ironstone Plateau and the Hills and Mountains agro-ecological zones each have one percent of their total areas covered by investment. Due to its low agricultural potential, the Arid zone does not have any investment in the agriculture, biofuel, and forestry sectors.

Table 6: Percentage of Agro-ecological Zone Area Covered by Investment

AGRO-ECOLOGICAL ZONE	AREA (HA)	NUMBER OF FOREIGN INVESTMENTS	NUMBER OF DOMESTIC INVESTMENTS	AREA COVERED BY INVESTMENTS (HA)	% OF AGRO-ECOLOGICAL ZONE COVERED
Green Belt	5,050,000	7	0	1,265,000	25
Nile and Sobat Corridor	7,900,000	4*	0	1,010,000	13
Floodplains	32,700,000	2*	9	720,000	2
Ironstone Plateau	13,300,000	2*	0	160,000	1
Hills and Mountains	845,000	1	0	12,200	1
Arid Belt	1,710,000	0	0	0	0

*We do not have information on the size of several of these investments. We left those areas out of our calculations.

Figure 5: Map Showing Distribution of Investments Across Agro-ecological Zones*



*Since we do not have information on exact project locations, the distribution of investments on this map involves a degree of approximation.

**We were not able to determine the land areas involved with either the Madhvani (CES) or the MAJ (WBEG) investments.

***This project by the Jonglei Ministry of Agriculture involves acquisitions of land from each county in the state.

It is interesting to note that the zones with the most foreign investment seem to have the least domestic investment, and vice versa. To a certain extent, the data might not present a complete picture of domestic investment activity, since many of the domestic projects do not surpass the 500-hectare threshold to be considered 'large-scale' investments. However, one might speculate that states with higher demand from foreign investors tend to make large-scale land allocations to foreigners a priority, whereas states in which there is less interest from foreigners may rely more on domestic alternatives. The end result is that the prime agricultural land is allocated to foreigner investors.

C. Progression Over Time

Overall, the data shows an increasing trend in investment activity over time (see figure 5 below). This is partly attributable to the relatively large number of domestic investments started in 2010. However, disaggregating foreign forestry and agricultural investments shows that foreign investments in agriculture have also steadily increased over the last four years (see figure 6 below).

Figure 6: Trend in Foreign and Domestic Land Investments in All Sectors from 2007-10

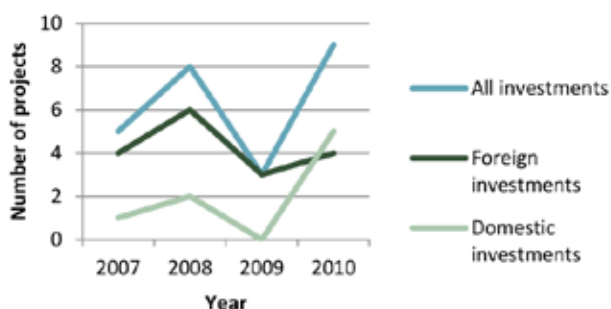
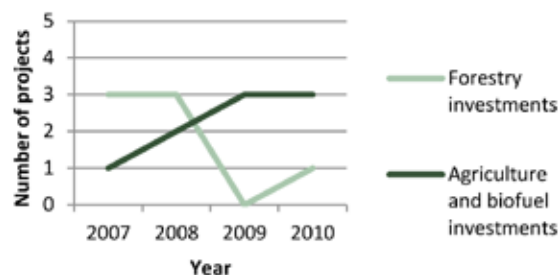


Figure 7: Trend in Foreign Investments in Forestry, Agriculture and Biofuels from 2007-10



The data also shows a dip in investment activity in 2009, coinciding with the increased levels of violence in that year, when the death toll in Southern Sudan temporarily surpassed that of Darfur. In 2010, when the high levels of violence subsided and it became increasingly apparent that the governments in the North and South were committed to moving ahead with the referendum process, investments recovered. With the uncertainty of the referendum period now passed and Southern Sudan's independence a mere four months away, it is likely that investment activity will continue to increase as the nation moves into the post-CPA period.

D. Impact Potential

Table 6 provides county and payam population statistics in order to better quantify the number of people who stand to be affected by investments at the local level. For many of the investments, this data only gives a rough estimate of population levels in affected communities. A more accurate assessment would require additional information on population densities at the *payam* and *boma* levels, the precise location of project areas, and a thorough review of investment plans to determine the likely positive and negative socio-economic and environmental impacts. For instance, some projects may occupy large areas but involve relatively few restrictions on access and use for the local population. Conversely, a project that occupies a relatively small area may be located in a densely populated region and involve high impact business practices.

Table 7: Population Data at the County and Payam Levels*

	PROJECT	PROJECT AREA (KM ²)	COUNTY	COUNTY AREA (KM ²)	% OF TOTAL COUNTY AREA COVERED BY INVESTMENT	COUNTY POPULATION	COUNTY POPULATION DENSITY (PEOPLE / KM ²)	PAYAM	PAYAM POPULATION
CES	CEDASS	122	Juba	18,400	< 1%	368,000	20.0	Northern Bari	39,800
	Central Equatoria Teak	519	Lainya	3,450	15% (of Lainya)	89,000	25.9	Kenyi	19,100
			Yei	6,670		201,000	30.2	Lasu	15,700
	Green Resources	1,790	Terekeka	10,500	17%	144,000	13.7	Tindilo	15,700
	Madhvani	TBD	Terekeka	10,500	N / A	144,000	13.7	Mangala North	4,000
			Juba	18,400		368,000	20.0	Mangala South	7,040
Nile Trading	10,000	Lainya	3,450	290%	89,000	25.9	Mukaya	10,600	
WES	Blue Lakes	6	Yambio	8,850	< 1%	152,000	17.2	Yambio	106,000
	Equatoria Teak	186	Nzara	6,470	3%	66,000	10.2	Sakure	14,900
								Nzara Centre	30,800
								Ringasi	2,210
	Eyat	1,620	Ezo	8,050	8%	81,000	10.0	Bariguna	6,530
			Tambura	12,600		55,000	4.4	Source Yubu	12,100
	Jam and ACD	243	Yambio	8,850	3%	152,000	17.2	N / A	N / A
M.A.J. Foundation	80	Ezo	8,050	< 1%	81,000	10.0	Naandi	10,100	
		Nzara	6,470		66,000	10.2	Andari	11,500	
							Sakure	14,900	

	PROJECT	PROJECT AREA (KM ²)	COUNTY	COUNTY AREA (KM ²)	% OF TOTAL COUNTY AREA COVERED BY INVESTMENT	COUNTY POPULATION	COUNTY POPULATION DENSITY (PEOPLE / KM ²)	PAYAM	PAYAM POPULATION	
EES	Imatong Nat'l Park	132	Ikotos	3,530	2%	85,000	24.0	Imatong	11,370	
			Magwi	5,210		170,000	32.6	Lobone	13,200	
	Loile Nat'l Park	2,800	Kapoeta East	30,000	9%	164,000	5.5	Lomati	N / A	
								Kapoeta	N / A	
								Loile	N / A	
	Jonglei	Ai Ain	22,800	Kapoeta East (EES)	30,000	32%	148,000	4.5	Kuron	N / A
Pibor (Jonglei)				33,300	Pibor				44,200	
Pochalla (Jonglei)				8,380	Boma				6,070	
				66,000	7.9				Marow	3,7800
Jonglei MAF		400	Plan is to acquire some land from each county in the state.	–	–	–	–	Kizon-gora	9,300	
Yen Thumb	30	Bor	14,100	< 1%	221,000	15.7	Anyidi	24,900		
							Duk	6,910	Jalee	13,500
							66,000	9.5	Baidit	51,500
Lakes	Fenno Caledonian	1,600	Wulu	11,700	14%	41,000	3.5	Payuel	4,580	
								85,300	14.0	Pakeer	16,600
WBEG	Egyptian Irrigation Scheme	168	Jur River	10,000	2%	128,000	12.7	TBD	TBD	
	M.A.J. Foundation	N / A	Wau	19,300	N / A	151,000	7.9	Wachlela	N / A	
			Jur River	10,000				128,000	12.7	Wau	118,000
NBEG	Aweil Rice Scheme	63	Aweil West	5,030	1%	166,000	33.0	Roch-rochdong	14,800	
	Warrap	Tonj East Agricultural Cooperatives	13	Tonj East	3,990	< 1%	116,000	29.1	Wau Bai	12,400
Gogrial East Farmers' Union		8	Gogrial East	3,890	< 1%	103,000	26.6	Maduany	N / A	
Toch Chol		27	Gogrial West	4,750	< 1%	244,000	51.3	N / A	N / A	
								Akon North	22,100	

Unity	Jarch	4,000	Mayom	4,970	80%	121,000	24.3	N / A	N / A
	Prince Budr Bin Sultan	1,050	Gwit	3,430	31%	33,000	9.6	N / A	N / A
	SEAC	1,050	Gwit	3,430	8%	33,000	9.6	Wathn-yona	3,150
Pariang			9,020	82,000		9.1	Nyeel	6,420	
Upper Nile	Mechanized schemes	2,940	Renk	10,000	29%	138,000	13.7	N / A	N / A
	Mechanized schemes	1,470	Manyo	6,680	22%	38,000	5.7	N / A	N / A
	Mechanized schemes	294	Melut	6,950	4%	49,000	7.1	N / A	N / A

**This data is taken from the 2010 statistical yearbook for Southern Sudan (SSCCSE 2010b). In some cases, payam names used by local residents differ from what is listed in the statistical yearbook. We could not specify population levels for those payams. In other cases, our sources were not able to provide a complete listing of payams associated with investment projects.*

For those investments that only implicate a small fraction of the land in the county in which they are located, the data on county population and population density are of limited probative value. The information on *payam* populations in these areas gives a better indication of population levels in affected communities, though the exact number of people who stand to be affected at the *payam* level would still depend on the precise location of the project area within the *payam*. For the investments that occupy significant portions of the counties in which they are located, the information on county population and population density take on additional significance. The data on *payam* populations also more closely mirrors the population levels of affected communities.

Two of the agricultural investments—Nile Trading’s lease in Lainya County and Jarch Management’s lease in Mayom County—set themselves apart, in this regard. The Nile Trading deal covers more than three times the area in all of Lainya County. The investment has official backing from the CES Ministry of Physical Infrastructure, even though Nile Trading’s investment agreement was only signed by a paramount chief at the *payam* level, without the involvement of leaders from any of the other four *payams* in the county. The investment also seems to conflict with Equatoria Teak’s forest concession, which itself covers 15 percent of the land in Lainya County. For its part, the Jarch Management deal in Unity State covers 80 percent of Mayom County. Unlike Nile Trading, the Jarch Management lease does not have any official recognition from the government.

These figures raise certain questions about the purpose of the Nile Trading and Jarch Management investments. Lainya and Mayom counties have populations of 89,315 and 120,715 people respectively. Resettlements on such a scale are impractical. Even if the companies were to invest in a manner that does not require resettlements, it would still affect patterns of land access and use for tens, or even hundreds of thousands of people. These apparent shortcomings in the two companies’ investment plans suggest that some element of land speculation may be involved. Indeed, despite having leased their landholdings in 2008 and 2009 respectively, Nile Trading and Jarch Management have yet to establish any visible presence on the ground.

E. Displacement Potential

Among the most serious potential impacts for local populations is displacement, whether from residential, agricultural, pasture or forage land. As the examples in the previous section demonstrate, a number of the investments are located in highly populated areas where tens or even hundreds of thousands of people rely on land and natural resources for their daily livelihoods. If the project proponents choose to deny local populations access, it could have devastating impacts on rural communities whose lives have already been sorely affected by poverty, food insecurity, and conflict. As noted above, additional information on population distributions at the *payam* and *boma* levels, precise project locations, and the nature of companies' business plans would be required to accurately speculate about displacement potentials associated with individual investments. However, there are a few exceptions for which we were able to obtain information about planned displacements (see Table 7). It should be noted that, at this stage, there have been no reports of forced evictions associated with any of the investment projects.

Table 8: Displacement Potential Associated with Specific Investments

PROJECT	LOCATION	POTENTIAL FOR DISPLACEMENT
Ai Ain Wildlife	Jonglei, EES	AI Ain Wildlife and the GoSS Ministry of Wildlife are currently developing a management plan for Boma National Park. Government officials say that they will then consult with communities living in the park to see if they would be willing to relocate elsewhere. The government is considering providing infrastructure and services at designated sites outside the park in order to entice communities to resettle.
Blue Lakes	WES	The WES government plans to expand the area of Yambio town by 25 square kilometers. According to an official in the WES Ministry of Agriculture and Forestry, this would encroach on Blue Lakes' forest concession. One solution that the parties are exploring is to extend the forest reserves onto community land to compensate for the areas taken by the state. Depending on how such expansion is managed, it could displace portions of the neighboring community.
CEDASS	CES	According to community members in Jebel Lado, a number of families (perhaps as much as 100 people or more) had to move their family farms in order to make the area available for CEDASS.
Central Equatoria Teak Company	CES	There are approximately ten families living in the Loka forest reserve leased by Central Equatoria Teak Company. A member of a local development committee reports that these households will need to be relocated to make the area vacant when the company starts logging.
Fenno Caledonian	Lakes	According to an official in the Lakes State Ministry of Agriculture and Forestry, some 1,300 households may have to be relocated to make way for Fenno Caledonian's project.
Madhvani Group	CES	The paramount chief in Mangala reports that the Madhvani Group's planned revival of an agro-industrial complex in the payam may involve the relocation of residential areas. Since the exact area of the plantation has not yet been determined, it is not possible to give exact figures for the amount of displacement that this would entail. However, Mangala has a population of 11,000 people and the town center is located in the same area where the pre-war agro-industrial complex once stood, suggesting that considerable relocations would be required.

F. Differences Among Business Sectors

Of all the business sectors, the agricultural investments implicate the largest areas of land. Figure 7 below shows areas of land leased by foreign and domestic interests, pre- and post-CPA, in all business sectors. In reviewing these figures, it should be noted that the particularly large land areas involved with the projects in the tourism and conservation sector (i.e. Al Ain Wildlife in Boma National Park, EES Ministry of Wildlife in Imatong and Loile National Parks) and the biofuel sector (i.e. Nile Trading and Development in CES) may cause these sectors to appear more active than they actually are. Figure 8 limits the comparison to land areas involved with post-CPA foreign investments in the agriculture and forestry sectors.

While the agricultural sector implicates more land, the investments in the forestry sector are significantly more developed. Four of the seven forestry projects have already begun project operations. Some companies have already exported multiple consignments. In contrast, only two of the eight foreign investments in the agriculture sector are operational. One of them involves a charitable venture by a Canadian organization called CEDASS. CEDASS has been authorized by the CES Ministry of Agriculture and Forestry to establish a mechanized farm on a defunct government plantation at a place called Jebel Lado, about 35 kilometers outside Juba. Since the project does not involve a land lease, CEDASS was able to bypass the convoluted land acquisition process and begin farming immediately. The only other agricultural investment that is currently operational is a project funded by an Egyptian private equity firm called Citadel Capital and implemented by the Sudan Egyptian Agricultural Company (SEAC) and an Australian company called Concord Agriculture. This project has the strong support of the Unity State government, which helped to facilitate the land acquisition. Figure 9 below depicts the progress of forestry investments compared to that of agricultural investments.

The discrepancy between the forestry and agriculture sectors may be attributable, at least in part, to the history of timber extraction in Sudan. Many of the forest reserves date back to the 1930s or 40s, and Southern Sudanese were thus already familiar with some of the technical aspects of the forestry sector. The SPLM/A gained additional experience in forestry during the civil war when it used revenue generated from the timber trade to finance its war efforts. As a parliamentarian with the Southern Sudan Legislative Assembly explained in an interview with researcher Elizabeth 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.’

Figure 8: Areas According to Business Sector for All Land Investments, Pre- and Post-CPA

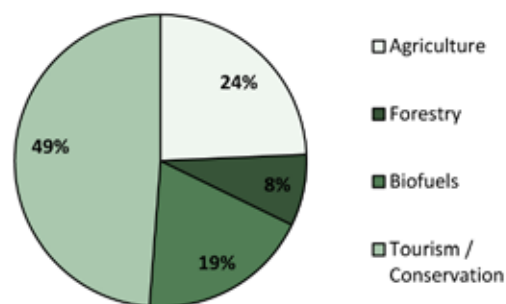


Figure 9: Areas According to Sector for Post-CPA Foreign Investments in Agriculture and Forestry

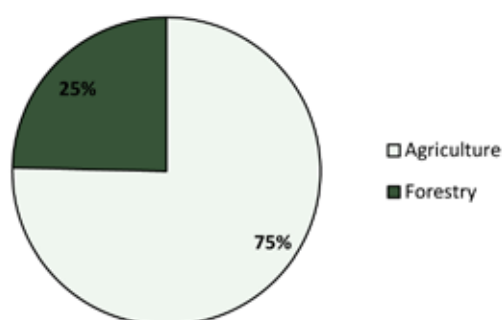
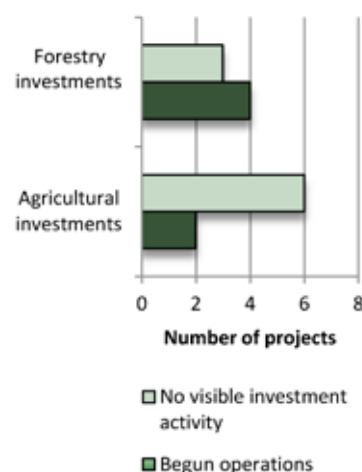


Figure 10: Progress of Forestry Investments vs. Agricultural Investments



Most of the forest reserves in Southern Sudan have matured forests that are ready for harvest. As a result, the GoSS was able to harness its reserves to generate quick revenue upon assuming administration of the South in 2005. Agricultural investments, by contrast, often require several years of financial inputs before they begin producing commercially viable yields.

There also seems to be a larger potential for displacement associated with agricultural investments than with forestry investments. This is because the agricultural projects tend to be located on community-owned land where larger populations are found. The land on which the government-owned forestry reserves are located was mostly expropriated during the British colonial era. In several cases, villages relocated back onto reserve land for added security during the civil war, yet much of it remains uninhabited. Nonetheless, communities still depend on forests for their fuelwood and construction needs. The investing companies are therefore confronted with difficult balancing tasks in limiting the cutting of trees and promoting the sustainable use of forest resources while not undermining livelihoods in the process. One notable exception is Fenno Caledonian's planned project in Lakes State. Up to 1,300 households live on the forest reserve. According to an official in the Lakes State Ministry of Agriculture and Forestry, the government is considering relocating these households to make the area available for the company.

G. Community Engagement

Generally speaking, there is a serious deficiency in the extent to which communities are being consulted regarding land investments. Failure to consult with affected communities before leasing land to an investor constitutes a violation of both the Land Act (see Ch. IX, § 63(3)) and the Local Government Act (see Ch. IX, § 89). In addition to consulting the communities that own the land in question, the Land Act also requires that government officials and company representatives consult pastoralist groups with secondary rights of access before making any decision that would affect their grazing rights (see Ch. X, § 67).

There are several ways in which consultations typically fall short. The government and the company may negotiate agreements among themselves and only inform the community as a formality at the end of the process after the details of the arrangement have already been finalized. For example, the three forest concessions that are currently active undertook stakeholder engagement activities only after their concession agreements had been negotiated with the government. A government official may have a discussion with a local chief and a handful of community leaders and consider that to be sufficient consultation, even if the rest of the community is not involved. There are also reports of agreements that have been entered into without involving the affected communities at all. For example, the county commissioner in Mayom County where the Jarch Capital deal is supposedly located has never even heard of the company. If Jarch had followed appropriate procedures, the county commissioner would be the one responsible for facilitating the consultations with the local community (see Local Government Act (2009), ch. VI, § 52).

For the purposes of our study, we only indicated that prior consultation had taken place if it involved a large cross-section of the affected community and if the community's feedback was incorporated into the design of the investment. We were able to confirm such consultations for two of the foreign investments (see Table 8).

Table 9: Community Engagement Practices Associated with Specific Investments

PROJECT	LOCATION	COMMUNITY ENGAGEMENT
Green Resources	CES	Green Resources undertook a community engagement process that lasted a year and involved a series of three meetings with the affected community. The more sustained negotiations were done through a local steering committee comprised of twelve community members.
CEDASS	CES	CEDASS representatives held a meeting at Jebel Lado in which they discussed their plans with members of the affected community before beginning the project. However, there appears to be some misunderstanding between the organization, the community, and the CES Ministry of Agriculture and Forestry over the terms of the arrangement. The community is of the opinion that the organization had committed itself to providing them with a school and a health clinic, whereas the CES Ministry and the organization understood that they would only be giving the community a portion of the crop produced.

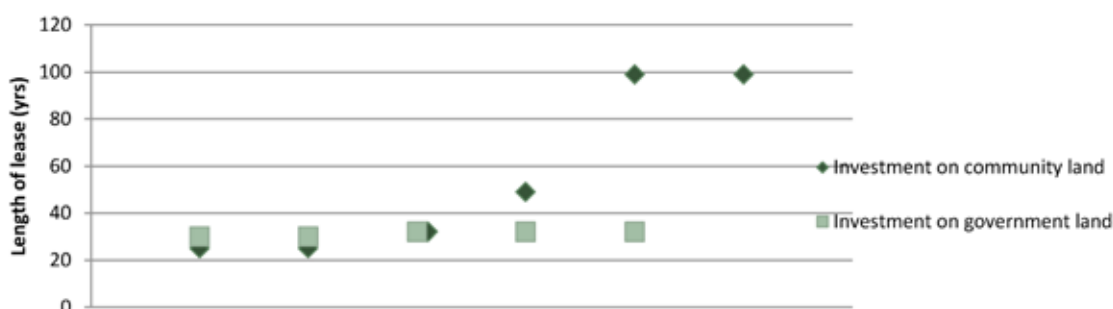
We found a similar shortcoming with respect to environmental and social impact assessments (ESIAs). Failure to conduct ESIAs prior to issuing land leases constitutes a violation of the Land Act (see Ch. XI, § 70(1)). Three of the companies undertook ESIAs after they had begun operations and others reportedly had plans to do so in the near future, but none of the companies conducted ESIAs prior to the finalizing the investment agreement.

H. Lease Periods

Two of the large-scale land investments involve long-term leases of 99 years. Although the Land Act implicitly permits such long-term leases to foreign entities (see Ch. VI, § 18(2)), the Investment Promotion Act explicitly limits the length of foreign investments in agriculture and forestry to renewable terms of 30 and 60 years respectively (see Second Schedule (3)). Assuming that leases constitute investment property and can therefore be considered to be investments in their own right, then any agricultural lease longer than 30 years and any forestry lease longer than 60 years would seem to be inconsistent with the terms of the Investment Promotion Act.

The data also indicates that leases of government-owned land tend to be structured with shorter lease periods than those involving community-owned land. The average length for leases of government-owned land is 31 years. The corresponding average for community-owned land is 55 years. This discrepancy may reflect the stronger negotiating power of government institutions brokering deals for government land, as opposed to communities, which may have less negotiating power in brokering deals on community land. Although government institutions are typically 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 at the end of the lease when the land reverts back to the community (see Land Act, Ch. VI, § 27(7)). Figure 10 below depicts the length of leases on government-owned land versus those on community-owned land, arranged in order of increasing lease periods.

Figure 11: Lease Periods of Investments on Gov't and Community-owned Land



I. Lease Payments

Lease amounts tend to be rather low compared to the value of the land. For example, Green Resources plans to pay only \$12,500 per year for its 99-year lease of 179,000 hectares in Terekeka County (CHRGJ 2010: 56). In several cases, companies have pledged to provide services to affected communities in lieu of monetary payments. However, rarely are the monitoring mechanisms in place to ensure that the companies fulfill their obligations in a timely manner. Al Ain Wildlife, for example, has reportedly promised to provide education and health facilities for affected communities living in and around Boma National Park. Despite being on the ground for more than two years, the company has not yet provided anything to the local communities. Table 9 below lists the compensation that is provided to affected communities for each investment:

Table 10: Compensation Provided to Affected Communities

	COMPANY	LANDOWNER	COMPENSATION FOR AFFECTED COMMUNITIES
CES	CEDASS	Gov't	CEDASS is supposed to give the community at Jebel Lado a portion of the crop produced on the land. The remainder of the crop is sold to the World Food Program (WFP) at market prices for distribution in Southern Sudan. However, a number of community members that we interviewed were of the understanding that CEDASS would also provide health and education services for the community. CEDASS and the CES Ministry of Agriculture and Forestry do not consider provision of services to be part of the arrangement. Community members also complain that they have not been provided with a share of the crop that has been harvested thus far.
	Central Equatoria Teak	Gov't, Comm.	The affected communities receive a lump sum deposit of \$200,000 US into a social fund in addition to royalty payments of five dollars per cubic meter of sawn teak board that the company exports.
	Green Resources	Comm.	According to the terms of their investment agreement, Green Resources is supposed make annual rental payments of \$12,500 US to the local community. They are also supposed to assist with a number of development projects, including the building of a school, health facilities, and a community office. It is not clear whether these projects would be funded by the annual rental payment or whether they would be provided in addition to that payment.
	Madhvani Group	Gov't	When representatives of the Madhvani Group met with the paramount chief in Mangala, they reportedly told the chief that the company would build education and health facilities for the community. We do not have any information on whether such commitments were included in the MOU.
	Nile Trading	Comm.	The company says it will give the local community a portion of the profits from the investment, increasing from 40 to 50 percent of net profits over the life of the lease.
WES	Blue Lakes	Gov't	The affected community receives a lump sum deposit of \$200,000 US into a social fund in addition to royalty payments of ten dollars per cubic meter of sawn teak board that the company exports.
	Equatoria Teak Company	Gov't	The affected communities receive a lump sum deposit of \$200,000 US into a social fund in addition to royalty payments of ten dollars per cubic meter of sawn teak board that the company exports.
	Eyat	Comm.	No compensation for affected communities is provided for in the preliminary MOU. The lease payment is a one-time sum of \$250,000 US to be paid to the WES government.
	JAM and ACD	Comm.	According to the WES Ministry of Agriculture, ACD will be leasing the land in order to implement a commercial farming project and JAM will provide assistance to local farmers to help increase their productive capacity.
	M.A.J. Foundation	Gov't	The affected communities receive a lump sum deposit of \$200,000 US into a social fund in addition to royalty payments of ten dollars per cubic meter of sawn teak board that the company exports.

	COMPANY	LANDOWNER	COMPENSATION FOR AFFECTED COMMUNITIES
EES	EES Ministry of Wildlife	Comm.	The government plans to provide the community with a health center, schools, a dam and other infrastructure projects in exchange for the land.
	Al Ain Wildlife	Gov't	The company promised to build health and education facilities for the affected communities. None of these services have been provided yet.
Jonglei	Jonglei MAF	Comm.	Community members will be given land to farm arranged in four zones throughout the state.
	Yen Thumb	Comm.	N / A
Lakes	Fenno Caledonian	Gov't, Comm.	TBD
WBEG	Egyptian Irrigation Scheme	Comm.	TBD
	M.A.J. Foundation	Gov't	TBD
NBEG	Aweil Rice Scheme	Gov't	The local community is given 60 percent of the crop produced. The rest is sold in Southern Sudan.
Warrap	Agricultural Co-ops	Comm.	This is a community-owned project. No land transfer or compensation is involved.
	Farmers' Union	Comm.	This is a community-owned project. No land transfer or compensation is involved.
	Toch Chol	Comm.	This is a community-owned project. No land transfer or compensation is involved.
Unity	Jarch Management	Comm.	N / A
	Prince Budr Bin Sultan	Comm.	N / A
	SEAC	Comm.	The company has built a health clinic built for the local community, although lease payments are made to the Unity State government.
Upper Nile	Mechanized agricultural schemes	Gov't, Comm.	N / A

The concessions on government-owned forest reserves appear to be generating the most revenue for local communities. Most of the projects are structured with similar terms. First, the company makes a refundable deposit with the government. This payment is typically in the range of \$300,000 USD. It then makes a lump sum payment to a social fund for affected communities. Equatoria Teak's investment in WES, for example, involved a payment of \$200,000 to a social fund to be divided between two communities. The government and affected communities also get royalty payments calculated according to the amount of sawn timber that the company exports. Equatoria Teak pays the government \$100 USD and the community \$10 USD per cubic meter of sawn timber exported. However, officials in the state level ministries of agriculture and forestry have expressed dissatisfaction with these terms, complaining that the amount being paid for the concession is insufficient compared to the price that Sudanese teak earns on international markets.

J. Foreign versus Domestic Investments

There are a number of differences between projects conceived and implemented by Southern Sudanese and those involving foreign investors. First, the domestic investments tend to involve smaller land areas than the foreign investments. The average size of domestic agricultural investments (excluding the mechanized schemes of Upper Nile in which individual farmers own plots of 420 hectares each) is 9,620 hectares. The average size of foreign agricultural investments is 175,000 hectares. This is not surprising in that one would expect foreign investors to be more likely to have the necessary capital to invest on such a large scale.

Second, generally speaking, the domestic investments do a better job of consulting with communities prior to making decisions on land allocations. This may be because the domestic projects are often conceived of as community ventures that seek to build capacity among local farmers. Foreign companies, on the other hand, can often use the political capital of their domestic allies to facilitate the land acquisition and may not need to rely as heavily on social capital within the community. This may avoid some of the *ex ante* costs of negotiations involving affected communities, but it makes for weaker agreements and less sustainable investments in the long term.

Finally, the foreign investments are mostly based on centralized business models that take advantage of economies of scale to maximize returns for the investor. The domestic projects, on the other hand, tend to be organized around farmers' groups and smaller investments by private individuals. The foreign investments' focus on mechanization has its advantages and disadvantages. Mechanized agriculture can produce food relatively quickly. In that sense, as long as the food is being sold on local markets, mechanized production may be one component of a short-term solution to food insecurity in Southern Sudan. However, mechanized farming can also produce undesirable social and environmental externalities that are often borne disproportionately by host communities. Generally speaking, highly mechanized modes of production do not generate the same levels of employment as more labor-intensive methods that work through smallholder farmers. When coupled with displacement, they can actually lead to increased rural poverty, since 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). If not done in a sustainable manner, mechanized farming can also cause severe environmental degradation. The mechanized farming schemes of Upper Nile, for example, have squandered soil fertility in that part of the state. Yields have reportedly dropped from 550 kilograms of sorghum per *feddan* when the schemes were first established in the 1970s to 200 kilograms of sorghum per *feddan* today.⁴

Since the post-CPA foreign agricultural investments are still in their early stages, their full impacts are not yet apparent. However, some preliminary observations can be drawn from the two projects that are currently operational. Both CEDASS in CES and Sudan Egyptian Agricultural Company (SEAC) in Unity employ highly mechanized forms of production. As a result, the benefits they bring in terms of employment creation are small. Incomes generated from these jobs are unlikely to contribute to poverty alleviation. Both investments also prioritize production for local markets, suggesting the possibility of positive impacts in terms of increased food security. However, without being able to review the investment agreements, we were not able to determine whether they included export restrictions or whether it was a voluntary decision on the part of the companies to sell their food locally. Indeed, SEAC has publicly stated that in the long term, it may choose to export its produce for sale on international markets. This would have negative implications for Southern Sudanese food security. On the issue of displacement, the CEDASS project is reported to have displaced some members of the local community from their family farms. However, the community members interviewed for this study claimed that they were able to reestablish their farms outside of the plantation area with relatively little inconvenience, suggesting that any loss of livelihoods was minimal.

⁴ A *feddan* is equal to 0.42 hectares. It is slightly larger than an acre.

K. Viability

Although the data suggests that foreign interests have already acquired very large areas of land in Southern Sudan, there are questions concerning the viability of several of the deals listed above. There are a number of ways in which investment projects may fail to materialize. First, the government may void the lease. This is particularly likely with investments that are made between private parties without government involvement (e.g. Jarch Management's lease in Unity State). Second, investments may be threatened by land disputes or conflict in project areas. For example, in Mangala, where the Madhvani Group would like to establish a sugar plantation and processing facility, the local community has been wracked by a number of overlapping conflicts in recent years. There is also an ongoing border dispute between Juba and Terekeka county authorities over which county owns the land in question. It is difficult to imagine how a company could establish a farm in such a contentious location. Third, community opposition could frustrate investment plans. One could envision such opposition arising particularly with respect to those projects that are done without consulting affected communities. Finally, some investors, particularly those involved with the more speculative investments, may not have the expertise or inclination to devote capital towards developing the property. Instead, they may be more interested in holding on to the property to see if land values rise, at which point they can issue a sublease to a subsequent lessee at a profit. Meanwhile, the land remains unused awaiting a genuine investment.

Despite the concerns that these issues raise, none of them are insurmountable. Indeed, Southern Sudanese are very eager to attract investment and if a company comes with plans to invest, they will rarely be turned away. A number of influential Southern Sudanese are also deeply involved with many of these deals, and a project that does not seem viable today may nonetheless come to fruition through the political weight of its supporters.

VII. CONCLUSION AND RECOMMENDATIONS

Despite the uncertainty of the transitional context, the baseline data suggests that large-scale land-based investments are on the rise in Southern Sudan. Judging by the numerous on-going expressions of interest from private investors, it is likely that investment activity will continue to increase as Southern Sudan moves towards independence on 9 July 2011. This investment can provide much-needed support to post-conflict reconstruction efforts in the region. It can stimulate rural development and generate employment opportunities, increase food productivity, provide government institutions with new and sustainable sources of revenue, and help to diversify the economy. But if investments are structured to benefit a small transnational elite at the expense of the rural poor; if the country's arable land is used to grow food and biofuels for foreign populations, pushing communities onto increasingly marginal lands; if commercial land deals concentrate land and natural resources in the hands of a select few, they risk becoming sources of food insecurity, instability, social unrest and conflict.

Below are a series of recommendations for the government and its international partners, civil society, companies, investors and rural communities to consider in addressing the risks and opportunities of large-scale land investments moving forward:

1. **Adopt presumption in favor of disclosure** – Too often, companies and government institutions treat documents associated with investment projects as confidential information, withholding it from public review. This gives rise to conditions in which poorly drafted and inequitable investment agreements may flourish. By adopting a presumption in favor of disclosure, project proponents would pledge to make information associated with investments publicly available unless there is a compelling reason to do otherwise. Memorandums of understanding (MOUs), investment agreements, contracts, leases and environmental and social impact assessments (ESIAs) would be kept in easily accessible locations at the central, state, and local levels and be open to public review.

From transparency flows accountability. When the public has access to information about how investments are structured, it leads to stronger relationships between companies and their stakeholders and more sustainable investments. It also becomes easier for negatively impacted individuals and groups to assert their rights. Non-governmental organizations (NGOs) and other civil society actors in Southern Sudan can provide important assistance in these efforts. On the regulatory side, the government could outline the mechanics of the disclosure process in a Freedom of Information Act. It could also be included as a policy prescription in the forthcoming land policy.

2. **Develop clear jurisdictional roles for government institutions** – This jurisdictional clarity needs to be established both in terms of vertical federalism (i.e. among the different levels of government) and horizontal federalism (i.e. among the institutions of government within each level).
 - a. **Vertical federalism** – Under current practice, investment activity is mostly managed at the state-level. GoSS only takes the lead for so-called 'national projects'. This has the advantage of allowing states the flexibility to act as 'laboratories for experimentation', exploring different regulatory approaches. Successful policies can then be adopted into national regulatory framework and applied throughout the states. However, in order for this to work, GoSS must also play a role in setting regulatory floors. Otherwise, states may be tempted to adopt potentially harmful deregulation in an attempt to attract investment. The lack of a more substantive role for the GoSS may consequently serve to undermine a broader regulatory framework for investment. When the concerned ministry at the GoSS level is informed of investment projects from their inception, it allows them to more effectively monitor investment activity, thereby promoting policy coherence at all levels.

- b. **Horizontal federalism** – Under current practice, most investments are managed exclusively through the executive branch (i.e. either the president's office or the concerned ministry at the GoSS level, or the governor's office or the concerned ministry at the state level). As a result, affected communities and other important stakeholders are sometimes marginalized in the process. By providing a role for the legislative branch to participate in investment decision-making, the GoSS and the state-level governments can foster a more inclusive process. Legislative assemblies at either the GoSS or state level could hold hearings on land allocations above a certain size, adding another layer of transparency to investment decision-making. Parliamentarians are also better positioned to represent the views of their constituencies, which could help avoid the allocation of land without the knowledge of affected communities.
3. **Graduated land ceilings** – The Land Act calls for regulations to be put in place that prescribe a ceiling on land allocations (see Ch. V, § 15(6)). Graduated land ceilings, in which authorization from successively higher levels of government is required as the size of land allocations increases, can help to ensure that the higher levels of government are informed when large territories are transferred to private interests. Under such a system, county commissioners and traditional authorities could only unilaterally allocate land up to a certain size (e.g. 100 ha). State authorities would have to authorize anything above that size.⁵ The state government too would have a ceiling above which the allocation would have to be authorized by the GoSS (e.g. 1,000 ha).
4. **Moratorium on large-scale land acquisitions** – By putting in place a moratorium consisting of a temporary ban on all large-scale land acquisitions for a specified period of time, the government could allow time for its institutions to better establish themselves before entering into long-term obligations with foreign interests, tying up large portions of valuable land. The challenge in any such effort would be to cultivate the necessary political will. Since most investment projects are not yet operational, Southern Sudanese are not yet feeling the impact of investments in any tangible way. As a result, most Southern Sudanese are still very eager to attract investment and may not fully appreciate the costs in doing so. Based on the findings in this report, if policy makers determine that the situation is serious enough to warrant a moratorium, it will be important for them to build strategic support among key stakeholders within affected communities, relevant government institutions, and the private sector.
5. **Review of existing contracts** – Even if the GoSS were to place limits on the negotiation of new large-scale land investments, such a limit would not affect those agreements that have already been negotiated. Therefore, the government should conduct a review of existing investment agreements to ensure that they have followed the appropriate procedures. This review should ensure that leases comply with the terms of the Land Act, the Investment Promotion Act, and the Local Government Act with respect to the length of investments (i.e. agricultural investments should not exceed 30 years and forestry investments should not exceed 60 years), the need to consult with affected communities prior to making decisions concerning land allocation, and the conduct of environmental and social impact assessments (ESIAs) before issuing leases.

Insights for how to approach such a review can be drawn from past events in the forestry sector. When the GoSS was first established in 2005, the Ministry of Agriculture and Forestry formed a forest technical committee to review the performance of timber companies operating in Southern Sudan. The technical committee determined that the companies were all acting illegally and that their contracts should be considered null and void. The committee's recommendations prompted the Minister to issue a decree

⁵ Cf. Land Act (2009), ch. V, § 15(5) (stating that "Any allocation of a piece of land beyond 250 feddans [105 hectares] ...shall be approved by the Concerned Ministry in the State").

annulling all contracts, agreements and grants authorized before 2005. He also put a moratorium on new concessions until relevant policies and procedures were developed (Ashamu 2010: 29-30).

6. **Promote alternative business models** – Most foreign-owned large-scale land investments in Southern Sudan are structured with highly centralized business models that seek to capitalize on economies of scale to maximize profits for the investor. While the more centralized models carry certain advantages in terms of lowered costs, they can also produce undesirable social and environmental externalities that are often born disproportionately by host communities (World Bank 2010). By encouraging companies to invest in farmers' groups and smallholder farmers, the GoSS could help to maximize benefits for rural economies in terms of job creation and poverty alleviation. Project proponents could explore alternative business models, such as granting communities equity ownership in investment projects and various forms of contract farming, in which investors provide smallholder farmers with agricultural inputs in exchange for commitments to buy produce directly from the farmers at a predetermined price.
7. **Constructive Engagement** – For those companies that demonstrate a willingness to respect community rights, follow appropriate procedures in acquiring land, and conduct their business in a way that preserves the environment and uses natural resources in a sustainable manner, the government and civil society may consider exploring opportunities for constructive engagement. For example, NGOs could play a coordinating role between agricultural companies and smallholder farmers living on or around the project area to maximize the extent to which the investment helps to build their productive capacity, or academics could help to design and implement environmental management plans to minimize negative impacts on the environment.

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APPENDIX II

This questionnaire is being distributed by Norwegian People's Aid (NPA) as part of a baseline study on large-scale land acquisitions in Southern Sudan. Please complete as much of the questionnaire as possible with information on land investments in your area. If possible, also provide information on investment projects in neighboring areas.

Complete one questionnaire per land investment. If precise information is lacking, please provide estimates. Once the information has been gathered, it can be entered directly into the electronic copy of the form below. The text boxes will expand to accommodate the entries. To check or uncheck boxes, simply click on them. For the purposes of this study, large-scale land investments include land sales or leases of 500 hectares (approximately 5 square kilometers) or larger.

Please direct any questions to

and Once the form has been completed, please save the changes and email the document to XXXX and XXXX at the email addresses above.

1. Respondent information

a. Name:.....

b. Employer:

c. Position / title:.....

d. State:

e. Email:

f. Tel:.....

2. Investor information

a. The investment is being made by (check all that apply):

- Foreign investor(s)
- Domestic investor(s)
- Government institution in Sudan
- Foreign government

b. Please list the names of all investors / institutions that are involved with the investment. For investors, please indicate whether the investor is a private individual or a company (check appropriate box):

- i. Individual Company
- ii. Individual Company
- iii. Individual Company
- iv. Individual Company

c. If foreign investor is involved, what is the investor's country of origin?

d. Please indicate the percentage of the investment that is owned by the local community (if any): %

3. Information on land parcel

- a. Size of acquired / requested land (please specify in either hectares, acres, square kilometers, or feddans):
- b. Location of acquired / requested land:

- i. State, County, Payam:
- ii. GPS location or coordinates of acquired / requested land (use Thuraya, if possible):
- c. Prior to the lease / sale, to whom did the land belong?

- Local community
- State government
- GoSS
- Private individual

- d. What was the land being used for before being allocated to the investor (check all that apply)?

- Residential purposes
- Farming
- Pastureland
- Sacred land
- Foraging (e.g. for firewood, etc.)
- Hunting
- Land was unused
- Other (please specify)

- e. Is the acquired / requested land registered in the state land registry?

- Yes No

- f. Has the land been surveyed or demarcated?

- Yes No

- g. Has there been any visible investment activity on the ground (e.g. areas fenced off, fields cleared, structures erected, etc.)?

- Yes No

- h. If yes, please specify the type of activity:

4. Information on investment project

- a. Type of transfer:

- Land sale Land lease

- b. If land is leased, what is the length of lease (in years):

c. Is lease renewable?

- Yes No

d. The lease agreement was signed between investor and (check all that apply):

- Community
 Traditional Authority
 Payam
 County
 State
 GOSS
 Sudanese individual / family

e. If the agreement was signed between an individual and the investor, please specify name and position of the individual:

f. If the agreement was signed between a government institution / official and the investor, please specify the institution / official:

g. What is the investor's planned capital contribution (in U.S. Dollars)?

h. Purpose of investment:

- Food crop production
 Cash crop production
 Biofuel production
 Plantation forestry
 Forest conservation
 Carbon sequestration
 Game reserve / tourism
 Mineral extraction
 Other (please specify):

i. What type of crop is being produced?

- Wheat
 Rice
 Maize
 Sorghum
 Vegetable
 Sesame
 Groundnuts/peanuts
 Other (please specify):

j. Goods being produced for:

- Export
- Local markets
- Mixed export and local markets
(please specify percentage for export: %)

k. Total amount of crops / goods expected to be produced (in tons):

5. Acquisition process

a. Who did the investor approach first when seeking land for investment?

- GoSS
- State government
- Local government
- Local community
- Private individual

b. When did the investor first file for approval of his / her investment?

c. At what stage in the approval process is the investment project?

6. Consultations / negotiations

a. Please list affected communities:

- i.
- ii.
- iii.
- iv.

b. Did the investors consult with the affected communities?

- Yes No

c. Were consultations carried out prior to the negotiation of the investment agreement?

- Yes No

d. Who was involved in the consultation (check all that apply)?

- Community leaders
- Other community members
- Local politicians or intellectuals
- Government representatives (please specify the relevant institution):

- e. If internally displaces persons (IDPs) reside in the area, were they involved in the consultations?
 Yes No

- f. If neighboring pastoralist communities use the land for pasture, were they involved in the consultations?
 Yes No

- g. Were women involved in the consultations?
 Yes No

- h. If women were involved, in what way did they participate?

- i. Are the affected communities welcoming of the investment project?
 Yes No

- j. Other than the investor, who participated in the negotiations (check all that apply)?
 Government officials
 Community members
 Local politicians / intellectuals
 Other (please specify):

7. Compensation

- a. Amount paid for the land (in U.S. dollars):

- b. Is this a one-time payment, or periodic payment?
 One-time payment Periodic payment

- c. If periodic, how often will payments be made?

- d. To whom is the money paid?

- e. Was monetary compensation for the affected communities specified in the agreement?
 Yes No

- f. If yes, how much (in U.S. dollars)?

- g. Did the investor provide the affected community with other forms of compensation?
 Yes No

- h. If yes, please list forms of compensation:
 - i.
 - ii.
 - iii.
 - iv.

- i. If social services are being provided, are they being provided by the government or the investor?
 Government Investor
- j. Were pastoralist groups with secondary rights to the acquired land provided with compensation?
 Yes No
- k. Were IDP communities residing in the area provided with compensation?
 Yes No

8. Impacts

- a. Will community members need to be relocated to make land available for the investment?
 Yes No
- b. Have socio-economic and environmental impact assessments been carried out?
 Yes No
- c. Were they carried out prior to the negotiation of the investment agreement?
 Yes No
- d. Did the local community actively participate in the impact assessments?
 Yes No
- e. Are the results of the impact assessments publicly available?
 Yes No
- f. How many households will be affected?
- Will local community members be employed on the investment project?
 Yes No
- g. If yes, is the amount of labor that will be drawn from the local community specified in the agreement?
 Yes No
- h. How many people will be employed directly on the investment project?

Number of year-round jobs:

Number of seasonal jobs:

Additional thoughts or observations:



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