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**Title:** Dubious Land Policy: The Unresolved Major Root Cause of War in South Sudan

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## INTRODUCTION: LAND POLICIES IN SUDAN

The Republic of Sudan has a long experience of conflict and instability driven by land policies - pretty long experience. Perhaps, South Sudan separated from Sudan while there were still unresolved border and territorial disputes. The 2005 peace agreement that ended the long civil war in the Sudan was reached after the Sudanese government accepted to end a popularly resisted land law. The law, titled 'The Unregistered Land Act', ended all customary land ownership in South Sudan and transferred such ownership to the government which was wholly controlled by the Arabs in the northern Sudan. During the beginning of the oil discovery in the country, the peace deal was abolished by the Northerners as being a potential threat to the Islamic policies and oil explorations in the South.

Before independence, Southern Sudan was for long, since the year 1500 AD, being controlled by invaders and elites from Northern Sudan. Few land policies were made to fulfil the interests of the regimes in those years, but were largely ineffective and remained opposed in the South. The first land law of 2009, exclusively enacted by South Sudanese, for the first time, vested land ownership on the people, but exercisable by the government on behalf of the people, subject to different limitations and administrations. Before that year, land policies and laws were made far away and without the involvement of South Sudanese.

The Anglo-Egyptian Rule from 1898 – 1955 introduced lots of land policies and laws in the Sudan, however many of the policies were mostly enforced in Northern Sudan. The South remains locked from the Northerners as a policy of the British government to administer the two regions separately. The Colonial government introduced the following laws for the governance of land in Sudan:

- Land Settlement and Registration Ordinance, 1925
- Prescription and Limitation Ordinance, 1928
- Pre-emption Ordinance, 1928
- Land Acquisition Ordinance, 1930
- Town Re-planning Ordinance, 1950
- Rent Restriction Ordinance, 1953

Vast land in the North were registered and towns reorganized during the colonial era. In the South, very little areas were demarcated. It was the first time when the registration of private and public land became a proof of ownership. Despite the compulsory registration of private and public land, no community land was registered, although this type of ownership was recognized, largely in the South.

After the independence of Sudan in 1956, land policies were changed in many ways that provoked the South to despise the government in Khartoum, a worst relationship that continued to fuel the civil war.

The oil discovery changed the land policies in the Sudan to worst. Although oil was very

positive for the progress and political power in the Sudan, South Sudan, which was still in its natural state, remained undeveloped in all the areas of development. The only recognized land ownership in the South was the customary land, with limited public land for government offices and schools. Oil explorations became difficult in the South as communities, who were always oppose to any policy of the Arabs, were to be asked and convinced, first. The Islamist government, seeing these coming, exercised its power by dividing the communities in the South into smaller states, and appointed loyalists to be governors in those states. Still this policy didn't worked well in allowing the oil exploration and the northerners to settle in the south, as communities, headed by chiefs, were in control of all the land in the South.

Then, the most aggressive law was passed – the Unregistered Land Act, to grant ownership of all unregistered land to the government. By default, all unregistered land in South Sudan were customary land. Civil war broke out again in 1983 and ended in 2005, when that land law was abolished and autonomous government and right of self-determination were granted.

## **SOUTH SUDAN: LAND CONFLICTS**

Despite these experiences, in the present independent South Sudan, there are still no precise land policies. Specifically, laws to manage large-scale land investments.

The regime had all the opportunities and the trust of the people to develop national land policies. Instead, bigger interests and lots of efforts were put only on the control, which looks more of secret privatization, of the revenue from the oil sector. Internal borders and communal land were redrawn and new states were established to ease government control over the oil sector. The society, at large, didn't benefit from the policies of the government and activities of the extractive industries. The current natural resource laws were made in a view not to restrict the flow of revenue to the government, as the government relies 98% on such revenues to function. However, this policy to secure the flow of revenue conflicts with the traditional community land ownership and rights, which are the foundations for potential land tenure in the country. The government weighted the later with less importance because the earlier is important for its survival. This policy has caused seemingly endless conflict among communities and against the government, thus, threatening every peace effort.

South Sudan became independent in 2011, while creating several border and territorial disputes. These territorial disputes put the two countries, previously a united one country, in a war, in several border areas. I can admit that the separation of South Sudan has produced a lot of conflicts along the long border between the two countries.

The Abyei crisis represents the biggest of all. Abyei is a disputed area, which falls in the border of Sudan and South Sudan. The dispute in Abyei reached up to the Permanent Court of Arbitration, where the borders were redefined, but demarcation of the new borders was not done. Unlike the case in the Blue Nile or Nuba Mountains, Abyei was to hold its own referendum to either become part of South Sudan or remain with Sudan. The same violations of the 2005 peace agreement affected Abyei. Conflict broke out

many times, as South Sudan was almost celebrating independence, till UN Mission was established in the area.

South Sudan separated, leaving Abyei in a confusing status. An area currently with no government, no judiciary, no police, no parliament and no laws. The citizens of Abyei are left stateless. They are forced to choose either the nationality of South Sudan or Sudan, or sometimes both, dual nationality. This situation is putting South Sudan and Sudan in a standby for war, if no political settlement is reached.

Other hotly disputed territories include, mostly in the borders with Sudan, Kafia Kingi, Jau, Kaka, Megenis, Joda, Panthou (Heglig) and Kiir River. Border disputes and conflicts are not limited in the Northern parts of South Sudan alone. In the border with Uganda, there exists a hotly disputed area, South of Kajokeji in South Sudan and North of Moyo district of Uganda, which has caused heavy fighting between the communities claiming it, from Uganda and South Sudan. Also there is a border dispute with Kenya in an area called Ilemi (a triangle area stretching towards Kenya). Joint Border Committees with Sudan, Kenya and Uganda were differently established to demarcate the borders of the contested areas. Most of these committees have reached six years now without doing anything, not even little, to address the dispute, thus, leaving the communities in these areas at risk of violence, anytime in the future.

## **LARGE-SCALE LAND INVESTMENTS**

Land is the economy of South Sudan. In 2011, the country relied on oil revenues to finance public and government works, which were the results of large-scale land investments on community land. There was no existing manufacturing industry. There was, and there is still, no other tangible means of national revenue other than the oil. The country separated while there was no existing development to contribute to the national economy. As the country was heading towards nation building, land began to shape the national politics.

After the independence, the new country had a total area of 644,329 kilometer square, believed to contain oil, Gum, timber, fertile agricultural land and several other resources, and the Nile dividing the country and forming several hydropower areas and one of the largest swamps in Africa, the Sudd. All these resources fall in the community lands, as such, they were owned by the communities in their specific lands. Thus, the country faced the same challenges in accessing land that contains oil and other resources, and since the oil fields were productive before the independence, the country started borrowing few provisions from the past regimes in order to allow the production of the oil to continue and to restrict communities' rights over their land. As a result, few laws were enacted that separate natural resources from land, and restricting rights on land that contains hydrocarbon. The distribution of land related resources in the country was not equal - the northern parts of the country, largely inhabited by pastoralists, for example, have little to no stones for constructions; the oil is located in few concentrated areas; water is unavailable in other areas during dry seasons; and the Southern parts of the country, 90% targeted by mining companies for minerals, are inhabited by farmers.

Pressure mounted on various communities because of these land related resources, including the enactment of laws for the exploration and production of the oil and minerals, commercial agriculture and other infrastructure development in community land. The laws enacted were the Petroleum Act, 2012, the Petroleum Revenue Management Act, 2013 and the Mining Act, 2012.

The Petroleum laws were enacted in order to continue the production of the oil. It declared that all the subterranean natural resources are owned by the government. In avoiding the policy of the North, it recognizes the rights of the communities in the oil fields by allocating some percentages of the net oil income to them – 2% to the producing States and 3% to the communities in the producing Counties. However, these allocations were never implemented since the law was enacted. The business of the oil became too secret. Oil deals were done in camera. No production, revenue and licence information, data and reports are being made public. The body established under the Act to manage the oil sector was ignored and left without any duty. Corruption took control, and reached at the peak. The management of the oil sector, lawfully by the Oil and Gas Commission, has been seized by the Ministry of Petroleum and the Presidency. Transparency and accountability became nearly impossible. Large-scale land have been expropriated from communities without compensation, while oil production has been going on without a penny been given to the communities living in those areas. Poverty is extreme in those communities. Instead, Toxic chemicals, including sacks of Potassium Chloride imported from Jordan, used for oil-drilling have caused rear diseases among the communities. Independently reported by the Energy Committee at the National Parliament, there were lots of cases of women having miscarriage of babies, children born deformed, and youth and elderly contracting unidentifiable illnesses. In one oilfield, the oil companies established a dumping site, located within the areas closely inhabited by the communities, for expired chemicals, called the Gumry Expired Chemicals Yard. The dumping site is not properly fenced or guided, and some of the chemicals were left open to the sun, air/wind and rain, which carries them to the community residual sites. As reported by the Energy Committee, the oil companies also established Bio-remediation and evaporation ponds. That the oil production capacity at Paloch oil-fields is approximately 450,000 bb/day (gross oil and water), of which 330,000 bb/day or 78% is purely water and 120,000 bb/day or 22% is crude oil. This water is discharged and kept in those bio-remediation and evaporation ponds. These caused the land to crack and the soil to erode, very fast. Communities living in the oil producing areas and South Sudanese in general have experience true marginalization and exclusion from the benefits of the extraction of the oil.

The old laws of the Sudan were being indirectly implemented in practice. All community land rights in the oilfields have ceased to exist. Calls for the country to join the EITI have been ignored by the government. Due to these mismanagement, the oil sector has been sanctioned by the US government, although the sanctions have produced no effect.

In the Mining Sector, considering that South Sudan is a virgin for mining industries, the sector is still untapped. The precedents set by the Unregistered Land Act during the 1970s have remained influential in the lawmaking process of the Mining Act, 2012. This law governs the mining sector in South Sudan. It invalidated the provisions of the land

law, in a manner that land containing mineral resources is owned, governed and managed by the national government. Communal ownership of land and communal land rights ceased to exist in the event mineral resource is discovered in such land. The criteria and process of allocating licences are strictly controlled by the Ministry of Mining. Also, the collection of revenues from mining activities and licences are based on bilateral agreements between the Central Bank and the Ministry of Mining. As of November, 2018 there were already more than 55 exploration licences being granted to both national and foreign mining companies to conduct large scale explorations, only in 23 locations in the country, with the majority in the Equatoria Region. The duration of Exploration Licence is 5 years, and renewable for two terms, with a systematic reduction of the original concession area, up to 50% and more in the last term. The Licence is granted by the National Minister of Mining, a one-man decision-making process. The process and criteria for allocating the licence are too secret and lack basic elements of transparency. Communities are always unaware of licences being granted for exploration in their land.

The total concession/area granted for mining exploration to companies is roughly 84,613 KM<sup>2</sup>, which is 13% of the total area of South Sudan, 60,092 KM<sup>2</sup> (31%) of the total area of Equatoria Region, 9,943 KM<sup>2</sup> (4%) of the total area of Upper Nile Region and 12,343 KM<sup>2</sup> (6%) of the total area of Bahr El Ghazal Region. Much of these areas are held by communities that relies on farming. Therefore, this is a growing threat to their survivals. However, none of these companies has commenced any work.

## **LAND CONFLICTS AND THE CIVIL WAR**

The political desire and intention of the country's leaders to control natural resources in the country became the biggest incentive, thus, mistrust developed very fast among loosing communities and political parties. In less than a year, these politics have already separated the army into tribal lines. Military rivals knew themselves, as well as tribes identified their potential enemies.

When the 2013 war erupted, it turned into several shapes, but still land continues to be its major caused. Presidential Decree, called 'Administrative Order', was passed to increase the number of states from ten to thirty-two, and tribal boundaries were redefined. There was resistance by communities, with some tribes taking up arms to protect their land and land related resources. Several local militias emerged, and inter-communal conflict increased in the country. Insecurity rose, roads outside Juba became dangerous for travels. The decentralized system of governance in the country turned into a deeply centralized one.

With the raise in displacement by the war, Juba, the capital of South Sudan, became the center for political power, employment and habitation. These caused huge migration to the capital, Juba, and increased land grabbing of community land.

Land grabbing is a chronic problem in South Sudan. The centralized system of governance in the country has significantly contributed much to the problem.

Communities from other regions have migrated to the national capital due to the following reasons:

- Land and border conflicts
- The brutal civil war
- Forceful displacements from original villages
- In search of economic opportunities, education and basic services in the capital.
- Escape from the effects of climate change, including floods, prolong dry season and unfertile agricultural land.
- In search of grazing land
- Settlement

The above reasons and the reluctance of the central government to intervene have fueled and eased land grabbing by migrating communities. The army also contributed a lot to land grabbing in the country. Most often, when the army is deployed in any community area, and they happen to stay for several years, the soldiers mostly engage in policies contrary to their rules. While in a newly established based, they normally move further to areas around their base and establish homes. Gradually, the soldiers then unlawfully demarcate such land to themselves, and forcefully claim private ownership over those lands. Communities that oppose are severely mistreated.

Armed Cattle keepers are also responsible for inter-communal conflict as they trespass and threaten agrarian survival. The owners of the larger cattle camps are widely believed to be the army generals in the country, thus, making every effort to impose or apply law very difficult.

It is a national crises that has affected the country and has contributed to the civil war, but the regime is not concerned with these problems. As it looks, as long as it is in power, land policy would continue to divide the nation and fuel conflicts.

## **THE LAND ACT, 2009**

This law regulates land tenure and protects rights in land in South Sudan. Under this law, land is separated from subterranean natural resources, and are owned, governed and managed by the government. Despite the enactment of the land law, approximately 15% of the total land in the country is surveyed, demarcated and registered, and only in urban areas.

The law provides three land tenure systems in South Sudan: Customary, Freehold and Leasehold. In practice, freehold tenure does not exist.

All land in South Sudan has been classified into three: public, private and customary. Private land is allocated through a process controlled by committees acting on behalf of a community and government. Names are registered in a registry held by the

community and another by a State, and tokens, small pieces of papers containing the plot area, number and stamp of the community, are distributed to the registered persons. In this process, violence normally erupts and many plots are taken by the members of the committees. The token is the first proof of ownership. An owner of a token then develops the token into land documents by obtaining a leasehold from the government. Final proof of ownership is a registration of the plot with the Registrar of Land in the Judiciary of South Sudan. The initial process for allocation of land is outdated, as it encourages corruption.

This process of allocation of land has created land disputes all over the country. Courts are exhausted with land disputes since 2009, and there seems to be no improvement or clear ways of mitigating or preventing this disputes. Approximately 70% of court cases every year are land disputes.

After demarcation of an area, and when the map is closed, it has become a practice that, the custodians of such maps always re-demarcate the closed area by allocating new plots for themselves in areas left empty around the demarcated place. Further, land allocated for sporting, refreshment centres, areas around swamps or water ways, road islands and other extensions from roads or public places, among others, are always grabbed by such officials.

## **THE SEARCH FOR A DURABLE PEACE**

The peace efforts led by the IGAD to resolve the civil war, which erupted in 2013, was intended to bring a lasting and sustainable peace to the new country, by finding and resolving the root causes of the war. Unfortunately, peace talks were narrowed to power-sharing and true root causes ignored. The process resulted into the signing of the 2015 peace-deal, known as the 'Agreement on the Resolution of the Conflict in the Republic of South Sudan'. Among the major issues discussed and resolved were the security reform, transparency in the extractives sector and the system of governance.

The peace failed in 2016, and conflict erupted again. It was accepted that the true root causes of the conflict were not comprehensively addressed, thus, another peace talk was launched in 2018 to revitalize the failed peace. The critical issues discussed, include transparency in the extractives sector – which is large-scale land investments, number of States and borders – which is demarcation of communal land borders, system of governance, centralized or federal system – which is land governance and policy, and the last, the security sector reform – which is inclusive security sector consisting of all members of community. Land was linked to all of the issues and problems discussed in the second peace talk, but it was not discussed separately as the main cause of the war.

The new peace-deal, called 'the Revitalized Agreement on the Resolution of the Conflict in the Republic of South Sudan', did not, again, recognize that dubious land policy is the root cause of the conflict in the new nation. The new peace has also reached a standoff which is now threatening the peace, as the Independent Boundaries Commission, established by the new peace-deal to redefine the boundaries and determine the



number of States in the country, is unable to complete its duties.

The first peace agreement failed when the government unilaterally increased the number of states from ten to twenty eight, and later, to thirty-two and changed the names and borders of community land, before the formation of a government under the peace deal. The second peace deal was meant to address the shortfalls in the first agreement. The agreement on land challenges was; 1- the establishment of Independent Boundary Commission to consider the number and boundaries of States, and its transformation into a Referendum Commission on Number and Boundaries of States, 2- Appointment of a Technical Boundary Committee, and 3- the empowerment of the National and State Land Commissions.

The second peace deal, as it is called 'the Revitalized Peace Agreement', didn't change much of the provisions of the old agreement. It mostly expanded the bodies of the government institutions and brought in new parties and a change in power-sharing ratios. In the oil sector, the revitalized peace hasn't provided transparency provisions. It returned absolute powers to the President and the First Vice President over oil contracts, as they chair the National Petroleum and Gas Commission.

The issues and challenges on land governance in the country have prevented the smooth implementation of the current peace agreement. The government of National Unity, which is supposed to be formed in early May, 2019, has been postponed as the Independent Boundary Commission, which was to complete its work before the formation of new government, could not start their work, because the existing land problems are far bigger than the mandate of the Commission. The formation of the new government is now set for the month of November, 2019, but till now the Independent Boundary Commission is still inactive, threatening further delay in the implementation of the peace and the formation of a new government.

As the parties struggle to implement the peace, dubious land policy continues to prevent peace in the country. Inter-communal conflict, land grabbing, displacements, farmers-pastoralists conflicts, corruption in the oil sector, and inter-state conflicts, conflict in general, do not seem like ending soon in South Sudan, unless these land related conflicts are strongly considered and resolved as the major root causes of the conflict. This paper recognizes an expandable, inclusive land policy as the solution to the conflict in South Sudan.