

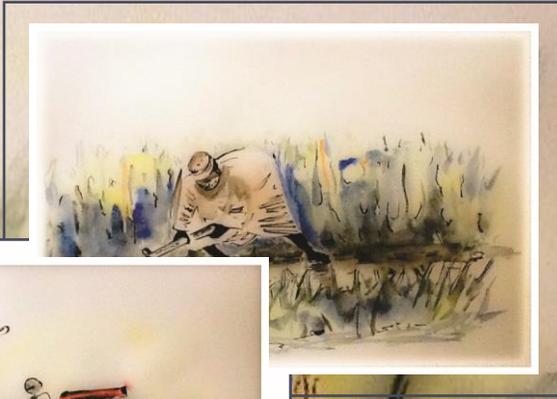


المجموعة السودانية للديمقراطية أولاً
Sudan Democracy First Group

Land Use, Ownership and Allocation in Sudan

The challenge of corruption and lack of transparency

Sudan transparency Initiative



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September 2016

Sudan Democracy First Group (SDFG) was formed as an umbrella group of leading Sudanese independent and democratic civil society and media actors to serve as a think tank and a venue for indigenous research, analysis and advocacy on human rights, development, peace and democratic transformation in Sudan.

SDFG launched the Sudan Transparency Initiative (STI) Project in March 2015 to investigate, analyze, document and disseminate credible and reliable information about the scope and scale of corruption and lack of transparency in Sudan. The STI project consists of five tracks that collectively raise awareness, promote accountability and resistance and spur grassroots anti-corruption movements in Sudan. One of these tracks is to commission expert consultants to thoroughly research and report on corruption and lack of transparency in specific key sectors. One of the sectors that receive considerable attention and controversy is land use, ownership and allocation in Sudan.

Executive Summary

The first part of this research focuses on the spatial impact of resource-extracting economies, notably the foreign acquisitions of agricultural land. The case studies from South Kordofan/Nuba Mountains, Blue Nile, Northern and River Nile states and Eastern Sudan, show how rural people experience "their" land vis-à-vis the latest wave of privatization and commercialization of land rights. The second part of this research will address and analyze lack of transparency and corruption in the field of land use, ownership and allocation. The researcher used a participatory methodology including critical reviews of available literature, and interviews with resource persons from academia, government, traditional administrations, civil society organizations (CSOs) and civic unions. The major key findings of the research are:

- Land tenure insecurity has resulted from the imposition of formal law that does not recognize individual rights to unregistered land. State authorities have considered unregistered land to be state land and thus available for the state to transfer to private commercial interests, the military, land speculators, and elites without regard for customary rights. Although the Comprehensive Peace Agreement (CPA) of 2005 required the development of laws to incorporate customary laws and practices, local heritage and international trends and practices, the Government of Sudan (GoS) continues to issue new long-term leases over community lands to commercial interests (both national and international) and well-connected individuals without consulting local populations or obtaining their consent.
- As a result, smallholders and pastoralists have been evicted from land and denied access to natural resources in favor of private investors, land speculators, military personnel and elites.
- Sudan is among the global 'hotspots' for such large-scale land acquisitions. According to a 2014 study by the World Bank, from 2004 to 2013, Sudan transferred nearly four million hectares of land to foreign private investors, more than any other country surveyed. As such, Sudan has established itself as number two, second to Saudi Arabia, within the region in attracting foreign direct investment (FDI).
- Large-scale investments in land, water, and other natural resources, have fueled a wide range of conflicts in the country. These conflicts were and still are, symptomatic of the lack of will and capacity of the state and investors to take into account the local needs and rights, and that wealth generated through these resources should yield dividends for the affected communities. The granting of land without undertaking the relevant studies and public consultations to ensure the social, environmental and economic feasibility of a given project seems to be one of the greatest problems.
- There is limited transparency in the land use and allocation in the country, feeding into corruption. The corruption in land related issues is associated with larger-scale investments, agricultural development corridors, and their supply chains. Key corruption risks are impunity of political elites in securing favorable land allocations, leading to elite capture of international land deals, associated kickbacks and profits from commercial land development, and the use of land for political patronage, and the power imbalance between actors profiting from corruption and those suffering its effects. Furthermore, the lack of coordination and sharing of information between existing land regulating agencies, has created gaps in the current maps and master plans of land use, ownership and allocation.

Based on the above findings the research makes the following recommendations:

- The Government of Sudan (GoS) should assess whether the existing policies, legislation,

regulations, and institutions that govern land in Sudan are sufficient and benefit the country and local communities, and strengthen these frameworks where necessary. The processes for land acquisition and all associated investments activities must be transparent to ensure accountability.

- The GoS and the FDI companies should conduct preliminary studies to assess the economic, technical, social, and environmental impacts of all large-scale land investment projects prior to implementation. Impacts on the livelihoods of local communities, their employment, and the environment should be carefully appraised. The land users and rights holders of the land should be identified and consulted throughout this process, and should be sufficiently compensated where the investment leads to their displacement.
- The GoS should consider alternative business models other than large-scale land acquisition. The government should provide incentives to encourage FDI to invest in sub-sectors that have the potential to create jobs and infrastructure, decrease poverty, maintain biodiversity and increase food security.

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ACRONYMS

AOAD:	Arab Organization for Agricultural Development
ARP:	Agricultural Revival Program
CBOS:	Central Bank of Sudan
CPA:	Comprehensive Peace Agreement
CSOs:	Civil Society Organizations
DPA:	Darfur Peace Agreement
ESPA:	Eastern Sudan Peace Agreement
FAO:	Food and Agricultural Organization
FDI:	Foreign Direct Investment
GoS:	Government of Sudan
IFAD:	International Fund for Agricultural Development
Km	Kilometer
MIGA:	Multilateral Investment Guarantee Agency
NADEC:	Saudi National Agricultural Development Company
NGOs:	Non-Governmental Organizations
NISS	National Intelligence and Security Service
OECD	Organization for Economic Co-operation and Development
PDS:	Partners in Development Services
SDFG:	Sudan Democracy First Group
SMEs:	Small and Medium Enterprises
SPLM/A:	Sudan People's Liberation Movement/Army
STI:	Sudan Transparency Initiative
TI:	Transparency International
UAEs:	United Arab Emirates
UN:	United Nations
UNCTAD:	United Nation Conference on Trade and Development
USD:	U.S. Dollar
WB:	World Bank

1. INTRODUCTION

In recent years, corruption in land governance in Sudan has come under greater scrutiny, not least as a result of the increased commercial value of agricultural and urban land and concerns that corruption plays a role in facilitating large-scale land acquisition by investors. Corruption is associated with unresponsive, unaccountable, and frequently ineffective land governance. The systemic enablers of corruption include: (i) prevalence of discretionary power within land administration; (ii) the role of parallel institutions for land management, (iii) overlapping formal and customary institutions and the partial or non-recognition in law of established customary rights; (iv) extensive state powers and non-transparent procedures for allocation and privatization of public land. Corruption has been shown to be extensive in processes of delivery and development of urban land for commercial and residential purposes, in processes of land acquisition from, and utilization of land revenues by, customary authorities, and in the capture of land titling programs by national and local elites.

Of particular concern is the risk of corruption associated with larger-scale investments, agricultural development corridors, and their supply chains, whereby investors including national and local elites can override the rights and interests of less powerful land users. Key corruption risks are impunity of political elites in securing favorable land allocations, leading to elite capture of international land deals, associated kickbacks and profits from commercial land development, and the use of landform political patronage. In addition, unclear legislative and regulatory frameworks around large-scale agricultural investment open up much room for discretion and abuse by public officials and powerful individuals at national and local levels. At an upstream level, the opaque structures of both national and international companies and lack of transparency surrounding the financing and contractual details of investment projects constitute systemic corruption risks. Lack of transparency in investment chains and company ownership structures and, at the midstream level, in land allocation for investment purposes also renders the systematic identification of involved actors and specific types of corruption problematic. The main causes of land-related corruption identified are lack of political will at a host country level, linked to vested interests in land development and control of land for the purposes of patronage, and the power imbalance between actors profiting from corruption and those suffering its effects.

One of the most common forms in which corruption occurs is in bribery of land officials to facilitate access to information and services or favorable outcomes of administrative decisions in land valuation, development planning, and resolution of disputes or formal allocation of land rights (Owen et al., 2015; Transparency International and FAO, 2011). This occurs as a result of the high level of discretionary power and authority and access to rent-seeking opportunities that land officials have as a result of the complexity and lack of clarity of land administration procedures. These are often ill suited to the needs of most land users in developing countries, and frequently entail the abuse of discretion for personal gain, combined with nepotism and favoritism, involving family members or political or business associates. Systems to detect bribery and corruption within land registration and valuation offices are largely nonexistent (van der Molen and Tuladhar, 2007).

In addition to the acceptance of bribes, corruption can take the form of fraud and alteration of land records and forgery of land documents, multiple allocations of the same plots of land and gaining kickbacks from business relationships or other benefits from parties with interests in acquiring, disposing of or developing land with whom land officials collude.¹ Perhaps the greatest corruption risk is the widespread lack of publically available information on the details of

¹Kakai, 2012; Obala and Mattingley, 2014

contracts. The ‘lack of transparency and of checks and balances in contract negotiations create breeding ground for corruption and deal that do not maximize the public interest’.² This makes it very difficult for citizens to assess both harmful and beneficial impacts, undermining democratic accountability on a national and international level and preventing people from scrutinizing government decisions on large-scale agricultural investments (Anseeuw et al., 2013; Blackmore et al., 2015; Global Witness, 2012; MacInnes, 2015; Oxfam, 2012). From the perspective of international NGOs, the critique extends to the funding policies of multilateral banks such as the European Investment Bank and the World Bank (Action Aid, 2014: 20–3; see also Oram, 2012).

There is robust evidence to support the claim that a high frequency of large-scale land deal-making is concentrated in countries with weak governance, although the evidence also suggests high levels of corruption can tend to generally dissuade investment (Transparency International and FAO, 2011). Also, the successful development of land concessions and effective returns to investments may be associated with stronger governance arrangements.³

Sudan faces many challenges as a result of widespread corruption, which partially fuels instability and insecurity and seriously undermines the fragile peace building processes. The international community perceives Sudan as a corrupt state and all available data and country reports indicate persistent and widespread corruption at all levels. For example, Transparency International (TI) in its 2014 Corruption Perceptions Index ranked Sudan’s public sector as 173 out of 175, and as 165 out of 168 with a score of 12 on a 0 (highly corrupt) to 100 (highly clean) scale in 2015. According to TI, the country is one of the most corrupt in the world and is ahead of only North Korea, Somalia and Afghanistan in terms of government transparency.

The country also performs poorly on the 2014 World Bank’s Worldwide Governance Indicators, scoring well below 10 (on a scale of 0 to 100) in all areas of governance, and showing no improvement. The country scored only 3.88 in political stability 9.6 in rule of law, 6.73 in regulatory quality, 3.85 in government effectiveness, and 3.85 in control of corruption. According to TI’s 2016 Global Action against Corruption survey, 61% of the citizens surveyed believed that corruption in the country had increased during the three years preceding the survey.⁴ Corruption can be found in all sectors of the economy and at all levels of the state apparatus in Sudan. Corruption manifests itself in various forms, including widespread financial and political corruption, nepotism, and misuse of power.

The US Department of State reports that government officials frequently engage in corrupt practices, with total impunity, as officials suspected of corruption are only rarely investigated.⁵ Poorly paid and poorly trained administrative staff, inefficient government bureaucracy, lax record keeping, combined with a general lack of transparency and oversight, provide both opportunities and incentives for corruption and rent-seeking behavior (Business Anti-Corruption Portal, 2010). As a result of this combination of factors, citizens commonly face demands for bribes in their dealings with government institutions to access basic public services. For instance, the latest (September 2014 to November 2015) TI Global Corruption Barometer found that of those respondents who have had contact with nine public institutions (in particular land services, tax revenue, customs, registry/permits); 48-50% reported paying bribes. Citizens’ experience with corruption is significantly high in dealing with the land services (27%). A significant percentage of Sudanese have reported paying bribes in order ‘to speed things up’ (48%) or to avoid problem

² Cotula et al., 2009: 7

³ Arezki et al. 2015 Bujko et al., 2016

⁴ Transparency International’s The Global Action Against Corruption (2016): People and Corruption Middle East and North Africa Survey

⁵ US Department of State, 2009

with the authorities. 63% of the poorest people surveyed paid a bribe and 37% of richest people surveyed paid a bribe which clearly shows that bribery often hurts the poorest most.⁶

When it comes to doing business in the country, the large numbers of documents, payments, and procedures required for business operations increase the opportunities for public officials to solicit bribes and facilitation payments to bend the rules or speed-up bureaucratic processes. Sudan ranks 158 and 159 out of the 189 countries assessed by the World Bank's Ease of Doing Business Index in 2015 and 2016 respectively and in term of starting business, it ranks 146.⁷ On average, it takes 10 procedures, 36 days and a cost of 14.8% of per capita income to open a business in the country, an average which is better than other Sub-Saharan African countries, but still much higher than in OECD countries. The Financial Standards Foundation concludes that Sudan is a difficult place to do business due to many governance-related challenges, including high levels of corruption, a dysfunctional judiciary, and lack of transparency in the regulatory process, cumbersome bureaucracy and weak enforcement of contracts.⁸

The country scores 10 out of 100 in transparency according to the 2014 and 2015 Open Budget Index reports, which is substantially lower than the global average score of 45.⁹ Since 2010, the Government of Sudan has decreased the availability of budget information by producing its audit report for internal use only. This indicates that the government provides the public with scant information on the government's budget and financial activities, making it virtually impossible for citizens to hold the government accountable for its management of public money.

According to the World Bank's most recent Worldwide Governance Indicators, corruption is a severe problem. The law provides the legislative framework for addressing official corruption, but implementation is weak, and many of the punishments that have been applied have been lenient. For example, officials found guilty of corrupt acts could often avoid jail time if they returned ill-gotten funds. Journalists who report on government corruption are sometimes intimidated, detained, and interrogated by government security services.

In his National Dialogue speech on 27 January 2015, the President of Sudan pledged to address government corruption. A noticeable rise in media articles on corruption and a limited increase in prosecutions of private sector and government officials accused of corruption followed that pronouncement. In April 2015, two employees of the Khartoum State Governor's office were charged with running a massive embezzlement scheme. As of the year-end, the two men remained free, and the trial against them appeared to have been postponed indefinitely. Indeed, by the early summer of 2015, reporting on corruption was considered a "red line" set by the National Intelligence and Security Service (NISS) and a topic the authorities prohibited newspapers from covering.

Sudan's 2005 interim constitution provides for freedom of thought, expression, and of the press. However, the government severely restricts these rights in practice. Newspapers are licensed and monitored by the National Press Council which is dominated by government appointees and can prevent publication or broadcast of "unsuitable" material. Radio and television are required to reflect government policies and the only television station is state-owned.¹⁰ The government confiscated printed publications on at least 45 occasions between January and July 2015. The

⁶ Transparency International, 2016

⁷ A World Bank Group Flagship Report, Doing Business 2016 Measuring Regulatory Quality and Efficiency

⁸ Doing Business 2016, Page 236

⁹ International Budget Partnership (IBP), Sudan Open Budget Survey 2015

¹⁰ E Standards Forum, 2014

editions confiscated were from *Al-Jareeda*, *Al-Ayam*, *Al-Sahafa*, *Al-Meghar-Al-Siassi*, *Al-Youm-Al-Tali*, *Al-Intibaha*, *Akhir Lahza*, *Elaph*, *Al-Sudani*, *Al-Ahram Al-Youm*, *Al Hurra*, and *Assayha*. Between July and September 2015, the NISS confiscated six newspapers on eight different occasions. Confiscated newspapers included *Al-Tayyar*, *Al-Khartoum*, *Al-Akhbar*, *Al-Youm Al-Tali*, and *Al-Jareeda*. The newspapers attributed their confiscations to their coverage of government corruption, political opponents, rebel leaders, and government security forces.

The main actors in land corruption are public officials and in some cases customary leaders, often operating together with land professionals and commercial developers. Politicians and high-ranking public officials are key actors in cases of grand, systematic, and political corruption. Although social values and norms play a role in framing corruption, the prime incentive for corruption in land governance at a national level is profit and personal gain through the extraction of bribes and access to profits from land sales. An additional incentive is the use of land as an asset for patronage to consolidate political power and influence.

Although allegations of corruption are extremely sensitive and hard to prove, the principal conclusion is that corruption is most evident at the higher level of the investment chain, associated with deal-making in establishing partnerships, joint ventures, land acquisition and project planning with concession holders and project managers. This is supported by investment finance originating higher up the chain, with weak governance as a prime enabler of corrupt practice.

2. THE RESEARCH

This research attempts to investigate the changing relationships between people and land in Sudan. The first part focuses on the spatial impact of resource-extracting economies: foreign agricultural land acquisitions. Case studies from South Kordofan/Nuba Mountains, Blue Nile, Northern and River Nile states and Eastern Sudan, show how rural people experience "their" land vis-à-vis the latest wave of privatization and commercialization of land rights. The second part will address and analyze corruption and lack of transparency in the field of land ownership, allocation and use. To attain a comprehensive, reliable and convincing final document, the research will look into lack of transparency and corrupt practices in the following areas:

- Rules and regulations that govern processes of land ownership, allocation and use;
- The recent controversial Investment Promotion Act and how it deprives communities of their communally owned land;
- Foreign direct investment, especially from wealthy Arab countries and the large-scale land acquisitions (and land grabs);
- The mechanized farming agriculture in South Kordofan/Nuba Mountains, Blue Nile, Northern and River Nile states and Eastern Sudan;
- The lack of transparency and secrecy surrounding land use agreements and contracts concluded with foreign investors;
- The victims of corrupt practices of land ownership, allocation and use; and
- Land misappropriations and corrupt practices as drivers of conflict, promotion of racism and social disintegration.

Methodologically the research adopted a participatory methodology and employed triangular data collection techniques including:

i. Secondary data

In-depth reviews of available literature including federal and state level laws and documents on land resource use. Also of material availed from a number of workshops focusing on conflict over land resources and relevant material available from the processes intended to prepare for the popular consultations in South Kordofan and Blue Nile states.

ii. Primary data

- Direct interviews with relevant policy makers, traditional and community leaders, and land users at the community level to solicit their opinions on land management systems, tenure arrangements and conflict mapping and conflict analysis. Semi-structured interviews were also conducted with key resource persons, from senior government officials in Khartoum and Blue Nile and South Kordofan states, academia, native administration, the Heads of the Pastoralists Unions and Farmers Unions from the two states of Blue Nile and South Kordofan.¹¹
- Interviews with key informants and resource persons; this has involved extensive discussion with key informants in Khartoum and at the state level. This included leaders of traditional administrations, former executive officers in office between 1960- 2000, CSOs and NGOs.
- Interviews with the Investment Commissions in Blue Nile and South Kordofan states.
- Partners in Development Services (PDS) Policy Forum held in Khartoum on 8 March 2016 and attended by more than 50 participants from a wide spectrum including CSOs, international NGOs, UN agencies, government officials, former ministers, the private sector, and universities. The forum tackled two main issues related to the research theme; the first one on the development model for Sudan. The second on development practices and experiences with a focus on the economic evolution of Sudan. This particularly focused on the period after the secession of South Sudan, with emphasis on the agricultural development and investment, including laws, their implementation and acceptance, customary law, existing institutions both customary and modern and conflict-related issues.
- Symposium on China in Africa, organized by the Mammon Beheiry Centre for Economic and Social Studies and Research in Africa, on 28 February 2016. The presenters highlighted the three stories of China in Africa mainly around oil, trade and agriculture, and recommended to undertake researching Sudan on this issue. More than 50 people attended the workshop, including national and international experts. The discussion during the conference focused on the consequences of Chinese investment in Africa, and Sudan specifically. One of the commentators raised the issue of land grabbing and environmental degradation due to Chinese investment. This event has helped to break the silence on damaging investment and laid the ground for future research, including highlighted the same questions of this land research.
- Land Policy Forum organized by IFAD in March 2016, for the dissemination of a mechanized farming study. This was attended by representatives from the states of Blue Nile, South Kordofan, Kassala, Gizera, Sinnar, Gedarif, White Nile and Khartoum, in addition to CSOs, the private sector and academia.

¹¹ *Investment Commissions in Blue Nile and South Kordofan; Range Departments in Blue Nile, South Kordofan and South Darfur; National Forests Corporation; State Forests Departments in Blue Nile and South Kordofan; Dry Land Unit in the Ministry of Agriculture; Agricultural Planning Unit in the Ministry of Agriculture; Land Use and Soil Conservation in Blue Nile and South Kordofan; Department of Horticulture in Blue Nile; Native Administration Blue Nile, South Kordofan, South Darfur and North Darfur; Farmers Unions in Blue Nile, South Kordofan, River Nile, Northern, Kassala and Sinnar; Pastoralists Unions in Blue Nile, South Kordofan, North Kordofan, River Nile and Gedarif States; national experts (academia); civil society activists.*

3. LAND RELATED REGULATORY FRAMEWORK

In Sudan, land is controlled by government authorities and the balance between the roles of government and traditional leadership around the issues of land, varies across the country. Communal tenure rights exist in the customary and ‘informal’ domains and apply over vast tracts of rural land where government institutions either have weak reach or reduced interest. Statutory and customary paradigms for land therefore exist in parallel in Sudan. The consultation of the Traditional Administration by government land authorities over land allocation at the State and locality levels and the recognition of customary land rights in peace agreements (the CPA, Doha Document for Peace in Darfur and Eastern Sudan Peace Agreement), have consolidated this cooperation. However, tension also exists between them. Complicating factors in Sudan include a low level of trust between people and government in some parts of the country, and a perceived reluctance to devolve power to the lowest levels, both of which make dialogue a primary concern.

During the Turkish (1821-1884) colonialism and the brief Mahdist rule (1885-1898) no radical changes were introduced to the basic structure of the land tenure system. Tribal stabilization on the rain lands of Sudan was, however, interrupted during the Mahdiya when tribal leadership was abolished and a new administration based on army leaders was instituted (Shazali, 2002). Vast tracts of land were also transferred from disloyal to loyal groups; but this was soon to be reversed by the British colonial administration (Awad, 1971). One of the most important features of such customary tenure is the right and authority exercised by the leadership of the native customary institutions in the allocation of land rights, its administration, and the settlement of disputes over it. This right was consolidated through the institutionalization of the Traditional Administration, based on the principle of *Dar*, or “tribal homeland”, and empowered by economic and legislative mechanisms.

During the British colonial era, the politicization of land ownership was pursued through a series of land legislation amounting to more than twelve ordinances and their amendments from 1899 to 1930 (see Sudan Archive: 627/12/3-44; Simpson 1965) as in *Box 1*. One major policy of these ordinances was to expand cultivation while safeguarding the inhabitants’ rights and encouraging the formulation of a Sudanese proprietary class (Warburg 1970: 156). According to the Title to Lands Ordinance of 1899 (Sudan Archive 1899: 627/12/7), for individual land to be recognized by the government as an absolute entitlement in the northern region, a continuous possession or receipt of rents or profits during the five years immediately preceding the date of claim, was

Box 1: Colonial land-related legislation (1898-1955)

- 1 **The 1899 Land Ordinance** recognized and started registering as private property the continuously cultivated lands in northern and central riverain Sudan.
- 2 **The 1905 Land Settlement Ordinance** made general provision for the settlement and registration of claims to lands which were, or were alleged to be waste, forest or unoccupied and added the important provision that all such land should be deemed the property of the government unless claims to the contrary were proved.
- 3 **Native Disposition of Lands Restrictions Ordinance, 1918 and 1922**, by which the colonial government sought the “protection” of the native private landowners from dispossession by expatriates.
- 4 **1920 Declaration on Gash**, which stated that: “*the whole of the land situated in the delta of the River Gash is government land and the government reserves its full rights of ownership of land and the flow of the river through the area*”, declaring the full rights and control of government over the delta.
- 5 **The 1925 Land Settlement and Registration Ordinance**. Title to land as tainted by the common law principles was classified into either free hold or lease holds ownership, which is individual rather than the traditional tribal ownership system.
- 6 **The 1927 Gezira Land Ordinance**, the first instance of withdrawing usufruct rights on a large scale, which undermined further the position of *wathiga* (legal land registration document) holders and provided for the ownership of all land in Gezira by the government.
- 7 **The 1930 Land Acquisition Act**, further paved the way for government to acquire any “*land subject to village or tribal rights*” when it “*appears that it is likely to be required permanently or temporarily for any public purpose*”.
- 8 **Towns Land Disposal Regulations 1947.**
- 9 **Villages Land Disposal Regulations 1948.**
- 10 **Religious Purposes Land Regulations 1949.**
- 11 **Clubs Sites Land Regulations 1950.**
- 12 **Rain Fed Land Disposal Regulations 1953.**

required. Toward that end, a number of land-settlement commissions were appointed in the northern and central districts. In contrast to Northern Sudan land legislation, no registration of similar lands was pursued in the Nuba Mountains, Darfur, southern Blue Nile and Eastern Sudan. Consequently, no individual private landownership was recognized in these regions.¹²

Postcolonial land tenure legislation did not deviate much from the colonial time. In practice however, customary land rights and therefore the interest of local communities, were significantly undermined by national state practices. The registration of land and the process of bringing communal land under the government control was not done at once, but started at the center and progressively moved out towards the peripheries. This process was accomplished by continuing the colonial processes of recognition, settlement, and eventual registration of the customarily and communally owned lands as they existed in the remaining regions of Sudan. By doing so, it was again assumed that the national state would make use of the land for good public purposes, but at the same time protect the customary communal or individual landowners' interest in the land. Contrary to these assumptions, the national state proved to be more repressive when it categorically undermined these fundamental principles.

The Government of Sudan has expropriated land without due process or payment of compensation. The GoS has relied on formal law – the Unregistered Land Act of 1970 and the Civil Transaction Act of 1984 - to designate all unregistered land as state land. The Unregistered Land Act further legitimizes expropriation by expressly authorizing government eviction of occupants on unregistered lands, through the use of reasonable force if necessary. This legal dispossession of unregistered lands, which account for 90% of all lands in the country, appears to be the most common form of expropriation in Sudan. Land seizures have been common in the states of South Kordofan and Blue Nile, and in the eastern region. The state has seized land and leased it out to private entities for development of large mechanized farming operations. The government has used gunships and helicopters to clear people from villages to secure land for the development of oil fields.¹³

To ensure the suppression of communities or individuals that might resist the process of land grabbing and to disable their efforts, three interrelated measures were put into place. Firstly, the Unregistered Land Act gave the government the right to use force in safeguarding land designated as government land. Secondly, it was virtually concurrent with the abolition of the Traditional Administration, which had acted as an important institution for regulating land and managing inevitable land-related conflicts. Thirdly, it also enabled the government to implement a development policy based on the expansion of mechanized farming, and oil exploration, production and transportation by allocating vast tracts of land to private investors (both local and foreign) at the expense of rural communities' traditional land rights.

The fundamental aspects of the 1970 Unregistered Land Act were further exacerbated by the 1984 Civil Transaction Act and its amendments of 1991 and 1993. In this Act, any case against the government pertaining to unregistered land has no legal basis; therefore, no court of law is competent to receive a complaint that goes against the interest of the state. These amendments incorporated the Islamic concept of land as a public utility —owned by God and regulated by the Islamic Sharia principles in an Islamic state. It also legalized some elements of Sharia Law, such as the official recognition of unregistered land rights connected with Islamic *urf*(custom).¹⁴

¹² Bolton 1954: 187; Warburg 1970: 159.

¹³ Alden Wiley, 2010

¹⁴ De Wit 2003: 11

The point here is that, this step institutionalized another form of regional and social differences in land rights, but along religious lines this time. It reinforced the rights of Muslim communities by accepting Islamic *urf* in legalizing unregistered land. It thus provides an opportunity for a Muslim claimant to transfer Islamic-based customary rights into full legal rights of ownership. No equivalent chance is granted for the Christians and other non-Muslims in the Nuba Mountains and southern Blue Nile. Despite the fact that both the 1970 and 1984 Acts have never been widely applied on a routine basis, the government continues to use them whenever and wherever it deems appropriate, instigating a high degree of communal insecurity among the affected communities particularly in rural Sudan.¹⁵ The political and socio-economic repercussions of the subsequent national government's practices of grabbing land for public and private development lie in the persistent undermining of the rights of local people, followed by an incredible devastation of their livelihoods and modes of life, with significantly greater impact in Eastern Sudan, Darfur, Blue Nile, and the Nuba Mountains.

Sudan's current interim constitution was enacted in 2005 following the signing of the CPA. The Interim National Constitution does not directly address land rights and ownership of natural resources, but it does sanction the establishment of a National Land Commission to direct the development of land policy, the adjudication of land disputes, and the development of policies for the recognition of customary land rights. State Land Commissions are also called for in Blue Nile, Southern Kordofan, and Darfur states to exercise the powers of the National Land Commission at the state level. To date, the Government of Sudan has not taken steps to form the National Land Commission or State Land Commissions in South Kordofan and Blue Nile. The Darfur Land Commission was established in 2007. Sudan is now in the process of drafting a new constitution to replace the Interim National Constitution.¹⁶

The National Investment Encouragement Law of 2013 establishes the general regime for domestic and foreign direct investment in the Sudan. The law is generally liberal in the provisions affecting FDI. The adoption on 1 December 2013 of the regulations complementing the law, which list the industries open to foreign participation, also results in a further opening of the Sudanese economy to FDI, particularly in the services sector. At the institutional level, the High Council for Investment and the National Investment Authority are the federal authorities responsible for investment. The High Council for Investment is the highest investment entity. It is chaired by the President and comprises representatives of the authorities involved in investment policy, including government ministries. The National Investment Authority is headed by a person appointed by the President. The Council acts as the supervisory and approval body for the investment policy, related suggestions of the National Investment Authority and exercises administrative control over its budget, organizational structure, etc. The National Investment Authority holds both regulatory and promotion roles for investment, which raises a series of issues, as discussed below in more detail.

According to Mona Ayoub of Khartoum University, the 1970 Act was justified by the government on developmental grounds; to aid the expansion of the agricultural sector, specifically mechanized farming, which had increased fifteen fold by 2005 (two million feddan in 1970 to 31 million feddan in 2005¹⁷). She argues that the legislation "entitled the government to use force in safeguarding 'its' land and encouraging the accumulation of land by a minority of rich investors (both local and foreign)."¹⁸ The result was the displacement of communities, mostly

¹⁵ Mohammed Salih 1999; de Wit 2003; Harragin 2003; Egemi 2004

¹⁶ UNEP 2012 a; Sudan Tribune 2012

¹⁷ 1 hectare = 2.381 feddan

¹⁸ Mona Ayoub (2007): Land and conflict in Sudan

agro-pastoralists, from land, often through violence. The 1970 Act and the Investment Encouragement Law of 2013 have both undermined the trust the rural poor, pastoral communities and nomads have in traditional authorities, whose mandate also included the management of land, and denied traditional authorities the formal legitimacy and juridical status to traditional property rights. The laws also implied the cancellation of all rights relating to water, land and grazing by pastoralists. This fact was confirmed by IFAD's 2015 report on mechanized farming which shows that mechanized farming is expanding at the expense of an increasing number of rural communities, covering an area of 2 million feddan in 1979, 14 million feddan in 2007 and about 40 million feddan in 2015.¹⁹

The interviewed resource persons reported that transparency is a critical component of a functioning land administration. This is particularly the case in view of the high degree of corruption common in the allocation of land. It extends to the lack of clear and credible information on land availability and transactions, and to the poor dissemination of public information on land rights and policies. The impact of corruption and inequalities are very real in land allocation and management. They affect the economy as a whole, the cost of doing business and have direct consequences in terms of quality of life for ordinary people. These consequences are particularly harsh for poor people as they exacerbate social exclusion and marginalization.

In summary:

- Land tenure insecurity has resulted from the imposition of formal law that does not recognize individual rights to unregistered land. State authorities have considered unregistered land to be state land and thus available for the state to transfer to private commercial interests, the military, land speculators, and elites without regard for customary rights. Although the CPA required the development of laws to incorporate customary laws and practices, local heritage and international trends and practices, the Sudanese government continues to issue new long-term leases on community lands to commercial interests and well-connected individuals without consulting local populations or obtaining their consent. Many of these new large commercial leases have involved prime farmland and have been made to international investors from the Gulf States, South Korea and Egypt.
- Under successive governments, economic elites who control power in Khartoum have shaped land laws and institutions in such a way that provide them both legal cover and practical instruments for the exploitation of poor rural people. In the name of modernization, the state has enacted legislation that removes the land from the control of local communities and sometimes removes the local communities from the land. The promotion of mechanized schemes has empowered external investors whose motivation is rapid profit.
- The modern laws have enabled elites to purchase rural land at relatively low prices, with profound negative implications on small farmers and pastoral communities. The Unregistered Land Act, a de facto nationalization of land by the state, denies any formal legitimacy or judicial status to customary property rights and implies the cancellation of all rights relating to water, land and grazing by pastoralists, as well as the denial of any future income related to such rights. This applies to the whole dry lands of Sudan including the South, Greater Darfur, Greater Kordofan, the East, and Blue Nile.

¹⁹ IFAD's 2015 report on mechanized farming

- The land legal framework establishes procedures for facilitating access to land for private investment, including by foreign investors, in ways that did not take into consideration the interests of the traditional holders. The Land Act prohibits foreigners from purchasing land but allows foreigners to lease land for up to 99 years. The Land Act states that citizens and foreigners can obtain access to land for investment purposes and allows for states to prepare land-use plans that delineate zones.
- While the 1925 Land Settlement and Registration Law does not appear to distinguish between investors on the basis of nationality, the National Investment Authority, the Investment Encouragement Commission of Khartoum and the 1994 Urban Planning and Disposition Law have clearly made such distinction for foreigners to acquire land in any part of the country.

4. FOREIGN DIRECT INVESTMENT (FDI) AND LARGE-SCALE LAND ACQUISITION

FDI has become a very important source of external funding for Sudan, and an important source of foreign currency to support the country’s recent current account deficits. In this context, examining the rational, motives, and detailed picture of the achieved level of FDI is essential. Economic uncertainty, political instability, and corruption are among the most serious obstacles for FDI.

The distribution of Inflows and stocks is highly uneven, shaped by cross-country differences in resource endowments. Big shares of investment are concentrated in countries with important petroleum and mineral resources, such as Nigeria. But while investment flows to some countries have stagnated (e.g. Cameroon), countries like Sudan, Ethiopia, Ghana, Mozambique, Tanzania and Zambia, that received little foreign investment until the early 1990s, now host sizeable stocks of foreign investment as shown in Figure 1 (UNCTAD, 2008a; see Figure 2.2). Inter-governmental arrangements may evolve into committed partnerships underpinned by mutual financial stakes. For instance, under the 2002 Special Agricultural Investment Agreement between

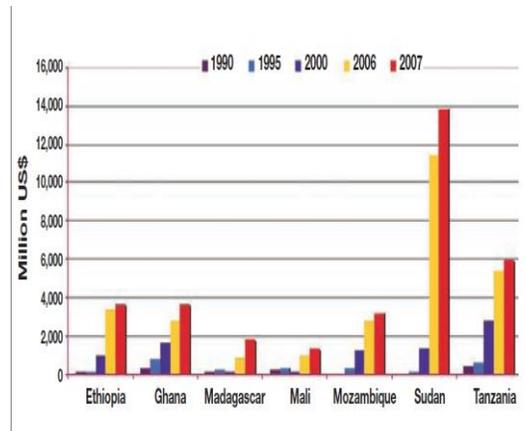


Figure 1

Syria and Sudan, the Government of Sudan granted the Government of Syria a 50-year lease over a land area of 30,000 feddans (about 12,600 hectares) in Gizera State according to articles 2 and 3 of the agreement. The preamble explicitly refers to the agreement as a “practical step” to execute the Agreement for Cooperation in Agriculture, signed between the two governments in 2000.

The total amount of arable land in Sudan is about 175 million feddan which is equivalent to 45% of the Arab world’s arable land, out of which only 31 million feddan are being used²⁰. The Arab Organization for Agricultural Development (AOAD), based in Khartoum, was created in 1970 for

²⁰ Agricultural Planning, Ministry of Agriculture and Forestry, 2009

the purpose of identifying and developing links among Arab countries, and coordinating agriculture-related activities among members. More than two-thirds of the approved projects during 2004 - 2008 belonged to investors from six countries, namely: Saudi Arabia (18.4 %), Turkey (12.8 %), Syria (12.0 %), Egypt (9.3%), Jordan (8.2 %), and Lebanon (7.8%). The remaining members of the Gulf Cooperation Council (Qatar, Kuwait and the United Arab Emirates) owned about 6.7% of the total number of approved projects. In other words, 75% of approved projects belonged to the Arab investors and Turkey. According to the Ministry of Investment the number of implemented projects in three sectors (agriculture, industry and services), between 2000 and 2010, reached 505 with a total capital of \$7.425 billion. Eight out of the top 10 investors were Arab countries whose total investments amounted to \$4.526 billion.²¹ As of 2011, Sudan's inward FDI stock stood at \$24 billion, the fourth highest in North Africa behind Egypt, Morocco, and Tunisia (and the sixth in Africa; UNCTAD, 2014). For example the Saudi investment in Sudan increased by 34% during the year 2015 (\$11 million) and 2016 (about \$15 million). The following are examples that show some of Saudi Arabia's projects in Sudan:

- Al Rajhi Agricultural project with an area of 100 thousand feddan in the River Nile State and 205 thousand feddan in Northern State;
- Taba Agricultural scheme with an area of 225 thousand feddan in River Nile State;
- Dala Agricultural scheme with an area of 50 thousand feddan in the River Nile State;
- Nadik Agricultural scheme with an area of 100 thousand feddan in North Kordofan State;
- On 3 November 2015 Saudi Arabia agreed to provide \$1.7 billion to construct three dams in northern Sudan, Kajbar, Dal and Al-Shiraik dams, which are all expected to be completed in five years; \$500 million for other water and electricity projects and the cultivation of a new 1.038 million feddan area on the banks of the Atbara and Setit rivers in Eastern Sudan.

Sudan is among the global "hotspots" for these large-scale land acquisitions. According to a recent study by the World Bank, from 2004 to 2013, Sudan transferred nearly 9.5 Million feddans (4 million hectare) of land to private investors, more than any other country surveyed²². In December 2011, the government replaced the Ministry of Investment with the High Council for Investment. The Council is mandated to create an enabling climate for investment through easing procedures, unifying them and putting in place the rules and procedures to facilitate protecting investors' rights. The President with the state governors and other relevant figures are members of the Council. It is the highest authority assuming the responsibility for investment policies, plans, programs, follow-up and the creation of an attractive climate for investment. At the Summit of Arab Leaders in Sharm el-Sheikh, Egypt, in March 2015, the Sudanese President announced that Sudan had taken a series of measures to implement an initiative on Arab food security and was ready to receive Arab investments. The summit followed shortly after the second Saudi-Sudanese investment forum in Riyadh in late February 2015, which confirmed the Saudi investments in Sudan for last 5 years (2011-2015) reached more than \$13 billion. Furthermore, at the Sudanese-United Arab Emirates Forum in Abu Dhabi in May 2015, investment projects worth \$16 billion were discussed with UAE investors.

The Sudan Vision newspaper of 25 February 2016 reported the Chief Executive of the Saudi National Agricultural Development Company (NADEC), as saying the company's investment in Sudan had reached 81 million Riyals (approximately \$25.5 million), mostly invested in agriculture in an area of about 62 thousand feddans in North Kordofan. An article published by the Saudi newspaper, Al Riyadh, on 24 February 2016, said that the NADEC chose Sudan in

²¹ Ministry of Investment, 2013

²² Baro Mamadou (2014). Improving Land Sector Governance for Shared Prosperity in Sudan

order to take advantage of its natural and fertile resources. The World Bank reported that between 2003 and 2008, out of 132 projects, 42 were allocated to foreign investors as per Table 1 below²³. These projects were located in nine states; Blue Nile, River Nile, Northern, North Kordofan, Gedarif, Gezira, Khartoum, Kassala and White Nile. Table 2 below gives details about the size of areas allocated to foreign investment.

Country/group	No. of projects	Area allocated (000 hectares)	% share
Saudi Arabia	20	1371	17
Qatar	3	470	6
U.A.E	16	400	5
Egypt	3	56	1
Other Arab countries	11	300	4
Non-Arab Countries	3	342	4
Local investment	37	2950	36
Unclassified	39	2161	27
Total	132	8050	100

Within 10 years (2005-2016) Sudan was number two in the region in attracting foreign direct investment. According to the Minister of Investment, the FDI for up to April 2016 reached \$42 billion, Saudi Arabia was number one. CNN Arabiya reported on 8 February 2016 that 230,000 feddan of land in Sudan was allocated to Qatar for agricultural investment. Also as per the United Nation Conference on Trade and Development (UNCTAD) report for 2015, the FDI in Sudan amounted to 41.6% of the country's GDP for 2013. The report indicated that the FDI increased after the secession of South Sudan; it rose from 1.3% of GDP in 1995, to 31.1% in 2011, 50.6 % in 2012 for 46.1% in 2013²⁴.

State	No. of projects	Area allocated(000 hectares)	% share
Northern	38	4349	54.0
Nile	73	1676	20.8
Blue Nile	4	545	6.8
White Nile	10	1180	14.7
N. Kordofan	7	300	3.7
Total	132	8050	100

5. MECHANIZED FARMING AGRICULTURE

The progressive introduction of mechanized rain-fed farming into the region since the 1960s led to a disturbance of the ecological system and to an inevitable land-based conflict between local communities and the state. Under the 1968 Mechanized Farming Corporation Act and upon the request of the World Bank to facilitate agricultural development in Sudan, mechanized rain-fed farming was pursued vigorously particularly in the Gedarif area in the eastern part of central Sudan, Blue Nile, Darfur, and the Nuba Mountains through public and private sectors.²⁵

From the 1970s to the present day, land grabbing has become a consistent government policy, with a resultant strengthening of the privileged ruling elites and their allied merchants, who acquired land at the expense of rural communities. In the process of

²³ Performance of agricultural investment projects, 2009, Ministry of Agriculture and Forests, Department of Investment, Report, 2009

²⁴ UNCATAD, report for 2015

²⁵ Duffield, 1990

allocating schemes, local communities and their native institutions were hardly engaged. Many entrepreneurs ended up acquiring land, which they had never even seen.

In the early 1960s, the GoS established the New Halfa irrigated scheme on the Butana plains of Eastern Sudan to resettle the Nubians displaced by the construction of the Aswan High Dam. By the 1970s large irrigated schemes for cotton production were established in the Rahad and Suki areas in Eastern Sudan as well. The post-independence period also witnessed the establishment of a number of irrigated sugar plantations in El Guneid, Khashm Al Girba, West Sennar (Sennar State), Assalaya, Kenana and currently the White Nile scheme. This accelerated mechanized farming led to the transformation of vast tracts of rain-fed cropping and grazing lands into other patterns of land use. The introduction and expansion of semi-mechanized farming on the central clay plains in the Eastern, Blue Nile, Nuba Mountains, White Nile, and West Kordofan resulted in a substantial reduction in lands available for smallholders' production. The area under semi-mechanized farming increased from 214,000 feddan in 1954/55 to 2 million feddan in 1970/71. By the mid-1990s the area reached an estimated 14.5 million feddan and 31 million feddan in 2015.²⁶

An example of the land plunder that has led to a serious conflict between government, farmers, and pastoralists, was the GoS allocation of a large tract of land (amounting to 38 thousands feddans) to the Malaysian African Agricultural Company (known as *Jandeel*) under the Investment Promotion Act of 1990. Little regard was given to the customary rights of the pastoralists and cultivators and to the adverse socio-economic impact on the local population. The use of the vast tracts of land, stretching from Kazgil to Rahad, for growing Acacia trees has robbed the pastoralists of their traditional cattle routes and of two of their most important wet grazing areas (Mugshasha and Ghannamas Mekhras). Another cause of conflict over land in Northern Kordofan State relates to the allotment of about 42 schemes (250 feddans each in size) to retired government officials and traders from North Kordofan and other states for rain-fed mechanized agriculture.

In South Kordofan/Nuba Mountains, the government allocates the mechanized farming schemes to outside investors, with little to no consideration of the rights or interests of the local peoples. By 1974, the distribution of schemes in Habila Agricultural Project was as follows: 11% for local farmers, 6% for cooperatives, 49.8% for merchants, 21.6% for retired officials, 5.8% for government officials, and 5.8% for other government related entities (Ibrahim, 1988: 128). By the 1990s, both African Rights (1995: 41) and Suliman (1998: 8) reported that two hundred mechanized farms in Habila were allocated as follows: four were leased to local co-operatives; one was leased to a consortium of local merchants, and four to local merchants. The remaining 191 were leased to absentee landlords - mainly merchants, government officials, and retired army officers. In Keiga Tummer area, one of the fieldwork sites, the sedentary Nuba people were discontented with the establishment of the mechanized schemes on their tribal land without their consent. From their perspective, any land allocated by the government for mechanized farming schemes customarily belongs to certain sub-hill communities. From the nomadic Baqqara's standpoint, the mechanized farm projects usually intersect with seasonal migratory routes, and that inevitably forces them to detour and pass through some traditional farming zones, which in turn creates conflict with the local communities.

²⁶ IFAD Mechanized Farming Study report, 2015

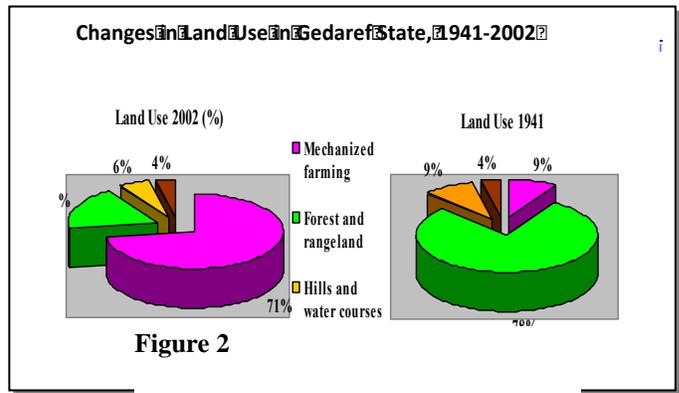
The crux of the matter here is that due to the expanding mechanized rain-fed farming schemes in the region, local Nuba communities were and still are being systematically squeezed out, not only to the margins of their livelihood base but also to a peripheral socio-economic and political status. That is a contributing factor as to why, when the civil war broke out in southern Sudan in 1983, the Nuba peoples were prepared for rebellion and armed struggle for their own causes. In fact, several published works have pointed to the land factor, in its wider context, as the single biggest issue that triggered Nuba moves to join the war in the middle of the 1983²⁷

**Box 2: Mechanized farming and the creation of landless peoples
Umsainat-Sumsam Extension, Gedarif State:**

There were about 4,100 families in the villages of Rashid, Ndarait, Um-rakoba, Um-Blail, Wad-fartouk, and Alhammad in Gedarif area. They were traditional farmers. To establish the first phase of Umsainat-Sumsam Extension, a total area of 200,000 feddans around these villages was demarcated as mechanized farms and distributed to 200 investors from outside the area. Only an area of 14,000 feddans representing 7% of the total area was distributed to the local 350 families, the rest of the families (3,750 families or 90.5%) have been left landless. To implement the second and third phases of Umsainat, the villages of Um-Maleeha, Tamra, Saraf Saeed, Alam, Daneekola, Babikery and Dokah have lost their lands completely (Ijaimi, 2005).

In Gedarif state, a report published in 2014 stated that, “in the Gallabat-Douka area, more and more land had been allocated by the state or illegally grabbed by farmers for the purpose of large scale mechanized farming of sorghum and sesame”, please see Box2. The rapid expansion of mechanized farming has also created a culture of land grabbing among traditional farmers fearing loss of land to investors. Some leaseholders control more than 30,000 feddan per individual in Gedarif State. Figure 2 shows that the area described as grazing lands has declined from 28,250 square km (78.5% of the state’s total area) in 1941 to 6,700 square km (18.6% of the state’s total area) in 2002, as a result of the rapid expansion in the semi-mechanized farming sector, that has increased from 3,150 square km in 1941 to 26,000 square km in 2002²⁸. Also because of mechanized farming the number of main transhumance routes over the Butana Plains of Central Sudan has been reduced from 14 routes in 1964 to 7 routes in 2004 with the total length of the routes being reduced from 1,580 kms to 750 kms.²⁹

In Blue Nile State, the Investment Commission reported that the area under dura cultivation increased from 2.3 million feddan in 1970 to 8.3 million feddan in 2004 giving a percentage increase of 361%. Most of the increase has taken place in the semi-mechanized sector where the area increased by 653% over the past 40 years giving an annual growth rate of 16.3%. Since the 1970s, government officials have acknowledged recording 62 commercial leases most of which are for 10,000 feddan or more, allocated to an elitist sector controlled by three major groups: traders, government employees and Arab companies.³⁰ This is in addition to successive waves of new settlers progressively pushing



²⁷ Ayoub 2006; Johnson 2006; Suliman 1998
²⁸ Performance of agricultural investment projects, 2013, Ministry of Agriculture and Forests, Department of Investment, Report, 2003
²⁹ Ijaimi 2005 about the perception of local communities on mechanized farm in the Gedarif State
³⁰ Blue Nile State, the Investment Commission, 2015

indigenous groups towards the Ingessana Hills and other mountainous areas. This migration has triggered competition over land and other resources and created a general feeling of victimization among the indigenous communities, which see themselves as discriminated against politically, culturally, economically, and exploited by the center.³¹

The resource persons interviewed, including former senior government officials, local administration leaders, chairs of the pastoralists' unions, farmers unions and experts, stated that the unregulated expansion of the sector has been responsible for blocking transhumance routes, loss of water points and pastures, and creation of large scores of landless groups. Many villages were left landless, small farmers were forced to work as precarious wage laborers on their own land that had been converted into large mechanized farms, or had to migrate to urban centers.

The impact of modern agriculture is varied. In some cases, such as the irrigated schemes, modern agriculture has offered employment to hundreds of thousands of migrant workers from Southern Kordofan/Nuba Mountains and Darfur. In other cases, the emphasis on modern agriculture has just been another aspect of the marginalization of rural communities. In the Nuba Mountains and more recently in Blue Nile State, since 1989, mechanized farming has dovetailed with political and military aims. In agriculture, as in other sectors, the regime has implemented policies that are, broadly speaking, similar to those of its predecessors, but more aggressive, virulent and harmful to rural communities. Sudan does not have in place legal or procedural mechanisms to protect local rights and take account of local interests, livelihoods and welfare. Lack of transparency and of checks and balances in contract negotiations creates a breeding ground for corruption and deals that do not maximise the public interest. Insecure user rights on state-owned land, inaccessible registration procedures, vaguely defined productive use requirements, legislative gaps, and compensation limited to loss of improvements like crops and trees, have undermined the position of local people.

In response to the process of land grabbing, pastoralists have had to divert their migration routes to avoid the risk of conflict arising from damage that their animals might cause to crops in the newly established schemes. This diversion of the routes has increased the distance that the pastoralists have to cover every year. Meanwhile, due to the continuing expansion of the schemes, the traditional watering points (*hafirs*) have often come to fall within the boundaries of these new schemes. Pastoralists have been denied access and have had to find new sources of water for their animals and themselves while on the move, an activity that has required added labor to draw water from dry river beds (*khors*). Covering long distances before reaching water points can lead to drastic losses in herds. Under such circumstances, the grazing areas have continued to shrink, leading to further competition over limited resources and forcing the settlement of poor pastoralist households (Ahmed, 1974; Shazali and Ahmed, 1999, 2001). Violent confrontation with those who continued to move and trespass on the schemes started to become a common feature of the relationship between the pastoralists, settled village cultivators and the scheme owners. The symbiotic connections between sedentary cultivators and pastoralists that used to characterize the relationship between the two groups gave way to conflict, which at times has turned violent.

³¹ A. Ahmed, 2012; M. Ahmed, 2012

6. LACK OF TRANSPARENCY AND CORRUPTION IN LAND USE AND ALLOCATION

General governance principles set a useful framework for looking specifically at the issues of land governance. Transparency is a critical component of a functioning land administration, in particular in view of the scarcity of clear and credible information on land availability and transactions and the poor dissemination of public information on land rights and policies. Lack of transparency and corruption are very real in land allocation and management. The consequences of lack of transparency are usually manifested in the difficulty in accessing land assets, lack of awareness about land policies and legal frameworks, land transactions and prices. When in place, transparency encourages accessibility, civic engagement and accountability. This in turn strengthens confidence in the government and public agencies.

Lack of transparency is a major challenge in processes of land allocation and use. There is a general sense among observers that land negotiations and agreements/contracts in Sudan, whether with local or foreign investors, occur behind closed doors and are not made accessible to the general public, and sometimes not even to other relevant government agencies. Very limited information about land deals can be obtained from the land register. Lack of transparency during

the negotiating and contracting creates a breeding ground for corruption and for deals not in the best public interest. Some reported land deals by the government have raised allegations that investors paid cash or in-kind contributions to businesses or other activities run by high-level government officials.³² Elbeely argues that the key problem facing the implementation of the privatization programs, launched by the government especially in the land subsector, is the lack of transparency, especially in bids and tenders.³³ Some Members of Parliament claimed that they were unaware of the work of the High Committee for Privatization.³⁴ They argued that the lack of transparency surrounding its work has led to many allegations that the values of enterprises to be privatized were under estimated. They were convinced that if transparency had been espoused, such allegations not would have been raised.³⁵

Box 3: Khartoum State

The Ministry of Industry and Investment's report of 2015 stated that Khartoum State's Ministry of Investment sold plots of land, without consulting the Investment Commission Authorities, to three companies (El Wisam for water pipes, Zawayia for brick making and the Khartoum Company for Agricultural and Livestock Production [El Rawabi]). The transaction generated revenue of 12.7 million Sudanese Pounds. The report also indicated that only 348, out of 882 projects, which were in the Khartoum State Annual Development Plan, were implemented and the main reason behind this inefficiency was the related to land use and allocation. This story tells the kind of lack of transparency within the government's highest levels.

The famous case of Khartoum State (please see Box 3) shows how the lack of transparency can breed corruption and nepotism in contract awards.

The regime used severe measures to subdue any resistance that might threaten its security, especially from the rival political parties. As a result of these harsh measures the government succeeded in subduing any opposition toward the introduction and implementation of its

³² Hervieu, 2009

³³ Khalid Hassan Elbeely (2015), in the International Journal of Business and Social Research Volume 05, issue 02, 2015

³⁴ Committee formed for the purpose of privatization of the Three-Year National Salvation Economic Program (NSEP) was accompanied by the issuance of the Disposition of Public Enterprises Act in August 1990.

³⁵ Transitional National Assembly, Session 31, April 1995.

privatization policy in particular on land-related issues. This transformation of the land into a politicized commodity has negative impacts on land users, particularly the most vulnerable and marginalized groups, including those living in poverty. Investment in land is not conflict-neutral, and given the history of violent conflict and mutual destabilization in Sudan there is potential for localized political grievances to turn into wider regional conflict.

7. LAND AND CONFLICT

Historically, development policy in Sudan has marginalized communities in the eastern, southern, and western parts of the country. Regulation of land use has largely been overlooked, and the customary systems for land ownership ignored. This situation has resulted in conflicting and inefficient uses of land, and intensified scarcity. Land acquisition-related issues are central to understanding the resource-based conflict in Sudan in general and in particular in Darfur, Eastern Sudan, Blue Nile, and South Kordofan. Land issues also provide a common backdrop to smaller-scale conflicts across the country.

Several factors seem to underpin these land acquisitions. These include food security concerns, particularly in investor countries, which are a key driver of government-backed investment. Food supply problems and uncertainties are created by constraints in agricultural production due to limited availability of water and arable land. Government-backed deals can also be driven by investment opportunities rather than food security concerns. In addition, global demand for bio-fuels and other non-food agricultural commodities, expectations of rising rates of return in agriculture and land values, and policy measures in home and host countries are key factors driving new patterns of land investment.

In Sudan it is already well documented that competition over land and natural resources was among the root causes of the civil war. After the loss of the oil revenue and its negative impact on the stability of the economy, the government of Sudan started to pursue short and long term policies to rescue the situation. The short term policy aimed to promote traditional gold mining through offering favorable exchange rates to artisan miners, while the long term policy aimed to promote large-scale foreign agricultural investments to improve food security, reduce poverty and stimulate economic development. The current adopted land policy in Sudan has led to the following negative impacts:

- Land deals ignore land rights of communities and other landowners and lack transparency.
- It tends to concentrate ownership in a small number of foreign companies.
- Large-scale land investments currently underway do not comply with the existing land regulation laws because the existing land legal frameworks are largely confused with apparent dichotomy between statutory and customary rights. Specifically, it is not at all clear whether customary rights have legal status in terms of who owns and controls land, and how access to land can be given, legitimated and contested.
- When allocating land to foreign investors, the government rarely consults with the occupants of that land. In the rare cases when this does happen, it consults with the local elites and not the grassroots.
- The environmental and social impacts of large-scale agricultural project are rarely assessed when the lands are allocated. This limits the involvement of civil society and affected communities in negotiating and implementing deals, and limits their ability to respond to new challenges and opportunities.

- The inequality in bargaining power between investors/GoS and local communities is exacerbated when the smallholders, whose land is being acquired for foreign investment projects, are unable to present an official title to the land, yet they have been using it under customary tenure arrangements. Since the state formally owns the land, the poor run the risk of being pushed off the land in favor of the investor, without consultation or equitable compensation.

Examples of such conflicts and clashes include:

- In Gezira State, a particularly fertile area south of Khartoum where many foreign projects are being established, there have been some disputes with small landowners, who feel that they have to give up their land unfairly and without adequate compensation.
- In the Um Juasir – west locality of Northern State—there has been a surge of demonstrations against confiscation and allocation of lands to foreign investment companies. Also, there is the conflict between Merowe Dam Authority and the affected Hamadab people of Amri Village in Northern Sudan. In April 2006, violent clashes occurred between the local community and security forces, including GoS militia, over the construction of the Merowe Dam. During the clashes, four community members were shot dead and tens were seriously injured. What triggered the violence was anger among the local community over inadequate compensation, lack of transparency and participation in the dam planning, and their relocation.

These clashes were symptomatic of a wider concern about corruption and lack of transparency on the part of the national and state authorities and other stakeholders.

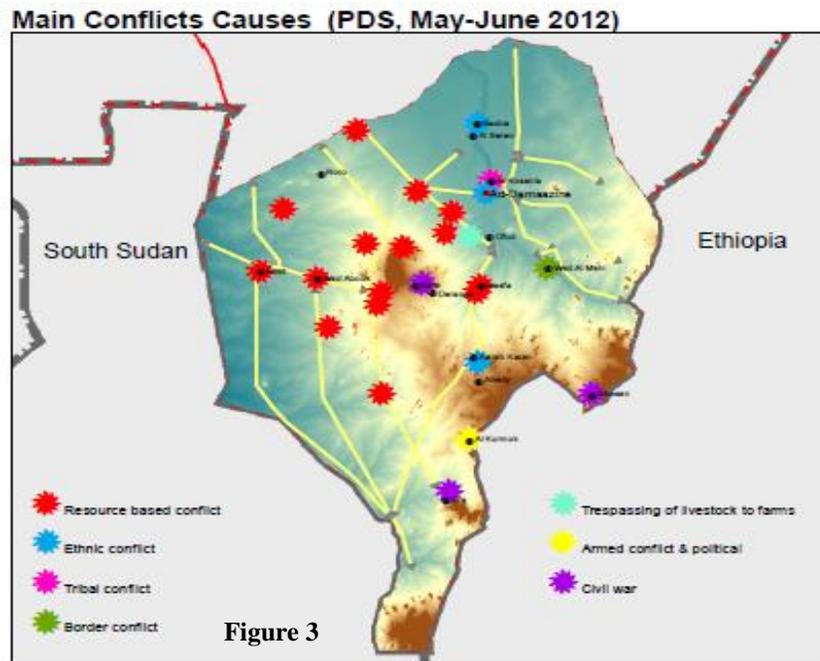


Figure 3

- On 15 February 2016, the Nubians from Northern Sudan took to the streets in various towns to protest the construction of Dal and Kajbar Dams at the second and third cataract of the Nile. Nubians from several chiefdoms expressed their rejection of the construction of these dams by pointing to the experience of the construction of the Egyptian Aswan High Dam in 1964, when tens of thousands of people were displaced and many villages were flooded by the Nasir Lake behind the dam. The non-participatory approach of the GoS and the lack of transparency triggered these protests and internationalized these conflicts. The Kajbar project will displace more than 10,000 people and submerge an estimated 5,000 archaeological sites. The Dal Dam is expected to displace at least 5,000 people (Sudan Vision, 23 February 2016).

- The community dialogues carried out by PDS in 2012 for the Blue Nile Peace Council (with support from USAID/AECOM), revealed that many of the conflicts in Blue Nile State are of a resource-based nature – please see Figure 3. In these conflicts, the parties are usually farmers, pastoralists, large agricultural companies/projects owners, and villagers.³⁶
- There is a wide consensus in Sudan that conflict over access to land has increased significantly during the last three decades. Available evidence from Darfur, Nuba Mountains, and Blue Nile reveals that the instability and civil wars in these states were instigated and driven by competition over natural resources. In North Kordofan, all of the 23-recorded conflicts in 2002 were of a resource-based nature³⁷. When interviewed, judicial authorities in Abu Gubeiha town (Eastern Nuba Mountains in South Kordofan) highlighted that in 2004, 93% of the conflict cases reported in court were of resource-based nature involving pastoralists and farmers.

The non-inclusion policies followed by various Sudanese governments towards land tenure have led to the gradual awareness of affected communities as to the importance of land possession. To resist government exclusion and access natural resources, these communities can resort to ethnic affiliation as a rallying mechanism to strengthen their position and possession. Both sedentary and pastoral groups affected by the expansion of mechanized farming have tried to promote solidarity on the basis of identity. Several collective activities organized by communities in rural areas can be attributed to the awareness of their exclusion from decision-making processes regarding the utilization of natural resources in their ancestral homelands. The most striking examples of such type of collective activities or movements are:

1. Political movements that aim at representing constituencies in the National Assembly/Parliament in order to reflect their grievances and put forward demands for development and end of negligence. The formation of the Beja Congress, Nuba Mountains Union, and Darfur Renaissance Front are typical illustrations of this type of awareness among marginalized groups in the peripheries.
2. Spontaneously formed committees in reaction to government decisions regarding resource allocation have also been witnessed. The construction of Merowe Dam and the announcement of plans to start Kajbar Dam have instigated the formation of anti-dams resistance committees in Northern State.
3. Armed rebellion has become another pattern of resisting against the domination of the center and the exclusion of local communities in the resource management process. Thus, the peoples of Nuba Mountains and southern Blue Nile joined South Sudan's SPLM/A while the peoples of Darfur and Eastern Sudan formed their own versions of armed movements to end the domination of the center. An important point to be noted here is that restoring historical rights over land is a common demand for all these movements.³⁸
4. The continuous alienation of Nuba and the appropriation of their land by outside investors has been one of the key reasons for the Nuba to join the SPLM/A. The Nuba Mountains General Union, established in 1965, announced that one of its main objectives was the "implementation of a land reform policy for the benefit of the indigenous farmers of the Nuba Mountains and [the] eradication of the feudalistic land policies and relations of production from all forms of exploitation". The Union movements of disadvantaged

³⁶ PDS, 2012

³⁷ Egemi, 2009

³⁸ Suliman, 1999 and El-Tayeb, 2006

farmers protest against unfair deals regarding land allocation, the formation of the Nuba Peasants Union is an example of this.³⁹

8. CONCLUDING REMARKS AND RECOMMENDATIONS

- Land Acts and policies in Sudan have denied customary land users proper recognition, the right to compensation, and the opportunity to benefit from dividends generated by investment in their land, whether by the government or the private sector. The promulgation and implementation of these Land Acts were concluded in complete absence of the people and communities. The implementation of large-scale agricultural projects has severely impacted rural communities, coinciding with a period of severe droughts, large-scale environmental degradation, and massive population movements, a situation that later emerged as a major cause of conflict. The 1970 Unregistered Land Act and other legislation that followed, especially the 1990 Investment Act and its revised versions in 2007, 2012, and 2013, have alienated small holders and set in motion a progressive process of their marginalization.
- There is a lack of transparency in the regulations, rules, and acts that govern land use in the country. This is in part due to their frequent changes, lack of inclusive processes that seek input from local communities and limited access to information. Benefits accruing from changes to land use are shared among few people and applied in a discretionary manner. In such an environment, corruption in land allocation, ownership and use thrives and progressively benefits the ruling elites and supporters of the ruling party.
- Land regulation agencies lack coordination and sharing of information.
- Land acquisition and grabbing lead to local conflicts between pastoralists and farmers and among pastoralist themselves. Also between communities and mechanized scheme owners and oil companies, and within and between tribal groups over administrative and community boundaries, power and identity. These conflicts range in intensity from ad hoc, occasional skirmishes to prolonged violence between entire sub-groups such as Nuba and Misseriyya in Lagawa area, and the Rezeigat and Misseriyya. Such conflicts are currently expanding and contributing to wider insecurity and instability. In these areas, conflict over land and natural resources has led to ethnic polarization and social disintegration. The discovery and exploitation of oil has intensified the rush and competition for land grabbing at different levels, from the federal government level to the levels of tribes, clans and households, and consequently land possession has become a major driver of conflict in a number of states.
- Existing legal frameworks to land are largely confused with apparent dichotomy between statutory and customary rights. Specifically, it is not at all clear whether customary rights have legal status in terms of who owns and controls land, and how access to land can be given, legitimated and contested.
- Lack of title to land has denied traditional farmers and pastoralists the right to access public resources, namely formal credit increasing their disadvantage and marginalization.
- Currently, customary land tenure arrangements are under extreme pressure caused by large-scale land acquisition, rapid population growth and increased mobility, accelerated land degradation and the rapid transition to a market economy.
- Appropriation of land for the semi-mechanized sector has resulted in significant modifications in land tenure arrangements with apparent heavy cuts in the rights of smallholders to land and natural resources.

³⁹ Al-Batahani, 2002

- Existing institutional arrangements suffer problems of low capacity, lack of coordination and compartmentalization between different government institutions. There is also an apparent ambiguity concerning roles and mandates of the various actors at the various levels of governance (local councils, native administrations, land dispossession committees, Ministries of Agriculture, etc.).
- There is ambiguous and confusing division of power between the federal and state governments that has resulted in conflicting decisions over land and the continuous encroachment of the federal government on land in the states.
- The definition of land administration as a concurrent power between the federal and states governments is a major gap in the legislative structure of land management. The prevalent centralized authoritarian mentality is problematic.
- Absence of transparent and effective land administration is one of the main constraints to investment and effective utilization of Sudanese lands. The gray and ambiguous concept of “public interest” has been a major factor contributing to land dispossession of smallholders on the rain lands of the country.
- The Investment Encouragement Act of 1990 and its amended version of 2007 don’t sufficiently recognize and prioritize the social dimension and conflict sensitivity in relation to land.

The recommendations that follow from this research are:

- The government should assess whether the existing land policies, legislation, regulations, and institutions are capable of assessing and maximizing the benefits from international investment and minimizing its risks. Policies should favor national interests and those of the community where the project is located and at the same time offer attractive conditions to foreign investors.
- The establishment of adequate regulatory mechanisms for equitable and inclusive sharing of land and natural resources recognizing, legitimizing and securing the rights of rural communities to land and natural resources as fundamental assets for the livelihoods of rural populations.
- The establishment of a recognizable, transparent, accessible and capacitated institution for the administration of rural lands, that reaches down to the state and locality levels.
- The establishment of an adequate and transparent regulatory framework for private and public sector investments in extractive natural resources and resource-based industries.
- The transparent and effective participation and representation of communities and their organizations in land allocation decision-making process as well as an effective, responsive anti-corruption mechanism.
- The government should undertake preliminary studies to assess the economic, technical, social and environmental impact of any FDI project. The land users, right holders and community should be identified and consulted before the government signs the contract with the investors.
- Provisions should be made to remedy any potential adverse effects and compensate affected people where the investment leads to their displacement.
- Land acquisition deprives local populations of an important economic asset; hence the government should consider alternative business models.
- The government should provide incentives for FDI to invest in other sub-sectors that have the potential to decrease poverty through job creation and the development of infrastructure.
- The building of effective research capacities, including the training of university staff, availing of research funds, exposure to international and regional experiences, and support to undergraduate and graduate research projects.

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