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# Norms, Mobilization and Conflict: The Merowe Dam as a Case Study

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## Abstract:

This article investigates dynamics of mobilization over environmental and human rights norms in the context of undemocratic governments. We test the suggestion in norm diffusion theories that success of domestic struggles in this context depends on the level of internalization of norms brought forth by international pressure. We find that the internalization (or lack thereof) of global norms by the Government of Sudan does not explain its recognition of environmental justice claims in this case.

Furthermore, the various litigation efforts pursued by affected people outside of Sudan did not influence their campaign. However, a combination of the political

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climate in the country and a unique political interplay between the government and a distinct group of the affected people may have led to the singular success of their campaign. We use a combination of discourse analysis, legal analysis, norms-mapping and semi-structured interviews to reach conclusions.

**Keywords:** Spiral Model, Norm-diffusion, Mobilization, Environmental Litigation, Resettlement, Internal Displacement.

## 1. INTRODUCTION

In this article, we examine the drivers of behaviour of actors involved in struggles over large-scale development projects. The article uses the Merowe Dam in North Sudan as a case study. In addition to widespread displacement, the case presents us with an on-going conflict that developed asymmetrically with respect to the groups affected, and that resulted in a number of litigation efforts both within and outside Sudan. This represents a unique opportunity to examine the role played by the involvement of transnational non-governmental organizations (NGOs) in seeding the struggle and in the development of relevant legal norms. We use a modified version of the spiral model to understand (i) how conflicts arise in the first place; (ii) what determines their trajectory; and consequently (iii) the best way to manage them in the future. These questions are examined with reference to the three main actors involved: people affected by the Merowe Dam and its reservoir – who call themselves the Dam Affected People (DAPs); the Government of Sudan (GoS); and the international

litigation NGOs (INGOs)). The basic assumption of our theoretical model is that the extent of congruence or divergence in norms between governments and affected people is likely to determine the trajectory of conflict, but that it may also dictate the success or failure of mobilization.

The article uses a combination of discourse analysis, legal analysis, norms-mapping and semi-structured in-depth interviews conducted with six key informants to reach conclusions. The interviews were conducted with (a) three local activists - each belonging to one of the affected groups and having been involved in the various committees organized to negotiate with GoS;<sup>1</sup> (b) the activist who spearheaded the litigation efforts outside Sudan;<sup>2</sup> and (c) representatives from two of the INGOs leading these efforts.<sup>3</sup>

The case of the struggle over the negative impacts of the construction of the Merowe Dam on communities inhabiting the surrounding area unveils a complex picture of conflicting norms and unusual patterns of government responses. As expected in cases such as this, mobilization over the rights of the affected people resulted in a mixed bag of successes and failures. While the context of the struggle and the legal matrix against which the story has unfolded is shared, the scale of injustices visited on each of the affected groups was markedly different even when distance of the particular locality from the dam is taken into consideration. The extent to which each

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<sup>1</sup> Reference to the activists will be by using the letter A coupled with the first letter of the name of the affected group, e.g., the activist from Manasir will be referred to as AM.

<sup>2</sup> We will refer to this activist as the Justice Broker throughout the paper and we will use the acronym (JB) to reference his interview contributions, but we might also refer to him by his name (Ali Askouri).

<sup>3</sup> We will refer to them in the separate sections covering the case as the representatives of their respective INGOs or by their names where the same is appropriate.

of these groups affirmed their preferences and realized their entitlements also differed.

The suggestion in this article is that internal political dynamics may have played a bigger role in advancing or halting the efforts of different groups than the apparent or real internalization of environmental justice norms. This may put into question the assumption inherent in the Spiral Model that the responses of governments (including undemocratic ones) are the result of the internalization of norms which is consequently dependent on external pressure. It is to be noted that in the case of Sudan, norms of justice relevant to the construction of dams were recognized and to some extent reflected in legislation and national policy documents. Implementation, however, was lacking and government responses benefited from the inherent conflict between norms of development, economic growth and access to water and energy. We find that, rather than international norms influencing norm uptake in Sudan as anticipated by the Spiral Model, the struggle against the Merowe Dam has in fact contributed to a nascent exploration of norms currently being pursued by transnational litigation INGOs as a direct result of being involved in the mobilization over this cause. The logical policy implication is thus to shift focus back to issues of governance, domestic capacity building and legal reforms alongside the conventional focus on the development of international norms and their diffusion. Of particular interest in the latter respect from the point of view of participants in the struggle is ensuring access to remedy against gross violations of accepted legal standards on the international level.

We present the theoretical model we used to analyze the case study in section 2 together with some explanation of the methodology based on the theoretical design. In order to provide the appropriate context for the discussion that follows, we set out the administrative structure and legal framework governing environmental protection in Sudan in section 3. Section 4 presents the factual background of the resettlement and resistance of the affected communities. Section 5 is dedicated to responses to mobilization against the Merowe Dam by GoS as well as by litigation INGOs, which adopted the struggle. A discussion follows in section 6 and a short conclusion is offered in closing.

## **2. THEORETICAL FRAMEWORK AND METHODOLOGY**

This research builds upon the rich and diverse body of literature looking at norms from a constructivist perspective.<sup>4</sup> We adopt the definition of norms as ‘standards of behaviour defined in terms of rights and obligations’.<sup>5</sup> Using this approach, we also encompass the traditional international relations concepts of self-interest, power, and language as central components to decision making, in this case by the DAPs and GoS. As stated by Goertz and Diehl, ‘ [n]orms and their impact on behaviour cannot

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<sup>4</sup> J.L. Campbell, 'Ideas, Politics, and Public Policy' (2002) 28(1) *Annual Review of Sociology*, pp. 21-38 ; S. Cardenas, 'Norm Collision: Explaining the Effects of International Human Rights Pressure on State Behavior' (2004) 6(2) *International Studies Review*, pp. 213-32; J.T. Checkel, 'The Constructive Turn in International Relations Theory' (1998) 50(2) *World Politics*, pp. 324-48; M. Finnemore and K. Sikkink, 'International Norm Dynamics and Political Change' (1998) 52(4) *International Organization*, pp. 887-917.

<sup>5</sup> F. Kratochwil & J. Gerard Ruggie, 'International Organization: A State of the Art on an Art of the State' (1986) 40(4) *International Organization*, pp. 753-75, at 769.

be studied apart from issues of power and self-interest<sup>6</sup> – which will become clearly evident throughout this article.

In order to understand the responses of the different actors involved in the struggle including INGOs, we use a modified version of the Spiral Model developed by Risse, Ropp and Sikkink<sup>7</sup> (See Figure 1 The Basic Form of the Spiral Model). The spiral model was originally developed to consider different stages of reactions by governments to boomerang effect mobilizations over human rights issues.<sup>8</sup> The model captures the processes by which domestic struggles to overcome human rights abuses can be addressed by the involvement of transnational advocacy networks and indeed international norms. Initially viewed as a ‘boomerang’ effect, where the domestic groups would repeatedly reach out to transnational groups, in the 1990s the model evolved to capture a more robust and detailed process for human rights change. In its simplest form, the Spiral Model works through five consecutive phases: repression, denial, tactical concessions, prescriptive status, and, finally, rule-consistent behaviour; emphasizing the importance of pressure from the bottom up (domestic, in this case by the DAPs) and the top down (transnational, in this case by the INGOs involved in the litigation efforts). Although not without weaknesses and criticisms,<sup>9</sup> the model provides a useful framework to analyze the development, movement, and growth of

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<sup>6</sup> G. Goertz & P.F. Diehl, 'Toward a Theory of International Norms: Some Conceptual and Measurement Issues' (1992) 36(4) *Journal of Conflict Resolution*, pp. 634-64, at 661.

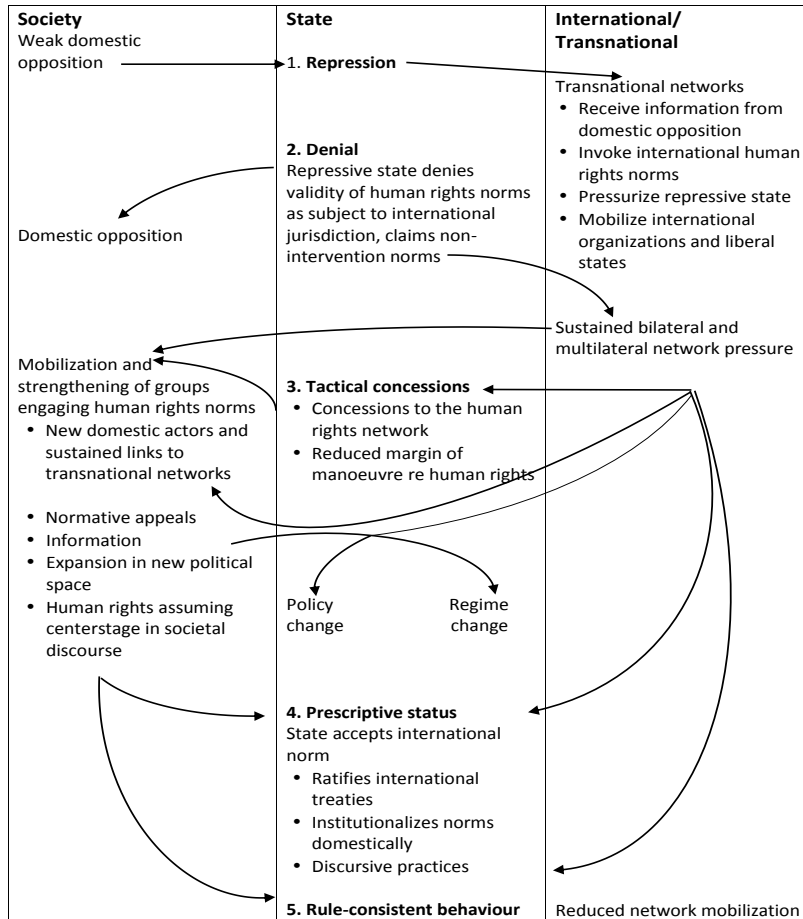
<sup>7</sup> T. Risse-Kappen, T. Risse, S.C. Ropp & K. Sikkink (eds), *The Power of Human Rights: International Norms and Domestic Change* (Cambridge University Press, 1999), at pp. 1-38.

<sup>8</sup> It has since been used to analyze responses to environmental justice issues (see, e.g., K. Hochstetler, 'After the Boomerang: Environmental Movements and Politics in the La Plata River Basin' (2002) 2(4) *Global Environmental Politics*, pp. 35- 57.

<sup>9</sup> See, e.g., A. Jetschke & A. Liese, 'The Power of Human Rights a Decade After: From Euphoria to Contestation', in T. Risse, S. C. Ropp & K. Sikkink (eds), *The Persistent Power of Human Rights: from Commitment to Compliance*, (Cambridge University Press, 2013), at pp. 26-42.; R. Goodman & D. Jinks, 'Social Mechanisms to Promote International Human Rights', in T. Risse, S. C. Ropp & K. Sikkink (eds), *The Persistent Power of Human Rights: from Commitment to Compliance*, (Cambridge University Press, 2013), at pp. 103-122.; J. Snyder & L. Vinjamuri, 'Trials and Errors: Principle and Pragmatism in Strategies of International Justice' (2004) 28(3) *International Security*, pp. 5-44.

norms employed by DAPs, GoS, and the INGOs involved in the Merowe Dam struggle.

**Figure 1: The Basic Form of the Spiral Model**



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The spiral model is adapted here to better understand responses to environmental mobilization (See Figure 2 - Decision Making within the Spiral Model). Zeitoun et al.<sup>11</sup> studied the effects of the construction of the Merowe Dam on DAPs using notions of Environmental Justice (EJ) and concluded that such notions do not lend themselves to considerations of repressive responses to struggles by undemocratic governments. However, repression can itself be understood as one strategy from a set

<sup>10</sup> Risse-Kappen, Risse, Ropp & Sikkink, *ibid*, at p. 20.

<sup>11</sup> M. Zeitoun, et al., 'A "Justice" Reading of the Trans-National Struggle of the People Displaced by the Merowe Dam' (2019) 24(2) *Local Environment*, pp. 129-45, at pp. 142-41.



of strategies open to utilization by governments which can include recognition as well as strategies of denial and partial accommodation through tactical concessions, as reflected in the basic form of the Spiral Model in Figure 1.

The spiral model explains how international norms can be used as a pressure point to shift a government from repression and denial towards concessions and, eventually, rule consistent behaviour. Given the human rights context of the Spiral Model, the pressure exerted by transnational networks on non-responsive governments in this respect manifests in directing international public attention to a particular government's violations and getting other states and international organizations to integrate concerns for respect for human rights in their dealings with the government in question.<sup>12</sup> Bringing about litigation in international forums is an important tool that has been successfully utilized by transnational networks against authoritarian governments in Latin America in the 1970s and 80s.<sup>13</sup> Traditionally, such litigation initiatives targeted non-responsive governments directly in order to reaffirm the validity of the international norms in question. The case brought in the African Commission on Human and People's Rights against GoS is a classic example. We have also included an analysis of the case brought by the Justice Broker against the German company Lahmeyer as an example of litigation that brings about indirect pressure on the government and which also serves the purpose of raising public awareness of violations of international norms committed by the government.

What has emerged from the Merowe struggle, however, presents a fascinating challenge to the Spiral Model. Here, GoS strategically and perhaps pre-emptively invoked strong international norms to justify actions that resulted in human rights

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<sup>12</sup> Risse-Kappen, Risse, Ropp & Sikkink, *ibid.*

<sup>13</sup> *Ibid.*

abuses. Given this minimum level of internalization of norms, instead of dismissing the response of GoS to the environmental struggle against the Merowe Dam as an extension of its existing repressive practices, this analysis seeks to understand it as belonging to a continuum of acceptable and unacceptable responses, including violent repression.

The Decision-Making Model in Figure 2 posits that the congruence or divergence in norms between the different actors (GoS, DAPs and INGOs) is determinative of their interaction with other actors. Given this underlying assumption, we opted to do a norm-mapping exercise in order to better understand the decision-making process by GoS.<sup>14</sup> This theoretical framework also accommodates the possibility that the DAPs may at any given point accept the conceptualization of justice propounded by the Government or reject it (totally or partially) and resist it accordingly. Once the DAPs decide to resist, INGOs may decide to adopt the struggle or not to adopt it, depending on whether there is sufficient convergence between the two actors with respect to the norms they wish to give effect to. In the particular case of the Merowe Dam, the litigation INGOs involved worked within human rights frameworks that were then utilized in order to seed the resistance of the DAPs in its environmental context. We, therefore, found it necessary to explore the reasons for the adoption of this particular cause. The use of in-depth interviews in this research is geared towards understanding the motives of the actors involved and their perception of the struggle and the attitude of GoS.<sup>15</sup> In order to develop a theoretical understanding of mobilization in this case,

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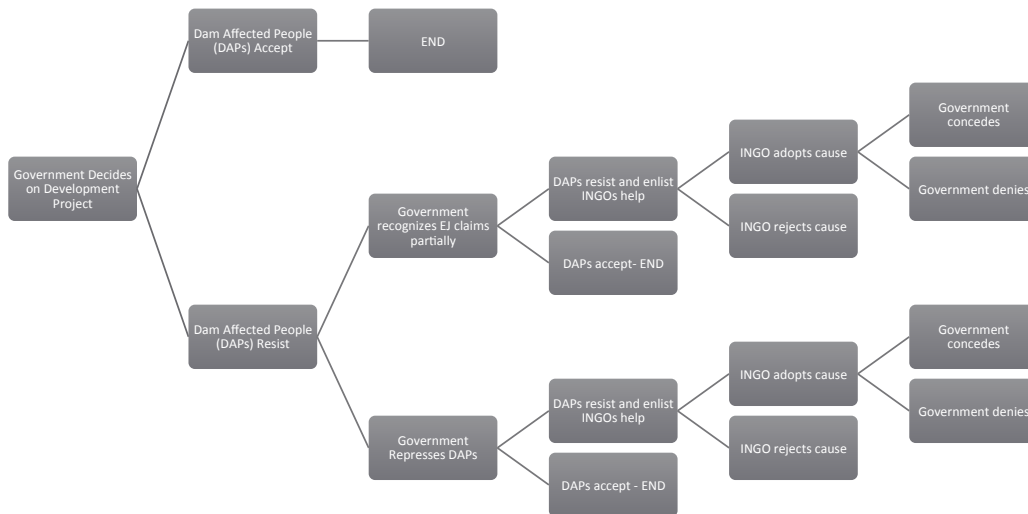
<sup>14</sup> While semi-structured interviews with relevant government officials would have offered further corroboration of the evidence collected in the norm-mapping exercise, we are yet to gain access to GoS for this purpose.

<sup>15</sup> D. Della Porta, 'In-Depth Interviews' in D. Della Porta (ed.), *Methodological Practices in Social Movement Research* (OUP Oxford, 2014), pp. 228-261.

representative interviews of key-informants were sufficient even though further interviews would have offered better corroboration of the data. It is therefore suggested that further empirical testing of the tentative conclusions in this article would be a valuable contribution towards understanding mobilization in the particular case of the Merowe Dam.

We were also interested in understanding whether the scaling up of the struggle by the Justice Broker who brought the two cases before the African Commission of Human and People's Rights (ACHPR) and before the German courts is likely to give rise to new global environmental norms of environmental corporate responsibility. We hope that a better understanding of decision making- as per this theoretical framework- can inform international norm-development policies and the management of similar struggles by affected people, transnational networks and governments.

**Figure 2: Decision Making within the Spiral Model**



*A note on Norm- Mapping:*

A growing body of literature examines norms through the lens of environmental justice and indeed focuses specifically on the struggles of populations affected by hydropower dams.<sup>16</sup> Organizations such as the World Commission on Dams (WCD) are an example of collaborative efforts<sup>17</sup> that can result in the setting and employing of norms which benefit all involved parties.<sup>18</sup> As the most comprehensive and often-cited norms of dam building, the WCD process ‘...can be regarded as an instance of

<sup>16</sup> C. Bethoux and S. La Branche, 'The Internalization of Participation Norms by International Organizations: The Case of Sustainable Development and Dams' (2011) 67(1) *International Journal*, pp. 195-217.; U. Khatri, 'Indigenous Peoples' Right to Free, Prior, and Informed Consent in the Context of State-Sponsored Development: The New Standard Set by Sarayaku V. Ecuador and Its Potential to Delegitimize the Belo Monte Dam' (2013) 29(1) *American University International Law Review*, pp. 165-207.; P. Langley, 'Transparency in the Making of Global Environmental Governance' (2001) *Global Society* 15(1), pp. 73-92.; C. Okereke, 'Equity Norms in Global Environmental Governance' (2008) 8(3) *Global Environmental Politics*, pp. 25-50.

<sup>17</sup> The WCD came into being in 2000 under the auspices of both the International Union for the Conservation of Nature (IUCN) and the World Bank (WB) and included a broad-based consultation in which multiple stakeholders between proponents and opponents of large dams were involved (See Dingwerth, n 19 below for details).

<sup>18</sup> N. K. Dubash, 'Global Norms through Global Deliberation? Reflections on the World Commission on Dams' (2009) 15(2) *Global Governance: A Review of Multilateralism and International Organizations*, pp. 219-38.

transnational rule-making that is functionally equivalent to multilateral environmental negotiations'.<sup>19</sup> Despite their status as mere guidelines without binding effect, they have acquired a normative and discursive value in that departures from them may give rise to calls for justification.<sup>20</sup> As such, reference will be made throughout this article to relevant WCD standards.

In assessing the adherence to international norms of Dam building, the World Bank Operational Policies on Internal Displacement<sup>21</sup> also provide a useful reference point against which we can assess the behaviour of GoS. These quasi-administrative standards are, strictly speaking, internal guidelines set up to ensure that the organization fulfils its own mandate of development and poverty alleviation when funding appropriate projects in borrower countries.<sup>22</sup> However, the World Bank operational policies often consolidate and indicate the emergence and universality of certain benchmark practices related to dam construction even if the same are only sometimes legally binding, depending on whether they are incorporated in loan or credit agreements.<sup>23</sup> There certainly seems to be a consensus that although the norms involved in dam building may lack 'teeth', they still matter and play an important role.<sup>24</sup>

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<sup>19</sup> K. Dingwerth, *The New Transnationalism: Transnational Governance and Democratic Legitimacy* (Springer, 2007), at p. 59.

<sup>20</sup> Ibid.

<sup>21</sup> The World Bank Operational Policy 4.12, adopted Dec 2001 and revised in Apr. 2013, available at: <https://policies.worldbank.org/sites/ppf3/PPFDocuments/Forms/DispPage.aspx?docid=1572&ver=current>, and the World Bank Operational Directive 4:30, adopted 1 June 1990, available at: [https://www.ifc.org/wps/wcm/connect/322d9d80488559f584b4d66a6515bb18/OD430\\_InvoluntaryResettlement.pdf?MOD=AJPERES](https://www.ifc.org/wps/wcm/connect/322d9d80488559f584b4d66a6515bb18/OD430_InvoluntaryResettlement.pdf?MOD=AJPERES).

<sup>22</sup> See B. Adams, *Green Development: Environment and Sustainability in a Developing World* (Routledge, 2008). and L. Boisson de Chazournes, 'Policy Guidance and Compliance: The World Bank Operational Standards', in D. L. Shelton (ed) *Commitment and Compliance: the Role of Non-binding forms in the International Legal System*, (Oxford University Press 2000), pp. 281- 302.

<sup>23</sup> L. Boisson De Chazournes, *ibid.*

<sup>24</sup> W. Scheumann and O. Hensengerth, *Evolution of Dam Policies: Evidence from the Big Hydropower States* (Springer Science & Business Media, 2014). and Dingwerth, n.19 above.

Norms relating to dam construction operate on three different levels: international, national and local. The analysis of the Sudan Merowe Dam case suggests that different actors in environmental struggles focus on different norms drawn from six distinct clusters, namely: environmental/environmental justice, human rights, developmental, social and indigenous rights, corporate responsibility, and state powers. There is a measure of overlap between these categories, especially between environmental justice norms and human rights (e.g. participation and accountability) on which the framing of the environmental struggle by DAPs tended to coalesce. What becomes clear is that the landscape of norms is becoming increasingly crowded, and allows for what we term ‘norm shopping’ to justify positioning and related actions. Particularly in the field of environmental justice, there is extreme scope for multiple, competing, and/or overlapping norms. Rather than fostering more equitable and just outcomes, this leads to a confusing and complex backdrop, allowing for parallel trajectories.

The integration of international norms on environmental protection, human rights and development and economic growth has been a serious challenge for the international community, which strove to bring them together through the concept of sustainable development. Following the 1992 Rio Conference on Environment and Development,<sup>25</sup> norms of sustainable development were codified in a number of international instruments<sup>26</sup> culminating in the new Sustainable Development Goals (SDGs) adopted in 2015.<sup>27</sup> These initiatives, however, often understood the elements of sustainable development as independent yet mutually reinforcing, but not

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<sup>25</sup> N. 31 below.

<sup>26</sup> N. Schrijver, *The Evolution of Sustainable Development in International Law: Inception, Meaning and Status*, (Brill/Nijhoff 2009).

<sup>27</sup> UN General Assembly, *Transforming Our World: The 2030 Agenda for Sustainable Development*, 21 Oct. 2015, UN Doc. A/RES/70/1, available at: <https://www.refworld.org/docid/57b6e3e44.html>.

necessarily interconnected, competing, conflicting or irreconcilable. For example, linking aid for developing countries to democratization assumes that achieving development in undemocratic contexts, while possible, is not as valuable as achieving it in contexts where human rights are protected. Similarly, by rejecting that development can be used as excuse for abridging human rights, the SDGs seem to juxtapose the two; thereby presupposing their independence from each other. . In the context of the Merowe Dam, Gos invoked the right to development, economic growth, access to energy and clean water not as justification for violating human rights but as a necessary means of achieving respect for them.

The concept of sustainable development itself is multi-faceted and ‘...has come a long way from the original meaning of sustainable use of natural resources to one with more anthropocentric and...socio-economic substance’.<sup>28</sup> However, it has developed in a piece-meal fashion and tended to evolve divergently depending on the over-arching purpose of a particular initiative and the interests of the main actors behind it. Noting the integration challenge inherent in the concept of sustainable development, Kent argues that the difficulty is in designing laws and policies that go beyond specific goals and strike a balance between various considerations from many fields.<sup>29</sup> We, therefore, present our arguments regardless of the sustainable development framework, which we believe suffers from the same syndrome of fragmentation of international law discussed herein.

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<sup>28</sup> Schrijver, n. 25 above, at p. 217.

<sup>29</sup> A. Kent, ‘Implementing the principle of policy integration: institutional interplay and the role of international organizations’ (2014) 14(3) *International Environmental Agreements: Politics, Law and Economics*, pp. 203-224.

### 3. ADMINISTRATIVE STRUCTURE AND LEGAL FRAMEWORK IN SUDAN

GoS created a number of administrative units both within its existing structure and additional to it to be in charge of the Merowe Dam Construction. The first unit created was the Merowe Dam Implementation Unit (MDIU), which existed under the Ministry of Agriculture and Irrigation.<sup>30</sup> This was later replaced by the Dam Implementation Unit (DIU), which was created to be under the direct supervision of the Office of the Presidency and not subject to the usual legal constraints applicable to administrative units within the executive branch.<sup>31</sup> According to Scudder,<sup>32</sup> parastates such as the DIU are the most logical institutional mechanisms for planning and implementing large-scale hydro power structures and they often enjoy the political backing as well as the direct involvement of the head of the state.<sup>33</sup> What is unusual about the DIU seems to be both its exclusion from all scrutiny and the apparent classification of the unit and the Merowe Dam as a national security concern, as explained by all interviewees belonging to the DAPs. They stated that ‘The DIU behaved like a security apparatus’; ‘[we were] struggling against an entity that is beyond law and scrutiny and that enjoy[ed] the protection of the state and its laws’; and ‘I was told by an editor of a newspaper that “the intelligence services regard the Merowe Dam issue as a red line. There can be no reporting on it whatsoever...”’<sup>34</sup>

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<sup>30</sup> Ali Askouri, *Khazzān Al-Hammādāb: Namūzaj Al-Islam Al-Siyāsī Lil’ifqār Wa’nahb Al-Mawārid [the Hamadab Dam: The Political Islam Model for Impoverishment and the Expropriation of Resources]*, (Lithuania: AJSP Printing Services, 2014).

<sup>31</sup> Presidential Decree No (217) of 2005.

<sup>32</sup> T. Scudder, *The Future of Large Dams: Dealing with Social Environmental, Institutional and Political Costs* (Earthscan, London 2005).

<sup>33</sup> See for example the case of the MSLA in Sri-Lanka reported in Scudder, n. 31 above.

<sup>34</sup> Interviews with AM (15 Apr. 2017), AA (16 Apr. 2017) and AH (17 May 2017) respectively.



Notwithstanding the nature of the DIU, it is important to note national legislation exists which promulgates standards governing development projects in the country. The Environment Conservation (or Protection) Act (2001)<sup>35</sup> (EPA Act) defines the functions of various Federal and State bodies with respect to ensuring environmental protection. Article 17 EPA Act places a clear obligation on all parties interested in projects likely to negatively affect the ‘environment or natural resources’ to submit an Environmental Impact Assessment (EIA) detailing project alternatives as well as actions planned to mitigate the negative effects of the project. Article 3 EPA Act defines the environment as inclusive of the social, cultural and livelihood systems in place. This definition clearly incorporates the norms of sustainable development promoted in the 1992 Rio Declaration on Environment and Development<sup>36</sup> and subsequent developments. Notable in this respect, however, is the absence of any procedural provisions to ensure transparency and adequate participation by stakeholders in decision making with respect to development projects in the EPA Act.

In addition, Article 43 of the 2005 Interim Constitution<sup>37</sup> guarantees the usual list of rights of citizens, including the right to own property and to not be divested from it ‘...save by law in the public interest *and in consideration of prompt and fair compensation*’ (emphasis added). A combination of previous pieces of legislation had the same effect prior to the adoption of the Interim Constitution.<sup>38</sup> Also relevant to the

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<sup>35</sup> Sudan Environment Protection Act (EPA) (2001), available at <https://www.resourcedata.org/dataset/rgi-sudan-environment-protection-act-2001/resource/b7b21c00-019d-4e26-848b-fbcc27a68e71>

<sup>36</sup> Adopted by the UN Conference on Environment and Development, Rio de Janeiro (Brazil), 3–14 June 1992, UN Doc. A/CONF.151/26/Rev.1 (Vol. I), 14 June 1992, available at: <http://www.un.org/documents/ga/conf151/aconf15126-1annex1.htm>.

<sup>37</sup> The Interim Constitution National Constitution of the Republic of Sudan (2005), available at <https://www.wipo.int/edocs/lexdocs/laws/en/sd/sd003en.pdf>.

<sup>38</sup> The 1930 Land Acquisition Act together with the 1994 Civil Transactions Act and the Seventh Constitutional Decree of 1993 (Source Resettlement Policy Framework (the WB Project on Sustainable Livelihoods for Displaced and Vulnerable Communities in Eastern Sudan (2016))

case of the Merowe Dam is the organization and recognition of land rights in Sudan. Askouri notes that, in addition to the above, there were 17 pieces of legislation specifically issued in relation to the construction of the dam.<sup>39</sup>

#### 4. RESETTLEMENT AND RESISTANCE

The construction of the Merowe Dam by GoS in 2009 on the fourth cataract of the river Nile fully or partially submerged of 80% of a 250 kilometres (km) stretch along the banks of the Nile, from the North of Abu Hamad until the Hamadab area to the South of Nouri. The 67 metre-high dam has a reservoir of 174 km and a surface area of 400-800 square metres. The Dam Affected People (DAPs) inhabiting this area are understood to be 65% Manasir, 7% Hamdab and 28% of both Manasir and Hamdab who inhabit the area of Amri (hereinafter Amri). For historical reasons, the affected areas have sustained a somewhat independent existence from the centre and their inhabitants have been able to develop a self-sufficient agricultural economy despite inhospitable conditions and scarcity of agricultural lands.<sup>40</sup> While the struggle of these communities against the Dam evolved as issues of resettlement and compensation became obvious grounds for conflict, the locals initially saw the construction of the Dam itself as a welcome development and a promise for further economic growth in the area.<sup>42</sup> In addition, and because of the challenging conditions

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<sup>39</sup> Askouri, n. 29 above.

<sup>40</sup> Ibid.; and Mohammad Jalal Hashim, *Risālat Kajbār: Min Ajl Al-Sūdān, Lā Min Ajl Qaryah: Qaḍāya Al-Sudūd Fil'sūdān [the Message of Kajbār: For the Sake of Sudan, Not a Village: Issues of Dams in the Sudan.]* (London: Shafuq.com, 2016).

<sup>42</sup> Askouri, n.29 and Hashim, n. 39 above.

in the area, most communities were initially receptive to the idea of resettlements and were duly engaged by GoS in talks regarding possible sites for relocation.<sup>43</sup>

Despite the fact of shared concerns of and demands by the affected groups', GoS' response to each group's mobilization effort differed markedly. The Hamdab inhabited the area closest to the Dam and were resettled first. Their experience was characterized by very limited resistance and, in general, a failure to stave off the efforts of the central government to uproot their communities in favour of constructing the Merowe Dam. However, their early resettlement had a profound effect on the trajectory of the Amri and Manasir struggles, which followed from 2005 onward.<sup>44</sup> Both groups lost trust in GoS early on in their struggles, organized and coordinated their efforts efficiently and assumed unwavering positions with respect to acceptable terms for resettlement. In addition, and as explained by the Hamdab activist, '[i]n 2003, the government had a stronger hold in terms of internal security. Amri and Manasir benefited from the conflict between the Islamists over power. And the internet and telecommunications boom also made a difference.'<sup>45</sup>

The subsequent failure of the Amri struggle, juxtaposed against the evident success of the Manasir struggle, demonstrates the failure of the Spiral Model to capture the effects of mobilization in a country like Sudan. The Amri group inhabited an area down stream from the Hamdab and was the second group to be resettled followed by Manasir who inhabit the are much further removed from the Dam. While the Amri

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<sup>43</sup> Activists from both the Manasir and Hamdab groups stated that they were engaged in talks with GoS as early as the 1990s: "Committees were formed as early as the 1990s to look into possible resettlement locations... We started talking to the implementation unit since the mid 1990s.' (AM Interview, 15 Apr. 2017); "I was involved in talks regarding resettlement from the early 1990s in my capacity as Chair of the Hamdab Student Body' (AH Interview, 17 May 2017).

<sup>44</sup> Askouri n. 29 above and Hashim n. 39 above.

<sup>45</sup> AH Interview, 17 May 2017.

communities consistently reached out to transnational networks and international NGOs, the Manasir Executive Council (MEC) adopted a more accommodating approach towards GoS that ultimately worked given the political climate as explained by AM who stated, '[w]e have to use whatever tools are available to us; patience, manipulation, negotiation.'<sup>46</sup>In a clear departure from the predictions of the Spiral Model, the ability of Manasir to negotiate effectively with GoS can hardly be attributed to transnational mobilization and have resulted instead from a unique set of internal political dynamics.

Hildyard notes that the Hamdab resettlement package was a total failure given the poor soil and the inadequacy of basic infrastructure and facilities in the new villages.<sup>47</sup> According to Bosshard and Hildyard, the poverty rate in the population increased from 10% to 65% in the two years of resettlement.<sup>48</sup> By 2009, the irrigation scheme in the area had failed completely and farmers were forced to spend from their own pockets to affect workaround solutions. The failure of the Hamdab resettlement was hardly unexpected, with representatives of the group informing GoS as early as 2002 that the designated location was not suitable and insisting on the readiness of projects as a pre-condition to relocation.<sup>49</sup> In order to manage the situation, GoS resorted to a number of coercive measures aimed at deflating the Hamdab resistance. As explained by Hamdab activist, '[t]he government exerted all sorts of pressures to induce people to move including excessive taxation on crops and means of

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<sup>46</sup> AM Interview, 15 Apr. 2017.

<sup>47</sup> Nicholas Hildyard, 'Neutral? Against What? Bystanders and Human Rights Abuses: The Case of Merowe Dam' (2008) 37 *Sudan Studies*, pp. 19-38.

<sup>48</sup> P. Bosshard and N. Hildyard, 'A Critical Juncture for Peace, Democracy, and the Environment: Sudan and the Merowe/Hamadab Dam Project' (2005) *A report published by the International Rivers Network and The Coroner House, USA*.

<sup>49</sup> Askouri, n. 29 above. This was supported by the Hamdab activist who stated that "*The Hamdab unanimously rejected Al-Multaga as a resettlement option, because of the obvious risk of desertification in the area.*" (AH Interview, 17 May 2017).

production. They also infiltrated our committees and arrested activists. We had no option but to move'<sup>50</sup>

The resettlement of the Amri group proved even more problematic and has since formed a part of the two litigation initiatives discussed in section 5.2 below. Conflict erupted in 2006 between the group and the body in charge of the implementation and construction of the Merowe Dam (the Dam Implementation Unit (DIU) over property surveys conducted in the area between 2003-2006 for the purposes of determining compensation packages and resettlement entitlements. This culminated in an unprovoked attack by the police on peaceful protestors gathered to discuss further action regarding the negotiations with the DIU on 22 April 2006. The attack resulted in three deaths and thirteen casualties. Later in the year, Amri villages were flooded without warning, following a decision by the Dam authorities to close the dam gates during the high-rise season. In their 2006 letter of complaint to the United Nations (UN) Special Rapporteur for Adequate Housing, the committee representing the demands of the Amri people (the Amri Committee) characterized the incident as 'a deliberate strategy by the Dam Implementation Unit and the Government of Sudan to force the Amri communities to accept a resettlement package that they have up to date rejected'.<sup>51</sup> In addition, and following the reluctant acquiescence of the Amri people to be resettled in accordance with the project plans, it became apparent that the DIU grossly underestimated their numbers and needs. Consequently, over 1360 families remained without housing.

The initial kernel of the conflict between the Amri community and GoS was adequate compensation. However, by 2008 -- and perhaps because they were emboldened by

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<sup>50</sup> AH Interview, 17 May 2017.

<sup>51</sup> The letter is reproduced in Askouri, n.29 above, at p.792.

the gains the Manasir achieved in their fight for recognition of the local option -- 750 families decided to resettle back on the banks of the Hamdab lake in old Amri to avoid the dire conditions in the new resettlement projects.<sup>53</sup> This was confirmed by the activist from Amri, who stated ““After the flooding, families were forced to move to these unsuitable resettlement areas...many of them had since returned to old Amri and the focus has changed to rehabilitating the old villages””<sup>54</sup>

It is not entirely clear when the first conflict between the last of the three affected groups (Manasir) and GoS occurred. However, it is likely to have been instigated by a disagreement between the Manasir and the DIU with respect to assessing compensation and resettlement options for those affected pursuant to the Presidential Decree on Resettlement and Compensation of the Merowe Dam Affected Communities of 2002. Askouri estimates the start of the conflict at some time during 2004.<sup>55</sup> However, the issuance of Presidential Decree No (277) in September 2003,<sup>56</sup> which prepared for the recognition of the Manasir local option (the option to remain in the un-submerged lands around the lake) by re-vesting the ownership of the Manasir lands in the River Nile State, indicates that a conflict of some sort had already arisen and was being negotiated. In any event, GoS, once more, focused on ensuring that those representing the groups would be amenable to its own agenda.<sup>57</sup> The community eventually formed the Manasir Executive Committee (MEC); members of which were elected by each village in the area. As explained by the

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<sup>53</sup> Hashim, n. 39 above.

<sup>54</sup> AA Interview, 16 Apr. 2017).

<sup>55</sup> Askouri, n. 29 above.

<sup>56</sup> Reproduced in Askouri, *ibid*, at p. 791

<sup>57</sup> Askouri, n. 29 above.

Manasir activist: ““The DIU wanted particular people to deal with...they did not accept the chosen representatives and refused to recognize the duly elected MEC.’<sup>58</sup>

In any event, as early as 2004 the now representatively-constituted MEC wrote to both the DIU and the financiers and companies building the dam to stop work on the resettlement projects until a plan for resettlement (including an assessment of the local option) and compensation were agreed. By the end of 2005, the relationship between the MEC and the DIU had considerably deteriorated, perhaps precipitated by the earlier experience of the Hamdab group which suffered significantly as a result of agreeing to the DIU’s plan for resettlement. According to the Manasir activist: ‘People lost faith in the DIU, because it refused to recognize the representative MEC and had misinformed the people and were not forthcoming with information about the resettlement projects.’<sup>59</sup>

2005 was also a politically sensitive year for the ruling party in Khartoum. In addition to the conditions in Darfur and the international attention to the ethnic cleansing in the region,<sup>60</sup> that year witnessed the successful signing of the Comprehensive Peace Agreement<sup>61</sup> (CPA) between GoS and the Sudan People Liberation Movement; then the opposition group leading the fight in the South of the country for decades. The CPA guaranteed a number of political freedoms and there was a general sense of a permissive political climate. This had undoubtedly made the GoS in Khartoum weary of possible challengers. Askouri suggests that the MEC - dominated by the Popular Congress Party (PCP), which broke away from the ruling National Congress Party

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<sup>58</sup> AM Interview, 15 Apr. 2017.

<sup>59</sup> Ibid.

<sup>60</sup> These events are the subject matter of UN Security Council Resolution 1593 (S/RES/1593) of 31 March 2005 referring the situation in Darfur to the International Criminal Court for investigation, available at: <https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/Darfur%20SRES1593.pdf>.

<sup>61</sup> Available at: <https://peaceaccords.nd.edu/sites/default/files/accords/SudanCPA.pdf>.

(NCP) in 1998 – may have made GoS especially nervous given the conditions on the ground.<sup>62</sup> He explains that, '[t]he split in Islamist rows both benefited and disadvantaged the Manasir struggle. It was beneficial because it provided impetus for the PCP to organize for the case and against the government. It was also useful because members of the PCP had inside information about the project. But the split also caused a division between people in the communities.'<sup>63</sup>The GoS' conception of the various dynamics in play is summarised by Ibrahim Mahmud Hamid, the Minister of Humanitarian Affairs; who stated that the affected people '...think that even the Comprehensive Peace Agreement may affect them, that a new government will come and solve things for them.' He also added that 'Some groups in the opposition want to use [the Merowe Dam matter] as a political issue.'<sup>64</sup>

This charged atmosphere between the MEC and the DIU almost resulted in an armed-confrontation in Sani Valley in November 2005. Shortly afterwards, the Presidential Decree No (70) of 2006<sup>65</sup> was issued recognizing the MEC and providing the basis for recognizing the Manasir local option, which was later given effect to by the Nile State Governor in Decree No 37.<sup>66</sup>A number of other decrees were issued by the Nile State to implement the local option and postpone work on the resettlement projects until the local option resettlement started. By June 2006, the Manasir were signing an agreement with the Nile State to affirm the above decrees. This period of the Manasir interaction with GoS is characterized by tug-of-war patterns that do not lend themselves to seamless analysis. It could be the case that GoS negotiated with the Manasir when it had to and otherwise resorted to the same coercive and oppressive

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<sup>62</sup> Askouri, n.29 above.

<sup>63</sup> JB Interview, 7 May, 2017.

<sup>64</sup> Interview- with Sudanese Humanitarian Affairs Minister, *Sudan Tribune*, 20 May 2005, available at: <http://www.sudantribune.com/spip.php?article9680>.

<sup>65</sup> Reproduced in Askouri, n. 29 above, at p. 804.

<sup>66</sup> On file with author.



practices it used with the other groups when it could. According to the Manasir activist: 'In 2006, the new Nile State Governor recognized the MEC as representative of the Manasir, possibly because of fear over security escalations in the area. This, despite the fact that the DIU continued to reject the MEC.'<sup>67</sup>

Despite the gains made by the MEC, an armed forces under the command of the DIU were once more sent to the Manasir area in March 2007 to terrorize the people into surrendering to the DIU's terms of resettlement following its violation of the Nile State Governor's decrees, which called for halting work on the resettlement projects until an agreement is reached. The events culminated in a showdown between the two sides when the Manasir held the DIU force hostage in the Kurbukan Valley. The situation diffused only with the mediation of members of the MEC, who were later themselves taken to jail over the incident.<sup>68</sup> This was followed by another agreement between the Manasir and GoS in May 2007 (the Friendship Hall Agreement), which promised to implement the local option for Manasir and called for a property survey to be carried out for purposes of assessing compensation. By August 2008, the Manasir land was intentionally flooded before the survey of property, was conducted.

The difficulties in the relationship between the DIU and the MEC notwithstanding, Askouri suggests that with the issuance of Presidential Decree No (70) on 8 April 2006,<sup>69</sup> the Manasir struggle had already succeeded.<sup>70</sup> This is because the decree returned the lands to the affected people (via the Nile State), recognized the local option as well as the authority of the MEC, which by then embodied a true representation of the local sentiment on the Merowe Dam. Current Manasir demands

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<sup>67</sup> AM, Interview, 15 Apr. 2017.

<sup>68</sup> Askouri n. 29 above and Hashim n. 39 above.

<sup>69</sup> Ibid, n. 64 above.

<sup>70</sup> Askouri n. 29 above.

include access to electricity and water facilities, the construction of a road that can serve the area, and the establishment of agricultural and fish-farming projects capable of sustaining the needs of the locals.<sup>71</sup>

## **5. RESPONSES TO MOBILIZATION EFFORTS AGAINST THE MEROWE DAM**

### **5.1 Norm shopping**

Succinctly, GoS is invoking norms based on development and economic growth to justify the building of hydropower dams and the adoption of a national plan of environmental management that calls for population redistribution, natural resource management, economic management, land ownership, and urban planning.

Additionally, GoS has been seen to strategically ‘blame’ other international norms for

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<sup>71</sup> Interview with AM, 15 Apr. 2017.

any domestic failings; such as those giving rise to trade embargos, international sanctions, and foreign debt.<sup>73</sup>

There is a marked dissonance between categories of international norms relating to environmental protection, development and human rights.<sup>74</sup> On some issues, the conflict exists within self-contained groupings of international norms, as is the case when different actors use environmental justice references to justify different goals. For example, there is clear evidence of water resource management for developing countries being prioritized as an element of environmental justice on the international level.<sup>75</sup> This allows GoS to invoke environmental justice considerations to fend off criticism over dam construction.<sup>76</sup> While it is acknowledged that building dams to facilitate water resource management gives rise to concerns over distributive justice, the logic of the need for dams to guarantee water resources for a growing population is sound.<sup>77</sup>

Generally, development norms such as access to sustainable energy, economic growth and access to technology, tend to encapsulate the GoS approach more than any other normative framework.<sup>78</sup> GoS invokes these norms very regularly to justify dam projects, stating that the development of large scale dams will lead to the reduction of population level poverty, will increase access to power and urbanisation, and will

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<sup>73</sup> These conclusions have been drawn from a large scale review of several years' of UN reports, from both GoS and various UN bodies. A full list of the reviewed documents can be obtained from the authors on demand.

<sup>74</sup> E. Z. Bratman, 'Contradictions of Green Development: Human Rights and Environmental Norms in Light of Belo Monte Dam Activism' (2014) 46(2) *Journal of Latin American Studies*, pp. 261-89.

<sup>75</sup> SDGs, WCD and Global Compact for Sustainable Energy: A Framework for Business Action 2011 (NBI strategic paper).

<sup>76</sup> See Universal Periodic Report of Sudan to the UN Human Rights Office of the High Commissioner 2016.

<sup>77</sup> A. Wutich, A. Brewis, A. M. York and R. Stotts, 'Rules, Norms, and Injustice: A Cross-Cultural Study of Perceptions of Justice in Water Institutions' (2013) 26(7) *Society & Natural Resources*, pp. 795-809.

<sup>78</sup> SDGs, WCD and Global Compact for Sustainable Energy: A Framework for Business Action 2011 (NBI strategic paper).

harness the latest technology and research to improve environmental outcomes. The government's rhetoric also emphasizes access to sustainable resources and the prevention of desertification, disaster preparedness and flood protection as justifications for its dam projects<sup>79</sup>. The Nile Basin Initiative (NBI) has additionally invoked human rights and development norms to justify water management projects.<sup>80</sup> In like fashion, GoS explicitly referred to dam construction as an example of fulfilling the people's right to development in some cases.<sup>81</sup> Still, despite the utilization of the normative claims proffered to justify the GoS programme of dam construction, it has been suggested that dam construction is seen as an alternative to oil production following the cessation of the South<sup>82</sup> and that its aim is the further consolidation of the hegemonic control of the regime.<sup>83</sup>

The DAPs, in turn, focus on norms surrounding livelihoods, housing, and participation.<sup>84</sup> Finally, transnational NGOs have drawn heavily on indigenous rights, freedom of assembly, and accountability when formulating their litigation strategies.<sup>85</sup> This was at times also reflected in the DAPs formulation of the struggle:

The case of the Manasir at its core is a case of a struggle for land. The political aspect of this is the right to self-determinations. The Manasir, unlike Amri and Hamdab, is a tribe unto itself

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<sup>79</sup> Sudan National Action Programme (SNAP) A Framework For Combating Desertification In Sudan in The Context Of The United Nations Convention To Combat Desertification (2006, Republic of Sudan Ministry Of Agriculture And Forestry National Drought And Desertification Control unit (NDDCU); UN convention to combat desertification, 1994.

<sup>80</sup> Nile Basin Initiative, Briefing Note 8: Restoring the Nile Basin, May 2015.

<sup>81</sup> Resettlement Policy Framework (the WB project on Sustainable Livelihoods for Displaced and Vulnerable Communities in Eastern Sudan), 2016.

<sup>82</sup> Harry Verhoeven and Luke A Patey, "Sudan's Islamists and the Post-Oil Era: Washington's Role after Southern Secession," *Middle East Policy* 18.3 (2011).

<sup>83</sup> H. Verhoeven, 'The Rise and Fall of Sudan's Al-Ingaz Revolution: The Transition from Militarised Islamism to Economic Salvation and the Comprehensive Peace Agreement' (2013) 15(2) *Civil Wars*, pp. 118-40.

<sup>84</sup> This information was gleaned from the initial reports from the DAPs, primarily from the first letter to the UN Special Rapporteur on the Right to Housing and early litigation documentation.

<sup>85</sup> The normative framework utilised by the transnational groups was illustrated by official reports and informal discussions as well as litigation documents accessed through the activists.

and you cannot be a tribe if you do not have a tribal land. It was the local people who formulated the issue as one of tribal honour in defending tribal lands.<sup>86</sup>

Having said that, it is interesting to note that in the case of the Merowe Dam the affected people and the government converged on the need for development and economic growth, which were not necessarily seen as posing a direct threat to the relationship of the affected people with the land. This is not usually the case in conflicts over dam construction.<sup>88</sup>

People in the area were for the construction of the dam. We did not want to deprive the country from the general benefit brought by the dam provided our demands are met.<sup>89</sup>

People did not oppose the expropriation of lands for the public interest, but compensation is essential.<sup>90</sup>

The story of the dam is in the consciousness of the people in the area. The people here were expecting a dam and with it development to the area... We had no problem negotiating over a project that is in the public interest. The problem was that we were completely marginalized and excluded from this benefit and that someone else was making decisions about our lives.<sup>91</sup>

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<sup>86</sup> JB, Interview 7 May 2017.

<sup>88</sup> See Scudder, n. 31 above.

<sup>89</sup> AM, Interview 15 Apr. 2017.

<sup>90</sup> AH, Interview 17 May 2017.

<sup>91</sup> AA, Interview 16 Apr. 2017.

On another level, DAPs take issue with the absence of participation opportunities guaranteed in a number of international instruments, including those that have subsequently formed part of national policies.<sup>92</sup> In its 2011 Universal Periodic Review submitted to the UN Human Rights Council, GoS explained how the country had paid attention to the environmental dimension of development and the enactment of legislation, laws and regulations to protect the environment. It also mentioned its accession to a number of international conventions protecting the environment and the creation of environmental tribunals throughout the country.<sup>93</sup> Even though the EIA for the Merowe Dam did not in fact include any social impact assessment, the government maintained that ‘Feasibility studies had been conducted prior to the initiation of dam construction works to ensure that the views of persons affected by the projects were taken into account’.<sup>94</sup> Yet, the following excerpts from government officials and experts are indicative of the generally dismissive attitude of the concerns of DAPs:

[Addressing representatives of the affected people]...another problem is this focus on agriculture. It is not essential that people relocate from their flooded area to work in agriculture. They can work in mining, fishing or other industries. Why restrict people to one livelihood source?<sup>95</sup>

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<sup>92</sup> See the Sudan National Comprehensive Strategy of 1992-2002.

<sup>93</sup> Read together, the EPA 2001, the Interim Constitution 2005 and Sudan’s National Water Policy of 1999 show that citizens have the right to live in a clean environment, and that the protection and conservation of national resources including water is a priority. The EPA adopts the language of sustainable development as reflected in the Rio Declaration on Environment and Development (1992). In addition, the Interim Constitution addresses environmental and human rights concerns including with respect to displacement and provides for the protection of property rights

<sup>94</sup> 56<sup>th</sup> Session of CESCR. Note that the EIA referred to was never made available to the public (See Askouri, n. 27 above).

<sup>95</sup> Sa’addin Ibrahim Contributor to Hamdab, Makabrab and Local Option Studies, Chair of Al-Multaga Option Study (Workshop held 22 August 2016 in Sudan)

[The relocated communities] had the deal of their lives. [The government] gives them big pieces of land; they build new houses for them.<sup>96</sup>

I think this is one of the best-organised projects with the best-organised response for those that have been affected...I have been there to see their places, they have proper houses, they have proper facilities, they have farms, everything. And even it is better than the old villages. They have been compensated generously.<sup>97</sup>

One of the major points of conflict between GoS and populations affected by the Merowe Dam is the issue of forced displacement. The WB Operational Policy on Internal Displacement recognizes that in some exceptional cases displacement is necessary. This was also echoed in the national Guidelines of Internal Displacement (1999), which provide for an exception where the displacement is justified by compelling and overriding public interest. The difficulty, naturally, is in defining the ‘overriding public interest’. It is hard to dispute that, although the government has formulated a National Policy on the Internally Displaced (2009) that places on it an obligation to ‘prevent causes of displacement’,<sup>98</sup> GoS seems to act on a presumption of the government’s entitlement to displace populations regularly.<sup>99</sup> It has indeed

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<sup>96</sup> Abdelhalim Al-Mutaafi (Governor of Khartoum) interview in Financial Times 6 March 2007.

<sup>97</sup> Ibrahim Mahmud Hamid, Sudan Minister of Humanitarian Affairs on Merowe Dam (Sudan Tribune Interview, 21 May 2005).

<sup>98</sup> Article 8, paragraph 2.

<sup>99</sup> See Presidential Decree No (353) of 2002 on appropriating lands affected by the Merowe Dam. The Decree relies on Art. 43 of the 1998 Constitution and The Appropriation of Land Act of 1930.

expressed its belief that displacement may be necessary to open up usable land.<sup>100</sup>

Whether the use by GoS of population displacement to meet its economic growth is compliant with national law is a debatable point.<sup>101</sup> However, the lack of effective accountability measures prevents this apparent conflict between developmental and human rights norms from ever being debated and resolved at the national level.<sup>102</sup>

## **5.2 Seeking Accountability in International and Regional Forums**

The Spiral Model as modified for the purpose of this study predicts (or maps) the involvement of transnational networks following governmental repression of domestic opposition. The opposition enlists the help of international NGOs and actors within such networks in order to affect some sort of pressure on unresponsive governments to change their policies with respect to violations of accepted norms. In the same spirit, Ali Askouri as the ‘Justice Broker’ in this case study utilized his connections with the outside world to bring two cases concerning the Merowe Dam in Germany and before the African Commission on Human and Peoples’ Rights (ACHPR) respectively.<sup>103</sup> The first of these cases, brought before the public prosecutor in Germany against the German company Lahmeyer International, which consulted on the Merowe Dam project, was of particular importance both to the justice broker and the affected communities. The litigation in Germany was led by a

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<sup>100</sup> Sustainable Livelihoods For Displaced And Vulnerable Communities In Eastern Sudan – SLDP, Resettlement Policy Framework (RPF), February 2016.

<sup>101</sup> Sustainable Livelihoods for Displaced and Vulnerable Communities in Eastern Sudan (SLDP) - Final Evaluation Report Prepared by EDGE for consultancy & research

<sup>102</sup> Note the concern expressed by the ACHPR (2012) on the lack of access to the judiciary and censorship.

<sup>103</sup> Askouri is active within a wide transnational network of dam activists around the World (JB Interview, 7 May 2017).



single NGO; the European Centre for Constitutional and Human Rights (ECCHR), and in the African Commission by a consortium of litigation NGOs.

*ECCHR and Askouri v. Senior Employees of Lahmeyer International*

In May 2010, ECCHR submitted a criminal complaint against two senior employees at Lahmeyer International to the public prosecutor in Frankfurt am Main in the German Bundesland of Hessen. The complaint contended the complicity of senior employees of the company in the flooding of more than 30 villages and the displacement of over 4,700 families and the destruction of their livelihoods. In April 2011, the German prosecutor opened a formal investigation against three suspects and heard evidence from several witnesses.<sup>104</sup> In investigating the incidents of flooding of the Amri and Manasir lands in 2006 and 2008 respectively, the prosecutor mainly relied on section 313(1) of the German Criminal Code<sup>105</sup> which states that ‘Whosoever causes a flood and thereby endangers the life or limb of another person or property of significant value belonging to another shall be liable to imprisonment from one to ten years’. Additional offences were also identified, including abandonment of a person in a defenseless situation, consequently threatening his life (section 221(1), criminal damage of another's property (s.303 (1)) destruction of buildings (s.305(2), using threats or force to cause a person to do, suffer or omit an act (s.240(1)) as well as infringement of s.17 of the animal protection act.<sup>106</sup> Discussing the legal basis under which the investigation was brought, the ECCHR representative

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<sup>104</sup> See case report available at: [https://business-humanrights.org/sites/default/files/documents/Case%20Report%20Lahmeyer\\_20151127.pdf](https://business-humanrights.org/sites/default/files/documents/Case%20Report%20Lahmeyer_20151127.pdf).

<sup>105</sup> Available at: [https://www.gesetze-im-internet.de/englisch\\_stgb/](https://www.gesetze-im-internet.de/englisch_stgb/).

<sup>106</sup> Sources of the information regarding the legal basis for the case are the final decision of the prosecutor which was forwarded to us by ECCHR and the interview with their representative.

interviewed for this study explained that ‘No one has applied [these sections of the German Criminal Code dealing with flooding] to an extra-territorial case before’.<sup>107</sup>

The crux of the complaint was that, in both incidents of flooding, the resettlement agreements and plans had not yet been finalized and some communities had not yet been resettled, but the flooding took place anyway as part of the planned schedule for construction of the dam. The complaint contended that those in charge at Lahmeyer had prior knowledge that the floods they provoked and approved would destroy the villages.<sup>108</sup> From the account of the Justice Broker, the underlying complaint is that the communities were intentionally flooded out when they refused to agree to the unfair resettlement propositions, and that the Lahmeyer employees were complicit in the actions of GoS due to their position as consultants on the project and their expert knowledge of the dam construction business. The complaint also highlighted issues of corporate corruption and the systematic use of force to displace affected populations. Both the French partner company Alstom and Lahmeyer were previously implicated in cases of bribery and the use of force in similar projects.<sup>109</sup>

The complaint was eventually dismissed on the 20 April 2016, because there was no evidence to conclude that the accused knew of the displacement of the Amri and Manasir and deliberately harmed them or knew and accepted that they should be affected by the flooding. In coming to this decision, the prosecutor took on notice the fact that the contract between Lahmeyer and the DIU did not extend to responsibility over displacement and that Lahmeyer had no control over the timing of the closing of

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<sup>107</sup> Claudia Mueller-Hoff Interview, 30 May 2017.

<sup>108</sup> From the account of the justice broker as set out in his witness statement as shared by him.

<sup>109</sup> See J. Stempel, ‘U.S. Judge Sentences Alstom in Bribery Case, \$772 Mln Fine’, *Reuters*, 13 Nov. 2015, available at: <https://www.reuters.com/article/alstom-corruption-sentencing-idUSL1N13820V20151113>; and K. Guha, ‘German Group Put on Graft Blacklist’, *Financial Times*, 25 Feb. 2007, available at: <https://www.ft.com/content/27577430-c503-11db-b110-000b5df10621>.

the dam, which was agreed upon in the contract between the DIU and the Chinese construction consortium. The prosecutor was also of the opinion that there was insufficient evidence that flooding had been caused by omission. This opinion, too, was founded on the company's contract with the DIU and the risks expressly assumed by Lahmeyer.

This case had to take into consideration the content of the provisions of the German Code, based on which the complaint was brought before the courts. The complaint also invoked international standards for the construction of dams and resettlement but did, however, acknowledge that these standards do not amount to enforceable law.<sup>110</sup> Additionally, even though Corporate Social Responsibility norms were not directly invoked, the central themes of the case focused on the idea of a duty of care and professional diligence.

The decision of the prosecutor in fact did not make any mention of international norms. However, it did refer to the Sudanese municipal Law of Resettlement and Compensation of People Affected by the Construction of Merowe Dam of 2002 in the context of the fact that the EIA conducted by Lahmeyer did not include a resettlement plan. Nonetheless, the prosecutor was of the opinion that, as this Law had become effective in the same year, this lack of a resettlement plan could not be used to prove that the accused knew about the circumstances surrounding the delayed resettlement. The decision to dismiss the case against Lahmeyer, therefore, affirms the importance of national laws beyond their direct influence on decisions and strategies for mobilization. Zeitoun et al observed that rather than relying on a host of

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<sup>110</sup> The complaint included reference to 'internationally generally recognizable standards in industry' and the 'fulfilment of these standards [as being] part of the professional diligence of all stakeholders in projects which make resettlement procedures necessary'.

available international norms, mobilization over the Merowe Dam focused primarily on issues of compensation and dignity seemingly drawn from national frameworks.<sup>111</sup> This decision further indicates that for the indirect effect of transnational mobilization on behaviour of governments to occur as per the Spiral Model, it is essential that a minimum level of environmental (and other) protection already exist in national legislation. This makes the theory advanced by the Spiral Model a tautology in this case, since the little protection that is available was the result of prior internalization of international environmental norms.

The legal parameters within which the complaint had to be brought also meant that certain issues could not be specifically pleaded or relied upon. This was the case, for example, for suggestions that, in the light of the country's political climate, GoS was unlikely to uphold human rights in the process of dam construction, as explained by the justice broker in the following excerpt:

I wanted to make the point that by 2003 and because of the massive violations in Darfur, it was not reasonable for Lahmeyer to expect the Government of Sudan to affect the resettlement of the affected people in a fair, just and transparent way. This is in addition to the incidents of the wilful killing of Amri people in 2006 which were not specifically pleaded in the case.<sup>112</sup>

Following the dismissal of the case, ECCHR has called for legal reforms. According to the NGO, the prosecutor applied had an unduly restrictive test to the issue of intent

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<sup>111</sup> Zeitoun et al, n 10, at p. 137.

<sup>112</sup> JB Interview, 7 May 2017.

as relevant to culpability<sup>113</sup> Despite the eventual collapse of the investigation, bringing the case was in itself quite significant on a number of fronts. The ECCHR representative stated that at the time of accepting the case ‘...no thematic areas of focus had developed yet [for the NGO]. This case contributed to the focus of the organization.’<sup>114</sup> She also expressed her personal expectations regarding the development of the case as follows:

I was hoping that the German prosecutor would investigate the case so there would be a discussion on the criminal responsibility of German companies...a political discussion.<sup>115</sup>

In addition to corporate responsibility under German criminal law, ECCHR is interested in issues of victim participation in proceedings and state responsibility for the regulation of the activities of domestic companies abroad.

Although test cases can contribute meaningfully to our understanding of norms, especially in the context of corporate responsibility, the success of the strategy from the point of view of the people affected was questioned:

Given the current status of international law, it is a waste of time [for the affected local communities] to attempt to pursue justice against international companies... These communities cannot change this. But, international NGOs should organise campaigns to change these laws and to establish specific, simple and clear procedures that allow communities negatively affected by the work of these companies to bring them to account at minimum cost. Such

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<sup>113</sup> From a previous briefing note that was posted on [https://www.ecchr.eu/en/our\\_work/business-and-human-rights/lahmeyer-case.html](https://www.ecchr.eu/en/our_work/business-and-human-rights/lahmeyer-case.html).

<sup>114</sup> Claudia Mueller-Hoff Interview, 30 May 2017.

<sup>115</sup> Ibid.

efforts should be supported by a specified budget and there should be a specific court to look into these issues like the International Criminal Court.<sup>116</sup>

*Ali Askouri and Another (on behalf of the Persons Affected by the Construction of the Merowe and Kajbar Dams) vs. Sudan (2015- Present)*

The second litigation initiative is the case brought by a number of human rights litigation NGOs (the Egyptian Initiative for Personal Rights (EIPR), the Cairo Institute for Human Rights Studies (CIHRS) and the Center for the Study of Law, Justice, and Society (Dejusticia)) against the government of Sudan before the ACHPR.<sup>117</sup> The complaint concerns multiple violations committed in the course of the construction of the Merowe Dam as well as the planned construction of the Kajbar Dam and was brought in the name of the Justice Broker and other individuals from the affected communities. At the time of writing, a decision by ACHPR was still pending. This case seems to have been born out of an interest in the institutional potential of ACHPR and as part of a wider North African litigation initiative to use the existing infrastructure to advance jurisprudence on human and political rights.<sup>118</sup>

Under the procedural rules of ACHPR, parties to a complaint are under a strict confidentiality obligation, which remains in place until a decision is eventually made. In addition, the gestation period for cases can be as long as seven years and it is common for governments not to comply with the decisions of the Commission. The effect of these institutional features is two fold: (i) efforts to study the case in greater

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<sup>116</sup> JB Interview, 7 May 2017.

<sup>117</sup> EIPR works on rights and freedoms in Egypt, and engages in strategic litigation before the African Court and the African Commission on Human and Peoples Rights. CIHRS, also based in Egypt, works regionally across the Arab states and holds consultative status at the UN and observer status in the African Commission. Dejusticia is a Colombian based applied research centre engaging in strategic litigation and has experience in working with dam affected populations.

<sup>118</sup> NGO representative Interview, 9 May 2017.

depth are complicated by the confidentiality obligation; and (ii) the fact that a case was brought against GoS as well as any details of the litigation cannot be used to seed the struggle and advocate for it while a decision is pending.<sup>119</sup>

Given the framework of the African Charter and the space allowed by the Commission to bring about a broadly formulated complaint,<sup>120</sup> we expect pleadings in the case to coalesce around displacement leading to loss of homes, land, and property (economic rights), environmental degradation (environmental rights, environmental justice), arbitrary killings and arrests as well as limited freedom of expression, assembly, and political participation and most importantly lack of access to justice (civil and political rights). We are also informed that the Kajbar Dam context enlists concerns over indigenous rights and social and cultural recognition. It is in this context that the lack of free and informed consent (FPIC) on the expropriation of land from indigenous people is likely to be raised. The case presents a good opportunity to examine formulation of the struggle over dam construction in a shared forum but given the different contexts of those affected by the Kajbar Dam (indigenous people) and the communities affected by the Merowe Dam:<sup>121</sup>

[The complaint] is very much set up as an indigenous peoples' rights case, because the framework has a lot of resonance in human rights law and there is already some openness to the application of that framework which grew up in the Inter-American system...Because we are dealing with one community that

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<sup>119</sup> Ibid.

<sup>120</sup> What is positive about the African Commission compared to other bodies is that you can bring in a big-picture problem ...[that addresses] a number of different events over an extended period of time and that relate to the construction of two dams'. (NGO representative Interview, 9 May 2017).

<sup>121</sup> In similar cases adjudicated before the Inter-American Court of Human Rights (IACtHR), the rights afforded to indigenous people were extended, at least in part, to other communities affected by the construction of dams (See e.g. *Saramaka v. Suriname* (IACtHR, 12 Aug. 2008) and *Moiwana v. Suriname* (IACtHR 15 Jun. 2005)).

is more clearly Nubian, that would fit in quite without controversy in the rights framework. But, then we have another community in the case of Merowe who do not identify that way. So there is conflict there but the framing has evolved to saying that this is about the displacement of people because of an international product and it is not the case that the people have to fit into a particular box to determine that their rights have been violated.<sup>122</sup>

A number of international norms likely to be invoked include adequate compensation for the loss of livelihoods, land and income-generating property like palm trees. We also expect norms that made an earlier appearance in the communication of the Amri community with the UN Special Rapporteur for Adequate Housing, such as the right to health, to feature. The African Charter includes express provisions on the right to property, health and a private family life (read as guaranteeing a right to housing).<sup>124</sup>

Given the framework of indigenous rights, we expect a utilization of the right to cultural development in Article 22 of the Charter and perhaps claims of loss of culture as linked to the loss of land. Despite the focus on indigenous rights, and because of the substantial jurisprudence of the Commission in this area, it is likely that a submission would highlight the multiple violations of political and civil rights with respect to arbitrary arrests and wrongful deaths. This is the norm for submissions before the Commission. The bulk of the Commission's jurisprudence relates to extra-

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<sup>122</sup> INGO representative Interview, 9 May 2017.)

<sup>124</sup> African Charter on Human and People's Rights (ACHPR), Articles 14, 16 and 18. There is also a mention of the right to cultural development in Article 22.



judicial killings, arbitrary arrests, torture and access to justice.<sup>125</sup> There are also clear provisions in the African Charter on each of these categories.<sup>126</sup>

The remedies sought are likely to reflect the following

We want remedies for the communities that have been displaced and the individuals that have been injured. We want to stop the construction of the Kajbar dam and to be able to use a decision as and when it is rendered to push back against Sudan dam building activities more broadly.<sup>127</sup>

As is the norm in similar cases, we expect demands for reparation for victims of killings, arbitrary detention and other ill-treatment and an investigation into and prosecution of these violations. Most importantly with respect to Sudan, we anticipate an insistence on institutional and structural reforms to allow victims of similar violations access to remedies.

Documentation available from the ACHPR shows GoS clearly using instability and conflict as a justification for not improving the human rights situation more expeditiously. It does not engage in an outright denial of allegations, but offers contextual justifications and explanations, and makes tactical, even token concessions. It is, however, important to keep in mind that these litigation efforts involve a country whose sitting head of state has two outstanding ICC arrest warrants for war crimes and crimes against humanity. In this respect, the expectations of the affected people and the litigation NGOs involved with respect to the outcome of the

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<sup>125</sup> See e.g. ACHPR *Noah Kazingachire and others v. Zimbabwe* (Communication 295/04, 51st Ordinary Session), and ACHPR *Abdel Hadi, Ali Radi and others v. Sudan* (Communication No. 368/09, 54th Ordinary Session).

<sup>126</sup> Articles 1, 3, 5 and 7 (legal standing, due process and access to justice), and Articles 4 (life), 6 (liberty and security).

<sup>127</sup> INGO representative Interview, 9 May 2017.

case seem to be correspondingly modest. Given the political climate in the country, the primary goal of the NGOs is apparently to utilize the Commission system in the hope that it may become ‘more creative and more effective over time in terms of translating rights’.<sup>128</sup>

[The ACHPR] will never be able to influence the Government of Sudan to do anything about the Merowe Dam. Look at the response of the African countries about the ICC indictment over Darfur. Local people do not trust the African Commission and see it as an institution captured by a club of unaccountable states.<sup>129</sup>

It is very hard to make the case that African Commission litigation is an effective vehicle for advocacy on a particular issues.<sup>130</sup>

## 6. DISCUSSION

As is common in large-scale development projects, the reaction of those affected by the Merowe Dam shifted from hopeful reception to outright rejection. This shift in response was the result of the failure of GoS to engage these communities in a *bona fide* multi-stakeholder process as called for by the guidelines developed by the WCD and other international standards. This failure, however, did not happen because GoS

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<sup>128</sup> INGO representative Interview, 9 May 2017.

<sup>129</sup> JB Interview, 7 May 2017.

<sup>130</sup> INGO representative Interview, 9 May 2017.

rejected established international norms relevant to dam construction. On the contrary, there is evidence from legal instruments and policy documents that GoS acknowledged the existence of these norms and generally accepted them. The divergence in experience between the different groups of affected people with respect to government responses to their claims instead depended largely on the political climate in the country and on internal political dynamics tying these various groups to GoS.

An examination of the legal matrix in Sudan applicable to the Merowe Dam struggle shows that the recognition of rights is the only dimension of environmental justice reflected in national law. For example, the EPA makes no mention of procedural guarantees regarding transparency, participation and accountability. According to the WCD principles, gaining public acceptance extends to addressing risks and safeguarding entitlements in addition to recognizing rights.<sup>131</sup> In order to achieve these goals, participation of affected people is seen as key and good faith negotiations are essential. The WCD guidelines also emphasize the need for robust and effective legal and dispute mechanism resolutions to manage conflict, which were totally absent in the case of the Merowe Dam.

The inadequacy of Sudanese laws and regulations in this respect is evident when assessed against the World Bank Operational Policy on Involuntary Displacement (OP 4.12). This policy has been heavily criticized by environmentalist NGOs as well as scholars as being somewhat regressive in terms of guaranteeing acceptable living

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<sup>131</sup>World Commission on Dams (WCD) (2000) *Dams and Development*, November (Cape Town, WCD), at p.279.

standards for those displaced by development projects.<sup>132</sup> Yet, laws and regulations in Sudan still fall short of the OP 4.12 standard, as confirmed in the GoS Resettlement Policy Framework developed for the WB project on Sustainable Livelihoods for Displaced and Vulnerable Communities in Eastern Sudan in 2016. According to this document, laws in Sudan are characterized by (i) the absence of a requirement for compensation prior to resettlement as well as lack of provisions on restoring or enhancing livelihood<sup>133</sup>; (ii) the absence of provisions on modalities for affecting relocation and guaranteeing adequate infrastructure in resettlement locations; and (iii) the absence of an obligation to conduct on-going consultations with affected people (at present, the requirement is for consultation prior to the expropriation of the land but not on ongoing basis throughout the project). This lack of adequate legal mechanisms may explain the failure of local litigation initiatives (including the resort to arbitration). However, there is ample evidence that GoS attempted to adhere to its own rudimentary norms of development, environmental justice and human rights.

While the discourse of the government highlighted the safeguards existing under national laws, it also tended to acknowledge norms, which were championed by the affected people, such as participation. GoS may at times have downplayed the importance of these norms, or even have sought to manipulate the outcome of the required processes of engagement by choosing representatives from these communities that it can control, but it still seemed to accept the relevant norms in a general sense. This is interesting, not least because the political leadership of GoS is facing accusations of far more serious breaches of international standards especially

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<sup>132</sup> See D. Clark and A. Carothers, *Resettlement: The World Bank's Assault on the Poor* (CIEL, 2000).

<sup>133</sup> In the case of the Merowe Dam, compensation was promised in instalments and in many cases among the Manasir not paid (See Askouri, n. 29 above )

with respect to the Darfur war. If the pull of norms is to be adequately understood, the pertinent question to ask is what made GoS care about the existence of these norms in the first place? In this case, the apparent internalization of relevant norms (without good faith implementation) may have served the purpose of providing GoS with sufficient credibility to fend off criticisms over the building of the dam.

The Merowe Dam case study departs from the basic assumptions of the Spiral Model. The expected immediate gains flowing from the involvement of transnational networks (or the Justice Broker) did not transpire. While GoS resorted to tactical concessions on *ad-hoc* basis, there is no evidence to suggest that the litigation initiatives in Germany and before the ACHPR contributed to changing GoS' behaviour towards the affected people. Moreover, even though GoS was not particularly moved to respond to the intervention of the UN Rapporteur for Adequate Housing following the Amri complaint, it did in fact agree to a number of concessions in the case of Manasir following security threats in the area. For example, at the time of writing, GoS had completed the building of two new villages for resettlement around the reservoir lake for the Manasir on land the ownership of which is claimed by Amri on historical grounds.<sup>134</sup> However, none of the pressing housing issues raised by the Amri Committee in their complaint to the UN Special Rapporteur for Adequate Housing were addressed. The interviews with activists also suggest that the special history that the Manasir and their leadership had with the government did affect their ability to manoeuvre the conflict to their advantage. Because the concessions made by GoS in acquiescing to the Manasir demands for recognition of the local option and resettlement around the reservoir lake came about as a result of political wrangling

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<sup>134</sup> Informal discussion with AA in November 2017.

and not following recognition of applicable legal norms or norms of justice,, it is not expected that this particular form of resistance is likely to translate into policy or regime change as predicted by the Spiral Model.

It is also clear from the interaction between DAPs and litigation NGOs that the involvement of the latter is dependent on whether or not resistance is likely to translate into broader change that goes beyond the specific case of the affected people in questions both materially and geographically. Without immediate advocacy benefits to the causes involved, this may result in marginalization of the involvement of these international organizations as well as transnational networks in similar cases. The Merowe Dam case indicates that resorting to international or regional litigation as a viable resistance strategy should be approached with caution in a context like Sudan. Rather, the focus of resistance should be on internal efforts. However, given the importance of these actors in the development of international norms, it would be advisable to focus efforts on making international and regional forums more responsive to the needs of affected people in similar cases. For despite the limited impact of litigation efforts on the particular case of the Merowe Dam resistance, they did evince new thinking when it comes to environmental struggles.

Despite its eventual dismissal, the significance of the case in Germany against Lahmyer International is three-fold. Firstly, it symbolizes a move away from dependency on unresponsive states for observing human rights and other norms towards a long overdue enquiry into the responsibility of multinational corporations for human rights violations. Secondly, it brings to the forefront the global context within which these violations happen and highlights the focus on economic growth

(including of economies of developed countries) regardless of the effect that this may have on social conditions in developing countries. Finally, it indicates that rather than international norms being influential in determining the trajectory of struggles against large-scale development projects, these struggles are in fact influencing the development of international norms quite tangibly. The effect of the African Commission case is harder to gauge, because of the long gestation period for decisions as well as the procedural bar on disclosure of information regarding ongoing litigation. What we can be sure of, however, is that the case is likely to influence the development of norms on indigenous rights to include other groups with comparable experience of large-development projects in the African Context.

Furthermore, the Merowe Dam case study seems to highlight an additional issue with the underlying assumptions of the Spiral Model. Given the possibility of pressure from ‘abroad’, governments such as GoS tend to develop a discordant attitude towards the rights of the affected people. This involves having two uncoordinated dialogues: a domestic and an international one. Making use of a jumble of conflicting norms on the international plane, GoS strategically, and perhaps pre-emptively, invoked established (and often overlapping) international norms to justify actions that resulted in human rights abuses. In this way, GoS seems to have already reached rule consistent behaviour with respect to some international environmental and developmental norms but with a different set of “rules” that are not necessarily disputed by the DAPs. This creates an almost parallel trajectory of the Spiral model, with the DAPs engaged in one struggle, and GoS responding (legitimately) to another.

## CONCLUSION

Contrary to the expectations of our theoretical model, which expands on the Spiral Model, the government's responses to mobilization efforts by the local communities affected by the Merowe Dam over issues of resettlement and compensation had very little to do with normative convergence or divergence. There is ample evidence that GoS have reached rule-consistent behaviour with respect to recognition of DAPs rights. There is also evidence that GoS accepts the existence of international norms on participation and accountability despite the total lack of robust and effective legal and dispute resolution mechanisms to manage conflicts when they arise. The normative gap between GoS and the DAPs is also minimal when it comes to their conceptions of development and the need for economic growth.

Rather than a normative gap, what seems to be the driving force behind the conflicts that erupted between GoS and the DAPs is the absence of good faith in the government's interaction with these communities and the conceptualization of the DAPs as only tangentially relevant to the process of dam building. Given the contemporary political history of the country, it would be misguided to treat the Merowe Dam case as an isolated incident of injustice over dam construction. Instead, it evinces wider issues of state capture by the ruling regime and a generally dysfunctional relationship between the government and its people. The pattern of accommodating governmental responses to the Manasir struggle – as distinct from the other groups - as well as the characterization of the struggle by government officials as potentially political indicate the presence of an internal political dimension rarely explored in the literature.



The trajectory of the Manasir struggle mirrors the expectation of the Spiral Model in that, at some clear junctures of the struggle, GoS indeed made tactical concessions – often involving the granting of rights to the Manasir on ad hoc basis or at the expense of other groups.<sup>135</sup> Unlike the predictions of the Spiral Model, however, none of these concessions are likely to lead to either policy or regime change given the lack of principled engagement on the Manasir side.

In general, the success of the Manasir struggle against resettlement in the case of the Merowe Dam can be attributed to a number of factors that are overlooked by transnational networks. The conclusion of the CPA in 2005 opened a minute political space for the group to use in its mobilization efforts and technological advances allowed them to use social media platforms to rally support for the MEC. Most of the mobilization efforts, however, seem to have targeted members of the group itself as opposed to the wider public.<sup>136</sup> Near-incidents of armed confrontation such as the Sani Valley in 2005 and the Kurbukan Valley in 2007, which came about as a result of cooperation amongst the Manasir communities and which subsequently led to GoS acceding to their demands, indicate how the focus on local community mobilization is a winning strategy. There also seems to be evidence that the Manasir struggle benefited from the split in Islamist ranks. This political dimension might provide the better explanation for the trajectory of the Manasir struggle including aspects of it that flout the expectations of the Spiral Model such as the reluctance to enlist the help of INGOs. In their attempt to ‘manipulate’ GoS to grant them their demands, the group seems to accept the position of the government as the ultimate arbiter of rights, which

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<sup>135</sup> Ibid.

<sup>136</sup> From an informal canvassing of opinion in Sudan, very few people knew about the conflict.

needs to be placated and cajoled rather than alienated and threatened by resorting to international pressure.

Our research also shows that, given the constraints within which institutions such as the ACHPR operate, regional litigation efforts are unlikely to play an important role in environmental struggles over dam construction in Sudan or in Africa in the near future. This may alter significantly if attention is paid to reforming these regional institutions so that they are more responsive to advocacy campaigns. Procedural rules on disclosure and submission, as well as the enforcement of decisions, may be areas ripe for reform. Nevertheless, it is important to continue to bring claims against multinationals in their national legal systems where possible. The mere possibility of bringing litigation against corporations such as Lahmeyer International may inspire accountability that is not necessarily conditional on the safeguards already available in the laws of a country like Sudan. Having said that, the inadequacy of legal protection under Sudanese laws was what eventually led to the collapse of the case.

In sum, it is hard to isolate the success or failure of environmental struggles in countries such as Sudan from issues of governance, domestic capacity building and legal reform. This research suggests that, despite their obvious allure, the promotion of international environmental norms in this area may have very little impact in light of the persistence of competing international norms on development and economic growth. This may imply that what is required is a policy shift refocusing attention away from the development and promulgation of environmental norms on the international level to issues of domestic institutional building and norm development on the national level.



