



UNDERSTANDING LAND INVESTMENT DEALS IN AFRICA



COUNTRY REPORT: **SOUTH SUDAN**

UNDERSTANDING LAND INVESTMENT DEALS IN AFRICA

COUNTRY REPORT: **SOUTH SUDAN**



ACKNOWLEDGEMENTS

This report was researched and written by David Deng with support from Anuradha Mittal.

The Oakland Institute is grateful for the valuable support of its many individual and foundation donors who make our work possible. Thank you.

The views and conclusions expressed in this publication, however, are those of the Oakland Institute alone and do not reflect opinions of the individuals and organizations that have sponsored and supported the work.

Design: amymade graphic design, amymade@gmail.com, amymade.com

Editors: Anuradha Mittal and Frederic Mousseau

Production: Southpaw, Southpaw.org

Photograph Credits: David Deng and Anuradha Mittal

Cover photo: David Deng: Crops in Nuba Mountains

Publisher: The Oakland Institute is a policy think tank dedicated to advancing public participation and fair debate on critical social, economic, and environmental issues.

Copyright © 2011 by The Oakland Institute

The text may be used free of charge for the purposes of advocacy, campaigning, education, and research, provided that the source is acknowledged in full. The copyright holder requests that all such uses be registered with them for impact assessment purposes. For copying in any other circumstances, reuse in other publications, or translation or adaptation, permission must be secured.

Please email info@oaklandinstitute.org.

The Oakland Institute

PO Box 18978

Oakland, CA 94619, USA

www.oaklandinstitute.org

ABOUT THIS REPORT

This report is part of the Oakland Institute's (OI) seven-country case study project to document and examine land investment deals in Africa (Ethiopia, Mali, Mozambique, Sierra Leone, Sudan, Tanzania, and Zambia) in order to determine social, economic, and environmental implications of land acquisitions in the developing world.

This report is the product of research undertaken by OI between June and October 2011. The research team conducted thorough examination of the actual agreements and the extent and distribution of specific land deals. Through field research, involving extensive documentation and interviews with local informants, multiple aspects of commercial land investments were examined including their social, political, economic, and legal impacts. The team also met with government officials, civil society, investors, and the local communities that have been impacted by land investments.

TABLE OF CONTENTS

LIST OF ACRONYMS	1
EXECUTIVE SUMMARY	2
INTRODUCTION	5
1. COUNTRY CONTEXT	7
North-South Civil War.....	7
Challenges of Nation-building	8
Food Security	10
Questions Surrounding the Availability of Land.....	11
2. LEGAL FRAMEWORK.....	13
Land Act (2009)	13
Draft Land Policy (2011).....	14
The Local Government Act (2009) and Investment Promotion Act (2009)	14
“Land Belongs to the Community”	15
3. INSTITUTIONAL FRAMEWORK.....	16
Ministry of Agriculture and Forestry.....	16
Ministry of Commerce, Industry and Investment.....	17
International Financial Institutions (IFIs) and Donor Countries	18
4. CASE STUDIES	19
Nile Trading and Development, Kinyeti Development and the American Exotic Timber Group.....	20
Commonwealth Development Corporation (CDC) and the Finnish Fund for Development Cooperation (Finnfund) ...	27
Al Ain National Wildlife	33
Citadel Capital and Concord Agriculture.....	36
5. CONCLUSION	42
ENDNOTES	44

LIST OF ACRONYMS

AETG	American Exotic Timber Group
AfDB	African Development Bank
AIM	The Agency for Independent Media
CBOs	community based organizations
CDC	Commonwealth Development Corporation
CPA	Comprehensive Peace Agreement
DfID	British Department for International Development
DRC	Democratic Republic of Congo
EIB	European Investment Bank
ESIAs	environmental and social impact assessments
EU	European Union
FAO	The United Nations Food and Agriculture Organization
FDI	foreign direct investment
Finnfund	Finnish Fund for Development Cooperation
FSC	Forest Stewardship Council
GDP	gross domestic product
GIMS	Geospatial Information Management System
GoNU	Government of National Unity
GoS	Government of Sudan
GoSS	Government of Southern Sudan
ha	hectare (1 hectare = 2.474 acres)
IDPs	internally displaced persons in South Sudan
IFC	International Finance Corporation
IFIs	International Financial Institutions
IGAD	Intergovernmental Authority on Development
IGS	International Geophysical Services
MRG	Minority Rights Group
NCP	National Congress Party
OI	Oakland Institute
RSS	Republic of South Sudan
SAF	Sudan Armed Forces
SEAC	Sudan Egyptian Agricultural Company
SPLA	Sudan People's Liberation Army
SPLM/A	Sudan People's Liberation Movement and Army
SSCCSE	South Sudan Center for Census, Statistics and Evaluation
SSLA	The South Sudan Legislative Assembly
SSLC	South Sudan Land Commission
STEP	Sudan Transitional Environmental Program
UAE	United Arab Emirates
USAID	United States Agency for International Development
USD	United States Dollar
WFP	The World Food Program

EXECUTIVE SUMMARY

On July 9, 2011, the Republic of South Sudan (RSS) became the world's newest nation. Despite the significant strides that South Sudanese have made since the signing of the Comprehensive Peace Agreement (CPA) in 2005, South Sudan remains one of the least developed countries in the world. In order to meet its developmental challenges, the government of South Sudan has begun promoting large-scale private investments as a shortcut to rapid economic development. However, recent data about the rate at which the government is leasing land to foreign and domestic companies has led some observers to question whether the government's strategy can deliver on its promises. According to a recent study, in just four years, from the start of 2007 to the end of 2010, private interests sought or secured 5.15 million hectares (ha) of land in the agriculture, biofuels, forestry, carbon credit, and ecotourism sectors—equivalent to more than eight percent of South Sudan's total land area.¹ As currently conceived, these land deals threaten to undermine the land rights of rural communities, increase food insecurity, entrench poverty, and skew development patterns in South Sudan.

After providing an overview of the economic, social and political context, the report examines the following four case studies:

- Nile Trading and Development: In 2008, a Texas-based company called Nile Trading and Development obtained a 49-year lease to 600,000 ha of land in Central Equatoria State, with the possibility of increasing its landholding to one million ha. Nile Trading then entered into agreements with two other Texas-based companies—Kinyeti Development and the American Exotic Timber Group—to harvest valuable timber in the area. Evidence suggests that the companies are using the agro-forestry venture as a means of advancing their oil, gas, and mining interests in South Sudan.

- Commonwealth Development Corporation (CDC) and Finnish Fund for Development Cooperation (Finnfund): In 2007, the CDC and Finnfund, two

governmental development funds associated with the British and Finnish governments respectively, obtained a majority interest in several forest concessions in Central Equatoria and Western Equatoria states. The company that signed the concession agreements did so without consulting either the state governments or the affected populations living in the area. In late 2010, the CDC and Finnfund reportedly sold their interest in the forest concessions to unnamed investors without the knowledge of the government or affected populations.

- Al Ain National Wildlife: In 2008, an Emirati company, called Al Ain National Wildlife, entered into a 30-year agreement with the government of South Sudan to operate an ecotourism venture on 1.68 million ha of a government-owned national park. With the support of the government, the company has asked approximately 10,000 to 15,000 local residents to relocate to a new location that is at least a distance of four hours drive by car. The company had pledged to provide affected populations with a range of infrastructure developments and services prior to relocating the local population; despite having their lease for more than three years, the company has not yet delivered on its promises.

- Citadel Capital and Concord Agriculture: In 2009, an Egyptian private equity firm called Citadel Capital, through one of its portfolio companies called Concord Agriculture, obtained a 25-year lease to 105,000 ha of land in Unity State through an agreement with the state-level government. According to the terms of the agreement, the company pays just USD 125,000 in annual lease payments to the state government. Despite being located on community-owned land, the affected communities have not been provided with any direct benefits under the investment agreement.

The government's support for land investments is predicated on the myth that large-scale development projects are the quickest way to improve food security

and stimulate the economy in South Sudan. Evidence from land-based investments over the past six years, however, suggests that these projects are far more likely to undermine food security by dispossessing people from land and natural resources that are indispensable to their daily livelihoods. The country also lacks a regulatory framework for managing this influx of investment, reducing the likelihood that it will provide sustainable benefits to local economies.

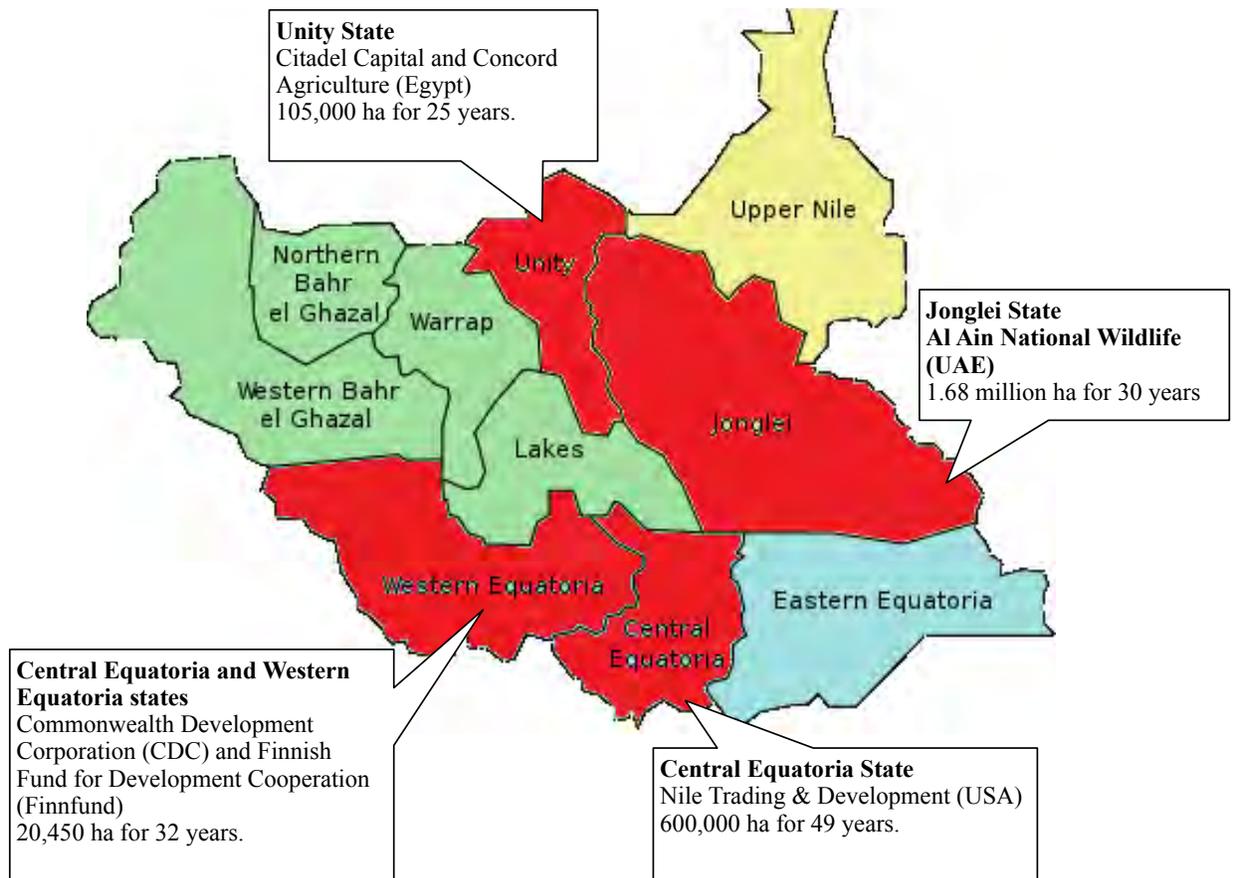
This report includes a number of key findings: First, most of the land deals fail to give due weight to the land rights of community landowners. The 2009 Land Act put in place a land administration system based on community landownership in which communities—defined mainly in terms of ethnic affiliation—own virtually all the land in the country. Even on public land, people’s long-standing relationship to their ancestral homelands, combined with the government’s failure to make active use of the land over the years, warrant heightened protections for community land rights. The transfer of such large areas of land to private interests directly undermines the establishment of a system based on community land ownership by concentrating land ownership in a small number of foreign and domestic companies.

Second, contrary to conventional wisdom, the uncertainty of the transitional context is actually encouraging certain types of investment. Opportunistic companies are able to take advantage of the unclear procedures for land allocation to secure favorable deals with power brokers at the local level. This is a potential source of conflict, both directly between project proponents and affected communities, and among affected communities themselves when they are forced to compete with neighboring communities over dwindling resources.

Third, the large-scale land investments that are currently underway are not complying with domestic law. Companies rarely consult with residents in affected communities, or conduct environmental and social impact assessments, as required by the 2009 Land Act. Nor do they feel pressure from government institutions to abide by “good practice” social and environmental protections. This greatly increases the risks of adverse impacts for host populations; it also increases the chances of local opposition arising when the companies come to the ground to begin project operations.

Fourth, international financial institutions (IFIs) and donor countries may be compromising the sustainability of peacebuilding efforts by encouraging the government of South Sudan to make land available to foreign companies for industrial agriculture. The government of South Sudan has embarked on a campaign with a consortium of development partners, including the International Finance Corporation (IFC) and the United States Agency for International Development (USAID), to promote agricultural investment in South Sudan, despite the lack of a regulatory framework to manage the influx of investment. By prioritizing private sector interests over those of the rural poor, initiatives such as these may inadvertently undermine the new social contracts that would provide the foundation for a sustainable peace.

In order to ensure that investments deliver on their lofty promises, the government of South Sudan should place limits on land-based investment until it can put in place an appropriate regulatory framework. It must also follow through on its commitments to review land leases issued during the interim period and to ensure that they comply with relevant legal standards.



INTRODUCTION

Around the world, fertile land is being made available to investors, often in long-term leases and at giveaway prices. This trend, often referred to as “land-grabbing,” gained traction after the global food crisis of 2008.² Corporations, fund managers, and nations anxious to secure their own future food security have been scouting out and securing large landholdings for offshore farms or just for speculation. Increasingly, investors have come to see farmland as a secure and profitable place for their capital. Some countries, particularly in Asia and the Middle East, recognized their own shortage of land or water resources for food production and began looking offshore for arable land—often in Africa—to assure their future food security. New quotas for the use of agrofuels in the European Union and the United States have also contributed to the global land rush as corporations began scouting out the vast land (and water) resources needed to produce crops that can be converted to fuels.

By the end of 2009, such investment deals covered 56 million ha of farmland around the world.³ The United Nations Food and Agriculture Organization (FAO) has suggested that this can engender a “win-win” situation for private investors and host communities,⁴ and the World Bank has laid out a set of principles for “responsible agro-investment” that in theory, could make this the case.⁵ Civil society and human rights groups, smallholder farmer associations and many scientists disagree. They argue that the land-grabbing threatens the food security and human rights of local populations. They call instead for investment in and support for smallholder agro-ecological farming systems.⁶

As a newly independent nation emerging from decades of civil war, South Sudan provides a unique glimpse into large-scale land investments in a transitional,

post-conflict state. For 22 years, the North-South civil war severely restricted public and private investment in the region. The little infrastructure that existed was concentrated in a handful of towns and severely degraded by the years of war. When the Comprehensive Peace Agreement (CPA) ended the war in 2005, there was only a single seven mile-long paved road in all of South Sudan.⁷

These circumstances began to change quickly after the signing of the CPA. Private investors flocked to access new markets and business opportunities in the country. Large-scale land investments were particularly attractive, given South Sudan’s large size, low population density, and impressive natural resource wealth. Private sector actors found eager partners in public officials and community elites, many of whom view foreign investment as a “silver bullet” that can solve the country’s problems of underdevelopment, poverty, and food insecurity. The end result was astonishing: According to a recent study, in just four short years, from the beginning of 2007 to the end of 2010, private investors sought or secured approximately 5.15 million ha of land—comprising more than eight percent of South Sudan’s total land area.⁸

Across the board, these investments display serious shortcomings in terms of a lack of community participation and one-sided contracts that strongly favor the private investor. Companies rarely negotiate investment agreements directly with landowning communities or their legally empowered representatives as required by the 2009 Land Act, preferring instead to enter into bilateral agreements with government ministries.⁹ Many projects also involve long-term leases of up to 99 years, despite government regulations limiting foreign investments to much shorter terms.¹⁰ Government institutions often give away large tracts

of land for nominal lease payments that do not take into account the loss in land-based livelihoods for host populations. Companies' social obligations also tend to be vague and not formalized, leading to long delays or nonperformance in the delivery of social benefits such as education, health services or road building and infrastructure.

Despite the massive land areas implicated by many of these investments, there remains relatively little evidence of investment activity on the ground. This is largely due to the political uncertainty of the current transitional context. Investors moved in quickly to secure their leases, but held off investing money into developing the property until they could see how events would unfold in the country. The lack of visible investment activity allowed a backlog of investments to accrue without anyone appreciating the true scale of the transfers. Private investors were able to secure large areas of land without any significant push back from civil society, since in many cases, the communities living on the land were not even aware of the leases.

The true test for companies comes when they go to the ground to begin construction. The importance of land-based livelihoods and the heavily militarized nature of South Sudanese society make for a combustible mix. There is a long history of social opposition to controversial development projects in the country, and in many respects, the government's approach to large-scale land investments shows that it has not learned from the mistakes of the past. If companies deny local populations access to land and natural resources that are indispensable to local livelihoods, they risk contributing to increased social unrest and conflict.

While the role of an unbridled private sector in promoting conflict is relatively well established, what is less apparent, and perhaps somewhat counterintuitive, is the way in which insecurity can actually serve to encourage certain types of investment. Legacies of conflict have left a South Sudanese state that is weak and unable to effectively extend its control into rural areas. The underdeveloped regulatory framework provides

a fertile ground for "high risk, high return" investors, who are able to exploit the lack of clear land acquisition procedures and the jurisdictional gray areas between the levels of government to negotiate favorable deals with government officials and community elites. The absence of a proper regulatory framework also means that investors are able to secure leases without having to demonstrate that they have the necessary capital with which to develop their property.

Despite the lack of a regulatory framework, international financial institutions (IFIs) and donor countries are promoting large-scale industrial agriculture as a shortcut to rapid development in South Sudan. In doing so, they inadvertently compromise local livelihoods. The government is granting foreign investors an assortment of privileges, many of which are not available to domestic enterprises, such as tax holidays, reduced limits on capital repatriation, and streamlined procedures of land acquisition. Amidst these efficiency-driven development models, the impacts on the human rights and dignity of millions of the rural poor are often overlooked or ignored.

This report is divided into five sections. The first section provides an overview of the political, social and economic context. It tells the story of South Sudan's road to independence and examines issues underlying food security and land availability in the country. The second section explores the legal framework in South Sudan, including several key legislative reforms that the government of South Sudan enacted in 2009. The third section discusses the institutions involved with land investments in South Sudan, examining how various actors view the role of the private sector in the country's post-conflict recovery efforts. The fourth section provides detailed analysis of four case studies of land investments in South Sudan, including investments in agriculture, agrofuels, forestry, carbon credits, and ecotourism. The final section concludes with a summary of the main points and a series of recommendations for the government.

1. COUNTRY CONTEXT

BOX 1. SOUTH SUDAN AT A GLANCE

Area: 619,745 km² (roughly the size of France)

Neighboring countries: Central African Republic, Democratic Republic of Congo (DRC), Ethiopia, Kenya, Sudan, Uganda

Population: The 2009 census estimated the country's population at 8.26 million, however the count was done during the rainy season and failed to reach communities in many remote areas. According to the Republic of South Sudan (RSS) (formerly known as the GoSS), the actual population is somewhere between 11 and 13 million.

Population density: 13.3 people / km² (roughly the same as Norway or Congo)

Seven agro-ecological zones: Arid Belt, Flood Plains, Green Belt, Hills and Mountains, Ironstone Plateau, Nile and Sobat Corridor

Ten states: Central Equatoria, Eastern Equatoria, Jonglei, Lakes, Northern Bahr el-Ghazal, Unity, Upper Nile, Warrap, Western Bahr el-Ghazal, Western Equatoria

South Sudan is a landlocked country situated at the intersection of North, East and Central Africa. Its rich and diverse landscape includes tropical forests, grassy savannahs, high-altitude plateaus, mountains, floodplains and wetlands. There are vast tracts of arable land found throughout the country, with the most fertile land in the “Green Belt” states of Central Equatoria, Eastern Equatoria, and Western Equatoria. South Sudan's forests contain a variety of valuable tree species, including mahogany, teak and ebony. They also provide important sources of timber, fuel, food, and medicine for local populations. The Nile, the longest river in the world, cuts across the country, flowing northward to Sudan and Egypt. Its seasonal flooding creates unique ecosystems that sustain a wide range of wildlife species. In terms of non-renewable natural resources, there are large oil deposits scattered across the country. There are also reports of considerable, though as yet unexplored, mineral resources, including copper, gold, tin, and uranium.

North-South Civil War

Sudan has experienced two North-South civil wars since independence in 1956. The second 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 four million displaced, making it among the costliest wars in terms of civilian casualties since World War II. The first major breakthrough in the peace process came in 2002 when the Government of Sudan (GoS) and the Sudan People's Liberation Movement and Army (SPLM/A), under the auspices of an East African development coalition called the Intergovernmental Authority on Development (IGAD),¹² signed the Machakos Protocol. In this preliminary agreement, the parties agreed on the broad framework for governance that would follow the cessation of hostilities. Most importantly, they agreed that at the end of the interim period, South Sudanese would vote 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.

The 2005 CPA laid out the terms of a permanent ceasefire between North and South in Sudan. The CPA was based on a “one country, two systems” model. It gave the South regional autonomy in the Government of Southern Sudan (GoSS) and the president of Southern Sudan also served as first vice-president of the Republic of Sudan. The SPLM, the majority party in the GoSS, was given representation in the newly created Government of National Unity (GoNU), controlled by the National Congress Party (NCP) in Khartoum. National elections in April 2010 were meant to provide an opportunity for the democratic transformation of the country. However, they failed to significantly alter power balances in either north or south. South Sudan held its referendum on self-determination from January 9-14, 2011. As expected, voters opted overwhelmingly for independence, with 98.8 percent of the electorate voting in favor of secession.¹³

South Sudan’s secession was, for the most part, peaceful, yet high levels of violence persist in parts of the country. According to the United Nations, in the first six months of 2011, there were a total of 330 violent incidents in South Sudan, resulting in the deaths of 2,368 people.¹⁴ A series of rebellions by senior SPLA officers is responsible for much of this violence; at one point, there were seven on-going rebellions in South Sudan.¹⁵ South Sudan also has a long history of localized conflict between neighboring communities, typically instigated by acts of cattle-raiding or various forms of competition over land and natural resources. One of the most deadly intertribal conflicts in recent years concerns fighting between the Lou Nuer and Murle ethnic groups in Jonglei State. According to the United Nations, in August 2011, Murle raids on the Nuer resulted in the death of 640 people, kidnapping of 208 children, and displacement of 26,800 people, in just a matter of days.¹⁶ The August 2011 attacks were in retaliation for Nuer raids on the Murle in June 2011, which were also reported to have claimed hundreds of lives.¹⁷

The high levels of insecurity are further complicated by large numbers of returnees and internally displaced

BOX 2. THE SUDD

The seasonal flooding of the Nile creates one of the world’s largest wetlands, known as the Sudd, or “barrier” in Arabic. The flooded area covers more than 8,000 square kilometers, and often extends to several times this area depending on seasonal and annual variations in the river discharge and the intensity of rainfall.¹¹ These seasonal floods sustain vast grazing lands, which are essential to the livelihoods and economies of South Sudan’s pastoralist communities, including the Dinka, Nuer, and Shilluk. The thick vegetation in the Sudd also provides important habitats for an array of migratory animal species.

persons (IDPs) in South Sudan. According to the UN, more than 330,000 people have returned to South Sudan in recent months, mostly from Khartoum and elsewhere in Sudan.¹⁸ There are also hundreds of thousands of IDPs in the country.¹⁹ These returnees and IDPs are often forced to live in very poor conditions where they become heavily dependent on humanitarian aid to meet their daily needs. The fragile livelihoods of many populations in South Sudan, together with the overlapping conflicts and the weakness of the young government, present fundamental challenges to peacebuilding efforts in the country. The fragility of the peace in South Sudan is reflected in a 2010 statement from the U.S. Central Intelligence Agency (CIA), which warned that of all the countries in the world, a new mass killing or genocide is most likely to occur in South Sudan.²⁰

Challenges of Nation-building

On July 9, 2011, the Republic of South Sudan (RSS) formally declared its independence from Sudan. Despite the progress that the GoSS made in the six years since the signing of the CPA, South Sudan remains one of the least developed countries in the world. The statistics are sobering:

- Until recently, there was only 7 miles of paved road in all of South Sudan.²⁵
- The World Food Program (WFP) estimates that 3.3 million people—more than a third of

the population—are moderately or severely food insecure.²⁶

- According to the South Sudan Center for Census, Statistics and Evaluation (SSCCSE), fifty percent of the population lives below the poverty line, defined as those earning less than USD 25 per month.²⁷
- Seventy-three percent of the adult population cannot read or write²⁸ and half of the civil servants do not have a primary education.²⁹
- South Sudan has the world's worst maternal mortality rate. The United Nations observes that a 15-year-old girl in South Sudan has a greater chance of dying in childbirth than finishing school.³⁰

Among the challenges that the RSS will face post-independence is managing the harmful side effects of an oil-based economy. With 98 percent of the government's annual budget derived from oil revenue, South Sudan has one of the most oil-dependent economies in the world.³¹ During the six years of the

interim period, the GoSS shared the oil revenue with the national government according to terms laid out in the CPA. With independence, the CPA's revenue sharing provisions have come to an end, and the RSS stands to receive 100 percent of the revenue from oil produced in South Sudan. While the possibility of post-independence wealth sharing is still the subject of ongoing negotiations between Sudan and South Sudan, the southern government has consistently maintained that it will only pay a fee to Sudan for the use of its oil pipeline and refinery.³²

The task for the government of South Sudan is to effectively manage this oil wealth in order to provide development and services for local populations. Evidence shows that countries with oil or mineral-based economies tend to have worse development outcomes than other countries, due to a variety of factors, including: corruption, increased vulnerability to price swings on international markets, and decreased competitiveness of economic sectors other than oil.³³ The fact that oil supplies in South Sudan are expected to decline sharply adds to the sense of urgency. Current oil revenue forecasts show that oil production from

BOX 3. JONGLEI CANAL

The Jonglei Canal is among the most contentious development projects in Sudan's history. By altering the course of the White Nile in Upper Nile State, the designers of the canal sought to reduce the amount of water that is lost through evaporation in the Sudd and divert it to agro-industrial projects in Sudan and Egypt.²¹ The national government started excavation on the canal in 1978, after conducting only perfunctory consultations and socioeconomic studies.²²

The northern government's disregard for the land and cultural rights of South Sudanese communities, as evidenced in the manner it proceeded with the construction of the Jonglei Canal, was among the proximate causes of the rebellion in South Sudan.²³ Work on the project was brought to halt in 1984, when an SPLA missile destroyed the massive excavator.

Despite the opposition to the project, the RSS has announced plans to resume work on the canal after independence. In a 2006 letter to the president, a South Sudanese student at the University of Massachusetts warned that the resumption of the project could spark conflict:

"For worse for better, the digging of canal has to stop. Our people couldn't take this massive invasion of their land anymore. ...Remember, if the government failed to stop the digging of canal; it is imminent for local people to take the matter in their hands through violence. ...[D]on't forget, part of the reasons that caused 21 years of pitiless war was sparked by Jonglei Canal!!"²⁴

The government of South Sudan's approach to large-scale land investments during the interim period demonstrates many of the same mistakes that the national government made in relation to the Jonglei Canal. By prioritizing the interests of the private sector over the development needs of South Sudanese, the government risks skewing development patterns to the detriment of local populations.

existing fields has peaked and that oil revenues will decline by approximately 50 percent over the next five years.³⁴ Since oil revenue will not be available to sustain future generations, the government must develop other economic sectors to compensate for the eventual loss of oil income. The RSS has focused on developing the agricultural sector as a way of diversifying the economy away from oil.

Food Security

With more than a third of its population moderately or severely food insecure, South Sudan is among the most food insecure countries in Sub-Saharan Africa. The FAO and WFP estimate that a significant proportion of South Sudan's population—as high as 33 percent in the lean season—depends on food aid to ensure a minimum level of nutritional intake.³⁵ Due to the low levels of domestic food production, South Sudan relies heavily on food imports from neighboring countries, which has implications for both local and regional food security. The high transport costs associated with food imports from Uganda, Kenya, and Sudan, coupled with inflation caused by the large international presence, have caused food prices to skyrocket in South Sudan. The increase in food exports to South Sudan is also partly responsible for rising food prices in Uganda and Kenya.

Despite the high levels of food insecurity in South Sudan, agricultural production has showed some modest improvement in recent years. According to the FAO, both yields and total cultivated area have been gradually increasing over time. In 2004, South Sudan produced only 490,000 metric tons of cereals, constituting approximately 46 percent of the country's total cereal requirements.³⁶ By 2008, however, cereal production topped one million metric tons for the first time in the post-CPA period. Production dropped to 541,000 metric tons in 2009, mostly due to high levels of insecurity and extensive flooding across several states. It then rebounded to 695,000 metric tons in 2010, falling short of domestic consumption needs by 291,000 tons.³⁷

While the statistics clearly demonstrate that domestic food production in South Sudan is insufficient to satisfy demand, the fact that the country was nearly food self-

sufficient in 2008 speaks to the productive capacity of South Sudanese smallholder farmers. What is needed now is consistency: If private investment is properly channeled to support smallholder farming through the provision of agricultural inputs, technology transfers, and improved access to markets, it can help to level out some of the year-to-year inconsistencies in the country's agricultural productivity. The RSS Ministry of Agriculture has announced its goal of boosting food production in South Sudan to two million metric tons per year by 2013.³⁸ As discussed in Section 3 below, many governmental actors in South Sudan envision a central role for industrial agriculture in achieving this goal. By proceeding with these large-scale agricultural investments in the absence of a proper regulatory framework, however, the government risks undermining smallholder productivity in the process.

BOX 4. SMALLHOLDER FARMING IN SOUTH SUDAN

Accounting for 80 percent of the country's cereal production, smallholder farming dominates the agricultural sector in South Sudan. Yet, smallholder farmers face a number of constraints, due to, among other things, high transport costs, unavailability of agricultural inputs, and underdeveloped agricultural extension services. The central and state-level ministries of agriculture have been operational since 2005, but they are chronically underfunded and unable to deliver meaningful services. Farmers must instead rely on support from isolated pockets of input supply and agricultural extension through donor-funded emergency and humanitarian programs.³⁹

Rather than investing resources into developing the kind of agricultural extension services that could help to spur smallholder production, many government institutions have turned towards large-scale, private sector-led industrial agricultural schemes as an easy way to boost food production. According to Mamer Kuer Ajak, a South Sudanese smallholder who has a farm in Jonglei State where he grows groundnuts, maize, and sorghum: "The government is speaking a corporate language and is out of touch with communities."⁴⁰

In addition to the lack of government support, communities must contend with vicious cycles of food insecurity and conflict. During the season when hunger is worst, roughly from July to October, food prices rise and resource-based conflicts begin to erupt among neighboring groups. The conflict often affects people's ability to plant and harvest on time, reducing their productivity in subsequent seasons. The fact that smallholder producers have managed to continue to produce year-after-year under these circumstances speaks to their resilience and adaptability.

Questions Surrounding the Availability of Land

There is a general assumption among both South Sudanese and foreigners looking to do business in the country that there are large amounts of unused, and therefore available, land in South Sudan. Using the population figure of 8.26 million, the country has a population density of 13.3 people per square kilometer. That is a relatively low population density, roughly equivalent to that of Norway or the Democratic Republic of Congo (DRC). Indeed, a recent satellite land cover survey by the FAO indicates that only 4.5 percent of South Sudan's land area is currently under cultivation, supporting the idea that land is underused in South Sudan.⁴¹

There are at least three reasons why the assumption that land is abundant must be scrutinized. First, there are land uses in South Sudan that are not immediately apparent to the casual observer. Many communities practice shifting cultivation, and an area that looks like natural forest may actually be a field that is left fallow for a number of years, sometimes up to a decade or more, until it is ready to be planted again. South Sudan also has one of the largest populations of pastoralists in the world,⁴² and rural communities may designate seemingly unoccupied areas for seasonal use by people and livestock. There are even some grazing lands that pastoralist communities use only in times of great hardship, such as during famine or drought. If communities are denied access to these resources, it could have far-reaching impacts on food security and livelihoods for local populations.

Second, aside from the question of non-apparent land uses, one must distinguish between land use and land ownership. South Sudan is home to some 65 ethnic groups whose territories span the entire region.⁴³ There is no *terra nullius*, or no man's land, in South Sudan. The RSS has put in place a land administration system whereby communities defined mainly in terms of tribal and sub-tribal affiliation own all land that is held under customary land tenure. This applies to virtually all of the rural land in South Sudan. The government's land holdings are limited to a handful of national parks, wildlife reserves, forest reserves, and pre-war agro-

industrial complexes. Most of these areas were gazetted by either the British colonial administration or the national government in Khartoum prior to the signing of the CPA. Therefore, even if there is land in South Sudan that is unused or underused, in the majority of cases that land still belongs to a community and the community's ownership rights must be respected under South Sudanese law.

Finally, given the complexity of displacement and migration patterns in South Sudan, it is often difficult to determine which areas of the country are populated. Many communities were displaced from their ancestral homelands during the war and now, in the postwar period, expect to return to their homes to rebuild their lives. In other situations, displaced communities may choose to permanently settle in their new locations. Without a firm understanding of local histories and the movement of local populations over time, it is difficult to determine the importance of specific areas to host communities and whether they are in fact abandoned or merely left temporarily vacant.



Teak nursery at ETC's project in Nzara County, Western Equatoria State

BOX 5. A PROPOSED SUGAR PLANTATION IN MANGALA

A Ugandan conglomerate called the Madhvani Group has entered into a preliminary agreement with the RSS to revitalize a defunct government-owned sugar plantation and processing facility in Mangala Payam (a “payam” is the equivalent of an administrative district), Central Equatoria State. The plantation would cover 10,000 ha of prime riverfront property along the Nile, about 70 kilometers north of Juba. According to the paramount chief in Mangala, the community has not been involved in any of the investment negotiations.

The Madhvani Group, owned by Ugandans of Indian descent, is among the largest companies in Uganda, at one time accounting for 10 percent of the country’s gross domestic product (GDP). It operates across a wide variety of sectors, from agriculture and agro-processing to media and information technology. The company owns sugar plantations in several East African countries, including Rwanda and Uganda.

There are a number of potential adverse impacts associated with this investment. First, a large population resides in the project area and would have to be relocated to make the land available for the company. The community has experienced high levels of insecurity in recent years, and if they were permanently displaced from the land being leased by the company, it would further undermine livelihoods that have already been severely affected by conflict-related displacement. Second, the plantation is adjacent to Bandingilo National Park, and there are concerns that it would affect the migratory routes of wildlife in the area.⁴⁴ Third, there is an on-going border dispute between Juba and Terekeka county administrations that centers on the land where the plantation is located. The border dispute arose during the election season of 2010 and has since become heavily politicized.

There is also some question about the legitimacy of the government’s ownership claims. In the government’s view, land owned by the northern government prior to the CPA passed to the GoSS when it assumed power in 2005. However, there is a growing body of jurisprudence maintaining that customary claims can only be extinguished through procedures that comply with basic standards of due process, such as registering community land under freehold title or expropriation with fair compensation and for a public purpose.⁴⁵ When the Khartoum government passed the Unregistered Land Act in 1970, decreeing all unregistered land to be government property, it did not compensate communities. Therefore, since the original expropriation was not lawful, the argument goes, the GoSS’s claims to these lands are similarly invalid. The issue is further complicated in Mangala by the fact that the government expropriated the land in the mid-1970s and was only making active use of the property for a few years before the war reached Mangala in 1985. The community reoccupied the land during the war and continues to reside there until the present day, making the government’s claim all the more tenuous.

2. LEGAL FRAMEWORK

South Sudan's legal framework is characterized by a high degree of legal ambiguity. Since its creation in 2005, the legislative assembly has enacted laws covering a range of issues, but large gaps in the regulatory framework remain. The few laws that do exist are poorly disseminated and under-enforced. Without rules to guide their activities, government institutions tend to function through a combination of discretionary decision-making and preexisting practice. The lack of clarity often gives rise to power struggles among government institutions when high profile foreign investments are proposed.

Shortly after the signing of the CPA, state-level governments began using the provisions relating to decentralization and grassroots empowerment in the CPA and the interim constitution to claim the right to unilaterally manage land without involving the central government. The resulting confusion over reporting lines and jurisdictions among government institutions introduced opportunities for private sector actors. Without regulatory oversight from the central government, investors were free to negotiate land leases with power brokers at the state level, thereby shielding themselves from national regulatory requirements. The fact that investments are managed almost entirely at the state level also contributes to an overall lack of transparency, since there is no central monitoring body responsible for keeping track of who is investing in what and where.

Despite the weak rule of law in South Sudan, the laws that have been enacted during the interim period encompass a number of key reforms, including: ceilings on land acquisitions;⁴⁶ limits on lease periods for foreign investments;⁴⁷ requirements for prior environmental and socioeconomic studies;⁴⁸ requirements for prior

community consultation;⁴⁹ and prohibitions on non-consensual interference with pastoralist communities' grazing rights.⁵⁰ If properly enforced, these laws can help South Sudanese to begin channeling foreign investment toward their own development priorities. Domestic laws such as these will also become increasingly important as a means of determining the reciprocal obligations when the government of South Sudan and private investors begin to use international arbitration as a means of resolving their disputes.

Land Act (2009)

In February 2009, the GoSS formally committed itself to community land ownership with the promulgation of the Land Act. The Land Act explicitly recognizes customary land tenure, putting it on equal footing with freehold and leasehold rights.⁵¹ It adopts an expansive definition of community land, which includes all land "lawfully held, managed or used by specific community as community forests, cultivation, grazing areas, shrines and any other purposes recognized by law."⁵² The Land Act also allows communities to allocate land for investment purposes so long as the investment activity reflects an important interest for the community and contributes to its economic and social development.⁵³ Section 15 of the Land Act lays out the procedures for allocating community land:

(1)...Traditional Authority within a specific community may allocate customary land rights for residential, agricultural, forestry, and grazing purposes.

...

(5) Any allocation of a piece of land beyond 250 feddans [105 ha] 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.⁵⁴

This provision suggests that the primary responsibility for allocating community land rests with the traditional authority, subject only to approval by the state authorities. The Land Act does not envisage the acquisition of community land for investment purposes as an expropriation. The root interest remains with the host community and the lessee company only enjoys rights for the duration of the lease, at which point the land reverts to the community.⁵⁵

Subsection 7 further clarifies the process by which traditional authorities may allocate land. It states:

(7) If the size of the land is over 250 feddans [105 ha], the Concerned Ministry in the State or its duly designated representatives shall verify the following:

...

(c) consensus on the allocation between members of the community;

(d) allocation does not exceed such a size that the Minister finds against principles of equity and fairness; and

e) the social and environmental impact that activity may cause.⁵⁶

This provision requires state authorities to play an oversight role to verify that the traditional authority was acting with the support of the community in its collective capacity. If significant dissent exists within the community, there cannot be consensus. As a precaution, the state authorities are also authorized to veto proposed projects that are against principles of equity and fairness.

Draft Land Policy (2011)

The policy objectives underlying these provisions of the Land Act were clarified with the release of the draft land policy in February 2011. The draft policy was developed through a lengthy consultative approach in

which the South Sudan Land Commission (SSLC) and its international partners held workshops in each of the ten states to solicit feedback on pressing matters relating to land in South Sudan. Though it still requires promulgation through the Council of Ministers and the Southern Sudan Legislative Assembly before becoming formal government policy, the draft policy includes a number of provisions that demonstrate continued support for community land ownership among many sectors of South Sudanese society. It emphasizes the importance of access to land as a “social right,” a feature of many customary land tenure systems that allows community members to access land irrespective of wealth or economic status. It also specifically identifies the risks associated with “land grabbing,” which it defines as “the acquisition of land without regard for the interests of existing land rights holders.” According to the draft policy:

“In some jurisdictions, community land used in common—for forest products, grazing and water supply—has been alienated by central and state level authorities for public use or for sale or lease to private investors without taking account of the ownership interests of communities in the land and its associated natural resources. This has occurred despite the fact that historically and customarily communal land has fallen under the ownership of communities, and its use has been regulated by traditional or other community-level authorities.”⁵⁷

The policy statement adds further support for the above interpretation of Section 15 of the Land Act. It suggests that the drafters of the Land Act intended for land ownership to be vested in the community and for communities to be the primary signatories to investment agreements with private investors.⁵⁸

The Local Government Act (2009) and Investment Promotion Act (2009)

The South Sudan Legislative Assembly (SSLA) also passed the Local Government Act and the Investment Promotion Act in 2009. The Local Government Act calls for a local government council, established at the county level, to be the primary institution managing land issues within rural communities. Land committees

within the local government council are responsible for the “mediation of consultation processes of land lease between the community and other investors.”⁵⁹ The Investment Promotion Act lays out the procedures for certifying and licensing foreign investors to operate in South Sudan. It explicitly limits foreign investments in agriculture and forestry to renewable terms of 30 and 60 years, respectively. Due to the poor uptake of these laws, however, many government institutions are not aware of this restriction and continue to issue 99-year leases to foreign investors for agriculture and forestry investments.

“Land Belongs to the Community”

The right of communities to exercise ownership and control over their land and natural resources was at the heart of the struggle in South Sudan. During the civil war, John Garang used the slogan “land belongs to the community” extensively to rally popular support for the SPLM/A. In the post-CPA period, communities have begun to expect and demand that they be involved in decisions relating to the use of community land. In the view of many South Sudanese, communities earned their ownership rights by virtue of the sacrifices they made during the civil war. According to Bukulu Edward, the speaker of the Western Equatoria State legislative assembly:

“When people were fighting for this land, there were no resources for fueling the war. The [Sudan People’s Liberation] Movement had to go to the chiefs, to the people at the grassroots level, and say, “Give us your children. Let them come. We will train them to fight for this land. It is their land.” The return for their sacrifice is the services, protection, stability, and peace that must be guaranteed by the government. The people are the owners of the

land, not the government. If they refused to give their children to go and fight—to go and die—we would not be where we are today.”⁶⁰

Despite the popularity of community land ownership among South Sudanese, some government officials are adopting a revisionist approach to this history, arguing that the “land belongs to the community” policy was merely a clever ploy used to protect the resources of South Sudan during the negotiation of the CPA and was not meant to apply in an independent South Sudan. Several high profile government officials are now attempting to redefine the land law in order to give the government additional control over community land.

Given the importance of land to local livelihoods and the fact that rural populations have sacrificed so much in order to control their community lands, these attempts to undermine community land ownership are likely to face stiff opposition from groups at the local level. It is also unclear how the government could roll back its commitments while complying with universally-accepted standards of due process. The government has already endorsed an expansive view of community land ownership in the Land Act, and any attempts to redefine the law at this point would constitute an expropriation for which the government would be obligated to compensate the community landowners. Since it is impractical to compensate such a large population, there is very little scope for restructuring the law without violating the rights of rural populations.

3. INSTITUTIONAL FRAMEWORK

South Sudan has made considerable progress in the six years since the signing of the Comprehensive Peace Agreement (CPA), yet daunting challenges in post-conflict recovery remain. The government and its international partners foresee a central role for the private sector in these nation-building efforts. In June 2011, the vice-president of South Sudan, Riek Machar Teny, announced an ambitious government plan to mobilize USD 500 billion of foreign investment—equivalent to almost 70 times the government’s annual budget—in the first five years of independence.⁶¹ Despite the implausibility of the plan, it nonetheless shows a clear intent on the part of the government to design a system that caters to the foreign private sector. Much of this investment would be focused in the agricultural sector, which the government hopes can help to diversify the economy away from oil and provide jobs to the large numbers of unemployed in South Sudan.

The international community is also promoting industrial agriculture as a solution to South Sudan’s problems of underdevelopment. Led by international financial institutions (IFIs) and donor countries, international initiatives often conflate investment and development by promoting the private sector as an “apolitical and accommodating development partner.”⁶² Such initiatives do not give due weight to the risks that unbridled private investment can pose in a fragile post-conflict context such as that of South Sudan. “Spoilers” have already begun manipulating perceptions of corruption and a government elite that is unresponsive to the needs of its citizenry to mobilize support for armed rebellions in many parts of the country.⁶³ By prioritizing the needs of the private sector—especially the foreign private sector—over those of South Sudanese, the government of

South Sudan and its international partners may be inadvertently fueling the recruitment efforts of these “spoilers.”

Ministry of Agriculture and Forestry

The ministry of Agriculture and Forestry at the central and state-levels are the main implementing partners for most large-scale land investments in South Sudan. Paul De Wit, a policy analyst who has studied the link between land and conflict in South Sudan, observed that from the outset, the GoSS Ministry of Agriculture and Forestry showed a willingness to prioritize the needs of large foreign investors over those of rural farmers:

“[T]he new Ministry of Agriculture and Forestry turned into a de facto player, albeit in the more traditional role of promoting activities such as the allocation of big areas for private investment without too much consultation. This complicates rather than resolves deep-rooted problems. A strongly renewed emphasis on the promotion of private, including foreign investment in the agricultural sector represents a clear shift from a community rights-based to a private sector investment-based approach, with the role of local communities and their legitimate rights over land once again becoming secondary.”⁶⁴

Policy statements from the RSS Ministry of Agriculture suggest that it views large-scale land investments as a means of rapidly increasing agricultural production in the country. The ministry’s 2006 Food and Agriculture Policy Framework, for example, advises that “the Government should quickly start... allotting large plots of uninhabited farmland to private investors for commercial agriculture.”⁶⁵ According to Steven Lawry, a



Habila mechanized schemes, Nuba Mountains

senior research fellow at the Hauser Center for Nonprofit Organizations at the Harvard Kennedy School, policies such as these reflect a common attitude among policy-makers in South Sudan:

“There appears to be undue infatuation [among policy circles in Juba] with grandiose, large enterprise [agricultural] models—public and private—as short-cuts to rapid modernisation. These models are unlikely to deliver the growth and poverty reduction that is expected of them, and could deflect the country from more productive strategies planned and carried out by the thousands of Southern Sudanese across the country prepared to make the most of the economic and social benefits of political independence.”⁶⁶

The danger of a development model that prioritizes industrial agriculture and sets governmental priorities to meet the needs of the foreign private sector, is that it marginalizes local development priorities in the process. Evidence shows that when a government tries to pursue an aggressive approach to private investment in industrial agriculture while, at the same time,

supporting smallholder farmers, its focus inevitably falls on the large-scale producers. Large-scale industrial production and smallholder-focused production involve two completely different development paradigms, and it is very difficult to manage the agricultural sector in a way that accommodates both groups, especially for a government as under-resourced and overworked as the RSS.

Ministry of Commerce, Industry, and Investment

The RSS Ministry of Commerce, Industry, and Investment has the clear mandate to design the investment framework and regulate private sector activities in South Sudan. The ministry was created in September 2011 and combines the old Ministry of Investment with the old Ministry of Commerce and Industry. Policy statements in the draft 2011 South Sudan Development Plan, which outlines the government’s vision for the country in the first three years of independence, suggest that the ministry’s activities will be geared towards facilitating the business activities of the private sector, rather than strictly enforcing social and environmental protections:

“The Ministry of Investment and the Ministry of Commerce and Industry are leading the development and implementation of actions to address key constraints to rapid private sector development. A One-Stop Investment Shop is being established, key laws already drafted ... will be enacted and implementation systems established.”⁶⁷

Streamlined investment procedures such as these often ignore the risks posed by rapid economic development in post-conflict states. A primary objective for transitional states like South Sudan is to reestablish trust with their citizenry. In these circumstances, robust regulation of the private sector is necessary to ensure that companies invest in a way that strengthens local economies and maximizes employment creation, rather than simply maximizing profits for the investors.

International Financial Institutions (IFIs) and Donor Countries

In March 2011, Rachel Kyte, the vice-president for advisory services at the International Finance Corporation (IFC), visited Juba in order to announce an ambitious new program to promote private sector development in South Sudan. A central component of the program concerns the restructuring of the “investment climate” in order to attract new businesses.⁶⁸ As seen elsewhere in the continent, guidance from the World Bank and the IFC often results in countries adopting a “hands-off” approach to private sector development. This minimalist approach turns a blind eye to success

stories elsewhere in the world, where robust state regulation of the private sector translated into rapid and sustainable economic growth. For example, most observers attribute the high growth rates of the Asian Tigers—including Hong Kong, Singapore, South Korea, and Taiwan—to the active role that those states took in regulating their economies. Even in the West, countries like the US and France have developed their agricultural sectors and become food exporters through substantial public intervention.

Donor countries are also actively promoting the myth that industrial farming is the key to improved food security in South Sudan. The United States Agency for International Development (USAID), for example, is working with Citibank, the IFC, the Corporate Council on Africa, and others to help the country market its resources and attract private capital in key sectors, such as agriculture. In partnership with the World Bank, African Development Bank, European Union (EU), and Japan, USAID is also working to organize sector-specific private investor conferences, including one on agriculture.⁶⁹ With little attention paid to the risks that an unrestrained private sector poses in a fragile post-conflict environment, initiatives such as these threaten to undermine peacebuilding efforts by elevating the interests of foreign investors over those of rural populations.

4. CASE STUDIES

There was a large influx of foreign investment in South Sudan following the signing of CPA in 2005. The first business sectors to start generating profits were telecommunications and construction. As the interim period progressed, additional investment began to materialize in the hotel and banking sectors. Conventional wisdom held that these sectors, together with the already active petroleum sector, were the major forms of foreign direct investment (FDI) during the early years of the interim period. However, as a recent study shows, there was also a surge in large-scale land-based investment after the signing of the CPA in 2005.⁷⁰ These investments in industrial farms,

plantation forestry, agrofuel projects, carbon credit schemes and ecotourism projects were largely initiated under the radar. Companies moved in fast to secure large concessions and land leases in some of the most fertile and water-rich regions of the country. For the most part, however, they held off investing large amounts of money into developing the property, preferring to wait until the political uncertainty of the interim period had passed. As a result, although large areas of land were sought or secured by private actors—more than eight percent of South Sudan’s total land area according to the study—there is relatively little evidence of investment activity on the ground.



Defunct agro-industrial complex in Mangala which the Madhvani Group is hoping to revitalize

The following four case studies provide additional information on large-scale land investments during the interim period. They involve companies from the United States, United Kingdom, Finland, Egypt, and the United Arab Emirates (UAE). The investments are

also notable for the large areas of land involved; these four investments alone cover 2.86 million ha (or 28,600 square kilometers). The table below summarizes some key characteristics of the four investments:

SUMMARY OF THE FOUR SELECTED INVESTMENTS

Project Proponents	Nationality	Business Sector	Land-owner	Size (ha)	Lease Period (years)	Lease Amount (USD)
Nile Trading & Development Kinyeti American Exotic Timber Group	American American American	Agriculture, Agrofuels, Forestry, Carbon credit (also touches on oil, gas and mining)	Comm.	600,000 (with possible extension to 1 million)	49	USD 25,000 plus sharing of 40-50% of any profits with local entity
Citadel Capital Wafra Concord Agriculture	Egyptian Egyptian Egyptian	Agriculture	Comm.	105,000	25	USD 125,000 (paid to state gov't)
Al Ain National Wildlife	Emirati	Ecotourism	Gov't	1,680,000	30	Revenue sharing of 70%-30% between company and gov't
Commonwealth Development Corporation Finnish Fund for Development Cooperation	British Finnish	Forestry	Gov't / Comm.	20,450 (plus 50,000 of natural forest in Lainya)	32	USD 200,000 for social fund in CES and USD 100,000 for social fund in WES plus a portion of profits per m ³ of teak exported.

Nile Trading and Development, Kinyeti Development and the American Exotic Timber Group

This case study examines investments by three American companies: Nile Trading and Development, Inc, Kinyeti Development, LLC, and the American Exotic Timber Group, LLC. According to the lease agreements obtained by OI, in March 2008, Nile Trading secured a 49-year lease to 600,000 ha of land, with an option for an extension to 1,000,000 ha, through a deal struck with

a local entity called the Mukaya Payam Cooperative.⁷¹ Howard Eugene Douglas, a retired US ambassador and the managing director of Kinyeti, told BBC radio that the investment is meant to be a “collaborative” venture in which the Cooperative will receive a portion of the profits over the life of the investment.⁷² As of October 2011, the companies had not yet begun project operations.

At the time of the signature, the government had not yet recognized the deal and it was little more than an

agreement between two entities, neither of which owned the land in question. In May 2008, David P. Neimann, the president of Nile Trading, wrote a letter to Clement Wani, the governor of Central Equatoria State, asking for the March 2008 lease to be formally registered with the government. The director general of lands in the state-level Ministry of Physical Infrastructure, responded:

“In the matter of your project plans with the Mukaya Payam Cooperative, we are able to confirm that the State of Central Equatoria and the Government of the Southern Sudan recognize as legal and valid the lease agreement signed between Nile Trading & Development ...and Mukaya Payam Cooperative on March 1 [probably meaning March 11], 2008 dealing with the Agro-Forestry project development of 2.47 million acres of Mukaya Payam lands.”



Woman farmer in the Mukaya Payam community

The letter was copied to the governor of Central Equatoria State and the GoSS and state-level ministers of agriculture. In October 2008, the state-level Ministry of Physical Infrastructure issued a lease for 600,000 ha of land to the Cooperative, effectively formalizing the March 2008 transfer between the Cooperative and Nile Trading.⁷³ The invoice attached to the October 2008 lease indicates that the Cooperative paid just 75,000 Sudanese pounds (approximately USD 25,000) in fees for the lease.⁷⁴ According to the residents of Mukaya Payam, no compensation was given to the community.⁷⁵

INVESTMENT ACTIVITIES

In his May 2008 letter to the state governor, Neimann states that Nile Trading will invest in a number of agriculture, forestry, agrofuel and carbon credit-related activities.⁷⁶ However, the preexisting lease agreement from March 2008 purports to give Nile Trading full rights to exploit all natural resources in the area, including: timber resources; carbon credits; agriculture, including agrofuels; petroleum, natural gas and hydrocarbons, as well as other minerals; and power generation activities.⁷⁷ A local government official who has met several times with representatives of Nile Trading expressed a sense of confusion of what the company actually intends to do:

“What makes me a bit suspicious is the kind of business that they say they want to do. It’s really not clear. ...They talk of agriculture as one of their activities, and then they also talking of minerals and agrofuels. So it’s not clear exactly where they really want to invest.”⁷⁸

The lease agreement also gives Nile Trading the right to sublease any portion of land and to sublicense any right to undertake activities on the land to third parties. In August 2009, Nile Trading assigned its rights and obligations with regard to the timber component of the agreement to Kinyeti Development—another Texas-based company, supposedly “founded by professionals with decades of experience in international business, finance and diplomacy”—in exchange for a percentage of Kinyeti’s annual profits.⁷⁹ One day after entering into the agreement with Nile Trading, Kinyeti sublicensed its rights to harvest timber to a third company called the American Exotic Timber Group (AETG). The AETG’s CEO, is Illinois-based American named James R. Franklin, who had previous experience harvesting timber in Bosnia and Herzegovina. According to the agreement, profits from the AETG’s agroforestry activities in Mukaya were to be split evenly with Kinyeti.

After several working visits to South Sudan the relationship between Douglas and Franklin began to deteriorate. In May 2010, Kinyeti delivered a formal notice of breach to AETG for failing to find investors for the agroforestry project. Then in November 2010,

NILE TRADING & DEVELOPMENT CONTRACT FOR 600,000 ha

THE GOVERNMENT OF SOUTHERN SUDAN
CENTRAL EQUATORIA STATE
MINISTRY OF PHYSICAL INFRASTRUCTURE
DIRECTORATE OF LANDS ADMINISTRATION AND PHYSICAL PLANNING

REF: MPI/DLAe&PP/CES/38.A.1

date: 1. 9. 2008

The Accountant,
Revenue Authority,
Central Equatoria State
Juba

1. Please collect from the CHAIRMAN, MUKAYA PAYM COOPERATIVE the sum of : SDG 75,00.00 being land charges for 6,000,000,000 square meters of AGRO FORESTRY land NO. 1 BLOCK 1 at MUKAYA PAYAM – LANYA COUNTY.
Preferential allotment with premium
2. The Accountant of: Juba, Lanya, Morobo, Terekeka, Yei and Kojakaji Counties to collect Rent payable in Advance
3. The Survey to collect Survey Fee;
4. The Registrar of Land to collect Registration Fees;
5. The Revenue Authority to credit the Land Charges to the Bank Account of the Revenue Authority, Ministry of Finance Economic Planning and Manpower.

LAND CHARGES BEAKENDOWN

1. Premium Reserve Fund:SDG 26,250.00

(b) The initial term of such lease shall be forty-nine (49) years, beginning from and after the date of execution of the Addendum.

(c) The Cooperative hereby agrees that the Company shall have the right to engage in the following activities on the Leased Land:

- (i) The development, production and/or exploitation of timber/forestry resources, including without limitation, the harvesting of current tree growth, the planting and harvesting of megafolia-paulownia, palm oil trees and other hardwood trees and the development of wood-based industries; and
- (ii) Agriculture, including the cultivation of the jetropha plant and palm oil trees (and the exploitation of any resulting carbon credits).

The Company agrees that the substantially majority of the land within the Leased Land from which trees are harvested shall be subject to a reforestation or agricultural cultivation programme.

The Cooperative acknowledges and agrees that the Company may undertake any other activity permitted by the laws of Southern Sudan on the Leased Land. Without limiting the foregoing, the Cooperative acknowledges that the Company may seek to explore, develop, mine, produce and/or exploit (x) petroleum, natural gas and other hydrocarbon resources, for both the local and export markets, and (y) other minerals, and may also seek to engage in power generation activities on the Leased Land. The Cooperative hereby agrees that it shall not oppose the undertaking of any such activities by the Company on the Leased Land and shall cooperate with the Company in any efforts undertaken by the Company to obtain one or more concessions therefor from the Government of Southern Sudan.

(d) The Cooperative acknowledges and agrees that the Company shall have the right to sublease any part of all of the Leased Land or sublicense any right to undertake activities on the Leased Land to third parties. Without limiting the foregoing, the Company hereby agrees to use its commercially reasonable best efforts to engage in the development, production and/or exploitation of the timber/forestry resources within the Leased Land and to engage in agricultural cultivation. In addition, the Cooperative acknowledges and agrees that the Company shall have the right to assign this Lease to any affiliated entity (that is, any entity controlled by the Company or whose shareholders are the same as the Company's shareholders), provided that the Company give written notice of such assignment to the Cooperative.

MUKAYA PAYAM PETITION AGAINST THE NILE TRADING DEAL

REPUBLIC OF SOUTH SUDAN
MUKAYA PAYAM LAINYA COUNTY

Date: 23rd - July 2011

To: H.E Governor,
Central Equatorial State - Juba

Thru: H.E Commissioner,
Lainya County

Sudan James
Commissioner - Lainya County
19th August 2011

Subject: **MUKAYA PAYAM PETITION ON 49 YEARS LAND LEASE**

We the chiefs, elders, religious leaders and the youth of Mukaya Payam unanimously with strong terms condemn disallow or deny the Land Lease agreement reached on 11th March 2008 between the two parties. Mukaya Payam cooperates, "Lessor" and Nile Trading and Development, A Delaware Corporation, "Lessee" for the following reasons.

1. The community of Mukaya Payam as indigenous inhabitants of their ancestral Land, and the law given rights for the community to own the land, we weren't consulted on the matter and therefore we are not part and parcel of the deal negotiated by the two parties.
2. Mukaya Payam cooperative is an individual entity and does not represent the community of Mukaya. The three influential natives leased the land behind the backs of the entire community and without consent of the ancestral inhabitants of the land.

The three concerned influential natives:

- > Mr. Sogpas Ladoi Torujo, - Paramount Chief Mukaya Payam
- > Mr. Samuel T. Youzel - Ministry of Housing, Land and Public Utilities - GOSSE
- > Mr. James Yosi Ramadala - 2nd Class Judge

Who claimed the responsibility of representing Mukaya Payam community at the grass root never followed the right procedure. Instead their lease of the land has created a Dilemma in the minds of the people and clearly undermines the Livelihood of the entire population in the area which signals risks in causing food insecurity, Displacement of subsistence farming, Conflicts, Environmental Devastation and many other hazards

that may account for instability in the whole of Mukaya Payam Community and Lainya County in general.

3. Mukaya Payam Community welcomes any investment deal to the area but the approach should be in line with our aspirations for development. Yet as Mukaya or People of Lainya County Community are not against any investment in our area but should be through the legal procedures accepted by the law. Therefore the deal reached between Mukaya Payam Cooperatives and Nile Trading and Development Company, whose the entire community of Mukaya was excluded is invalid document.
4. The land deal is the largest in our state of central Equatorial State that covers 500,000 Hectares which later to be increased to 1,000,000 hectares that covers the whole ancestral land of our people and therefore it is not acceptable and agreeable to the entire Mukaya Community
5. We also Appeal to the state ministry of Physical Infrastructure Directorate of land administration and physical planning as the agreement violates the South Sudan Investment Law and Local Government Act 2009 for not consulting the indigenous people before signing the deal. Then it is not in order for the Ministry of Infrastructure to collect the sum of Sudanese pounds Severely five thousand (25,000 USD) from the chairperson Mukaya Cooperative valid letter No. MP/CLAE & PP/CES/38.A.1, from the Ministry of Physical Infrastructure signed by Cornelius Lado Kulang Director General, Directorate of Land Administration and Physical Planning. Copies to all Executive Directors of Central Equatoria State Counties of Tendioka, Lainya, Kajo-Kajo, Yei and Mombi including Director of Survey Department CES/Juba, Chairperson Mukaya Payam Cooperative (name and office location not mentioned).
The land of Mukaya Payam belongs to the community and not to be leased out by the individuals. The revenue collected not for Mukaya Payam land.
The so called cooperative of Mukaya Payam wherever it may exist with its administration is estewarable to any issue that may arise thereafter.

Your Excellency we once again as community of Mukaya Payam bring to your full knowledge that no deal of lease land was reached by entire community with any other firm. We would like also to reaffirm your

estimated office that the agreement signed between Mukaya Payam Cooperative and Nile Trading & Development A, Delaware Corporation is illegal and not binding deal with entire community of Mukaya Payam, Lainya County.

Therefore we the Chiefs, Elders, Religious Leader and the Youth of Mukaya Payam, on behalf of the entire community hereby offer our signatures on this 23rd day of the month of July in the year 2011.

- | | | | |
|----------------------------------|---|---------------------|--------------------|
| 1. Chief Blosser Longi Saur | - | Biri Boma | <i>[Signature]</i> |
| 2. Chief Gordon Kwesi Logutomon | - | Dimu i Boma | <i>[Signature]</i> |
| 3. Chief Isaac Rofl Ware | - | Lorega Boma | <i>[Signature]</i> |
| 4. S/Chief Bahruei Laku Feteko | - | Lorega Boma | <i>[Signature]</i> |
| 5. S/Chief falman Lasu Lokoyome | - | Lorega Boma | <i>[Signature]</i> |
| 6. S/Chief George Laku Blin | - | Dimu i Boma | <i>[Signature]</i> |
| 7. S/Chief Martin Sefir Benjamin | - | Biri Boma | <i>[Signature]</i> |
| 8. Rev. Apok Laku Salmin | - | Mukaya Archdeaconry | <i>[Signature]</i> |
| 9. Elder Morris Lasu Lamsaring | - | Mukaya Payam | <i>[Signature]</i> |
| 10. Elder Jufi Jago Godu | - | Biri Boma | <i>[Signature]</i> |
| 11. Mrs. Gladly Moro Salmon | - | C/Lady Mukaya | <i>[Signature]</i> |
| 12. David Lemade Omed | - | Youth Leader Mukaya | <i>[Signature]</i> |

- s.c. Hon. Robert Lomude - State Assembly - CES/Juba
- s.c. Payam Director - Mukaya
- s.c. Chairperson Mukaya Community - Juba
- s.c. Chairperson Mukaya Community - Yei
- s.c. Chairperson Mukaya Community - Lainya
- s.c. Youth Leader - Mukaya Community-Juba



when Kinyeti representatives traveled to Juba they learned that Franklin had been meeting with South Sudanese public officials without their knowledge. According to Douglas, this constituted a second breach of the sublicensing agreement, in which AETG had agreed to refrain from having any communications with the Cooperative or any governmental authorities without Kinyeti's permission. In April 2011, Kinyeti filed for damages under the arbitration clause of the contract, accusing Franklin and AETG of breach of contract, tortious interference with a contract and lease agreement, fraud/fraudulent inducement, slander and libel.

OIL, GAS AND MINING ACTIVITIES

According to the transitional constitution, all subterranean natural resources in South Sudan are deemed to be the property of the central government. Douglas and Franklin would therefore need to secure a concession agreement from the GoSS Ministry of Energy and Mining to authorize their oil, gas and mining activities, despite the language in the March 2008 lease agreement purporting to transfer these rights to Nile Trading.

In fact, Kinyeti has already been in discussions with the Ministry of Energy and Mining on several initiatives. According to Kinyeti, it has hosted two senior level delegations from South Sudan in the US: one from the GoSS Ministry of Energy and Mining and the other led by the governor of Central Equatoria State. While in the US, Kinyeti reportedly introduced the South Sudanese leaders to public officials in Texas. According to Kinyeti:

“[O]ur management team has had the opportunity to introduce leaders from the South Sudan national government and at least one of the state governments to their counterparts in the State of Texas. The Texas Department of Agriculture and the Texas General Land Office have taken an interest in South Sudan and the heads of these two key departments have offered to assist the new leadership in South Sudan in practical training of administration of agricultural programs and the critical matter of administering land and mineral rights.”⁸⁰

Kinyeti has also had discussions with the Ministry of Energy concerning the development of an electric power station and a crude oil refinery in Central Equatoria State. At a cost of USD 205 million, Kinyeti asserts the facilities would be “designed to satisfy the current and near-term future electricity needs for Juba and Central Equatoria State—along with the country's priority fuel needs—in a secure, safe, cost effective, and environmentally responsible manner.”⁸¹ Kinyeti and a Colorado-based company called International Geophysical Services (IGS) have also been in touch with the director general of Geological Survey regarding a USD 34 million Geospatial Information Management System (GIMS) to map the mineral resources of South Sudan.⁸²

MUKAYA PAYAM COOPERATIVE

Aside from its widely divergent business interests, there are a number of other puzzling aspects to the Nile Trading agreement. The first concerns the identity of the main domestic signatory to the deal, the Mukaya Payam Cooperative. The Agency for Independent Media (AIM), a South Sudanese civil society organization that issued a report on the Nile Trading investment in 2010, asserts that it is a “fictitious cooperative” comprised of “a group of influential natives from Mukaya Payam” who leased the land to Nile Trading without the knowledge of the community.⁸³ In fact, the three individuals Scopas Loduo Onje, Samuel Tabani Youziel, and Vincent Kujo who are identified as members of the Cooperative are all blood-related.⁸⁴

A September 2008 letter from leaders from Mukaya Community to the then Central Equatoria State Minister of Agriculture corroborates many of the claims made in the AIM report.⁸⁵ The letter, signed by a Mukaya elder who resides in Juba, claims that the people of Mukaya “deplore the way these projects have been handled and vehemently reject them,” and demands that the minister suspend his approval for the projects⁸⁶:

“The two projects have not been made public to the wider community of Mukaya Payam so that they understand the benefits and disadvantages of the venture. Only a few citizens of the area, with the knowledge of the [then] Commissioner, were



Locally made map of mechanized schemes in Habila, Nuba Mountains

involved in the process leading to the signing of these projects.”⁸⁷

Though some members of Mukaya Community residing in Juba learned about the deal as far back as September 2008, this information apparently did not reach members of the community residing in Mukaya Payam. When OI researchers visited Mukaya Payam in June 2011, none of the community leaders had even heard of the Cooperative. The paramount chief who signed on behalf of the Cooperative in the March 2008 claims that several “intellectuals” from the community who reside in Juba brought him a lease agreement that had already been signed by all the other parties to the agreement and instructed him to sign.⁸⁸ The chief, an elderly man with primary level education, says that he signed the lease without understanding the terms of the agreement.

During a group meeting that OI researchers had with leaders from Mukaya community, one of the sub-chiefs expressed shock that something like this could be done without the community’s approval. He targeted his criticism at the “intellectuals” from the community who instructed the chief to sign the lease:

“We have children from this community, those ones that are learned, who are staying outside, they are the ones who bring these investors to this community. There are certain things they do in Juba, then they bring these lies and tell these people who stay here in deep village without any access to any information.”⁸⁹

Another sub-chief expressed a similar disappointment with Kinyeti’s agents from the Mukaya community residing in Juba:

“From before our grandparents were here, this land belonged to us. These people from the towns, who are claiming to be sons from here, these are the people whose fathers moved to the town a long time ago. They were born there, they grew up there, and now they do business from there.”⁹⁰

The local dynamics with respect to the relationship between the residents of Mukaya Payam and the “intellectuals” from the community who reside in Juba illustrates some of the power imbalances and prejudices that underlie investment decision-making in

South Sudan. There is a tendency for educated people to look down on their rural counterparts as “backward peasants” who are not sophisticated enough to make decisions about investment on community land. Even in situations where there is some agreement that the community leaders in Juba will represent the community in negotiations with foreign investors, the delegation of power to the “intellectuals” tends to be so absolute that it precludes any meaningful community contribution to the negotiations.

A TRANSFER THAT EXCEEDS ADMINISTRATIVE BOUNDARIES

The size of the land parcel that is indicated in the lease agreements is also puzzling. The project is meant to be located entirely within Mukaya Payam, which is one of the five payams in Lainya County. However, Lainya County itself only covers an area of 345,000 ha, far less than the 600,000 ha transferred to the company. Meanwhile, none of the other four payams in Lainya County or the neighboring counties of Juba and Yei were involved in any way with the deal. According to a local government official:

“You see this land [that Nile Trading has leased], stretches over to that side of Mundri [County]. This involves several communities, and it is only a few people from one clan discussing it, determining the fate of almost seven or eight communities.”

Lainya County has a population of 89,000 people and was a frontline between the SPLA and the Sudan Armed Forces (SAF) during the civil war. If the government were to transfer the entire county to a foreign company it would almost certainly provoke a violent response from the local population. An ongoing border dispute in Wonduruba Payam, another one of the payams in Lainya County, has already claimed several lives and given rise to a brazen attack on a GoSS minister and his bodyguards.⁹¹ The community’s willingness to oppose a unilaterally imposed investment was reflected in a statement by a Mukaya resident: “We who are living here, the poor, we cannot accept for even the president or a minister to do any business in this community if the community doesn’t know about it.”⁹²

LEGAL STATUS OF THE INVESTMENT AGREEMENT

The March 2008 lease agreement predates the 2009 Land Act and therefore falls outside the scope of most of its provisions. As a result, several aspects of the investment agreement that would constitute clear violations of the Land Act, such as the failure to consult with the local community and the failure to conduct environmental and social impact assessments (ESIAs) prior to making any decision about the investment, do not apply. This ambiguity presented opportunities for Nile Trading, Kinyeti and the AETG to legitimize their activities in Mukaya. Without applicable law to the contrary, public officials in the Central Equatoria State government were able to use their discretionary authority to issue the lease to the company. In response to a question of whether the Central Equatoria State governor had approved the Nile Trading lease, Howard Douglas responded:

“In 2008, the administrative procedures would not have required ‘approval’ by the Governor in the sense of your question. As with many things in political life, the Governor had the authority and access to object to the land lease if some aspect came to his attention and found disfavor, for whatever reason.”⁹³

Despite Douglas’s confidence in the legitimacy of the deal, the Mukaya community has had some early success in forcing the government to cancel the lease. In August 2011, a delegation from Mukaya Payam came to Juba to meet with both Clement Wani, the governor of Central Equatoria State, and Salva Kiir, the president of South Sudan. The community delegation, comprised of 12 community leaders who reside in Mukaya Payam, brought with them a letter in which they “unanimously with strong terms condemn disavow or deny” the Nile Trading lease.⁹⁴ They claimed that “the community of Mukaya Payam as indigenous inhabitants of their ancestral Land...weren’t consulted on the matter and therefore we are not part and parcel of the deal negotiated by the two parties.” The letter also corroborates the allegations that the Cooperative does not represent the interests of the Mukaya Community. According to the letter:

“Mukaya Payam cooperative is an individual

entity and does not represent the community of Mukaya. The Three influential natives leased the land behind the backs of the entire community and without concerned [sic] of the ancestral inhabitants of the land. ...The land of Mukaya Payam belongs to the community and not to be leased out by the individuals. ...The so called cooperative of Mukaya Payam wherever it may exist with its administration is answerable to any issue that may arise thereafter.”⁹⁵

The president and the state authorities noted the communities concern, assuring the community that no investment would proceed in Mukaya without the community’s consent.⁹⁶ However, the government has not yet publicly terminated the lease agreement. Nor have the institutions from the Central Equatoria State government that were involved with the investment explained how they could issue a lease over such a large portion of land without the involvement of the community residing in the area.

SOUTHERN CROSS MINING AND EXPLORATION

Through his contacts in the government of South Sudan and among South Sudanese living in the diaspora, Franklin was able to transition from the agroforestry venture into several mining ventures. His company, Southern Cross Mining and Exploration, is currently managing an artisanal gold operation in Morobo County, Central Equatoria State, which he hopes to develop into a full-scale gold mine. Project operations have not yet started due to the high levels of water in the project area, but the company’s geologist has been conducting exploration activities in order to identify areas of potential interest. According to Franklin, Southern Cross owns a 65 percent controlling interest in the venture and the SPLA and local community together own the remaining 35 percent. The project reportedly employs six ex-SPLA personnel as guards and project managers. According to Franklin, Southern Cross investors have already invested approximately USD 150,000 into the venture.

To date, there has been very little mineral exploration in South Sudan and the country’s mineral potential is largely unknown. Since the signing of the CPA, the RSS Ministry of Energy and Mining has instituted a

moratorium on mineral concessions awaiting the passing of the Mining Bill, now under review by the Ministry of Legal Affairs. However, as Franklin’s activities demonstrate, foreign investors are using a variety of means to position themselves to access South Sudan’s resources once the moratorium is lifted. It is not only “juniors” such as Franklin that are eyeing South Sudan—South Africa-based AngloGold Ashanti, the world’s third largest gold producer, is also interested in expanding operations to South Sudan. Mark Cutifani, AngloGold’s CEO, was recently quoted as saying that South Sudan has “untapped potential.” According to Cutifani:

“It’s that simple. When you look at the area there are lots of historical diggings and works and lots of smoke and in fact fire. ...For us, we’ve only been there five minutes when you look at the time, and we’re already seeing gold. That’s why we’re excited.”⁹⁷

It is too early to determine whether South Sudan will be able to manage its mineral resources to benefit local populations in South Sudan. However, the fact that the government has effectively limited mining activities while it develops the necessary laws and regulations suggests that a similar approach may be appropriate for other business sectors. Given the evidence from the interim period demonstrating the government’s inability to enforce its laws on private sector investments in agriculture, forestry, biofuels, and carbon credits, the government would be well-advised to limit investments in these other sectors until it has had an opportunity to develop the appropriate institutions.

Commonwealth Development Corporation (CDC) and the Finnish Fund for Development Cooperation (Finnfund)

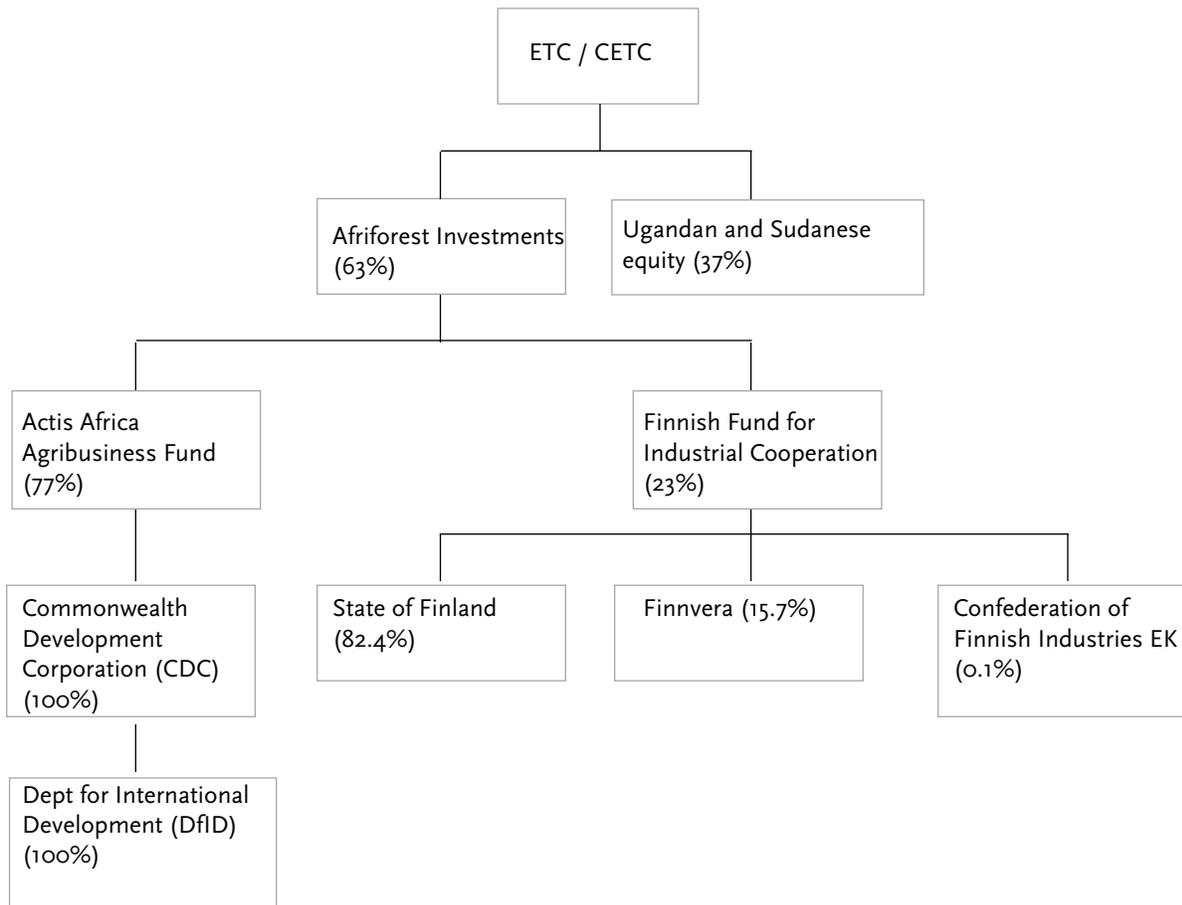
This case study involves investments in South Sudan by two governmental development funds: a British development finance institution called the Commonwealth Development Corporation (CDC) and the Finnish Fund for Development Cooperation (Finnfund). Until recently, these two funds held majority interests in two companies that are engaged in timber production and harvesting in South Sudan:

the Equatoria Teak Company and its sister company, the Central Equatoria Teak Company. The two projects cover 20,450 ha spread across seven government-owned forest reserves in Western Equatoria State and Central Equatoria State. The concession in Central Equatoria also gives the company rights on 50,000 ha of community-owned natural forest in Lainya County. Both concessions have been granted for a period of 32 years, equivalent to one full rotation of teak.⁹⁸

A considerable amount of controversy surrounded these two projects from the start. When the GoSS Ministry of Agriculture and Forestry signed the two concession agreements in 2007, the ministry reportedly did not consult either the state governments or the affected communities before granting the concessions.⁹⁹ This

resulted in several years of jurisdictional wrangling and local opposition to the projects. Although the concession in Western Equatoria was able to begin operations and has exported a few consignments, the project in Central Equatoria never managed to begin harvesting timber. Equatoria Teak stopped work on its project in Western Equatoria in October 2010, citing an inability to make the plantation profitable and uncertainty about the upcoming referendum on self-determination.¹⁰⁰ The CDC and Finnfund subsequently sold their interests in Equatoria Teak and Central Equatoria Teak to unnamed investors.¹⁰¹

EQUATORIA TEAK AND CENTRAL EQUATORIA TEAK'S CORPORATE STRUCTURE



THE COMMONWEALTH DEVELOPMENT CORPORATION

The CDC is the UK government's development finance institution. According to the organization's website, "CDC's objective is to invest in a commercially sustainable manner in the poorer countries of the developing world and to attract other investors by demonstrating success."¹⁰² Its sole shareholder is the British Department for International Development (DfID). According to Andrew McSkimming, a policy analyst in DfID's private sector department, the CDC manages its investments in the following manner:

"CDC does not invest directly in private sector businesses in poor countries. Instead, CDC places its capital in funds managed by independent Fund Managers, the largest of which is Actis LLP. ...The Fund manager aims to build value in the company, helps it to grow and become more efficient, and then after some 5-10 years sells the investment. The net proceeds of the sale are returned to the investors after deduction of the Fund manager's share of the profits. All profits that are returned to CDC are recycled into new commitments and new investments."¹⁰³

CDC's investments in South Sudan were driven, at least in part, by a perceived demand for teak in international markets.¹⁰⁴ It found experienced local managers in contractors who had previously been employed in the aid industry in South Sudan. According to the director general of forestry in the RSS Ministry of Agriculture and Forestry, Equatoria Teak and Central Equatoria Teak managers Peter Skov, Hannes Winter, and Sean White all came to South Sudan in order to work on a USAID-funded project called the Sudan Transitional Environmental Program (STEP).¹⁰⁵ USAID initiated the STEP in August 2005 as an 18-month activity to "develop an initial base of skills and institution capacity for the environmental analysis and planning necessary for Southern Sudan to conserve its natural and environmental resources while embarking on future economic and social development program."¹⁰⁶ At the time, Skov, Winter and White were based around the Loka and Korgulu forest plantations in Central Equatoria. They were then able to leverage their

familiarity with the local context to secure the backing of the CDC and Finnfund.

From the beginning, the CDC envisaged its investments in Equatoria Teak and Central Equatoria Teak as short-term investments. According to CDC's Policy Analyst, McSkimming:

"The purpose of the investment [in South Sudan] was to (i) supply sawn teak to the growing market for tropical hardwoods, (ii) to build a FSC-certified sustainable forestry operation and (iii) to exit through sale to a strategic or financial advisor."¹⁰⁷

Actis terminated the CDC investment in Equatoria Teak and Central Equatoria Teak towards the end of 2010 because they were unable to make it operate in a commercially viable manner. They then proceeded to sell CDC's interest to a number of unidentified investors.¹⁰⁸

The manner in which CDC has managed its investment in South Sudan raises questions as to how the fund balances its competing demands to responsible investment and commercially viable investment. After less than four years of operations, the CDC's sale of its interest in Equatoria Teak and Central Equatoria Teak was handled in a non-transparent and non-inclusive manner. When OI spoke to officials in the RSS Ministry of Forestry in June 2011, the officials were not even aware of the transfer. The director general of forestry in the RSS Ministry of Agriculture subsequently expressed his frustration at being excluded from the transaction, exclaiming: "I wish they [Equatoria Teak and Central Equatoria Teak] had never been given the concessions."¹⁰⁹

When the CDC obtained its concessions in 2007, it was formalizing a transferable interest in the plantations for the first time. Prior to these concession agreements, there was no simple way to transfer rights in these forest plantations among private sector actors. Even without considering any development of the property itself, the mere act of formalizing these reserves created added value for the investment. Then, by transferring its interest in the projects to third parties without notifying anyone in government or the affected communities,

the CDC exposed these groups in South Sudan to additional risk. One of the main reasons that the GoSS entered into the investment in the first place was the perception that the CDC were responsible investors,¹¹⁰ and there is no guarantee that the new investors would be committed to sustainable development in the manner that CDC claims to be.

Furthermore, when the CDC sold its interest in Equatoria Teak, it had only partially performed on its social obligations for host communities. As discussed below, Equatoria Teak only paid USD 79,000 of the USD 100,000 that it owed to the affected communities. In Central Equatoria, according to local officials, Central Equatoria Teak has still not paid any of the USD 200,000 that it owes to the affected communities.¹¹¹ Despite repeated attempts to contact the company, OI was unable to obtain their version of events. Due to the lack of transparency associated with this investment, it is not possible to evaluate how the fund balanced its objectives of promoting responsible investment that benefits all parties involved. What is certain is that the company's stakeholders in South Sudan are frustrated by the way in which they have been treated, and have yet to realize the promises that have been made by the company and its investors.

INVESTMENT BENEFITS

The relationship between Equatoria Teak, its employees, the state government and the local community has been very contentious in recent years. As a result, people interviewed by OI had many contrasting perspectives on the project and it was sometimes difficult to gather objective data on the investment's impact. Nonetheless, it is clear that Equatoria Teak's investment has brought some benefit to people in Western Equatoria. As alluded to above, the company established a social fund in order to "ensure that the Concessionaire fulfils its social responsibility to the communities in which it operates."¹¹² According to the Equatoria Teak concession agreement:

"The concessionaire will pay an amount of USD 100,000 into a social fund account. The money will be spent on community development projects as will be determined with stake holding communities at the second stakeholders meeting

not later than 6 months after the signing of this agreement. ...A further social fund contribution will be paid by the Concessionaire into a community fund at a rate of USD 5 per cubic meter (m³) of sawn board exported."¹¹³

According to a member of a local development committee, the company has paid USD 79,000 out of the USD 100,000 that it owes to the community.¹¹⁴ The company pledges to pay the remaining balance when it becomes fully operational, however its ability to do so may now be compromised since the withdrawal of CDC and Finnfund's support. The community has already used the money to build a secondary school and remains indebted to the contractor for the remaining USD 21,000.¹¹⁵

The company brought some benefit to the local economy through the creation of several hundred jobs in Nzara, although there are complaints of low wages and inadequate labor protections. According to a January 2009 forest certification report from SGS Qualifor, a Forest Stewardship Council (FSC)-accredited certification program, Equatoria Teak was then employing 246 people, 98 percent of whom were from the local population.¹¹⁶ Furthermore, the fact that the wood is processed on site at the company's sawmill, rather than exporting raw timber for processing elsewhere, creates added value in South Sudan. According to a government official, the investment has had positive spillovers on the local economy in Nzara:

"Nzara was a small town before Equatoria Teak came. You could go to the market and not see a single lorry. There is money now. That marketplace in Nzara grew from Equatoria Teak. Now that the company has put its operations on hold, it has had a bad effect on the area."¹¹⁷

Lastly, the company's investment has helped to develop the government's forest reserve. The reserve had been in a poor state of repair due to decades of neglect and illicit trade in teak during the war. The company has built a sawmill, offices and accommodation for several of its staff, and planted an estimated 200 ha of teak. According to an official in the Ministry of Agriculture, the company's presence also reduced the illicit timber trade in the area.¹¹⁸ In the past, there had been a lot

of encroachment by the local communities residing in and around the forest reserves. People from the local community would fell trees in the reserves and take them for sale in neighboring countries. The company's presence has reportedly reduced these activities.

CHALLENGES OF OPERATING IN A POST-CONFLICT CONTEXT

Both Equatoria and Central Equatoria Teak have encountered numerous obstacles in trying to get their plantations operational. In Western Equatoria, for example, Equatoria Teak was prevented from accessing a portion of the forest reserve due to insecurity caused by the Ugandan Lord's Resistance Army (LRA). According to a former employee, the company had to hire several soldiers from the Sudan People's Liberation Army (SPLA) to protect its workers in some parts of the plantation.¹¹⁹ In Central Equatoria, the roles were reversed and company managers ran into problems with SPLA officers who were allegedly stealing trees from one of its reserves. According to a government official:

“Unfortunately, there are military barracks in that forest. Some of the military officers exploit their proximity to these plantations to illegally cut trees in the forest. When this white man learned of this thing, he called the police and arrested some of the vehicles. Now this is where you can see how corruption operates in this country. While he was following up on this thing in Juba, instead of arresting the people who were stealing the trees, the police asked for his documents and later on he was put in jail. Simple as that. He was following his stolen things and later on the whole thing turned against him.”¹²⁰

Effectively balancing the competing needs of local populations to access forest resources with the demands of forest conservation and the company's commercial interests is likely to be a major challenge for the company moving forward. According to the terms of the concession agreement, people from affected communities may not cut live trees on the forest reserves, but they are still permitted to access fallen fuelwood and other forest products. According to the concession agreement:

“[T]he Concessionaire shall, as far as may be reasonably practicable, have due regard to the wishes of the Village Communities living adjacent to the Plantation and their customary dependence on the Plantation with respect to forest products (including controlled access to fuel wood, house construction material, thatching grass, and non timber forests products) and employment, and shall avoid any action which might tend to prejudice good relations between the said Village Communities and the Concessionaire or Government.”¹²¹

The investment faces more fundamental challenges with respect to the people who are living on the forest reserves. According to the SGS Qualifor report, about 1,000 people live on one of the forest reserves in Western Equatoria, causing “a negative effect on the integrity of the forest ecosystem.”¹²² The report cited Equatoria Teak for a minor non-conformance for failing to manage the situation by either (i) putting in place a system to relocate the people to an alternative site off of the forest plantation, (ii) redefine the boundaries of the plantation to exclude these areas, or (iii) establish a co-management agreement that would regulate this situation to ensure that the ecological function of the forest is not harmed.¹²³

To date, there are no reports of people being displaced from the forest reserves owned by Equatoria Teak and Central Equatoria Teak. However, government officials have expressed a desire to relocate populations living on these reserves in order to reduce the pressures they put on the forest and make the land available for the company. If not managed carefully through a process in which people are free to refuse the government's requests, such relocations could serve to undermine relations between the affected communities, the companies, and the concerned government institutions. As discussed below, the relationship between the communities is already strained, and additional pressure could easily spur heightened community opposition to the project.

LACK OF PRIOR CONSULTATION

Among the main issues of contention associated with both the Equatoria Teak and Central Equatoria Teak

concession agreements concern the manner in which they were negotiated. The GoSS Ministry of Agriculture and Forestry reportedly negotiated both agreements without the involvement of either the state government or the affected communities.¹²⁴ When the company came to the ground in 2008 to begin constructing its project facilities, it encountered a great deal of local opposition in the two states. The company was not permitted to operate until they conducted a series of stakeholder workshops in the two states to inform state officials and residents in affected communities about what to expect from the investment. In Western Equatoria, the concession agreement was also reviewed by the council of ministers and debated in the parliament before the state government would allow the company to begin operating.¹²⁵

The first few years were difficult for both the company and the government. A state official in Western Equatoria expressed a sense of powerlessness in dealing with the company in those early days: “The company had friends on high and when they came down here to us at the local level, no one could say anything to them.”¹²⁶ In Central Equatoria, a local government official recalled his outrage when the GoSS tried to unilaterally implement the investment without involving the local communities, likening it to the actions of the British colonial government:

“Actually, the Loka teak plantation was planted at the expense of the community, back in those days, during the British time. If we are to go to realities, the community in this area will demand compensation. If you claim to be the owner of this forest, then you will have to pay these people compensation, because first of all, they were forcefully evicted from their houses [by the colonial government]—their homes were actually burned. Two, people were conscripted to go and plant the plantations. This is the history when it comes to teak plantations. It is never anything that is done out of communally mobilizing people to work. It is done through forced labor and harassment. Despite all this, the community has not benefited at all. We only have a single secondary school at Loka, but the community and the local government cannot even take a single teak to sell it out and improve things.”¹²⁷

The current situation between the companies, their employees and the host communities remains very tense. According to a former state parliamentarian, when Equatoria Teak first came to Western Equatoria, the company promised that it would create 6,000 jobs in the state. When Equatoria Teak began operations, it reportedly hired about 600 people from the local community to work in various capacities on the reserve.¹²⁸ According to several former employees, they signed a one-year contract with the company that was supposed to be renewed on a yearly basis. They claimed that, aside from a handful of supervisors, the workers were paid just seven Sudanese pounds per day (a little more than two USD) and that after three years of working for the company the contracts were never reviewed.¹²⁹ In fact, according to the employees, they were not even allowed to take copies of their contracts home with them.¹³⁰ When the company encountered delays in getting the necessary licensing from the government it decided to save money by cutting labor costs. By the time it stopped project operations in Western Equatoria in October 2010, Equatoria Teak was only employing approximately 250 people.¹³¹

Perhaps more worrying than the meager employment benefits, are the reports of physical abuse by several company supervisors. When several employees failed to show up to work, a South African supervisor reportedly gave them an option to either accept to be beaten with a wooden stick or else be fired. Rather than lose their jobs, the employees reportedly chose the beating. Several former employees interviewed by OI also asserted that managers locked them in latrines as punishment for various infractions. When the company’s CEO found out about the abuses, he promptly fired the supervisor in question.

As this case study demonstrates, the CDC and Finnfund’s investment in South Sudan has had mixed results. On the one hand, the concession agreements include social benefits and attention to environmental impacts that are absent from most land-based investments in South Sudan. However, for development funds that portray themselves as socially responsible investors, the Equatoria Teak and Central Equatoria Teak investments fall short on several fronts. The lack of prior consultation and exploitative labor conditions raise serious concerns about the extent to

which the CDC and Finnfund are willing to prioritize the interests of local populations over their desire to make profits. The lack of transparency associated with these investments also precludes meaningful governmental and civil society oversight, leaving the people who were on the receiving end of the company's social and economic abuses with no viable means of seeking redress. By promoting such large-scale land investments before the proper regulatory framework is in place, the government of South Sudan and its international partners are exposing South Sudanese to unjustified risk and greatly reducing the benefits that host populations can expect to receive from their land and natural resources.

Al Ain National Wildlife

In July 2008, Al Ain National Wildlife, a United Arab Emirates (UAE) company, entered into a 30-year agreement with the GoSS Ministry of Wildlife to develop and manage a 1.68 million ha tourism project in Boma National Park, Jonglei State. Although the company's rights are not exclusive, they plan to relocate a large number of people—possibly as many as 15,000—from the project area.¹³² Al Ain began operations in 2009 and by August 2011, the company had constructed its project facilities, including guest accommodations, offices and a large airstrip, near a village called Maruwa. According to officials at the RSS Ministry of Wildlife, the company plans to begin receiving guests in December 2011. The analysis of this investment is based on the terms of the investment agreement, interviews with officials in the RSS Ministry of Wildlife, and interviews with residents in affected communities. Despite several attempts, OI was unable to reach Al Ain's representatives.

LACK OF PRIOR CONSULTATION

Boma is among the least developed places in South Sudan. The road infrastructure in the area is severely underdeveloped, and during the rainy season, travel over land to and from Boma is virtually impossible. Boma is also among the most ethnically diverse regions in South Sudan. The communities residing in the area include people from the Murle, Jie, Kachipo, and Anyuak ethnic groups. A 2011 report from the UK-based Minority Rights Group (MRG) emphasizes the

lack of political representation for these groups as an underlying cause of underdevelopment in Boma. According to a local resident:

“Up to now you can't even see a road. You can't access telephone networks. There are no good schools, there's no water. That is because we don't have a voice in the government... We can't really say what the government is going to do. Even the governor of the state does not come here. We have no way of taking a message to them. I would tell the governor that you must always have equal distribution of resources in the state.”¹³³

The marginalization of groups residing in Boma is also evident in the manner in which they were excluded from the negotiation of the investment agreement with Al Ain. The Al Ain agreement was brokered at the highest levels of government in South Sudan. After the president's return from a trip to UAE in which he met with representatives of Al Ain, the office of the president reportedly instructed the Ministry of Wildlife to sign the investment agreement with the company.¹³⁴ According to residents in affected communities, the government did not consult with them at any point during the negotiations, contrary to the spirit of the interim constitution of Southern Sudan, which states: “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.”

NON-PERFORMANCE OF SOCIAL OBLIGATIONS

According to a local government official, since signing the agreement, Al Ain has held just one meeting with local leaders in Boma. In that meeting, company representatives pledged to provide affected communities with a variety of development projects and services, including: educational and health services, boreholes, housing and road infrastructure, and three strategically placed airstrips. The company also promised to build “model villages” at locations outside of the project area in order to encourage communities to resettle outside of the park. None of these obligations were formalized in a written agreement with the affected communities. The investment agreement with

LETTER FROM THE LEADERS OF THE MURLE COMMUNITY TO CHANGE THE TERMS OF THE AL AIN DEAL

Liaison Committee from Murle Community to facilitate Al Ain National wildlife Company activities in Pibor County

Date: 8/6/2009

H.E the Minister, Ministry of Environment, Wildlife Conservation and Tourism Government of South Sudan

Ref: Some observations on the contract that signed by your Ministry and Al Ain National wildlife Company

Dear Sir,

With all due respect to the agreement signed in Juba on 29th July, 2008 between the Ministry of Environment, Wildlife Conservation and Tourism and Al Ain National wildlife Company, the Murle community represented by Liaison Committee observed that there are some legal articles in the agreement, which do not stipulate clearly the interest of the Murle community. Moreover, the community participation in decision making with regard to project implementation was completely excluded and ignored.

Therefore, to ensure that local community interests are considered in full, the Liaison Committee proposes the following amendments that are deemed necessary to be incorporated in the agreement to ease implementation of the project;

- 1. Article 4. Responsibility and obligations of the parties. In the bullet 1 paragraph 2 the word partners should be replaced by local community to consolidate commitment and ownership of the community to the project.
2. Article 4.2. Bullets eleven paragraph four that stipulates construction of schools and clinics. The committee considered that the statement was so broad without specificity and the following are recommended;
a. Construction of three secondary boarding schools in Pibor County
b. Construction of ten primary boarding schools in the County
c. Construction of referral hospital in Pibor town
d. Construction of Eight health Centers in Pibor payams
3. Article 5. Division of the total income generated was unfairly made. The share of local Community as stipulated in transitional constitution of the Government of South Sudan was completely

ignored. Thus the committee recommended division of the income as follows;

- a. Government of South Sudan 20%
b. Al Ain Company 70%
c. Local community 10%
4. Article 6(2). Provision of water catchments and bore holes. To ensure stability among the cattle keepers and enhance livestock sector in terms of trade, improvement of animal health condition and promoting livelihood of the pastoral community, we consider that the establishment of water catchments and boreholes are paramount important. Therefore, the committee recommended the following to be provided;
a. 40 water catchments
b. 100 boreholes
5. Article 14 (1). Duration stipulated in the contract for implementation of the project (30 years), was not justified with detailed events. Nonetheless, the community was not consulted during negotiation process to give its clear position on this issue. For this the Murle community has accepted the duration of 20 years. At the end of this period the agreement may be renewed by parties upon mutual consent.
6. Important point. Al Ain National wildlife Company has violated article 6(12) which stipulates clearly that local community is the primary beneficiaries of employment opportunities. The company has appointed manager who is not son of the Murle community based in Juba. This appointment is completely rejected and the Murle community will not tolerate it. The community has capable and qualified people who can fill this post.

The Ain Company must take it seriously, putting this into effect; removing the so called manager that has been imposed on us through political motives, and should appoint the Murle community's son to fill this post so as to create a healthy working atmosphere with the local community.

Liaison committee members:

- 1. William Boren Golla (Chairperson of the committee) Former Commissioner/ Pibor County
2. Dr Jacob M Korok (Deputy Chairperson) Director of Disease and Vector Control/ Ministry of Animal Resources and Fisheries-GoSS

- 3. Justice Khalid Wono (Secretary) SPLA, HQ
4. Pastor. Baba Medan (Finance) Headmaster/Pibor Secondary School
5. Mr. Francis Nyachon (Member) MP/ South Sudan legislative Assembly
6. Guzule Yar Korok (Member) MP/ Jonglic State legislative Assembly
7. Mr. Jakor Konyi (Member) Director/ Ministry of Education, Jonglici State

- CC: President of South Sudan office
CC: Vice President of South Sudan office
CC: Al Ain National wildlife Company
CC: Commissioner/Pibor County

the Ministry of Wildlife does allude to the company's social obligations to affected communities, but they are drafted in vague, nonspecific terms. Section 6(12) of the investment agreement states:

“The Company undertakes, as far as is practically possible and financially feasible, to ensure that local community interests are considered in full. A Joint Liaison Committee will be established with the local communities and existing community based organizations (CBOs) which will meet on a quarterly basis. Local communities will be the primary beneficiaries of employment opportunities and they will receive other economic benefits. The Company intends to establish a structure and/or support the existing not-for-profit organizations together with third parties which will focus on the establishment of small businesses and the creation of wealth in the surrounding communities...”

At this writing, more than three years after entering into the agreement with the government, the company has not yet provided any of the agreed upon benefits to the communities. The company's failure to deliver on its promises prompted several political leaders from the Murle community—the community that stands to be most directly affected by the investment in Boma—to issue a letter to the Ministry of Wildlife and the office of the president. The August 2009 letter states that community participation in decision-making with regard to the project “was completely excluded and ignored.” According to the letter:

“Al Ain National Wildlife Company has violated article 6(12) which stipulates clearly that local community is the primary beneficiaries of employment opportunities. The company has appointed [a] manager who is not son of the Murle community based in Juba. This appointment is completely rejected and the Murle community will not tolerate it. The community has capable and qualified people who can fill this post. The Ain Company must take it seriously, putting this into effect; removing the so called manager that has been imposed on us through political motives, and should appoint the Murle community's son

fill this post so as to create a healthy working atmosphere with the local community.”

The letter proposes a number of changes to the investment agreement to align it with community interests. For example, the terms of the investment agreement provide for an income sharing arrangement of 70 percent for Al Ain and 30 percent for the government. The letter proposes that this provision be adjusted to include a 10 percent share for the local community. The letter also asks for the project period to be reduced from 30 to 20 years, and for more specific details concerning the company's obligations to provide health, education, and water services to the local community.

The government did not respond to the community's letter. According to the director of a local community-based organization, the government's silence has caused the community to become rigid in their opposition to the investment.¹³⁵ Even government officials have begun to express concern over Al Ain's activities in recent years. Though Al Ain had reportedly promised to build its airstrip at the population center in Pibor, the company instead constructed a large airstrip adjacent to its project facilities in Maruwa. In interviews with OI researchers, several government officials also expressed concern that the company has been flying aircraft in and out of South Sudan with very little government oversight.

INVESTMENT-RELATED DISPLACEMENT

According to local officials, Al Ain, together with some officials in the Ministry of Wildlife, have requested that the local community residing in the area around its project facilities relocate to another part of the park, about four hours distance by car. The company would like for the community to relocate by December 2011, when the company plans to begin receiving guests at its compound. The local officials estimate that 10,000 to 15,000 people reside in the area.

The community has reportedly expressed security concerns about the proposed move. The residents of Maruwa are mostly pastoralists from the Murle ethnic group. The mountainous terrain in Maruwa and the fact that the neighboring groups are mostly agriculturalists

provide the local community with some protection. The proposed location, however, is adjacent to Murle and Jie pastoralist communities and would make the Maruwa community more susceptible to cattle rustling and intertribal conflict. Furthermore, the company has not yet delivered on its promise of infrastructure and services in the new location, and the community is reluctant to move until the company performs on its obligations.

The community also has cultural and spiritual reasons for opposing the move. Maruwa is the ancestral home of the Murle “Red Chiefs.”¹³⁶ Murle society is traditionally divided into “Red Chiefs” and “Black Commoners.” The Red Chiefs are considered to be leaders of the community who are given a privileged position for their ability to reconcile grievances among community members. For instance, if a Murle commits murder, the first thing he will do is run to the home of one of the Red Chiefs. If he reaches the Red Chief’s home, he is considered to be under the protection of the Red Chief until the case has been resolved.

Complicated displacement patterns in the area have obscured the community’s historical claim to the land in Maruwa. In an interview with OI researchers, an international organization operating in Boma claimed that the communities living in the vicinity of Al Ain’s project facilities only moved to the area in recent years, after the signing of the CPA.¹³⁷ Local residents, on the other hand, report that they were actually displaced from the area during the war and were only recently returning after having lived as IDPs elsewhere in South Sudan.¹³⁸ Upon their return, they found that the area had already been given to Al Ain for their ecotourism venture.

RISING TENSIONS

At this writing, the events surrounding the relocation of the community in Maruwa are coming to a head. In July 2011, according to a local resident, the Ministry of Wildlife repeated its request for the community to relocate from Maruwa. When the local chief refused, he was reportedly told that if the community does not move voluntarily, then they will be forcibly evicted by the

government. Negotiations are still ongoing between the Murle leaders and the government. However, according to a local resident, the Murle leaders have sided with the government and it is highly likely that the community will be forced to move from the area.

The implications of such a massive relocation of people would be far-reaching; not only are the chances of conflict greatly increased due to competition over land and resources between the relocated community and the communities already residing in the area, but the chances of conflict between the Murle community, Al Ain Wildlife, and the South Sudanese government are also increased. The Al Ain project vividly illustrates how large-scale land investments in a volatile post-conflict context such as that of South Sudan can drive conflict while at the same time benefiting from conflict. If the community in Maruwa had not been displaced from its ancestral homeland during the civil war, it would have been far more difficult for the company and the government to lay claim to the land in the area. Now, as a consequence of the social and administrative chaos in a post-conflict state, communities who have struggled with high levels of poverty, food insecurity, and conflict, are being forced once again to uproot their lives in the name of investment and its elusive promise of development.

Citadel Capital and Concord Agriculture

This case study examines investments in South Sudan by an Egyptian equity firm called Citadel Capital. In 2009, Citadel Capital, through a portfolio company Concord Agriculture (previously known as the Sudan Egyptian Agricultural Company (SEAC)), obtained a 25-year lease to 105,000 ha of land in Gwit and Pariang counties of Unity State. According to the managers at Concord, the purpose of the investment is to grow maize and sorghum for sale primarily on local markets. The company has not yet produced its first harvest, but it has developed 830 ha (3,500 feddans) of its landholding and, at this writing, was preparing the field for the summer crop.¹³⁹

Despite the clear recognition of community land ownership in the 2009 Land Act, many government

institutions in South Sudan continue to treat community land as though it is the property of the government. Concord's leasehold is entirely situated on community-owned land. Nonetheless, the company signed its lease agreement directly with the state government without the involvement of the local community. According to the terms of the agreement, the company is to pay just USD 125,000 in annual lease payments to the Unity State government.¹⁴⁰

CITADEL CAPITAL'S EXPANSION INTO EAST AFRICA

Citadel Capital is among the leading private equity firms in Africa and the Middle East.¹⁴¹ Its companies have more than USD 8.7 billion invested in 15 industries, including energy, mining, agribusiness cement, transportation and retail.¹⁴² Citadel Capital receives support for its agricultural ventures from a number of international lending institutions, including the IFC, the European Investment Bank (EIB), and the African Development Bank (AfDB). The IFC and the EIB, for example, have invested USD 25 million and USD 15 million respectively in Citadel Capital's Middle East and North Africa (MENA) Joint Investment Fund.¹⁴³ According to a press release from the EIB: "The core activity of the [MENA] fund will be to provide equity to a variety of companies in diverse industries such as packaging, waste management and recycling, textiles, agribusiness, and renewable energy."¹⁴⁴

Citadel Capital has more than USD 900 million invested in a variety of ventures in Sudan and South Sudan.¹⁴⁵ These investments are part of a broader strategy in which the firm is seeking to access markets in East Africa. According to Citadel's co-founder and managing director, Hisham El-Khazindar: "We believe that our strategy of establishing a strong base in Egypt—the largest and most diversified economy in North Africa—and leveraging this base to ease our entry into other parts of the continent is part of the reason we are successful private investors across North and Eastern Africa."¹⁴⁶ In addition to Concord's lease of 105,000 ha in South Sudan, Citadel Capital has obtained rights to a further 105,000 ha in the Republic of Sudan across the border to the north.¹⁴⁷ According to Citadel Capital, "these projects will engage in large-scale cultivation of cash crops including grain sorghum, maize, sunflower, rice and various grain legumes and together comprise one of the largest agricultural projects in Sudan."¹⁴⁸

Citadel's other investments in Sudan and South Sudan include:

- Keer Marine – Citadel Capital's portfolio company in the river transportation and logistics sector, operates a fleet of barges as well as ports along the Nile connecting Sudan and South Sudan.¹⁴⁹ The company plans to expand its fleet to ten convoys in the coming years "[i]n response to increasing demand for the transport of goods and petroleum products between North and South Sudan."¹⁵⁰
- Africa Railways – Citadel Capital's platform company in the railway's sector, has invested in railway transportation lines connecting Egypt, Sudan and South Sudan.¹⁵¹
- Nile Valley Petroleum Limited – Citadel Capital's oil and gas exploration and production platform company owns participating interests in three exploration blocks in Sudan.¹⁵²
- According to *Bloomberg news*, Citadel Capital owns oil concessions and a banking license in South Sudan.¹⁵³

INVESTMENT AGREEMENT

Citadel Capital's interest in South Sudan may be traced, at least in part, to relationships that its chairman and founder, Ahmed Heikal, has with senior leaders of the Sudan People's Liberation Movement (SPLM). According to Taban Deng, the governor of Unity State, Heikal has long been a friend of the people of South Sudan.¹⁵⁴ After the signing of the peace agreement in 2005, Heikal began pursuing several investments in South Sudan's "Greenbelt" region. After encountering community opposition to a cement factory that the firm was establishing in Eastern Equatoria, Deng encouraged Heikal to come and invest in Unity State instead.¹⁵⁵ Citadel Capital had already invested in the oil concession in Block A, and the agricultural project offered the firm an opportunity to diversify its investments in the state.

The Concord investment agreement was negotiated between the Unity State government and Citadel Capital. Despite several requests to both Concord and

officials with the state and central governments, OI was not able to secure a copy of the agreement and was told to ask the investor instead. In an interview with OI researchers, Peter Schuurs, the CEO of Concord Agriculture, candidly admitted that in his opinion, the agreement “is strongly tilted in favor of the lessee.”¹⁵⁶ Schuurs confirmed that the company is exempt from taxes on machinery and agricultural imports and from paying company tax on profits for the first 10 years. It is also permitted unlimited capital repatriation. While Concord’s leasehold does not have any riverfront land, the agreement allows for an easement to the Bahr el-Ghazal River, which is about 3 to 4 kilometers south of the project boundary. Schuurs maintains that the price of the water will have to be determined at the time of use.¹⁵⁷ However, a 2009 annual report from Citadel Capital states that the agreement includes “full irrigation rights.”¹⁵⁸

Despite the reported weakness of the investment agreement in catering to local interests, Schuurs asserts that the company has taken on additional responsibilities of its own accord in order to be seen as responsible investors: “I don’t want to be seen as money grabbing, land grabbing thieves. But none of [these obligations are] in the investment agreement.”¹⁵⁹ According to Schuurs, the company contracted a community development expert to come to Unity State in 2009 in order to determine community concerns about the project. Local residents confirmed to OI that Concord had held a series of consultations with host communities in which considerable numbers of people attended.¹⁶⁰ The communities’ main requests were that local residents be given employment opportunities on the farm and that the company provides technical assistance to help local farmers, water, school, and health care facilities. No monetary lease payments for the community landowners or any other form of direct community benefit are formalized in the investment agreement. According to Schuurs, the social benefits that the company provides are managed through informal discussions with the Unity State government.

CONSIDERABLE RETURNS DESPITE LOGISTICAL CHALLENGES OF OPERATING IN SOUTH SUDAN

Commercial agriculture ventures are confronted with considerable logistical challenges in the South Sudanese context. Due to the lack of road infrastructure,

companies must overcome high transport costs in order to get their goods to market. Security risks are also a constant threat, particularly in Unity State, with its proximity to the border with Sudan.

The difficulties that Concord has faced in importing its supplies illustrate many of these logistical constraints. The company had planned to import its machinery through Port Sudan, on the Red Sea across the border to the north. However, in June 2011, when several Concord employees went across the border to receive a shipment of machinery, Sudanese security personnel detained the employees and confiscated the company’s property.¹⁶¹ The employees were reportedly held for more than a month before Concord was able to secure their release, but the company’s property was never returned. By the time Concord had made the necessary adjustments and began importing its supplies through Kenya, it had already lost valuable time and money and was forced to delay its planting.

These difficulties complicated what was already a challenging venture in establishing a Greenfield project in South Sudan. According to Schuurs, “There is no information. There is no scientific data. We’re the first people doing anything here.”¹⁶² Nonetheless, Schuurs remains optimistic about the future of agriculture in the South Sudan. “With the proper management, the development of transportation infrastructure and the strategic investment of capital, agriculture has a very bright future in the region.”¹⁶³ Schuurs also anticipates considerable returns from the investment in Unity State: “We can get a 20 percent return on this investment. We’ve been here long enough to prove to ourselves that it is possible.”¹⁶⁴

Yet, with more than USD 20 million already invested into the farm, Concord has not yet harvested its first crop. Furthermore, according to Schuurs, Citadel has funded the project entirely out of their balance sheet and is expecting to scale down its interest in the company over time.¹⁶⁵ One possibility that the firm is exploring, according to Deng, is for the Bank of South Sudan (BoSS) to provide a guaranty for Concord to pursue a loan or outside investors to compensate for the loss of the capital from Egypt.¹⁶⁶ This would be a risky move for the government of South Sudan. If Concord were to default on a loan for which the BoSS provided a

guaranty, the RSS would then be obligated to pay back the loan on the company's behalf. For a venture that has not yet proved to be economically viable, the fact that they are willing to consider such a move reflects the government's willingness to bend over backwards in order to facilitate foreign direct investment in South Sudan.

ENVIRONMENTAL AND SOCIAL IMPACT ASSESSMENTS (ESIAs)

The Land Act requires companies to conduct environmental and social impact assessments (ESIAs) before any decision may be made on a land allocation. However, in practice, government institutions rarely pressure companies to conduct these studies. When asked whether Concord had conducted ESIAs, the Unity State governor responded in the affirmative, maintaining that the company had brought in an expert from the World Bank to conduct the studies. However, according to Schuurs, Concord only touched on the social context in their feasibility studies, and did not do any assessment of likely impacts: "Since the funders were funding the start-up out of their own pocket, there was no need for a detailed ESIA, nor did the government or the agreement require it."¹⁶⁷ Schuurs claims to have done some studies on his own accord since he was of the opinion that "we needed to do something so that we're not accused of having done something stupid."¹⁶⁸ Concord plans to conduct a more thorough ESIA study during the 2011-12 dry season in order to qualify for funding from European development banks.

The lack of prior impact assessments and mitigation plans increases the likelihood that the project will impact adversely upon host communities. Concord is employing zero tillage agriculture, in which they control weeds through the use of large amounts of Roundup. The risk of water contamination has very serious implications for the natural environment in the area and could adversely impact the local population and their cattle.¹⁶⁹ According to Schuurs, the company plans to conduct outreach to the community to explain what is happening when they begin spraying.¹⁷⁰ They also plan to leave buffer zones of at least 400 meters from roads and water points. Nonetheless, by merely explaining to community members what to expect after

the fact, the company is missing an opportunity to take advantage of local knowledge in designing its project in a way that is responsive to local concerns.

LOCAL MARKETS VS. EXPORT-ORIENTED PRODUCTION

Concord asserts that, in the short to medium term, it will prioritize sale of its produce in local markets, though it also leaves open the option of selling on international markets in the long term.¹⁷¹ There are no export restrictions included in the investment agreement, even in situations of increased food insecurity. According to Deng, this is consistent with trade in a free market economy, such as that of South Sudan:

"Peter [Schuurs] is going to produce grain and he can sell his grain wherever. We can only appeal to him, 'Look my brother, why are you taking the whole food elsewhere? There are markets here. Why don't you sell here?' And he can say, 'No. I'm not selling here because I'm getting more money elsewhere.'"¹⁷²

Concord's decision to sell its produce on local markets is as much related to the economics of operating a farm in South Sudan as to concerns about food security in South Sudan. According to Schuurs, the high transport costs make export-oriented agriculture in South Sudan impracticable, at least until infrastructure is improved. Concord's direct costs (including the cost of seeds, fertilizers, fuel and repairs) are approximately USD 800 per hectare, and he does not expect this figure to reduce over time.¹⁷³ When coupled with these large direct costs, the logistics costs involved with exporting food to international markets becomes unmanageable. Meanwhile, with a 90-kilogram bag of sorghum trading for 400 Sudanese pounds (USD 130) in Unity State, local markets provide an attractive alternative. In the interview with OI researchers, Schuurs candidly admitted: "We don't have any particular goal of doing development. We're here to make money. But the opportunity to make money depends on our ability to contribute to local food security."¹⁷⁴ To supplement sales in urban areas, Concord is also pursuing an agreement to provide food for the SPLA, which currently imports

all of the 50,000 tons of food it consumes per year.

Both Schuurs and Deng believe that the fastest route to improved food security in South Sudan is through large-scale industrial projects such as that of Concord Agriculture. According to Deng, the situation in Unity State is dire: “People need to eat now. It is not okay for a bag of sorghum to be 400 [South Sudanese] pounds in the market.”¹⁷⁵ As Schuurs explained, the benefit of commercial agricultural production is that it can very quickly get large amounts of food into local markets:

“We can produce 20 to 30 tons of grain in a short period of time. In two years, we can get 50 tons into the local market. That will increase food security quickly. I think that’s part of our role here. Let’s show what’s possible. If people like that, then we can scale it down and apply it elsewhere.”¹⁷⁶

Both Schuurs and Deng expressed skepticism about the prospects for smallholder farming in Unity State. Their views reflect a widely held misconception in South Sudan that pastoralists are only concerned with their cattle and are not interested in farming. While it is true that agriculture is not as central to pastoralist communities as it is to agriculturalist communities, the family farms that pastoralist communities maintain alongside their cattle are of vital importance to local food security. The food insecurity that is prevalent among many pastoralist communities in South Sudan may be attributed more to the damaging effect of insecurity on livelihoods, than a cultural disinclination towards farming.¹⁷⁷

RELATIONSHIP WITH LOCAL COMMUNITY

Concord estimates that there are about five villages in the project area with a total population of approximately 1,250 people, not including Fellata pastoralists from across the border in Sudan who pass through the area on a seasonal basis.¹⁷⁸ Most people live along the road, just outside of the project area. According to community residents, larger populations used to reside within the project area, but they were displaced to their current locations during the civil war. Several local residents interviewed by OI confirmed that they do not use the land in the project area and that they were content to remain settled along the road.¹⁷⁹

Regarding the possible displacement of local populations, both Schuurs and Deng maintain that there are no plans to resettle the people living in the project area in order to make the land available for the company. Schuurs indicates that Concord will develop its landholding in a checkerboard pattern, allowing them to work around the populated areas.¹⁸⁰ He estimates that the company will only develop 30,000 to 40,000 ha of its property in total, leaving the settled areas untouched. Without access to the lease agreement, it was not possible for OI to determine whether or not these restrictions were legally-binding.

Since Concord uses highly mechanized forms of production that do not require much in terms of labor, its benefit in terms of employment creation for the local population is minimal. According to Schuurs, Concord employs 35 people in a variety of positions, including: equipment operators, truck drivers, welders, cooks, administrators, surveyors, geographic information system (GIS) experts and horticulturalists. The company employs an additional 15 to 20 local people as casual laborers on an as needed basis. Most of the permanent staff are migrant workers from Southern Africa. However, according to Schuurs, the number of South Sudanese workers that the company employs has increased in recent months as skilled workers return from across the border in Sudan: “Unfortunately, when we started, a lot of the skill set that we needed wasn’t here. That has changed enough in the last six months that we can see it.”¹⁸¹ Schuurs reports that Concord has gone from having only two local staff when they first started to nine local staff now.

Both Schuurs and Deng claimed that Concord had a good relationship with the local community. One of the key benefits that project proponents cite is a health clinic that the company claims to provide for the local community. According to Schuurs, the company offers the services of its nurse to the local community three days a week: “He’s become the local medical person. He even gets phone calls in the night for help from pregnant ladies.”¹⁸² The project proponents also cite local benefits in the form of technology transfers. Schuurs claims that Concord’s horticulturalist has been helping women in the host community to develop basic agronomy skills, such as using cattle dung as

fertilizer instead of burning it all as fuel. According to Deng, the generation of scientific data on the area is among the central benefits of the investment: “They are turning into a research center. If you want to have reliable rainfall records you can only go to Concord. If you want soil analysis, you can only go to Concord. If you want ideas in pest control, you can only go to Concord.”¹⁸³

Despite the positive spin from project proponents, group discussions that OI held with residents in the host community contradict many of these assertions.¹⁸⁴ The local residents reported the health center as being not functional and with a largely absent nurse. With regard to the training in agronomy, one resident commented: “These people came and promised that if anyone is interested in cultivating, the company will provide assistance. Since that time, they’ve never come to implement their promise.” Another resident expressed disappointment that local people were not given permanent positions with the company:

“Since they have started, they have not employed our people. They just went to their area and left us here. It is not because our people cannot do anything. We are strong. We do not know why they are not hiring our people.”¹⁸⁵



Farming equipment Concord Agriculture

For the time being, the local residents were content to wait to see if the promised benefits would materialize. However, they also appear confident in their ability to oppose the investment if more job opportunities for local people are not made available: “Up to now, we are still waiting. If they are not going to employ people, then they will chase them away because the land belongs to the community.”¹⁸⁶

5. CONCLUSION

South Sudan experienced a large influx of investment after the signing of the CPA in 2005. Companies used the ambiguity of the prevailing law to secure favorable deals for themselves through agreements with local powerbrokers. There was very little resistance to these investments, in part due to the underdeveloped civil society in South Sudan and the fact that many investments have not yet become operational. This is starting to change; rural communities are beginning to demand that their ownership rights be respected and the government is beginning to take note. For the first time, in September 2011, the president of South Sudan responded to the demands of affected populations, promising to conduct a review of lease agreements signed during the interim period and to pass new procurement legislation to regulate future land deals.¹⁸⁷

Despite positive developments, a more fundamental change in the government's development paradigm is necessary to bring it into line with its priorities of improving food security, reducing poverty, and developing rural areas. The government's recognition of customary land tenure in the transitional constitution and the Land Act is a step in the right direction, but without implementation the laws' protections are not available to affected populations. As the nation moves into the post-independence period and interests become entrenched, it will become increasingly difficult to enact any meaningful reform. Investors and their local partners often benefit from the opaque rules and procedures, making it more difficult to put in place a framework for responsible investment.

Unless the government is better able to prioritize the development needs of local populations, land investments may well become a source of social unrest and conflict. There is a long history of violence

associated with land-based development projects in South Sudan, and if the government continues to allocate large land areas to foreign companies in direct contravention to communities' ownership rights, it will begin to undermine peacebuilding efforts. In countries such as South Sudan, with its large populations of pastoralists, there is an even greater risk of conflict since communities require access to large areas of land to graze their livestock. Conflict also provides a fertile ground for certain kinds of investment. Opportunistic companies can take advantage of weak institutions and unclear laws to secure favorable deals for themselves. Without regulatory oversight, it is very difficult for the government to even monitor what is happening, much less enforce its regulatory requirements.

South Sudan desperately needs private investment. If done in a responsible manner, agricultural investments can help to jumpstart the economy, provide food and services for struggling populations, and develop building and road infrastructure in rural areas. By adopting business models that maximize employment opportunities, investments can create jobs for rural communities and provide young people with an alternative to recruitment into armed groups. For investment to deliver on its promises, however, the government must place local development priorities at the heart of all aspects of investment negotiation, contracting, implementation, monitoring, and enforcement. It must ensure that communities meaningfully participate in all decisions that affect them, and find ways of fairly and efficiently operationalizing community land ownership. Most importantly, the government must concentrate its time and resources on supporting smallholder farmers. Although their productive capacity has been undermined by insecurity and a lack of agricultural support services, smallholders

managed to produce sufficient amounts of food to feed the domestic population in South Sudan in 2008. If the government is able to provide security to rural communities, all indications are that smallholder producers can flourish.

ENDNOTES

- 1 This is an updated figure from a March 2011 study by the author. David K. Deng, *The New Frontier: A Baseline Survey of Large-scale land-based investment in Southern Sudan*, Norwegian People's Aid (NPA), March 2011, http://www.npaid.org/en/News_Archive/?module=Articles;action=Article.publicShow;ID=17086 (accessed 27 September 27, 2011).
- 2 See, for example: *Seized: the 2008 Land Grab for Food and Financial Security*, GRAIN, October 2008, http://www.grain.org/briefings_files/land-grab-2008-en.pdf (accessed 27 September 2011); Shepard Daniel with Anuradha Mittal, *The Great Land Grab: Rush for the World's Farmland Threatens Food Security for the Poor*, The Oakland Institute, November 2009, <http://www.oaklandinstitute.org/?q=node/view/526> (accessed 27 September 2011); L. Cotula, S. Vermeulen, R. Leonard and J. Keeley, *Land Grab or Development Opportunity? Agricultural Investment and International Land Deals in Africa*, International Institute for Environment and Development (IIED)/Food and Agriculture Organization of the United Nations (FAO)/International Fund for Agricultural Development (IFAD), <http://pubs.iied.org/125611IIED.html> (accessed 27 September 2011); Carin Smaller and Howard Mann, *A Thirst for Distant Lands: Foreign Investment in Agricultural Land and Water*, International Institute for Sustainable Development (IISD), May 2009, http://www.iisd.org/pdf/2009/thirst_for_distant_lands.pdf (accessed 27 September 2011).
- 3 Klaus Deininger and Derek Byerlee, *Rising Global Interest in Farmland: Can it Yield Sustainable and Equitable Benefits?* The World Bank, 2011, p xiv, <http://siterandresources.worldbank.org/DEC/Resources/Rising-Global-Interest-in-Farmland.pdf> (accessed 27 September 2011).
- 4 Food and Agriculture Organization (FAO) of the United Nations, "From Land Grab to Win-Win: Seizing the Opportunities of International Investments in Agriculture," *Economic and Social Perspectives Policy Brief*, June 2009, <ftp://ftp.fao.org/docrep/fao/011/ak357e/ak357e00.pdf> (accessed 27 September 2011).
- 5 Klaus Deininger and Derek Byerlee, op. cit. p xiv.
- 6 See, for example: Frederic Mousseau and Michael McGuirk, *Why Prioritize Small Farmers?* The Oakland Institute, November 2010; Jinukun/Coalition for the Protection of Africa's Genetic Heritage (COPAGEN), "African Agricultural Policies and the Development of Family Farms," 23 April 2010, <http://www.grain.org/m/?id=246> (accessed 27 September 2011); Via Campesina / International Peasant Movement, "Main Issues," http://www.viacampesina.org/en/index.php?option=com_content&view=section&layout=blog&id=5&Itemid=27 (accessed 27 September 2011); IAASTD, *Agriculture at a Crossroad. Global Report of the International Assessment of Agricultural Knowledge, Science and Technology for Development*, 21 April 2008, http://www.agassessment.org/reports/IAASTD/EN/Agriculture%20at%20a%20Crossroads_Global%20Report%20%28English%29.pdf (accessed 27 September 2011).
- 7 Peter Moszynski, "Peace Deal in Southern Sudan Brings Little Respite for Darfur," *British Medical Journal*, 15 January 2005, p 110.
- 8 Deng, *The New Frontier*, op. cit.
- 9 Government of Southern Sudan (GoSS), Land Act, 2009, ch. V, § 15.
- 10 According to the 2009 Investment Promotion Act, foreign investments in agriculture and forestry are limited to renewable 30 and 60-year terms, respectively. See Second Schedule, 2009. Some government institutions continue to issue 99-year leases in violation of this provision.
- 11 Adil Mustafa Ahmad, "Post-Jonglei Planning in Southern Sudan: Combining Environment with Development," *Environment and Urbanization* 20, no. 2, 2008, p 576, <http://eau.sagepub.com/content/20/2/575.full.pdf+html> (accessed 27 September 2011).
- 12 The Intergovernmental Authority on Development (IGAD) has six member states: Djibouti, Ethiopia, Kenya, Somalia, Sudan and Uganda. <http://www.igad.int/> (accessed 27 September 2011).
- 13 Southern Sudan Referendum Commission (SSRC), *Southern Sudan Referendum: Final Results Report*, GoSS, 2011.
- 14 Josh Kron, "Tribal Clashes Raise Fears of Instability in South Sudan," *New York Times*, 21 August 2011, <http://www.nytimes.com/2011/08/22/world/africa/22sudan.html> (accessed 27 September 2011).
- 15 Nenad Marinkovic, "Field Dispatch: The Challenge of Tackling Terrorism in South Sudan," Enough Project, 22 August 2011, <http://www.enoughproject.org/publications/field-dispatch-challenge-tackling-terrorism-south-sudan> (accessed 27 September 2011).
- 16 Though the UN has not managed to confirm these statistics, a UN humanitarian investigation team found more than 330 buried dead, close to 200 injured, and over 250 unaccompanied minors in just two villages in the area. Statement attributable to the United Nations Humanitarian Coordinator in South Sudan, Ms. Lise Grande, United Nations Office of the Resident and Humanitarian Coordinator in South Sudan, 24 August 2011, <http://www.sudantribune.com/UN-statement-on-jonglei-violence,39936> (accessed 27 September 2011).
- 17 Josh Kron, "Death Toll Passes 600 from Raid in South Sudan," *New York Times*, 22 August 2011, <http://www.nytimes.com/2011/08/23/world/africa/23sudan.html> (accessed 27 September 2011).
- 18 Integrated Regional Information Networks (IRIN), "South Sudan: Reintegrating Returnees in Upper Nile," 18 August 2011, <http://www.irinnews.org/report.aspx?reportid=93533> (accessed 27 September 2011).
- 19 There are conflicting accounts on the number of IDPs in South Sudan. James Monyluak Majok, "South Sudan IDPs and their Fears of Returning Home," *Gurtong*, 16 September 2010, <http://www.gurtong.net/ECM/Editorial/tabid/124/ctl/ArticleView/mid/519/articleId/4078/South-Sudan-IDPs-and-Their-Fears-of-Returning-Home.aspx> (accessed 27 September 2011).
- 20 May Ying Welsh, "Sudan: Transcending Tribe," *Al Jazeera*, 16 August 2011, http://english.aljazeera.net/photo_galleries/africa/20111010324526960.html (accessed 27 September 2011).
- 21 Douglas Johnson, *The Root Causes of Sudan's Civil Wars*, International African Institute, Indiana University Press, 2003, p 47.
- 22 Douglas Johnson, *Root Causes*, p 48. In his doctoral thesis on the Jonglei Canal, John Garang, then a student of agricultural economics at Iowa State University, characterized the development planning in Jonglei as mere "misery management."
- 23 According to Francis M. Deng, a prominent South Sudanese diplomat and scholar, Southerners "saw [the Jonglei Canal's] benefits flowing to the North and to Egypt while it destroyed the natural environment and dislocated the human and animal life cycles in the South." Deng, *War of Visions*, p 171.
- 24 Deng-Athoi Galuak Deng-Athoi, "Open letter to H.E. President of South Sudan, Salva K. Mayar-dit," 28 August 2006, <http://www.sudantribune.com/Unpredictable-threat-of-jonglei,17304> (accessed 27 September 2011).
- 25 Moszynski, op. cit.
- 26 FAO, *South Sudan Food Security Improves*, 12 January 2011, <http://www.fao.org/news/story/en/item/49423/icode/> (accessed 27 September 2011).
- 27 South Sudan Center for Census, Statistics and Evaluation (SSCCSE), *Statistical Yearbook for Southern Sudan*, GOSS, 2010.
- 28 SSCCSE, *Statistical Yearbook*, op. cit.
- 29 "South Sudan's Future: Now for the Hard Part," *Economist*, 3 February 2011, <http://www.economist.com/node/18070450> (accessed 27 September 2011).

- 30 Maggie Ficke, "South Sudan Gains Independence, Becomes New Nation," *Associated Press*, 9 July 2011.
- 31 According to the South Sudan Development Plan, there is no other country in the world that is as dependent on a single volatile commodity. Republic of South Sudan (RSS), *South Sudan Development Plan 2011-2013: Realizing Freedom, Equality, Justice, Peace and Prosperity for All*, Council of Minister's Draft, 5 July 2011, p 48.
- 32 "Sudan: South Sudan to Pay Khartoum Oil Fees in Arrears, Mulls Mobile Refineries," *Sudan Tribune*, 10 September 2011, <http://www.sudantribune.com/South-Sudan-to-pay-Khartoum-oil,40102> (accessed 27 September 2011).
- 33 Jeffrey D. Sachs and Andrew M. Warner, "Natural Resource Abundance and Economic Growth," Working Paper No. 5398, National Bureau of Economic Research, December 1995.
- 34 RSS, South Sudan Development Plan, op. cit., p 49.
- 35 FAO and the World Food Program (WFP), *Crop And Food Security Assessment Mission to Southern Sudan*, 2011, <http://www.fao.org/docrep/013/al973e/al973e00.htm> (accessed 27 September 2011).
- 36 FAO, "Focus: FAO in Southern Sudan," September 2010.
- 37 Ibid. See revised figure for 2009 net cereal production in FAO and WFP, Crop and Food Security Assessment.
- 38 "S. Sudan Targets 2m Metric Tonnes of Food after Independence," *Sudan Tribune*, 6 July 2011, <http://www.sudantribune.com/S-Sudan-targets-2m-metric-tones-of,39443> (accessed 27 September 2011).
- 39 Ministry of Agriculture and Forestry, GoSS, Agriculture and Forestry Policy Framework, 2007 (on file with author).
- 40 Mamer Kuer Ajak, South Sudanese farmer, direct communication, 20 August 2011.
- 41 Femi Adewunmi, "Only 4.5% of South Sudan's Land Currently Under Cultivation," 25 July 2011, <http://www.howwemadeitinafrica.com/only-4-5-of-south-sudans-land-currently-under-cultivation/11333/> (accessed September 2011).
- 42 Before the secession of South Sudan, Sudan as a whole was tied with Somalia for having the world's largest population of pastoralists. Each country had a population of 7 million pastoralists. Nikola Rass, "Policies and Strategies to Address the Vulnerability of Pastoralists in Sub-Saharan Africa," Pro-Poor Livestock Policy Initiative (PPLPI), FAO, Working Paper No. 37, 2006, <http://www.reliefweb.int/rw/lib.nsf/db900SID/LTIO-6UHRZJ?OpenDocument> (accessed 27 September 2011).
- 43 United Nations Office for the Coordination of Humanitarian Affairs (UN OCHA), Map Showing Ethnic Groups in Sudan, 2009, http://www.unsudanig.org/library/mapcatalogue/south/data/population/SS_0132a_Ethnic_Groups_A1_20091224_300_1.pdf (accessed 27 September 2011).
- 44 Established in 1992, Bandingilo hosts the world's second largest annual animal migration, involving multiple species of antelope, which cross the Nile at two locations near Mangala.
- 45 Liz Alden Wily, "Whose land are you giving away, Mr. President?" Paper presented at the Annual World Bank Land Policy & Administration Conference, Washington D.C., 26-27 April 2010.
- 46 The Land Act requires that state authorities provide approval for land acquisitions above 250 *feddans* (105 hectares) and calls for regulations to be put in place that prescribe a ceiling on land allocations. Land Act, ch. V, § 15 (5) (6).
- 47 Although the Land Act allows for long-term leases of up to 99 years, the Investment Promotion Act explicitly limits foreign investments in agriculture and forestry to renewable terms of 30 and 60 years, respectively. Land Act, ch. IV, § 14; Investment Promotion Act, 2009, Second Schedule(3).
- 48 The Land Act requires public and private parties to conduct environmental and social impact assessments (ESIAs) prior to engaging in any activities that might affect the people or the environment. Land Act, ch. XI, § 70(3).
- 49 Both the Land Act and the Local Government Act require that the government consult with local communities and take into consideration their views on decisions related to community land. Land Act, ch. IX, § 63(3); Local Government Act, 2009, ch. IX, § 89.
- 50 The Land Act gives special protection to pastoralists, stating: "[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." Land Act, ch. X, § 67.
- 51 Ibid. ch. II, § 8(6).
- 52 Ibid. ch. III, § 11(2)(b).
- 53 Ibid. ch. IX, § 63.
- 54 Ibid. ch. V, § 15.
- 55 Upon completion of the investment, according to the Land Act, the leased land must revert back to the community. Ibid. ch. VI, § 27(7).
- 56 Ibid. ch. V, § 15.
- 57 Southern Sudan Land Commission (SSLC), GoSS, *Draft Land Policy*, 2011.
- 58 Ibid. 22.
- 59 Local Government Act, ch. IX, § 91(3)(g).
- 60 Bukulu Edward, Speaker, Western Equatoria State Legislative Assembly, direct communication, May 2011.
- 61 In 2011, the government's annual budget stood at a little less than USD 1.5 billion, 98 percent of which comes from its share of South Sudan's oil revenue. "South Sudan to Mobilize USD 500 Billion for Future Infrastructure Development, Machar," *Sudan Tribune*, 29 June 2011, <http://www.sudantribune.com/South-Sudan-to-mobilize-500,39378> (accessed 27 September 2011); "South Sudan's VP and US diplomat discuss foreign investment after independence," *Sudan Tribune*, 2 July 2011, <http://www.sudantribune.com/South-Sudan-s-VP-and-US-diplomat,39402> (accessed 27 September 2011).
- 62 Julien Barbara, "Nation Building and the Role of the Private Sector as a Political Peacebuilder," *Conflict, Security & Development*, December 2006, p 582.
- 63 For example, the Mayom Declaration, in which Peter Gadet announced his rebellion against the government of South Sudan, states: "[O]ur entire nation has witnessed rampant corruption on the top echelon of GOSS. ...Little wonder that the more than 20 billion dollars of oil revenue received by GOSS could not be seen in terms of tangible services delivery in areas such as health, education, water, etc. ...These leaders of GOSS continue to siphon off the meagre resources of the South bleeding our people dry. Who is now the enemy of our people?" South Sudan Liberation Army (SSLA), *Mayom Declaration* (April 2011), <http://www.sudantribune.com/The-Mayom-Declaration,38605> (accessed 27 September 2011).
- 64 Paul De Wit, "Land Policy Development in Post-Conflict Sudan: Dealing with Delicate Balances in a Fluid Environment," Communication to the World Bank Conference on New Challenges for Land Policy and Administration: Session "Land administration in post disaster and conflict environments," Washington, 14-15 February 2008, p 13.
- 65 Ministry of Agriculture and Forestry, GoSS, *Food and Agriculture Policy Framework*, 2006.
- 66 Steve Lawry, "A New Start for Southern Sudan," *Mokororo Newsletter* 55, February 2011, p 2.
- 67 RSS, Development Plan, op. cit., p 17.

- 68 "South Sudan Launches Private Sector Development Program with World Bank Group," *Sudan Tribune*, 28 Feb. 2011, <http://www.sudantribune.com/South-Sudan-launches-private,38131> (accessed 27 September 2011).
- 69 United States Agency for International Development (USAID), "South Sudan's Greenbelt," *Frontlines*, September/October 2011, http://www.usaid.gov/press/frontlines/fl_sep11/FL_sep11_SUDAN_AGRICULTURE.html (accessed 4 October 2011).
- 70 For instance, important laws for the regulation of the private sector such as the Labor bill and the new Companies bill have not yet been enacted. World Bank and the International Finance Corporation (IFC), *Doing Business in Juba*, 2011, p 9.
- 71 Lease Agreement between Mukaya Payam Cooperative and Nile Trading & Development, 11 March 2008 [hereinafter Nile Trading, Lease Agreement]; Tristan McConnell, "The Secret Sale of a Country," *Times of London*, 2 July 2011, 41; "Sudan: The Scramble for the South," *Africa Confidential* 52, no. 7, 1 April 2011; Deng, *The New Frontier*, op. cit.; Oakland Institute, *Nile Trading and Development, Inc. in South Sudan*, Understanding Land Investment Deals in Africa, Land Deal Brief, June 2011, <http://media.oaklandinstitute.org/land-deal-brief-nile-trading-and-development-inc-south-sudan> (accessed 27 September 2011); Agency for Independent Media (AIM), *Southern Sudan Land Grabs: A Case on Mukaya Payam Land Issue*, unpublished work, research carried out by J. Lomery and L. Banak, commissioned by Oxfam International, October 2010; Oxfam, "Land and Power," Briefing Paper, 22 September 2011, <http://www.oxfam.org/en/grow/policy/land-and-power> (accessed 27 September 2011).
- 72 Howard Douglas, interview with BBC, July 2011; Directorate of Lands Administration and Physical Planning, Ministry of Physical Infrastructure, Central Equatoria State, Government of Southern Sudan (GoSS), Lease Agreement, Red: MPI/DLAc&PP/CES/38.A, 6 October 2008 [hereinafter GoSS, Lease Agreement].
- 73 Nile Trading, Lease Agreement, op. cit.
- 74 GoSS, Lease Agreement, op. cit.
- 75 Group discussion, Mukaya Payam, direct communication, 24 June 2011; Communication from Mukaya Payam Leaders to the Governor of Central Equatoria State, Subject: Mukaya Payam Petition on 49 Years Land Lease, 23 July 2011.
- 76 Communication from David P. Neimann, President, Nile Trading & Development to Major General Clement Wani Kongo, Governor, Central Equatoria State, May 2, 2008.
- 77 GoSS, *Lease Agreement*, op. cit.
- 78 Local government official, direct communication, 23 June 2011.
- 79 Kinyeti Development, "About Kinyeti," http://kinyeti.com/index.php?option=com_content&view=article&id=61&Itemid=79 (accessed 27 September 2011).
- 80 Kinyeti memo, Kinyeti Development LLC Initiatives South Sudan 2011 [hereinafter Kinyeti Development Initiatives].
- 81 Ibid.
- 82 Ibid.
- 83 AIM, *Southern Sudan Land Grabs*, op. cit.
- 84 According to a state official from Mukaya Community, Scopas Onje and James Hosia are cousins and Samuel Taban is their cousin once-removed.
- 85 Communication from Bullen A. Soro Elioba, Chairman, Mukaya Community-Juba, to Charles Manuel Jongo, Minister of Agriculture and Forestry, Central Equatoria State, Re: Lease of Mukaya Payam Land for Agro-Forestry Projects, 8 September 2008.
- 86 Communication from Elioba to Jongo, 2008.
- 87 Ibid.
- 88 According to the paramount chief, "The document was drafted from Juba, and brought here after the people already signed. They brought the document to me and said, 'You sign here.'" Group discussion, Mukaya Payam, direct communication, 24 June 2011.
- 89 Ibid.
- 90 Ibid.
- 91 Juma John Stephen, "Agriculture Minister Injured in Gun Attack in Wondoruba," *Gurtong*, 17 November 2009, <http://www.gurtong.net/ECM/Editorial/tabid/124/ctl/ArticleView/mid/519/articleId/2519/Agriculture-Minister-Injured-in-Gun-Attack-in-Wonduruba-Payam.aspx> (accessed September 2011).
- 92 Group discussion, Mukaya Payam, op. cit.
- 93 Howard Douglas, CEO, Kinyeti Development, August 4, 2011.
- 94 Communication from Mukaya Payam Leaders, op. cit.
- 95 Ibid.
- 96 Waakhe Simon Wudu, "Mokaya Payam Leaders Reject 600,000ha Land Lease," *Gurtong*, 15 August 2011, <http://www.gurtong.net/ECM/Editorial/tabid/124/ctl/ArticleView/mid/519/articleId/5582/Mokaya-Payam-Leaders-Reject-600000Ha-Land-Lease.aspx> (accessed 27 September 2011).
- 97 Business Daily, "AngoGold shows interest in South Sudan mineral potential," 16 October 2011.
- 98 Management and Development of Teak Plantation Agreement between the GoSS (Ministry of Agriculture and Forestry), on one party, and Equatorial Teak Company Limited, Western Equatoria State, Yambio, on the other, 28 June 2006, [hereinafter Equatoria Teak Agreement]; Management and Development of Teak Plantation Agreement between the GoSS (Ministry of Agriculture and Forestry), on one party, and Equatorial Teak Company Limited, Central Equatoria State, Juba, on the other, 23 November 2007, [hereinafter Central Equatoria Teak Agreement].
- 99 Johnson Ezibon, Director of Forestry, Western Equatoria State Ministry of Agriculture and Forestry, direct communication, 26 July 2011; Bernardo Kpasira, Parliamentarian, RSS parliament, direct communication, 27 July 2011.
- 100 Timothy Thwol, Director General of Forestry, RSS Ministry of Agriculture and Forestry, direct communication, 8 August 2011; Ezibon, op. cit.
- 101 Andrew McSkimming, Policy Analyst, Commonwealth Development Corporation (CDC) and Development Finance Institutions (DFIs), Private Sector Department, Department for International Development (DFID), direct communication, June 29, 2011; Thwol, op. cit.; Ezibon, op. cit.; Bukulu Edward, Speaker, Western Equatoria State Legislative Assembly, direct communication, 29 July 2011.
- 102 CDC website, <http://www.cdcgroup.com/overview.aspx> (accessed 27 September 2011).
- 103 Andrew McSkimming, Policy Analyst, Commonwealth Development Corporation (CDC) and Development Finance Institutions (DFIs), Private Sector Department, Department for International Development (DFID), direct communication, June 29, 2011.
- 104 According to a 2004 report by the Bois et Forêts des Tropiques, the CDC identified a global shortfall in the supply of natural teak as far back as 1992. It then set up a company in Tanzania called the Kilombero Valley Teak Company (KVTC) to engage in timber production and harvesting for international markets. Chris Bekker, Warren Rance, Olivier Monteuuis, "Teak in Tanzania: II. The Kilombero Valley Teak Company," Bois et Forêts des Tropiques, no. 279(1), 2004.
- 105 Timothy Thwol, Director General of Forestry, RSS Ministry of Agriculture and Forestry, direct communication, 8 August 2011.
- 106 Evaluation of the USAID-Sudan Sudan Transitional Environment Program (STEP), Implemented by International Resources Group (IRG), http://pdf.usaid.gov/pdf_docs/PDACMo88.pdf (accessed 27 September 2011).
- 107 McSkimming, op. cit.

- 108 McSkimming, op. cit.
- 109 Thwol, op. cit.
- 110 Ezibon, op. cit.
- 111 Suba Manase, County Commissioner, Lanya County, direct communication, 23 June 2011.
- 112 Equatoria Teak Agreement, op. cit.
- 113 Ibid.
- 114 Kpasira, op. cit.
- 11 Ibid.
- 116 According to the SGS Qualifor report, in January 2009, ETC was employing 246 workers. Equatoria Teak Company Forest Management Certification Report, SGS Qualifor, Doc. No. AD 36A-o8, 22 January 2009.
- 117 Ezibon, op. cit.
- 118 Ezibon, op. cit.
- 119 Former employee, Equatoria Teak Company, direct communication, 27 July 2011.
- 120 Local government official, op. cit.
- 121 Equatoria Teak Agreement, op. cit.
- 122 SGS Qualifor, op. cit.
- 123 Ibid.
- 124 Western Equatoria State Official, direct communication, 27 July 2011.
- 125 Ezibon, op. cit.
- 126 Ezibon, op. cit.
- 127 Local government official, op. cit.
- 128 Equatoria Teak employee, direct communication, 27 July 2011.
- 129 According to the SGS Qualifor report, the ETC paid its employees 10.11 Sudanese pounds per day. SGS Qualifor, op. cit. However, according to workers, the company deducted the cost of lunch and the actual amount that they took home was seven Sudanese pounds per day.
- 130 Former Equatoria Teak employee, op. cit.
- 131 Equatoria Teak employee, op. cit.
- 132 Paul Logony, Director, Boma Development Initiative (BDI), direct communication, 19 August 2011.
- 133 Jared Ferrie, "Southern Sudan: The Role of Minority Rights in Building a New Nation," Minority Rights Group (MRG), June 2011.
- 134 Local government official, Boma, direct communication, 29 June 2011.
- 135 Logony, op. cit.
- 136 The word "maruwak" is Murle for "ancestor" and Maruwa is considered to be the birthplace of the first Red Chiefs and a holy place in Murle culture.
- 137 International non-governmental organization (INGO) employee, Juba, South Sudan, direct communication, 19 August 2011.
- 138 Logony, op. cit.
- 139 Citadel Capital, "Wafra Concludes First Commercial Wheat Harvest in Sudan," 4 July 2011, <http://farmlandgrab.org/post/view/19018> (accessed 27 September 2011).
- 140 Deng, The New Frontier, op. cit.
- 141 Citadel Capital, <http://www.citadelcapital.com/> (accessed 27 September 2011) [hereinafter Citadel Capital website].
- 142 Ibid.
- 143 European Investment Bank (EIB), "Egypt: EIB invests in Private Equity Fund Managed by Citadel Capital, to Support Private Companies in the Region," 1 October 2009, <http://www.eib.org/projects/press/2009/2009-188-egypt-eib-invests-in-private-equity-fund-to-support-private-companies-in-the-region.htm> (accessed 27 September 2011); "IFC commits USD 25m to Citadel Capital's MENA Joint Investment Fund," *AltAssets*, 14 May 2009, <http://www.altassets.com/private-equity-news/by-region/africa/mena/article/nz15798.html> (accessed 27 September 2011).
- 144 EIB, op. cit.
- 145 Simon Mars, "Citadel Capital to conquer east Africa," *The National*, 3 December 2010, <http://www.thenational.ae/featured-content/channel-page/business/middle-article-list/citadel-capital-to-conquer-east-africa> (accessed 27 September 2011).
- 146 "Citadel Capital co-hosts annual African Venture Capital Association meeting," 17 November 2009, <http://www.ameinfo.com/216404.html> (accessed 27 September 2011).
- 147 Citadel Capital website, op. cit.
- 148 Citadel Capital, 2010 Annual Report, p 36.
- 149 Ibid. p 30; Citadel Capital website, op. cit.
- 150 Citadel Capital, 2010 Annual Report, op. cit., p 31.
- 151 Ibid. p 32.
- 152 Ibid. 38; Eric Ombok, "Citadel Capital of Egypt Plans to Invest More in East Africa," *Bloomberg*, 1 August 2011, <http://farmlandgrab.org/post/view/19019> (accessed 27 September 2011).
- 153 Ombok, op. cit.
- 154 Taban Deng, Governor of Unity State, direct communication, 17 August 2011.
- 155 Ibid.
- 156 Peter Schuurs, CEO, Concord Agriculture, direct communication, 17 August 2011.
- 157 Ibid.
- 158 Citadel Capital, 2009 Annual Report, p 5.
- 159 Schuurs, op. cit.
- 160 Group discussion, Unity State, direct communication, 17 August 2011.
- 161 Bonaifacio Taban Kuich, "North Sudan Army Arrest Two NGO Staffs and Four Civil Servants in Oil Rich Heglig," *Sudan Tribune*, 21 June 2011, <http://www.sudantribune.com/North-Sudan-army-arrest-two-NGO,39290> (accessed 27 September 2011).
- 162 Schuurs, op. cit.
- 163 "Citadel Capital co-hosts annual African Venture Capital Association meeting," Citadel Capital, 17 November 2009, <http://citadelcapital.com/press-releases/citadel-capital-co-hosts-african-venture-capital-association-meeting/> (accessed 27 September 2011).
- 164 Schuurs, op. cit.
- 165 Ibid.
- 166 Taban Deng, op. cit.
- 167 Schuurs, op. cit.
- 168 Schuurs, op. cit.
- 169 Carey Gillam, "Roundup Herbicide Research Shows Plant, Soil Problems," *Reuters*, 12 August 2011, <http://www.reuters.com/article/2011/08/12/us-glyphosate-idUSTRE77B58A20110812> (accessed 27 September 2011); B. McPherson, "Roundup Blamed for Plant Disease, Super Weeds, Lowered Fertility Rates," *All Voices*, 12 August 2011, <http://www.allvoices.com/contributed-news/9937636-roundup-blamed-for-plant-diseasesuper-weeds-lowered-fertility-rates> (accessed 27 September 2011); Sean Ellis, "Delays Pile up in Investigation of Biotech Woes," *Capital Press*, 21 July 2011, <http://www.capitalpress.com/idaho/se-Roundup-claims-072211> (accessed 27 September 2011).
- 170 Schuurs, op. cit.

- 171 Ibid.
- 172 Taban Deng, op. cit.
- 173 Schuurs, op. cit.
- 174 Ibid.
- 175 Taban Deng, op. cit.
- 176 Schuurs, op. cit.
- 177 As the South Sudan Development Plan notes, “The allocation of labor to military service and other war related activities might have meant that skills of doing business and participating in a market economy remained underdeveloped.” RSS, South Sudan Development Plan, op. cit., 55.
- 178 The ancestors of the Fellata were migrants of West African origin who settled in Sudan either on their way to Mecca or as labourers for colonial-era cotton schemes. Alex de Waal, “Counter-Insurgency on the Cheap,” *London Review of Books* 26, no. 15 (5 August 2004), <http://www.lrb.co.uk/v26/n15/alex-de-waal/counter-insurgency-on-the-cheap> (accessed 27 September 2011).
- 179 Group discussion, Unity State, op. cit.
- 180 Schuurs, op. cit.
- 181 Ibid.
- 182 Ibid.
- 183 Taban Deng, op. cit.
- 184 Group discussion, Unity State, op. cit.
- 185 Ibid.
- 186 Ibid.
- 187 “Kiir Vows to Fight Corruption in South Sudan Government,” *Sudan Tribune*, 20 September 2011, <http://www.sudantribune.com/Kiir-vows-to-fight-corruption-in,40193> (accessed 27 September 2011).

