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# SUDAN RURAL LAND GOVERNANCE (SRLG) PROJECT

## LAND CONFLICTS LEGAL BRIEF

JULY 2013

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Tetra Tech ARD Principal Contacts:

Marc Dawson  
Chief of Party  
Tetra Tech ARD  
Juba, South Sudan  
Tel: 095 640 3592  
[Marc.Dawson@srlg-ard.com](mailto:Marc.Dawson@srlg-ard.com)

Sandy Stark  
Project Manager  
Tetra Tech ARD  
Burlington, Vermont  
Tel.: 802-658-3890  
[sandy.stark@tetratech.com](mailto:sandy.stark@tetratech.com)

Megan Huth  
Senior Technical Advisor/Manager  
Tetra Tech ARD  
Burlington, Vermont  
Tel.: 802-658-3890  
[Megan.Huth@tetratech.com](mailto:Megan.Huth@tetratech.com)

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# CONTENTS

- CONTENTS ..... I**
- ACRONYMS AND ABBREVIATIONS ..... II**
- EXECUTIVE SUMMARY..... I**
- 1.0 OVERVIEW OF LAND BASED CONFLICTS ..... 2**
  - 1.1 ACCESS AND CONTROL OVER PASTURE AND WATER RESOURCES..... 2
  - 1.2 COMMUNITIES AND THE STATE: STALEMATE AND CONFLICT OVER LAND ACQUISITION FOR DEVELOPMENT PURPOSES..... 4
  - 1.3 LAND CLAIMS BY DISPLACED COMMUNITIES & RETURNEES..... 5
  - 1.4 THE FAILING LAND ADMINISTRATION INFRASTRUCTURE AND LAND CONFLICTS..... 6
  - 1.5 INTER-GOVERNMENTAL/INTER-INSTITUTIONAL LAND CONFLICTS..... 8
- 2.0 THE LEGAL DIMENSIONS OF LAND CONFLICTS..... 9**
- 3.0 THE NON-LEGAL DIMENSIONS: A SUMMARY OF ISSUES ..... 13**
  - 3.1 THE MISSING DEVELOPMENTAL ROLE OF THE STATE..... 13
  - 3.2 LEGITIMACY OF EXISTING CONFLICT RESOLUTION INSTITUTIONS..... 13
  - 3.3 SUMMARY OF THE KEY LEGAL STEPS..... 14
- 4.0 CONCLUDING REMARKS..... 15**
- 5.0 REFERENCES..... 16**

# ACRONYMS AND ABBREVIATIONS

CLA	County Land Authority
CPA	Comprehensive Peace Agreement
GOSS	Government of South Sudan
IDP	Internally Displaced Person
SPRP	Sudan Property Rights Program
SRLG	South Sudan Rural Land Governance
SSLC	South Sudan Land Commission
TOT	Training of Trainers
USAID	United States Agency for International Development

# EXECUTIVE SUMMARY

Even in an ideal context where the proper legal tools and alternative mechanisms exist for resolving land related conflicts, the existence of people with different interests having competing demands over land may result in land disputes and conflicts. The case of land related conflicts in South Sudan is complex owing to the fact that the country is still new and inexperienced in managing land and its inherent challenges. Therefore the malaise of land conflicts in South Sudan constitutes a major and complex threat to the peace and stability of the newly found nation. On one hand, the protracted civil war that lasted for more than twenty years created conditions that nurtured the development of land related conflicts which continue to perturb the development of the country; and on the other hand, there is increasing demand for land for different uses by various interest groups, both local and foreign, especially in the post Comprehensive Peace Agreement (CPA) independence era. In the post CPA period, many of these problems assumed new dimensions in the changed political landscape. As a result, some types of land conflicts have gained momentum even after the attainment of political independence in 2011. Thus, in the absence of a strong state, and amidst problems of weak and to some extent non-existing institutional and legal frameworks, land conflicts have continued to thrive. As can be expected from any new nation, the Republic of South Sudan is struggling to put in place sufficiently functional instruments to ensure adequate governmental services, including the enactment of legislation and supportive regulations that allow its institutions to function properly. Uneven power distribution among ethnic groups, whether real or perceived, has contributed to the escalation of land conflicts. Effectively, what confronts South Sudan is a myriad of land conflicts that require multiple approaches in the search for solutions. Hence, some of the conflicts require legal solutions, while others require non-legal remedies. This legal brief starts with a discussion of selected types of land conflicts affecting the country, followed by an analysis of the legal implications of the conflict situation as well as a brief discussion of the non-legal dimensions of conflicts existing in South Sudan. The brief also proposes policy recommendations for each section discussed herein.

# I.0 OVERVIEW OF LAND BASED CONFLICTS

## I.1 ACCESS AND CONTROL OVER PASTURE AND WATER RESOURCES

In many States, conflicts over access to pastures and water remain widespread while cattle-raiding is equally prevalent. Such conflicts quite often occur amongst pastoralist groups and between pastoralists and agriculturalists. With a diverse population that ranges from crop farmers who keep no cattle at all to pastoralists and nomads who survive on cattle alone, the competing interests among land-users are very complex and are yet to be managed in a way that encourages peaceful co-existence between competing land interest groups. Currently, conflicts over access to pastures and water coupled with the rampant practice of cattle raiding constitute a major cause of instability amongst communities especially in rural South Sudan. On the other hand, persistent insecurity in some areas has made vast pieces of land inaccessible, forcing communities to migrate to relatively safer areas which often results into high competition over specific areas of land; creating a widespread notion that there is acute scarcity of pastures in South Sudan. Additionally, traditional mechanisms for sharing of natural resources have eroded as a result of the long period of war.

Section 170 (1) of the Transitional Constitution of South Sudan provides that “*all land in South Sudan is owned by the people of South Sudan and its usage shall be regulated by the government in accordance with the provisions of this Constitution and the law.*” This provision is also confirmed by Section 7 (1) of the Land Act. However, estimates say that over 80% of South Sudanese live in rural areas, where the land rights of the population are governed by uncodified customary land tenure regimes which vary greatly from one community to another across South Sudan. There are also no clear distinctions that can be made between the different states and regions in the country. The main line of distinction that can be broadly made between the customary land tenure regimes is between groups that practice different livelihood patterns. South Sudan has more cattle per capita than many countries. Many pastoralist groups seasonally migrate with their cattle during dry season to access pasture and water points. Groups that depend on a more agriculturalist-based livelihood, by contrast, tend to be less mobile; often giving rise to more complex overlapping land rights and usages in certain areas. Neither the Land Act nor the Land Policy are explicitly clear on the role that identity plays in determining individual land rights or simply land use. Hence, in practice, people belonging to a certain ethnic group have a right to access land within that group’s territory. Therefore, easy access to land is seen as a ‘social right’ and is often an important form of protection for rural populations. However, the fact that people’s land rights depend so heavily on their identity can restrict individuals and groups from outside the community from accessing the land and can in certain instances be seen as infringement on people’s freedom of movement and settlement across the country, as stipulated by the transitional Constitution of South Sudan. Section 8 point (4) of the Land Act however says that, ‘*Any person or group of persons holding a customary land right before the commencement of this Act shall continue to hold the same*’ Also section (4) of the Land Act provides for a definition of communal grazing land as; ‘*... an area of grazing land which is directly owned in undivided shares by all members of a community*’. However, the Land Act has not provided a definition for the word **community** but has defined **local community** in section (4) as; ‘*means a group of families or individuals, living in a circumscribed territorial area at the level of a locality, which aims at safeguarding their common interests through the protection of areas of habitation, agriculture, whether cultivated or fallow, forests, sites of cultural importance, pastures, and area of expansion.* Again, *Article 171 (5) of the Constitution defines community land as “all lands traditionally and historically held or used by local communities or their members. They shall be defined, held, managed and protected by law.”* All these contradictions and ambiguities in the

law provide a fertile environment for conflicting interpretation by various entities and therefore become a recipe for inter-communal violent relationships regarding access to land and land resources.

A study commissioned by USAID Sudan in 2010 showed intense conflicts between pastoralist groups and crop farmers over access to Lake Bahr el Girindi in Mvolo County in Western Equatoria in search for pasture and water for both human and animal consumption. The brutality of the conflict has increased, as guns acquired during the 21 years of war are being used. Thus while pastoralists might have acquired guns to protect their cattle, they also use them to increase the population of their livestock through raiding of other communities' cattle and for accessing pastures by force. It appears that the culture of war and violence is still fresh in the minds of the young generations. As a result, youths take pride in violence, revenge, and cattle rustling. Another complexity revolves around the perception that most of the cattle in the contested areas are owned by top-ranking officials in the South Sudan army (USAID Sudan, 2010: Interviews with the chiefs and elders, July 2010; Schomerus and Allen 2010). The commonly held view is that these army officials supply the youths and cattle herders with guns and ammunitions to protect their cattle and raid more cattle to increase the numbers of their herds for prestige and fame. This has resulted in an arms race in the contested areas, further undermining peace and stability in communities.

Lacking are holistic and coordinated efforts to mediate in pastoralist related conflicts. The approach has been piecemeal, with no broader strategy to guide appropriate interventions. As an illustration, conflict over access to a particular cattle camp in Lakes State was solved through a take-over of the contested area by government, and allowing contesting parties to access it without restrictions (USAID Sudan 2010). However, such interventions are only short lived as they do not address the root causes of the conflict. At a recently held Workshop,<sup>1</sup> one participant expressed the opinion that, “no matter how many workshops you hold on conflict management, you will not be able to solve land conflicts in this country. You are not addressing the root cause of the problem, and that is the problem of insecurity and disarmament of communities.” The important question then is: What does it take to address conflicts over access to pastures and cattle raiding in the country? The political commitment to deal with such issues is questionable.

### **Policy Recommendations:**

The first step should be to pursue amendment of existing laws and policies to bring them in conformity with one another and with the Land Policy and Land Act. Secondly, government should prioritize formulation of additional laws and policy, such as the proposed Community Land Act, that will foster the implementation of all legal and policy frameworks in the country. There is also an urgent need to re-organize the institutions tasked with land administration and creation of additional institutions/structures at the local government level such as County Land Authorities in such a way that they become more efficient and effective in delivering their individual and collective mandates.

Additionally, efforts should be put into ensuring that existing laws are adhered to and implemented to the letter and spirit and applied to all without fear or favor. This understandably calls for the difficult task of strengthening the law enforcement agencies and the judicial system in the country.

As there are various customary land laws as there are communities in South Sudan, another policy recommendation could be around the conduct of an extensive research on the various customary land laws and practices that exist in South Sudan to understand their respective limitations, commonalities and how they could peacefully and legally interplay in the process of land administration in South Sudan. Deriving from the proposed research on various customary laws existing in South Sudan, it is also imperative to institutionalize and support the strengthening of the positive aspects of the customary systems in order to help mitigate and resolve land conflicts.

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<sup>1</sup> Training of Trainers and Trainers (TOT) Workshop on Land Administration and Land Conflicts, Workshop held on 16-20 January, 2012; Tetra Tech ARD offices, Juba.

## I.2 COMMUNITIES AND THE STATE: STALEMATE AND CONFLICT OVER LAND ACQUISITION FOR DEVELOPMENT PURPOSES

With the coming of peace and the enactment of the Land Act of 2009, the notion that ‘land belongs to the community’ has been strongly internalized by communities. The increasing demand for land for urban development and other investment purposes has increased the value of land, a notion that communities also seem to understand reasonably well. At the same time, government officials, keen on harnessing and securing development opportunities, are continuously faced with ever pressing needs to acquire more land for urban development and other investment uses. Moreover, communities have become inquisitive to advancement by government and investors alike to acquire land. This has led to strong assumption by public officials that communities are not keen on releasing their land and there seems to be a stalemate over the issue. The question that remains unanswered then is why would communities not be keen on providing land for the much needed development?

Evidence gathered from the implementation of the Sudan Property Rights Program confirms that relations between communities and the state over land acquisition are strained. It seems as if this is wide-spread, and the States most affected include Lakes State, Upper Nile, Jonglei, Central Equatoria, and Eastern Equatoria. At another Workshop<sup>2</sup> held in Bor, Jonglei State, government officials reported that they needed a police escort when undertaking their duties relating to planning, surveying and demarcation of plots. In a recent field visit to Kolnyang Payam of Bor County, communities of Malual Chaat villages expressed doubt and unhappiness with the way authorities in Bor decided to extend the boundaries of Bor urban center up to their lands. They claimed there were not sufficient consultations with the communities (owners of the land) during the process and that matters of compensation have not been agreed upon, although the authorities seem to agree that communities will be compensated. On-going ‘informal discussions’ seem to suggest that a decision has been made to relocate the capital from Juba precisely because the surrounding Bari community has expressed unwillingness to continue to offer land for urban development. This is unusual, and missing is a clear explanation as to why this is the case. Section 8 (2) of the Land Act provides that “*Pursuant to Article 32 (2) of the Constitution, no right in land shall be expropriated or confiscated save by law in the public interest and in consideration for a prompt and fair compensation.*” However, the Land Act 2009, Land Policy and the Transitional Constitution have not clearly provided for explicit procedures on how this compensation is supposed to be administered. Currently, there is little evidence to suggest that government has honored its own laws in cases where expropriation has taken place. Additionally, there is no land valuation law that could determine the value of compensation for land expropriated. Undoubtedly, this has remained as one of the major sources of discontent on the part of communities, often resulting into delayed or problematic land expropriation processes.

There is a lack of political will from the side of government when it comes to dealing equitably with communities/land owners for land expropriated. A good example of the lack of political commitment relates to the payment of compensation. Despite the existence of legal provisions that guarantee payment of compensation to communities for land acquired, there is no visible commitment by government to implement these. Yet the current community resistance and conflicts associated with land acquisition cannot be divorced from the lack of payment of compensation. Political commitment to address all types of land conflicts and more importantly, to respect government’s own laws is urgently required.

The law recognizes the rights of people living in both rural and urban areas but there is a huge discrepancy between the law and on-going practice. Reports of extra-legal acquisitions of land have been common, especially in urban and peri-urban areas. For example, in Juba there have been demolition exercises that have

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<sup>2</sup> The Jonglei State Workshop on Managing Land and Natural Resources of the Jonglei State, South Sudan Hotel, Bor, Jonglei State, November 15-17, 2011

been going on for the last few years. Most people complain that there is no adherence to due process regarding forced evictions, particularly with regard to compensation. In addition to expropriation being effected by government, higher ranking military and senior government officials have been allegedly involved in forcefully evicting rightful individuals from their properties despite the fact that such individuals possess legal documents which have been issued by the government. This practice is widespread especially in major urban centers such as Juba, Yei, and Nimule; and so far the court system has either been incapable of adjudicating these forced evictions or court verdicts have largely remained without enforcement to the disadvantage of the rightful land owner.

### **Policy Recommendations:**

Policy reform and more efficient, fair enforcement of existing laws are highly recommended here. More specifically, legislation is urgently required in determining the value of land in both rural and urban contexts. Such legislation can also assist in delivering appropriate compensation packages in case of expropriation, in enhancing the land market, and determining tax regimes for land. Land tenure security and the land registration process requires legal support in the form of a viable Land Registration Law and implementing regulations, since authorities currently use law from either colonial times or previous government.

Likewise, all land stakeholders including government, investors, communities and other interest groups should adapt to a participatory process in planning land expropriation exercises. This will ensure that conflicts that would ordinarily result from expropriation exercises are addressed collectively and proactively.

In general, the legal system needs to provide for more participation, sharing of benefits with the local population and increased due process protections in the expropriation process.

## **1.3 LAND CLAIMS BY DISPLACED COMMUNITIES & RETURNEES**

The period following the signing of the CPA and the subsequent declaration of independence of South Sudan witnessed a massive influx of returnees from both refugee and IDP camps, with understandably high expectations for a better life. These hopes have mainly been centered on land for both settlement and for a possible source of livelihood for most of the returning populations. It is also clear that many returning families are people who stayed in their refuge for over 20 years hence a large proportion of returnees were either born in the refuge places or were taken there at a very young age. Many of them can't clearly remember their original land or are in possession of any legal documents.

In urban centers, the successive local governments that served in the South during the war passed standing orders that allowed for re-allocation of pieces of plots to new owners on the grounds that these pieces of plots were not being developed by their first owners. Currently, there are multiple cases of double allocation of the same plots, with each claimant having "papers" that show they are the rightful owners of the plots. Current practice for resolving such impasses are having a negative effect on vulnerable groups such as returnees, who may not have the political or financial connections to successfully re-claim their pieces of plots.

Over 70% of the population of South Sudan live in rural areas and basically depend on subsistence farming using mainly traditional tools and old technologies to earn their living. Crop farming, livestock rearing and a small amount of cash crop farming are common practices among rural populations. Agriculture is the main source of employment for people living in rural parts of South Sudan. This clearly indicates that land is a central issue in ensuring the livelihood of the majority of the population. With the coming of relative peace and stability, there are many potential investors, both foreign and domestic, who are making proposals for the acquisition investment lands in rural areas. However, with the current weak legal and policy framework coupled with generally very low institutional capacity to address the increasing demand for investment land, unrest and land malpractice continue to be perpetuated, leading to prolonged conflicts and unprecedented loss of lives and property.

Except for women's rights to land, both the Land Act and Land Policy are silent on the special protection of the land rights of the returning populations, even though it is clear that hundreds of thousands of South

Sudanese are returning home from their refuge owing to relative peace and stability in South Sudan. In rural areas, returnees have not been well received by many host communities, who often see them as foreigners, due to their slightly different social patterns. This is possibly a possibly inevitable area of potential conflicts that will continue to challenge authorities for a very long time if not addressed effectively. **Section 8** of the Land Policy and **Article 32(1)** of the Interim Constitution of South Sudan have spelled out a number of areas regarding protection of land rights but have fallen short in addressing the land rights of returning populations.

#### **Policy Recommendation:**

As returnees are expected to continue arriving for a relatively long period of time and appreciating the fact that returnees will certainly be having issues of re-claiming their land from new owners who may not necessarily be willing to give up these pieces of land, government at all levels must acknowledge the vulnerability of returnees and IDP communities and therefore institute mechanisms to address land claims by these groups of people fairly and rather more expeditiously.

## **1.4 THE FAILING LAND ADMINISTRATION INFRASTRUCTURE AND LAND CONFLICTS**

In urban contexts, the failing land administration system, combined with the poor governance of land administration institutions, are root causes of land related conflicts. In the absence of modern practices of surveying and demarcation of urban plots, boundary problems are a major cause of concern. The weak land administration infrastructure and the prevalent corruption that has permeated land administration institutions have resulted in multiple allocations of plots, creating conflicts among residents. The development of town settlements has not been divorced from ethnic connotations, either. For various reasons, original inhabitants of places where towns are located continue to make land ownership and land administration claims, a situation that does not resonate well with the cosmopolitan nature of urban settlements and international practice. The failure of the planning system to deliver land for residential development for the poor largely explains the mushrooming of informal settlements in major cities in South Sudan. The demolition of settlements has seen residents losing both shelter and their premises for economic activities. Currently, the various levels of government do not seem to see this as a priority and therefore the continued inattention to this confusion will likely continue to be a cause of instability in the country.

In response to the multiple challenges faced in land administration, some individual states have instituted their own measures to address the problems without waiting for guidance from the parent ministry at the national level. Thus, in Eastern Equatoria State, the Lands and Natural Resources Committee of the State Legislative Assembly ended up assuming a monitoring role in the allocation of urban plots. Following complaints about corruption and unfair practices in land allocation, the State Legislative Assembly intervened to ensure a fair system for land allocation was put in place. Through Resolution Number 1 of 2008 on Land and Plots Allotment, land allocation functions were moved from the Surveying Department to the Lands and Town Planning Department of the State Ministry of Housing and Physical Infrastructure. Further, the Lands and Natural Resources Committee will be involved in the plot allotment process. Although such measures may not be devoid of the risk of creating a new set of problems, they constitute workable interim solutions to an already pressing problem.

Discussions with Judges (USAID SPRP 2010) provided concrete evidence of the loopholes in land administration in Southern Sudan. Such evidence showed that fraudulent land allocations by individuals and state land institutions were a major problem in most of the states. This often resulted in one plot being allocated to more than one person leading to land ownership disputes. The poor status of land registration and its non-computerization was also causing some unintentional double land allocation problems. According to the Judges, some of the land authorities were not following the correct procedures on the legal transfer of land ownership. Cases of fraud involved people who acted as agents of land owners when in effect such people do not have the power of attorney to enter into such transactions. Other land problems brought to the courts were offences of trespassing, many of which are caused by the lack of properly marked boundaries.

The breakdown of government services during the war left traditional authority structures as the main form of administration at the community level. Subsequently, traditional authority claimed control of the management of some of the towns in their areas. In post-conflict South Sudan, many of the traditional authorities are claiming authority in land administration in the towns. For instance, chiefs in Upper Nile and Central Equatoria States complained that they are being side-lined in the management of urban areas. In particular, chiefs in Upper Nile State noted that they wanted to participate in the allocation of plots in urban areas, noting that they are the providers of the land in the first place. Reinforcing their point, the chiefs pointed out that people in the town (especially if they are of the Shuluk tribe) approach the chiefs when they have plot ownership problems. Elsewhere, some chiefs seem to deal directly with investors with no meaningful consultations with the communities they are supposed to represent fairly. There is evidence of chiefs who work with government officials to allocate community land without consulting their citizens. Also, there is an increasing trend of informal groups that have sprung up, especially in Juba, engaging in informal plot allotment. These groups often charge high prices and allegedly receive the backing of chiefs and youth from the community concern. This raises the questions of how far chiefs can go in representing their communities, what constitutes consultation and what evidence is required to authenticate community consultation processes?

The land administration system in the country allows chiefs to allocate customary land categorized as fourth-class, land which is designated permanently to private use of individual members of the community. With the consent of the community, chiefs can apply to the County Commissioner through the Payam Administrator, stating their intention to divide part of the customary land within their community for allocation to community members and possibly to individuals from outside the community. When approved, community members pay fees that contribute towards costs of land demarcation by government officials. In practice, there are no written rules/instructions to guide this process. It is such allocations that are affected by fraud and illegal sale of land. In some cases chiefs connive with staff in the Survey Department of the State Ministry of Housing and Physical Infrastructure to ensure that some plots are reserved from being allocated without the consent of the community. Chiefs and government officials end up being beneficiaries of the illegal practices, with some of the plots being sold at inflated prices. As the USAID Sudan (2010) study shows, the emergence of false clan heads and chiefs has been confirmed, and these often become the main proponents involved in the illegal sale of land.

### **Policy Recommendations:**

The interface between community land informal institutions and the formal institutions remains a grey area, especially in peri-urban areas. Since this interface is a functional necessity, regulations that would recognize the legal personalities of communities and their nominated legally authorized representative(s) need to be formulated and clearly disseminated to all stakeholders. There is also need for clarity on the rights of informal settlers to their settlements as most of the informal settlers, who are often among the poorest segment of society. This inevitable interface between community and government allotment processes also calls for a series of mechanisms for effective coordination amongst all stakeholders involved in one way or another in land administration.

Town planners also need to improve on their planning by ensuring that towns/cities develop long term master plans that take into consideration inevitable expansion of urban areas into the rural lands. This process should be participatory and must be bottom-up to ensure that the master plans incorporate the views of the rural populations who are in fact the owners of the rural lands. The process of land administration is always bound to face conflicts in one way or another; therefore it is imperative to establish special land tribunals to complement the existing statutory courts in addressing land conflicts. These tribunals would draw membership from all interest groups and pursue alternative conflict resolution mechanisms basing on existing customary laws and practices.

## **I.5 INTER-GOVERNMENTAL/INTER-INSTITUTIONAL LAND CONFLICTS**

There are undoubtedly many instances of competing jurisdictions in functions of land administration in South Sudan that continue unabated. Despite some grey provisions in the legal and policy frameworks on which authority administers what portion of land administration aspect, there is a continuing struggle between different levels of government and even within a given level of government between departments and ministries on who controls what in regards to land management in South Sudan. For example, the land policy calls for the responsibility of land registry to be allocated amongst the various levels of government central, state and local government levels but without clearly outlining how these concurrent powers would be streamlined to prevent and manage conflicts between the various levels involved. In another example, the ministry of Agriculture, Forestry and rural development at the central level is alleged to have given a concession in Mangalla for a sugarcane scheme, but the ministry of Wildlife and Tourism is disapproving this concession. on the grounds that it would interfere with wildlife routes to the river Nile from Badingillo National Park; in addition, complaints have been lodged by the customary authority in Mangalla Payam that they were not consulted in the process of granting this concession and therefore they fear eviction by government authorities to make space for the concession. Such irregularities caused by conflicting jurisdictions over land administration are likely to impede economic development in South Sudan.

### **Policy Recommendations:**

Legislations can help to support land use planning especially when pursued in a participatory manner, in that it involves all relevant interest groups (such as the various government ministries and levels of governments) so that cases of competing land usage are minimized. Land conflict management should be designed to employ different processes and mechanisms geared towards providing both preventive and curative measures. This calls for a systematic approach to land conflict resolution that provides a clear conceptual framework for understanding the concept of land conflict management with emphasis on land dispute resolution on sustainable basis.

# 2.0 THE LEGAL DIMENSIONS OF LAND CONFLICTS

The land conflict situation in South Sudan has many legal dimensions to it. There are situations where the Land Act 2009 does not provide clear institutional mandates. To start with, the law itself is not clear on the implementing agency of the Land Act. There are certain inconsistencies with the Local Government Act, particularly in connection with the land acquisition functions. There are also examples of vague or incomplete legal provisions. This is visible in connection with land use planning and land administration. Some critical land administration functions, especially those governing plot demarcation and allocation in planned settlements are not provided for in the Land Act. Also, there is no law regulating the allocation of fourth class plots by chiefs and how this function interfaces with the land administration processes in urban centers.

The Land Act 2009 prescribes the South Sudan Land Commission (SSLC) as one of the key institutions mandated to arbitrate in land claims. The following is the mandate of SSLC as outlined in the Comprehensive Peace Agreement, CPA:

1. Arbitrate between willing contending parties on claims over land, and sort out such claims
2. Ensure that parties to the arbitration are bound by the SSLC's decision on mutual consent and upon registration of the award in a court of law. In due process, SSLC is required to apply the law applicable in the locality where the land is situated or such other law as the Parties to the arbitration agrees.

Section 79 (3) of the Land Act further confirms the legal mandate of SSLC in the arbitration of conflicts, although there is a current law of arbitration in South Sudan. Interestingly, the onus is upon the conflicting parties to approach SSLC with their land related problems. This is one major oversight of the law; as the nature and types of conflicts as already explained can be violent and at times involve the use of firearms. Expecting that such communities should approach the SSLC for arbitration of their own volition shows both misjudgment and lack of anticipation on the part of the law. In practice, SSLC is located far away from the communities, and many are not even aware of its existence. In fact, Land Commissions have only been formed in a few States, notably Jonglei, Upper Nile, Central Equatoria and Unity. The preferred and more realistic legal option would be one which complements the existing arrangement by giving SSLC powers to intervene and summon conflicting parties. The same argument holds in connection with Section 92 of the Land Act which states that in the mediation of other conflicts '... the parties may agree to use mediation to resolve the dispute.' Even traditionally, chiefs have authority to summon their subjects for a hearing for any offense committed in areas under their jurisdiction. State institutions cannot be encouraged to 'sit back and observe' while land conflicts undermine peace, stability and development in the country.

Whilst the law assigns responsibilities for dealing with land claims to SSLC, Chapter XV of the Land Act allocates functions of land dispute settlement to a mediator who is '...designated upon request by the parties from amongst members of the County Land Authority (CLA), the Payam Land Council or Traditional Authority...' Understandably, settling of land claims is also part of land dispute settlement. The division between the roles of SSLC and that of CLA appointed mediators potentially undermines the efficiency of the dispute resolution mechanisms, and this could explain why both systems have not been successfully implemented to date. It may be desirable for the law to allocate land dispute settlement to one institution or explicitly segregate the types and nature of conflicts per the specific institutions so cases of duplication and overlapping of dispute resolution responsibility are evaded.

Section 91(2) recognizes the role of customary law in solving land disputes. At the same time, it is significant to note that the Draft National Land Policy calls for the enactment of a Communal Land Act. Notably, Section 110 (4b) of the Local Government Act calls for the enactment of ‘...legislations to combat harmful customs and traditions which undermine the dignity and status of women...’ This legal brief has already referred to some of the potentially harmful cultural practices that may be contributing directly and indirectly to the escalation of conflicts. Currently missing is an accurate assessment of the role played by cultural practices in fuelling conflicts. Questions relating to, inter alia, which cultural practices, which groups of people are involved, how widespread the problem is and how can the law help in solving the situation are issues that require more analytical work. An important next step includes starting to work on the proposed Communal Land Act (or any other legal instrument) with a view to using such legislation to manage cultural practices that are contributing to the escalation of conflicts. Worth noting is that there are also cultural practices that were used to negotiate access to pastures and water amongst communities themselves. As such, the Communal Land Act should seek to revive such resource sharing arrangements, providing incentives for communities that successfully negotiate such mechanisms.

Section 66 of the Land Act provides for the protection of pastoral lands through the development and implementation of a land use planning. Section 67 seeks to protect the rights of pastoralists to access water points and pastures in communal grazing land. In general, the legal framework as defined by these two provisions is not comprehensive enough to address the conflict flashpoints between pastoralists and crop farmers. The law is vague, making a sweeping statement that nobody ‘... may prevent or restrict the residents of the traditional communities concerned from exercising their grazing rights.’ Needed in the law is the explicit statement of both rights and obligations of pastoralists. Without respecting the seasonal calendar of the host communities, pastoralist groups would always be in conflict with crop farmers over simple issues that could be addressed administratively or legally. For instance, lack of guidelines (legal or administrative) on when harvesting should be completed to allow cropped fields to be opened up for grazing annually is a conflict flashpoint (see USAID 2010 on conflicts over Lake Girindi). In addition, there are also issues relating to the livelihoods of host communities (fishing, honey extraction, gardens) which policy (and possibly legal regulations) would need to be managed in a way that balances the interests of pastoralists and crop farmers as well as other existing livelihood patterns that come into play for their very survival. Further, the exact rights that pastoralists have over pastures that are located in the territory of other communities need to be explicitly stated in view of the rights of other land users. It is also important that the law recognize the migratory routes of pastoralists and the regulatory requirements for supporting implementation. Thus, for instance, Section 66 that seeks to protect pastoral land based on a comprehensive land use plan should explicitly provide for the content of said plan, including the demarcation and mapping of cattle routes.

It is also important for the law to anticipate and provide for issues that will be faced by the livestock sector as the country continues with its modernization. In this regard, it is appropriate for the law to regulate grazing and grazing lands in a manner that matches the limitations of the environmental capacity of the land. Thus, there are issues relating to carrying capacity of the land, cattle herd sizes and disease control. In this regard, the Land Act should establish synergies with the parent legislation/regulations/policies that govern the livestock sector. Thus the Land Act must make specific reference to the Ministry of Animal Resources and Fisheries and its overall functions as the regulator of the livestock sector. In fact, the Ministry of Animal Resources and Fisheries’ strategic plans have proposals for Grazing and Grazing Lands legislation. As such, there is need for collaboration between such proposals and the review/implementation of the Land Act.

Modern democracies require legal frameworks which provide clarity, predictability and stability for all development partners to work efficiently and effectively (Leftwich 1994). Further, such frameworks should be impartially and fairly applied to all, as well as providing the foundation for conflict resolution through multiple channels. The Land Act and other supporting legislation fail to meet some of these fundamental prerequisites. Table 1 summarizes the institutional and legal gaps that are fostering the development of land conflicts, thereby threatening peace and stability in the new nation.

In many respects, the legal frameworks in South Sudan fail to provide clarity and predictability. For instance, there are conflicting provisions pertaining to statutory functions on the acquisition of land. Whereas the Local

Government Act 2009 (Section 89) assigns this responsibility to the appropriate local government council; the Land Acquisition Act (Section 73) allocates such functions to the Ministry responsible for housing, land and public utilities. This ‘legal contradiction’ creates confusion and inevitably constitutes a recipe for more complex land conflicts such as multiple allocation of land and a host of other illegal practices in the land acquisition process. For instance, it has been observed that there are situations where government officials, acting in their individual capacities, have impersonated government. This has been particularly so in relation to acquisition of land from communities for development purposes. Needed is a clear legal and policy instruction on who represents government in the acquisition of land. Such a policy instruction needs to be made available to all government departments as well as traditional leaders and their communities. Also; the law should provide for the creation of professional bodies that regulate the conduct of property professionals; especially town planners and surveyors.

A pertinent issue affecting the land sector as a whole relates to limited capacities of state institutions to deliver on their specific mandates. While the South Sudan Land Commission is the key institution mandated to deal with land claims, little has been achieved to date because of constraints associated with, among other issues, lack of human and financial resources and the lack of an establishment act. The County Land Authorities have been assigned with responsibilities of land disputes settlement, but most of these do not exist on the ground as yet. The law should clearly state the mandates of state institutions, taking care not to duplicate functions. It may be necessary for the law to reassign the responsibility to deal with land claims to CLAs. It is also necessary to put the functions of land acquisition into one institution, and good practice examples require that this be kept in local government.

Another pertinent issue affecting the settlement of land disputes in South Sudan is the weak judicial system in the country. This is particularly evident in regards to multiple claims on plots in urban areas, especially in Juba. There is a huge backlog of land dispute cases in the courts in Juba, due to a number of reasons including a weak court system and allegedly corrupt court officials. This has, in a number of instances, dissuaded disputants from approaching the court system to arbitrate between them and taking matters of law into their own hands, often resulting in violence. This lack of trust and confidence in the court system has continued to contribute to conflicts around land. A solution that could be proposed for this is to advocate for land dispute courts that are empowered to deal with issues of land conflicts that could not be addressed through existing alternative dispute resolution mechanisms. In addition the existing military courts should be involved in addressing military officers who are accused of grabbing individual or community lands as some of the senior military officers are allegedly defying nonmilitary courts. Also, to revamp this military court system, Legal Advisors in the Office of the President should play an oversight/advisory role in military court proceedings that involve senior military or government officials.

**Table1: Institutional and Legal Dimensions of Land Conflicts**

Issues & types of conflicts	Institutional & Policy Gaps	Legal Gaps	Other perspectives of the problem
Land claims by displaced communities, IDPs & returnees	- SSLC & few other Commissions have no capacity to deal with land claims	- Legal mandates for SSLC, CLAS etc. that allow them to intervene even if not ‘invited’ - Establishment of land specific courts to expedite the arbitration of land disputes	- Non-proactive approaches of dealing with land conflicts by SSLC - Weak and corrupt judicial system
Conflicts between pastoralists & crop farmers Conflicts between	- New demonstration models for livestock rearing	- Legally binding local arrangements for sharing pastures	- Unbalanced power distribution among ethnic groups requires urgent

pastoralist groups themselves	<ul style="list-style-type: none"> <li>- are missing.</li> <li>- Policies that match cattle population &amp; grazing capacity of land are missing</li> <li>- Political strategies to deal with negative cultural practices<sup>3</sup> are not in place</li> </ul>	<ul style="list-style-type: none"> <li>- Legal clarity on the rights &amp; obligation of pastoralist communities</li> <li>- Registration of the rights of pastoral groups</li> <li>- Absence of land use planning law limits options for managing pastoralist conflicts</li> </ul>	<ul style="list-style-type: none"> <li>- attention</li> <li>- Disarmament of communities urgently required</li> <li>- Developmental role of the state requires strengthening</li> <li>- Rampant insecurity in some states</li> </ul>
Multiple allocation of plots, corruption & boundary problems in urban areas	<ul style="list-style-type: none"> <li>- Lack of clearly defined institutional roles for land allocation in planned settlements</li> <li>- Weak land &amp; corrupt administration infrastructure</li> </ul>	<ul style="list-style-type: none"> <li>- Legal clarity on which institution should allocate land in towns</li> <li>- Legal clarity on management of urban land<sup>4</sup></li> </ul>	<ul style="list-style-type: none"> <li>- Lack of professional bodies to regulate activities of land surveyors &amp; town planners</li> </ul>
Land acquisition for development purposes	<ul style="list-style-type: none"> <li>- Policy guidelines on payment of compensation</li> </ul>	<ul style="list-style-type: none"> <li>- Regulations to guide community consultation processes</li> </ul>	<ul style="list-style-type: none"> <li>- Political commitment to implement law as is (i.e. section 75 of land act)</li> </ul>

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<sup>3</sup> This includes payment of hundreds of cattle for lobola, cattle raiding practices, non-recognition of commercial value of cattle etc.

<sup>4</sup> The proposed Country and Town Planning law advocated in the land use brief should address this.

# 3.0 THE NON-LEGAL DIMENSIONS: A SUMMARY OF ISSUES

As expected, some of the land conflicts also have non-legal dimensions. Presented here is a summary of some of the contextual issues that are needed to support legislative requirements.

## 3.1 THE MISSING DEVELOPMENTAL ROLE OF THE STATE

Against a background where there is lack of peace and stability in the countryside, the developmental role of the state is limited, and scarcity of water points and pasture is one such outcome of the process. The penetration of society by the state in its efforts to bring development through policy changes and piloting development projects remains weak. Schomerus and Allen (2010) argue that violence and conflicts could only be contained by strong and reliable state structures, 'yet these do not exist or where they do, might be perpetrators of violence themselves.' As already mentioned, the protracted civil war created situations where some communities yield more power than others. When faced with scarcity-related challenges, such communities are tempted to use force to achieve their goals. It is in this context that conflicts relating to cattle raiding and child abductions are occurring. The question that analysts are asking is: why does the State appear powerless to control cattle raiding, child abductions and general lawlessness when it comes to the use of arms by communities. By and large, the developmental role of the State remains at the embryonic stage. Thus, state failure to provide services like the control of cattle diseases lies at the heart of why communities are fighting over cattle movements. As an illustration, the absence of adequate veterinary extension services and the subsequent disease outbreaks in communities result in communities imposing restrictions on cattle movements into their areas for fear of spreading such diseases. With no other option available to communities which are bringing cattle into the premises of others, such communities resort to violence and the use of force in order to access water points and pastures.

## 3.2 LEGITIMACY OF EXISTING CONFLICT RESOLUTION INSTITUTIONS

If established conflict resolution institutions are often inaccessible, costly and unable to resolve and implement decisions over land conflicts, then there is room to question the legitimacy of their establishment and any of their actions. Accessibility of the institutions is crucial because it is important for maintaining peace and order within a community and improving efficiency of a mechanism for the resolution of conflicts (Paterson, 2001). Acceptability has impacts on transparency and cost. Where institutions in charge of solving conflicts are inaccessible, users have to pay much money before accessing justice delivery. If the institutions in charge are acceptable by parties who are involved in conflicts, it improves trustworthiness. This is because achieving an amicable solution depends to a great extent on the trust and loyalty of the people with regard to mediators and settlement procedures (Crook, 2002). Similarly, legitimacy means that the mediators have adequate knowledge of existing rules or must be advised by people who have such knowledge.

This means that in areas where land delivery is based on local rules, the institutions for land delivery must be built on the local institutional structure. Such institutions must also be free from government interference at all costs. This is because local governments have often exhibited tendencies and adequate capabilities to enforce their selfish decisions and orders. What the government should practically do is to legitimize the

operations of such institutions through the recognition of laws and provide logistics to support the operations of these institutions. This will certainly increase the access to justice for individuals and groups that are not adequately or fairly served by the formal judicial system

### **3.3 SUMMARY OF THE KEY LEGAL STEPS**

In summary, there is need for the law to synchronize the role of SSLC and that of the CLA appointed mediator in dispute resolution. The gravity of land conflicts in the new country requires that these institutions be accorded full legal powers to intervene in land conflict situations. An amendment of both the Land Act and the Local Government Act should see the responsibility for land acquisition assigned to one institution as well as addressing contradictions therein. The rights and obligations of pastoralist groups must be explicitly stated in the law. Section 66 of the Land Act should be amended so that the content or core elements of the land use plan are stated in the law. The Land Use planning brief has called for a new law on country and town planning. The same arguments apply in land administration. New laws are required to guide land administration. Such a law will, among other issues, clarify institutional responsibilities in allocation of plots in planned settlements and set standards in land administration (i.e. quality control). The draft Land Policy, as adopted by the Council of Ministers, is expected to be approved by the National Assembly during the coming months. The Land Policy includes principles and proposes legislation which will address most if not all of the failings of the legal framework described above. However, even if the necessary legal and regulatory framework is put in place, much work on the development of the institutions responsible for the implementation of the new legal framework will need to be carried out. While waiting for new legislation, the country can astutely use selected sections of old legislation that must be identified and agreed upon by stakeholders.

# 4.0 CONCLUDING REMARKS

The discussion shows that land conflicts in South Sudan have both legal and non-legal dimensions. The planned review of the Land Act will go a long way in addressing the legal gaps. Synergies with other legislation will further assist in plugging the legal loopholes identified. As discussed, the enactment of entirely new legislation in land administration, rural and town planning and; grazing and grazing lands will strengthen the legal infrastructure to deal with land conflicts. However, the non-legal dimensions are equally important. Needed in the South Sudan context is a strong state, one capable of holding the various groups together in pursuit of unifying national goals. More importantly, political commitment to always addressing conflicts in a decisive and objective manner is required. Also, the existing institutions need to be capacitated to govern in a transparent and accountable manner.

# 5.0 REFERENCES

- Cameron, G T (2007), The Political Economy of State Building in Sub-Saharan: The Journal of Politics, Vol. 69, No. 3 (Aug., 2007), pp. 716-731; Cambridge University.
- Leftwich, A (1994), Development and Change, Vol. 25 (1994), pp. 363-386, Institute of Social Studies, Blackwell Publishers.
- RoSS (2011), South Sudan Development Plan, 2011-2013, Juba.
- Schomerus and Allen (2010), Southern Sudan at odds with itself: dynamics of conflict and predicaments, Juba University and London School of Economics and Political Science Development Institute, report downloaded from: [www2.lse.ac.uk/businessAndConsultancy/.../pdf/southernSudan.pdf](http://www2.lse.ac.uk/businessAndConsultancy/.../pdf/southernSudan.pdf), 21 March 2012.
- USAID Sudan (2010), Customary Tenure and Traditional Authority in Southern Sudan, Case Study of Juba County, Study Commissioned under the Sudan Land and Property Rights Program.
- USAID Sudan (2010), Jurisdiction of GOSS, State, County and Customary Authorities over Land Administration, Planning and Allocation; Juba County, Central Equatoria State; Study Commissioned under the Sudan Land and Property Rights Program, Juba.
- USAID Sudan (2010), Conflict over Resources among Rural communities in Southern Sudan: a case study of Lake Girindi, Mvolo County, Western Equatoria State, Study Commissioned under the Sudan Land and Property Rights Program, Juba.
- UN-HABITAT (2010), Land Conflict Analysis for South Sudan, Report prepared for United Nations Human Settlement Programme, Regional Technical Cooperation Division/ROAAS.
- USAID Sudan (2005), Creative Associates International, Juba Assessment: Town Planning and Administration
- David K. Deng (2010), The New Frontier: A baseline Survey of Large-Scale Land-based Investment in South Sudan
- South Sudan Government (2009), Investment Promotion Act
- South Sudan Government (2009), Land Act
- South Sudan Government (2009), Local Government Act

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