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LAND TENURE ISSUES IN SOUTHERN SUDAN: KEY FINDINGS AND RECOMMENDATIONS FOR SOUTHERN SUDAN LAND POLICY

DECEMBER 2010

This publication was produced for review by the United States Agency for International Development. It was prepared by Tetra Tech ARD.

LAND TENURE ISSUES IN SOUTHERN SUDAN: KEY FINDINGS AND RECOMMENDATIONS FOR SOUTHERN SUDAN LAND POLICY

THE RESULTS OF A RESEARCH COLLABORATION
BETWEEN THE SUDAN PROPERTY RIGHTS
PROGRAM AND THE NILE INSTITUTE OF
STRATEGIC POLICY AND DEVELOPMENT STUDIES

DECEMBER 2010

DISCLAIMER

The author's views expressed in this publication do not necessarily reflect the views of the United States Agency for International Development or the United States Government.

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The USAID Sudan Property Rights Program has supported the Southern Sudan Land Commission in its efforts to undertake consultation and research on land tenure and property rights issues; the findings of these initiatives were used to draft a land policy that is meant to be both legitimate and relevant to the needs of Southern Sudanese citizens and legal rights-holders.

The Southern Sudan Land Commission recognized the importance of engaging Southern Sudanese academic institutions in undertaking land tenure and property rights research and recommended that the Sudan Property Rights Program collaborate with the Nile Institute to research key topics. The reports presented in this document are the result of several months of hard work by both the Nile Institute and the teams contracted to undertake this research. Southern Sudan poses particular challenges to researchers, both logistical and political, particularly when focusing upon the sensitive topic of land. Despite these challenges, the Nile Institute and research teams have produced important findings and recommendations that will add to the body of literature on land tenure and property rights in Southern Sudan and complement the results of public consultation, providing empirical evidence upon which to base aspects of Southern Sudan's land policy. The USAID Sudan Property Rights Program recognizes and commends the Nile Institute and research teams for their perseverance and hard work to produce this research.



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ACRONYMS

CPA	Comprehensive Peace Agreement
FDI	Foreign Direct Investment
GOS	Government of Sudan
GOSS	Government of Southern Sudan
IDPs	Internally displaced Persons
ICS	Interim Constitution of Sudan
ICSS	Interim Constitution of Southern Sudan
LTPR	Land Tenure and Property Right Research
NGOs	Nongovernmental Organizations
NISPDS	Nile Institute of Strategic Policy and Development Studies
NPA	Norwegians People's Aid
NRC	Norwegian Refugees Council
SAAR	Secretariat for Agriculture and Animal Resources
SPLA	Sudan Peoples' Liberation Army
SPLM	Sudan Peoples' Liberation Movement
SPLM/A	Sudan Peoples' Liberation Movement/Army
SPRP	Sudan Property Right Program
SSLA	Southern Sudan Legislative Assembly
SSLC	Southern Sudan Land Commission
UNHCR	United Nations High Commissioner for Refugees
USAID	United States Agency for International Development

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We take the burden for all errors.

Sibrino Barnaba Forojalla

Kennedy Crispo Galla

INTRODUCTION

The nascent Government of Southern Sudan (GOSS) has come into existence when globalization and liberalization are the defining principles for the management of national economies and resources. These imperatives present critical challenges to the new administration, especially in the light of the acknowledged land and natural wealth of Southern Sudan.¹ Recognizing the central importance of land to the people of Southern Sudan, the Comprehensive Peace Agreement (CPA) mandated the establishment of the Southern Sudan Land Commission (SSLC) to address the issues of land tenure and property rights in Southern Sudan. This new organization is faced with daunting challenges of how to resolve differences in expectations about land-use at all levels, from the national government down to communities. The Land Commission first developed the Southern Sudan Land Bill, which was passed into an Act by the Southern Sudan Legislative Assembly (SSLA) in January 2009. What is envisaged to follow is the formulation of land policy and laws, which is a long-term undertaking, requiring wide consultations with the communities at large and will be supported by evidence-based research.

The United States Agency for International Development (USAID) has contracted Tetra Tech ARD to collaborate with the SSLC through the Southern Sudan Property Rights Program (SPRP), in order to assist the GOSS in development of a land policy. The SPRP and SSLC have convened consultation workshops in each of Southern Sudan's ten states. They are continuing to implement a program of consultation and land tenure and property rights (LTPR) research to inform the process of land policy development.

To pursue the research aspect, the SPRP has subcontracted the Nile Institute of Strategic Policy and Development Studies (NISPDS), a national think tank, to research specific areas of land tenure and property rights issues that would contribute in the development of evidence-based land policies and laws. To undertake the research, the NISPDS has been entrusted to establish a Research Standing Committee, whose functions are twofold: (1) develop criteria and guidelines for selecting relevant research topics and proposals, and (2) review and approve research proposals. The starting point is to review the existing literature to identify what has been done and what needs to be done on the subject under study. It is in this context that this scoping paper has been prepared.

This scoping paper has drawn from numerous documents in the form of studies, reports of consultation workshops, and papers, mostly written on land tenure and property rights in Southern Sudan in the post-conflict period.

STRUCTURE

Since the aim of undertaking researches is to provide the SSLC with evidence on which to base the development of functional land policies and laws, the scoping paper has been structured on the basis of thematic areas:

- The first theme focuses on the traditional land tenure systems in Southern Sudan as the predominate system of land administration and management in the South and how it has survived marginalization by governments in Khartoum throughout the colonial and post-colonial period.

¹ Bior et al. Land Tenure Study in Southern Sudan, Phase I. 2005:7

- The second theme examines the power relations over land tenure and property rights between the different levels of government on one hand, including the GOSS, the states, and local governments on the one hand and traditional authorities and communities on the other.
- The third theme deals with the issues of the resettlement of returnees (internally displaced persons [IDPs] and refugees) as the most urgent and crucial issue for the GOSS, nongovernmental organizations (NGOs), and United Nations agencies.
- The fourth theme examines the issue of restitution of the appropriated lands and property rights of individuals or communities by government and other entities.
- The fifth theme deals with women's access to land and property rights.
- The sixth theme focuses on conflicts over access to natural resources between pastoralists and other pastoralists, and between pastoralists and farmers.
- The seventh and final theme deals with conditions under which local and foreign investors can gain access to land for investment purposes.

Finally, conclusions are drawn and recommendations for possible research themes are presented.

I.0 CUSTOMARY LAND TENURE SYSTEMS IN SOUTHERN SUDAN

Available literature informs that customary law has governed the use of land in Southern Sudan for centuries, with each ethnic group applying its own laws relating to land and land rights within its own geographical setting.²

However, with imposition of foreign rule over the Sudan, various attempts were made to change this regime. Efforts by Turk-Egyptian (1821–1885) and Anglo-Egyptian (1898–1956) regimes to intervene in the management of land through laws from Khartoum failed to have any significant effect. The first serious attempt to control customary land was by the Anglo-Egyptian regime through the Land Ordinance of 1906. This made all land in the Sudan the property of the government. In practice, however, land in Southern Sudan remained under the control of communities through the practices of customary laws and principles. The land Settlement and Registration Ordinance of 1925 required that any one claiming title to any land should submit a claim for settlement and registration. This only applied to the land on both sides of the Nile from Khartoum to the Sudanese-Egyptian border and urban centers. The prescription and Ordinance of 1928 gave entitlement to any person who has occupied a piece of land uninterrupted for a period of 10 years or more.

In the post-independence period, the Unregistered Land Act of 1970 provided that any land not registered in accordance with 1925 Land Settlement and Registration Ordinance was considered to belong to the Government of Sudan (GOS). In the north, the law gave the government the right to selectively sell land in the Nuba Mountains and the Funj region of Central and Southeastern Sudan, resulting in the displacement of entire communities from their ancestral lands. Although the law was opposed and challenged by most communities in Southern Sudan, the government used it for the diversion of water through the construction of the Jonglei Canal and oil prospecting projects. It was this unilateral decision to exploit the natural resources of the South without any regard for human security, land rights, and livelihoods that contributed to the outbreak of conflicts in 1983.³

In more recent years, Sharia Law has been used to underpin policy and legal interventions in the land sector, based on the principle that all land in Sudan belongs to Allah; the government, as the representative of God on Earth, has the right to take possession of land owned by non-Muslims. Fortunately, because of the war the application of this law has been ineffective in the Southern Sudan.

Thus, on the whole, land laws enacted by governments in Khartoum throughout the colonial and post-colonial periods have not seriously affected the customary land tenure system in Southern Sudan. During the peace negotiations in Machakos and Naivasha, land was the main point of contention between the (GOS) and The Sudan Peoples' Liberation Movement/Army (SPLM/A), reflecting the ongoing, historical

² Bior et al. Land tenure Study in Southern Sudan, Summary Report. Nairobi. February 2006.

³ Shanmugaratnam N., Post-War Development and the Land Question in South Sudan, 2008: 4.

struggle against proposed attempts to change traditional customary land laws and practices. This was considered critical for the attainment of lasting peace, as the Southerners considered land at the heart of their struggle. The result was the insertion of the concept of “Land belongs to people” in the CPA and inclusion in the Interim Constitution of Sudan (ICS) and Interim Constitution of Southern Sudan (ICSS).

It was in this context that the SSLC was established at the level of GOSS to address in general terms the issues of land and specifically resolve conflicts over land. One of the major functions of the SSLC is to develop policies that would resolve differences between different interests in land at both the horizontal and vertical levels of governments and communities in Southern Sudan.

In this context, the community land challenges that need to be defined are those of identifying communities and demarcation of community land. Furthermore, customary land practices need to be researched and defined.⁴

Bearing this in mind, while the formation of GOSS was being undertaken, partners involved in the return process of returnees (IDPs/refugees) commissioned the study on land tenure and property rights led by Norwegian Refugees Council (NRC) in the 10 states of Southern Sudan. This was later validated by consultation workshops. All the workshop reports confirmed that most of the lands in Southern Sudan were communally owned and customary land tenure practices are predominate in the land management system.

⁴ Justice Deng Biiong and Robert Benjamin Lowki. Challenges of Land Policy Development in Southern Sudan, November 2006.

2.0 RELATIONS BETWEEN GOVERNMENTS AND TRADITIONAL AUTHORITIES OVER LAND

Currently there are no clear policies and laws in place governing relations between the different levels of governments (GOSS, state, and local governments) and the traditional authorities (chiefs and community elders). As stated in the ICS, “it is not clear how rights of different levels of governments, communities and individuals, are defined in land held by government or traditionally held by communities. A report of joint study by Norwegian People’s Aid (NPA) and Sudan Peoples’ Liberation Movement (SPLM)/ Secretariat for Agriculture and Animal Resources (SAAR) presented at a 2006 national workshop of key government, civil society, and international stakeholders raised important issues regarding the respective roles and authorities of government and traditional authorities over the ownership and administration of land, including:

1. State Ministers complained about reluctance of rural communities to allow urban development and expansion, while rural communities equally complained about urban encroachment into rural areas and lack of consultation from the government side when they needed land, creating tension between the two groups.
2. Most rural communities are not aware of their land rights enshrined in CPA and ICSS. As a result, they still believe that land belongs to communities and they expect the SPLM to honor its promises of land belongs to communities.
3. There are two positions held on land ownership: (a) public/state ownership favored by GOSS Ministers/State Governors and local government officials (b) communal ownership favored by rural communities, traditional authorities, and legal and land tenure experts of Southern Sudan origin.
4. There is little discussion of private ownership.

Key recommendations in the report and from stakeholders stressed the importance of traditional land management mechanisms not only for administering land in the rural areas, but also resolving and settling land disputes and conflicts. Key limitations of customary land management systems were also highlighted, noting the lack of codification of customary laws and practices and their variation from community to community, which makes them difficult to replicate and apply widely.⁵

On other the hand, the current ongoing consultation workshops being conducted by the SPRP confirmed that communities fear to entrust the power of land acquisition to GOSS and State governments because

⁵ Odiambho, M. Southern Sudan Land and Property Study and Workshops, December 2009, p.1⁵.

the likelihood of abuse of such powers as well as the equal likelihood of marginalization of traditional leaders leading to the alienation of communities from their ancestral lands.

During a consultation on land issues in Lakes State in 2010, people expressed concerns about the exploitation of subterranean resources and the likelihood of local population displacement where these are found; and likelihood of ignoring the community in benefiting from such resources. Apparently, there has not been any meaningful consultation with local communities even though the CPA says that the “communities in whose areas subterranean natural resources occur have the right to participate, through their respective state/region in the negotiation of contracts for the development of these resources” (CPA 2005:52). The need for the land policy to address explicitly the question of subterranean resources, ensure safeguards for peoples’ land rights, and coordinate the land policy with any minerals and investment policies was suggested.

In this context, GOSS and state governments should incorporate international principles and practices in exercising “Eminent Domain” as they attempt to acquire land for public use as well as market needs without antagonizing the communities.

3.0 URBAN LAND MANAGEMENT AND THE QUESTION OF INFORMAL SETTLEMENTS

3.1 URBAN PLANNING IN SUDAN

Under the 1970 Land Act, urban planning is the responsibility of the government. The Act gave responsibility for any unregistered land to the government. Under this law, the government would identify a piece of land for specific purposes, such as housing plots, commercial areas, industrial areas, and infrastructure. This would then be gazetted, surveyed, and demarcated into blocks and subsequently, individual plots. It is at this stage that applications would be invited, and plots awarded upon payment to successful individuals or entities, based on defined criteria. This criteria includes the clause that only persons who have not obtained a plot previously would be considered. Later with the grading of housing plots into first-, second-, or third-class plots, the ability to pay the required fees became the deciding factor.

In the case of the South, this approach largely failed, except for in towns such as Juba, Wau, and Malakal. Many of the other towns were under frequent attacks by the Sudan Peoples' Liberation Army (SPLA).

Currently the process of land administration and management in Southern Sudan emanates from the CPA provisions on land that "land belongs to communities." This nullifies the previous process for land administration and management that existed in the Old Sudan. The Land Act of 2009 affirms this stand by nullifying the application of land laws of the GOS in Southern Sudan. This Act states that upon its coming into effect, "any national law addressing issues under this Act shall cease to operate in Southern Sudan *provided that* all proceedings, orders and regulations taken or made thereunder, except to the extent they are repealed by or are otherwise inconsistent with the provisions of this Act, shall remain in force or effect, until they are repealed or amended in accordance with the provisions of this Act."⁶

However, the Act was developed following the virtual collapse of the statutory land administration system during the war. Though customary systems remained largely intact in the absence of an effective statutory system, the lack of an integrated system and the failure to understand adequately or engage with traditional authorities and systems is problematic.

This has posed serious challenges to the different levels of governments (the GOSS, state, and local), individual citizens, as well as investors, in accessing land for different purposes. In the meantime, the

⁶ The Interim Constitution of Southern Sudan, 2005: Article 180–182.

ICSS, under concurrent powers of government, calls for the establishment of a Land Commission and an appropriate land administration system in Southern Sudan.⁷

The SSLC was established with the following functions:⁸

- 1) Arbitrate between willing contending parties on claims over land, and sort out such claims.
- 2) Assess appropriate land compensation, which need not be limited to monetary compensation, for applicants in the course of arbitration or in the course of a reference from a court.
- 3) Advise different levels of government on how to coordinate policies on GOSS projects.
- 4) Study and record land use practices in areas where natural resources exploitation occurs.

In addition, the post-conflict situation poses a number of challenges. Some individuals have sought to reassert rights that existed prior to the conflict. Others seek to protect rights that came into existence during the conflict. Many IDPs who settled in SPLA-occupied towns during the conflict are not ready or willing to return to their areas of origin. Those who fled to other countries are now returning and seeking to reclaim their land and properties. The result is that some state governments have been taking the initiative to govern land-use planning.

All these challenges are particularly evident in the situation of Juba town where the demand for land is greatest, resulting in incidences of land-grabbing and allotment of land by some chiefs.

3.2 INFORMAL SETTLEMENTS

According to World Bank Report, there are various forms of informal settlements with varying degrees of legality and illegality. They include regularized and unregularized squatting, and unauthorized subdivisions on legally owned land with various forms of unofficial arrangements.⁹

Invariably, some of these informal categories—such as squatting—started as a response to the inability of public allocation or commercial markets to provide for needs of the poor, and operated on a socially determined basis.¹⁰

In case of the Southern Sudan, Juba in particular, informal settlements date back to the first war (1961), when the Lopit and Latukah ethnic groups from the present Eastern Equatoria State were moved to Juba. The Lopit settled on sites of the present Catholic University and Al-Sabah Hospital. The Latukah occupied Hi Nyakama, which lies west of Block Primary School and south of Bulk Police Training School. Another Latukah group occupied Hi Kasafa, east of current Military Barracks of Joint Integrated Units. Other ethnic groups from different parts of Greater Equatoria occupied Hi Zandya, which lies south of the present South Sudan Hotel. All these areas have recently been surveyed and allocated as housing plots.¹¹

During the recent war, with the spread of the conflict in the rural areas, large populations of IDPs fled to Juba during the period of intense fighting between Sudan government Forces and SPLA. Some groups

⁷ Ibid.

⁸ The Comprehensive Peace Agreement. Wealth Sharing “Machakos” Protocol. Nairobi. 2005: 2.7

⁹ Payne, G. April 2000

¹⁰ Ibid.

¹¹ Hai Zandia Settlement Upgrading Project, March 2009

squatted on the already planned first class housing plot areas west of the airport known as “Tongping”. Others settled around government institutions such as the Multi-purpose Training Center, the University of Juba Campus, Juba commercial School and the area west of the SSLA.

In the case of the University of Juba, a shopping center popularly known as “Custom Market” was established and part of the land was occupied by squatters. Squatting occurred when the university was transferred to Khartoum with intensification of fighting around Juba town. However, since the end of the conflict and the relocation of the University of Juba through the persistent effort of the University Vice Chancellor, the Custom Market has been demolished along with some parts of squatter settlements.

Even more recently, with the influx of returnees and commencement of the repatriation program, many of the returnees chose to stay in Juba, rather than continue to their areas of origin. The result is the establishment of informal settlements at the peri-urban boundary of the town. These were in many instances facilitated by some communities and their chiefs, who allocate land for housing plots on cash payments basis. Even some public recreation grounds were grabbed and used as shopping areas, where large numbers of shacks were constructed as shops.

Most of the squatter settlements within Juba have since been demolished. However, the expansion at the peri-urban boundary is continuing at a rapid pace (population of Juba in 2005, 163,442;¹² in 2008, 372,413).¹³ An interesting observation about these settlements is that they have been planned by community surveyors, who have attempted to follow the normal pattern of urban planning. For instance, they have demarcated road systems; made provisions for social services such as schools, hospitals, and playgrounds; and areas for commercial activities such as markets and public transport terminals. The main reason for these informal tenure practices is basically the lack of government provision of housing plots that has resulted in higher rental rates on residential accommodation in the existing planned areas, thus denying the lower-income groups and poor from accessing housing.

It is however important to note that these settlements represent the most common tenure system in many developing countries, and accommodate the vast majority of lower-income households.¹⁴ In our particular situation, where majority of population are poor, it would be important that policy development should take into account the need of these population groups by recognizing these settlements and extending the necessary services to them. This requires the adoption of innovative and creative/progressive urban land tenure policies.

¹² Wikipedia, Accessed March 2009.

¹³ Sudan Population and Housing Census, 2009.

¹⁴ Payne, G., April 2000.

4.0 RESETTLEMENT OF RETURNEES

Returnees comprise of internally displaced persons (IDPs) and refugees. IDPs may be defined as “persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized state border.” (Refugees, on the other hand, are those persons or group of persons, who have experienced similar situation but have crossed an internationally recognized state border. (UNHCR, 1998)

One of the objectives of the recently enacted Land Act (2009) is to facilitate resettlement and reintegration of IDPs, refugees, and other categories of persons whose rights to land were or are affected by the civil war.¹⁵ This demonstrates the serious concern of the GOSS and the people of Southern Sudan in general about the proper management of the return and reintegration process. This process is sensitive and complex because most returnees are keen to settle in urban centers where there is great promise of access to social infrastructure, such as health facilities and schools. In the rural areas, the customary system and traditional authorities are capable of dealing with indigenous returnees who seek to access their ancestral land. They are not however equipped to deal with influx of people who are not indigenous to their communities.

The ICSS guarantees residence for every Southern Sudanese in any part of Southern Sudan. This means the GOSS cannot force individuals to return to their ancestral homes. However, as has been repeatedly stated in consultation workshops held by SPRP in the different States, Southern Sudanese who relocate into an area and who do not belong to that area’s indigenous ethnic group or clan are considered “outsiders.” They do not belong to that “community” and have no rights to claim land and settle in areas customarily claimed by that community. A chief or community leader can allocate land to such “outsiders” on temporary basis, provided that they respect local customary practices of the host community. Ultimately, outsiders are expected to relocate to their areas of origin or are forced to do so if necessary. Thus, the general expectation is that IDPs and refugees should be reintegrated in their ancestral communities. According to the NRC-led report (August 2004) “people tend to go back to their areas of origin because they can fall back on local safety nets, traditional solidarity mechanisms and kinship ties for re-integration into society. Belonging to a group is essential part of the livelihood strategy of rural people in Sudan. Furthermore, most Sudanese societies have health distribution mechanisms in place that may facilitate the recovery of individuals of the armed conflicts. People are well aware of local coping mechanisms and have a good understanding of the local socio-ecologic environment to make a living”¹⁶

¹⁵ Land Act 2009, Section 5(1).

¹⁶ Paul V. De Wit. Land Policy Development in Post-conflict Sudan: Dealing with Balance in a Fluid Environment (February 2008).

5.0 RESTITUTION OF LAND AND PROPERTY

Restitution refers to the return of property to a rightful owner from whom it was taken. With respect to land, restitution means giving a piece of land or property to the rightful owner. It could also mean compensating an individual or community for lost land or property, appropriated by individuals or government for public usage. According to De Wit (2008), in Sudan there seems to be two different dimensions for the restitution of land rights. For example, there are individual and household rights of IDPs and refugees that were lost in the conflict itself. Secondly, there are longer standing historical grievances and injustices which are mainly groups' claims, and often more complex to address, and have contributed to the emergence of the conflict itself. These are exemplified by the forceful displacement of people by the petrol concessions and mechanized schemes in petroleum producing areas and in the Greater Upper Nile States, respectively. De Wit then goes on to suggest a number of effective and tested tools that could be used for restitution of land and property rights, universally as well as in Southern Sudan.¹⁷

In Southern Sudan, the issue of restitution of land and property rights arose as preparation for repatriation of IDPs and refugees was under consideration. A number of workshop recommendations from the period immediately following the signing of the CPA highlight the growing attention to property restitution issues.¹⁸

However, the lack of a comprehensive policy and legal framework to guide the process of institution of land represents a key challenge to the restitution of land and property.¹⁹ This has different impact for urban and rural areas. In rural areas, the presence of customary institutions and traditional mechanisms for dealing with restitution of land makes the process easier for the reintegration of returnees than is the case in urban areas.

A key recommendation was that traditional methods be used for tracing ancestral lands, negotiating with those who are using such lands, and for resettling the original owners and resolving any disputes that may arise. Workshop reports, however, acknowledged the limit to what can be achieved by means of tradition and customs, especially for migrants and women. The case of women is particularly difficult under customary land tenure system, as their rights are normally mediated through male relatives. Even where traditional institutions are willing to allocate land to women, they are constrained by the fact of being considered along with other returnees as "outsiders." This is because most Southern Sudanese customary laws do not accord women complete human rights on equal basis as men. Their rights are always guaranteed through husband or male relative.

The challenges of restitution in urban areas are different because of high demand for land and the great pressure brought to bear on land management institutions to meet a variety of demands and interests. The

¹⁷ Ibid. p.19.

¹⁸ Michael O. Odhiambo. Southern Sudan Land and Property Study and Workshops, December 2009: p.19.

¹⁹ Ibid: p.17.

lack of clear policy and legal framework, and limited institutional capacity in terms of human resources and equipment all compound the situation.

Nevertheless, the 2009 Land Act makes an initial step in establishing a process for addressing claims for restitution of rights to land and lost property as a result of forced displacement resulting from the civil war. Further, the Act states that claims for restitution and compensation should be made to the Land Commission, traditional authority or any other recognized community representative within three years from coming into being of the Land Act (January 2009).

Unfortunately, so far the majority of people are not aware of this requirement and nothing much has been done to raise the awareness of the population of these provisions of the Act. A number of stakeholders have publicly voiced serious concerns about the implications of this provision for people who have restitution claims as not enough time is given considering the widespread lack of awareness regarding filing claims.

Another core theme of the workshops is the issue of land and property rights taken over by government institutions for public use without compensation. Examples cited at workshops are cases of land grabbing by top government officials and oil companies bypassing local authorities and communities and embanking on drilling such as occurred in Jonglei State. Similar incidents of taking land without consultation by mining and oil companies, as well as investors using land for commercial farming, was reported in NRC Kapoeta workshop. Eviction of local people for expansion of town and road construction was also reported in Western Equatoria workshop. All these incidences point to the need for a clear legal framework for land acquisition and appropriate compensation by government and other stakeholders.

In the light of the ever-growing level of awareness and sensitivity regarding land, it is important that land policy development in Southern Sudan should be achieved through consultation, negotiation, and fair compensation.

6.0 VULNERABLE GROUPS

Vulnerable groups in the context of this scoping paper refers to groups such as demobilized soldiers, fallen heroes, orphans, returnees, elderly, IDPs and refugees, widows, and youth. They are considered vulnerable because they are dependent on others, institutions, or individuals in guaranteeing their access to land and property.

Regarding the vulnerable groups, participants in SPRP consultation workshops express the following opinions:

- The right of inheritance for children to land owned by their parents should be guaranteed.
- Resolving problems of access to land for demobilized soldiers is an issue of paramount importance.
- GOSS should allocate land to deceased soldiers, who are considered fallen heroes, which can then be taken over by their children.
- GOSS should financially support demobilized soldiers to buy urban land, while local governments and chiefs allocate them temporal land in rural areas.
- GOSS should make sure that vulnerable groups are treated like other members of the society and should have access to both urban and rural land.
- Demobilized soldiers should be forced to return to their areas of origin or ancestral lands once peace has returned.

7.0 WOMEN'S RIGHTS TO ACCESS LAND AND PROPERTY

According to most traditions in Southern Sudan, women's access to land and property rights has not been an issue in the past. This was because women's rights to access and use land and other properties are through family and marriage, primarily husbands or fathers. It was however the case that in these traditional communities, the rights of older women and widows were more protected than the younger ones. Thus, norms and traditions of these communities are not equipped to deal with the situations where large numbers of young women are de facto heads of household.

However, as a result of the long conflict in Southern Sudan, during which a large percentage of males have died, 45–50 percent of returnee households are now headed by women.²⁰ Further, as the HIV/AIDS epidemic, the number of women at risk of losing their land has increased, as their infected husbands and partners die prematurely. According to Swangin Bismarck (December 2006), once referred to as “the last pocket of Africa in regards to HIV/AIDS prevalence,” Southern Sudan now faces a massive threat from the pandemic. Poverty, very low school enrollment, rudimentary health system, and powerlessness of women combined with cultural practices, polygamy, and widow inheritance provide favorable environment for the transmission of the disease.²¹ Even if it may not control the spread of the disease, there is evidence that women with secure access to land and other livelihood options are less likely to acquiesce to risky behavior because of economic dependency on men. Securing land rights for women is therefore an important means for the control of the spread of the disease.²²

With the end of the conflict and commencement of the repatriation program, the issue of women's access to land and property rights has become contentious and needs to be addressed in the context of the prevailing customary tenure practices in Southern Sudan. Another important consideration is the provision in the Sudanese Constitution for women's equal rights to land and property. However, efforts to turn these rights into daily practice remain precarious and challenges seem to be somewhat different for rural and urban areas. It is in these contexts that the issue of women's rights to access land and property has been raised as a key issue for discussion at various ongoing consultation workshops organized by SPRP in the 10 states of Southern Sudan. The opinions expressed at these workshops with regards to this issue can be grouped into two: positive and negative.

On the positive side, workshop participants expressed the opinion that:

- Women's access to land is a significant issue that should be addressed;
- Women should have equal rights to land with the focus on responsibility rather than gender equity;

²⁰ Ibid.: p. 22.

²¹ Swangin Bismarck in the Sudan Tribune, December 1, 2006.

²² Paul V. DeWit. Land Policy Development in Post-conflict Sudan. Dealing with Balance Fluid Environment. February, 2008.

- Women’s rights to access, inherit, and own land must be recognized;
- Female disabled persons should have access to both urban and rural land; and
- As equality towards recognition of the right of women and gender, workshop participants cited an example in Nyamleil, Aweil West County where each Payam has at least a female traditional chief.

On the negative side, the prevailing opinions were as follows:

- Current cultural practices in respect to property and land inheritance be maintained;
- Chiefs were of the opinion that empowering unmarried women with land may discourage marriages; and
- Women’s access to land in rural areas is governed by customary laws.

It may be helpful at this point to cite the international situation and stand regarding women’s rights to access land and property. According to the UN Special Rapporteur on Adequate Housing, *“In almost all countries, whether ‘developed; or ‘developing’ legal security of tenure for women is almost entirely dependent on the men they are associated with. Women headed households and women in general are far less secure than men. Very few women own land. A separated or divorced woman with no land and a family to care for often ends up in an urban slum, where her security of tenure is at best questionable.”*²³

*“Securing tenure for the household does not necessarily secure tenure for women and children. The extension of secure tenure must benefit women and men equally, which will require some fundamental changes to the rights of women.”*²⁴

In addition, without implementation of their equal rights to adequate housing, land, and property, women cannot enjoy other fundamental human rights such as: (a) the right to privacy; (b) the right to the highest attainable standard of health; (c) the right to food; (d) the right to water; (e) the right to protection of the law against interference or attacks against one’s privacy; (f) family and home; (g) equal rights before, during, and upon dissolution of marriage; (h) the right to security of person; (i) the right to equal protection before the law; and (j) the right to self-determination.

Furthermore, under international human rights law, secure tenure is one of the seven components of the human right to adequate housing, which again is linked to the right to land. The other six components are: (1) availability of services, materials, facilities, and infrastructure; (2) affordability; (3) habitability; (4) accessibility; (5) location; and (6) cultural adequacy.

Thus, women’s equal rights to adequate housing, land and property are firmly entrenched in international law. The right to adequate housing is laid down in Article 11 (1) of the International Covenant on Economic, Social and Cultural Rights. The right to property is a human right that is laid down in the International covenant on Civil and Political Rights. Together with the Universal Declaration on Human Rights, these documents form the “International Bill of Human Rights.” According to this Bill, “all human rights apply equally to women and men and discrimination on the basis of sex is prohibited.” Nevertheless, even in Southern Sudan’s urban areas, where statutory laws provide protection for women’s rights are backed by strong nucleus of female activists, there is still the overwhelming feeling that the rights of women are of secondary importance.

²³ UN High Commissioner for Refugees, *Guiding Principles on Internal Displacement*, 22 July 1998, E/CN.4/1998/53/Add.2, available at: <http://www.unhcr.org/refworld/docid/3c3da07f7.html>.

²⁴ UNCHS. (2000) *Global Campaign for Secure Tenure. Implementing the Habitat Agenda: Adequate Shelter for All*” Nairobi: United Nations Centre for Human Settlements (Habitat) at <http://www.unhabitat.org/content.asp?typeid=19&catid=283&cid=1507>.

8.0 INVESTORS' (LOCAL & FOREIGN) ACCESS TO LAND

Foreign investment is generally in the form of Foreign Direct Investment (FDI). FDI occurs where an enterprise from one country (home country) engages in economic activities in the economy of another country (host country).²⁵ Land policy is a major factor affecting the flow of FDI. A higher rate of FDI occurs where land policy is transparent and security of tenure is guaranteed. Where policy is unclear and there is uncertainty about the security of tenure, there is a lower rate of FDI.²⁶ This general rule applies to all countries, including Southern Sudan.

In the current situation of Southern Sudan, where a land policy and legal framework on land issues are lacking, the flow of FDI is expected to be slow and ineffective. The prevailing land tenure systems in Southern Sudan are basically twofold: (1) statutory tenure in urban areas, and (2) communal tenure in rural areas. According to Tagini P. (PhD thesis), foreign investors face two major obstacles when attempting to establish enterprise on communal held land. The first difficulty is how to identify the rightful people concerning land. The second is security of title to land. These two problems are particularly true for customary land. In a situation where the state is the land owner, the problem of ascertaining the land owner may be eliminated. The second problem of the security of title to land may still face the foreign investor with the same force.

The situation described is not dissimilar to what pertains in Southern Sudan at present. The reports of the ongoing workshops by SPRP in the 10 states with respect to climate for investment in Southern Sudan have identified the following concerns:

- The respective roles of the GOSS, state and local governments, and traditional authority need to be clarified with regard to monitoring investor operations to ensure that they comply with the terms of the lease agreement, and with the environmental and operational guidelines.
- Investors should present their project documents/proposal to the GOSS, state, county, community, and clan leadership before they can access land.
- Investors should have clan records and fulfill government conditions for running business.
- Investors should be encouraged to partner with local investors at all levels.
- Local communities would like to participate in the negotiation of the lease terms between the government and investors.

²⁵ Tagini, P. (2006), University of the South Pacific (USP).

²⁶ Ibid.

- Investors granted leases by communities to develop and use land must respect their customs and norms; failure to do so could result in revoking rights to the land allocated.
- Communities would like to have a monitoring role to ensure their rights are respected and, if not, have a right to terminate the investment contract.
- Finally, the government must protect communities from investors' exploitation.

In conclusion, if the inflow of FDI into Southern Sudan is to be encouraged, then appropriate land policies and legal frameworks that provide a conducive atmosphere for investment should be developed as quickly as possible.

9.0 CONFLICTS OVER RESOURCES

Conflicts amongst rural communities in Southern Sudan are basically resource-based. Such conflicts occur over access to resources like water points and grazing lands. These normally occur among pastoralist groups and between pastoralists and farmers. It is also evident among agro-pastoralist communities as they are relatively powerful groups that seek to expand land areas at the expense of others.

In the past these conflicts occurred at village, clan or tribal levels and were largely connected with cattle theft or girls' elopements, and in rare cases, child kidnapping confined to a few tribes. Casualties resulting from such conflicts were low because of the use of traditional weapons, such as sticks and spears. Normally such conflicts were easily controlled using traditional mechanisms.

However, in recent years (especially after the CPA), this intra- and inter-ethnic fighting has become widespread and frequent, particularly among pastoralist groups, due to increases in the sizes of their animal populations. In addition, lack of clear demarcation of boundaries at community levels and among payams, counties, and states has exacerbated the situation.

In terms of the frequency of clashes, there were numerous attacks and counter-attacks reported in 2009 (mainly in states such as Jonglei, Warap, Upper Nile, and Central Equatoria), displacing large numbers of people, as indicated in the table below. In Jonglei States, fighting between Murle and Lou Nuer killed well over 1,200 civilians. In late August some Lou Nuer groups from Wuror County attacked a Dinka village in Twic East County, killing around 40 civilians, including women and children. On September 20, a large group of heavily armed Lou Nuer youths attacked a Dinka town of Duk Padiet, overrunning security forces and killing some 100 civilians, soldiers and police.

In August, in Warap State, a clash between Dinka groups over grazing rights resulted in 30 civilian deaths. Another clash occurred between Shilluk and Dinka communities in late August when armed Shiluk attacked a Dinka village north of Malakal, killing 20 civilians.

Table 1. People displaced by conflict as of November 2009

State	Number of displaced people, November 09	Number of conflict incidents, December 09
Jonglei	104,000	116
Western Equatoria	76,000	58
Upper Nile	58,000	31
Lakes	32,000	51
Warrap	31,000	18
Central Equatoria	28,000	12
Eastern Equatoria	14,000	51
Unity	4,000	43
Western Bahr el-Ghzal	1,000	8
Northern Bahr el-Ghazal	0	0

Sources: WFP, UN-OCHA, & UNDSS

Authorities have been unable to address the underlying causes of these conflicts or protect civilians from the violence. The SPLA and the Southern Sudan Police Service (SSPS) are handicapped by insufficiency of numbers and resources to repel these armed attacks. They are equally not well trained to intervene to protect civilians in the rural areas where such conflicts invariably take place.

The GOSS authorities, however, have responded to this inter-ethnic violence by applying forced civilian disarmament. State governors have also carried out additional operations under a degree issued by President Kiir. Although these disarmament operations have had some success, they equally run the risk of provoking fighting between soldiers and armed civilians, as some soldiers have been known to become abusive.

During the ongoing consultation workshops of the SPRP, a wide range of mechanisms for the reduction and management of such conflicts have been suggested. These include: access and ownership for land for pasture should be clearly demarcated; local government and traditional authorities should enforce separation and proper use of grazing and agricultural lands; there should be alternative provisions for the establishment of permanent water sources, such as dams or water holes to minimize the movement of livestock, thus help to promote settlements and reduce conflicts; and grazing or communal land should remain under the jurisdiction of the traditional authority.

Recent experience in Jonglei State has demonstrated that facilitated dispute mediation coupled with proper disarmament efforts can help to reduce violent conflicts and establish lasting tenure arrangements among pastoralist communities.

In conclusion, it is important to note that conflicts over resources among the pastoralists and between pastoralists and farmers have been there for a long time. However, what raises serious concerns about the present trend is the scale and frequency of occurrence of the conflicts. If the trend is allowed to continue unabated, it will have negative impacts on the sustainability of peace and socio-economic development in the region.

10.0 CONCLUDING REMARKS

Control over land has been a core root cause of the long history of conflicts in the Sudan, especially between the North (as represented by the colonial and post independent regimes in Khartoum) and the South (represented by the various communities and lately by SPLM). The result was the consideration of the issue of land as key to peace in the settlement of the 21-year conflict and according it paramount place in the 2005CPA.

Within Southern Sudan, the long period of the war resulted in massive population displacement—four million as internally displaced and about 600,000 as refugees outside the country.²⁷ These population movements have had two important consequences for the repatriation and resettlement program at the end of the conflict.

The first is the need to undertake careful planning for resettlement of returnees in their home areas amongst host communities in the rural areas. This might require the restitution of land property rights of the returnees based on customary laws. The second is the need to return those people who may have moved and settled in areas within the country other than their own, and in the process laid claim to land and property that may appear to have no owners or rights holders. The overwhelming view as expressed by participants in the various validation and consultation workshops is that they should go back to their original home areas. This view also finds support amongst a wide spectrum of ethnic groups, as expressed in SPLM/SAAR survey report. However, the absence of policy and legal framework to guide the process of restitution of land and property presents a major challenge, especially in urban areas.

Women's access to land and property as a right is a new phenomenon in the customary tenure system of Southern Sudan. This is now an issue of concern, as women-headed households represents about half of the returnees seeking resettlement. Though there is general support for women to own land and property as a right, traditional leaders are largely against their enjoyment of such rights. Research would therefore be of assistance to determine the extent to which such women-headed households have been accorded rights to land and property in rural and urban areas.

The issue of how governments access community lands for the provision of social services or investment is one that requires urgent investigation to assist the SSLC to prepare a policy and legal framework that enables cooperation between traditional communities and the government.

Finally, the presence of rampant conflicts amongst rural communities over the use of natural resources is another issue that requires urgent solutions. This often results in extensive loss of human life and destruction of properties. Lack of clear boundary demarcation among communities, payams, counties, and states is an added critical dimension.

²⁷ [Humanitarian Policy Group \(HPG\), March 2009.](#)

REFERENCES

1. Bior, W.E. Akinyi-Nzioki, and M.O. Odhiambo. Land Tenure Study in Southern Sudan Phase I, Report of a preliminary survey of Land Tenure Systems in Parts of Southern Sudan. Secretariat for Agriculture and Animal Resources (SAAR), 2005
2. Bior et al. Land Tenure Study in Southern Sudan, Summary Report: Nairobi. February 2006.
3. Shanmugaratnam, N. Post-War Development and the Land Question in Southern Sudan. Paper presented at the International symposium on Resources Under Stress, Afrasian Centre for Peace and Development, Ryukoku University, Kyoto Japan, 23–24 February 2008
4. Biong D. and Lowki R.B. Challenges of Land Policy Development in Southern Sudan, Report on the Second African Regional Seminar on Land and Resource Rights, Norwegian Peoples' Aid, Johannesburg, South Africa, 20–22 November, 2006.
5. Odhiambo, M.O. Southern Sudan Land and Property Study and Workshops: A Synthesis of Policy and Legal Issues, NRC December 2009: p.17.
6. The Interim Constitution of Southern Sudan. Ministry of Legal Affairs and Constitutional Development, 2005: Article 180-182
7. Ibid.
8. CPA (Comprehensive Peace Agreement between the Government of the Republic of Sudan and the Sudan People's Liberation Movement/Sudan People's Liberation Army). 2005. Nairobi, Kenya. 9 January.
9. Payne G. Urban Land Tenure and Policy Options: Titles or Rights? Paper presented at World Urban Forum: Westfields, Marriott, Virginia, USA: 03-05 April, 2000.
10. Ibid.
11. Hai Zandia Settlement Upgrading Project, Survey Department, Central Equatoria State, March 2009
12. Wikipedia, accessed online at [http://en.wikipedia.org/wiki/Juba_\(Southern_Sudan\)](http://en.wikipedia.org/wiki/Juba_(Southern_Sudan)), March 2010.
13. Sudan Population and Housing Census, 2009
14. Payne G. Urban Land Tenure and Policy Options: Titles or Rights? Paper presented at World Urban Forum: Westfields, Marriott, Virginia, USA: 03-05 April, 2000.
15. Land Act, Chapter VII: Land Administration and Management, Section 41, 2009.
16. Paul V. De Wit. Land Policy Development in Post-conflict Sudan: Dealing with Balance in a Fluid Environment (February 2008). p.19
17. Ibid.
18. Odhiambo, M. Southern Sudan Land and Property Study and Workshops, December 2009: p.11
19. Ibid: p.17
20. Ibid: p. 22

21. Swangin Bismarck in the Sudan Tribune, December 1, 2006
22. Paul V. D. W. Land Policy Development in Post-conflict Sudan. Dealing with Balance Fluid Environment. February, 2008
23. UN High Commissioner for Refugees, *Guiding Principles on Internal Displacement*, 22 July 1998, E/CN.4/1998/53/Add.2, available at: <http://www.unhcr.org/refworld/docid/3c3da07f7.html>
24. UNCHS. (2000) *Global Campaign for Secure Tenure. Implementing the Habitat Agenda: Adequate Shelter for All*” Nairobi: United Nations Centre for Human Settlements (Habitat) at <http://www.unhabitat.org/content.asp?typeid=19&catid=283&cid=1507>
25. Tagini P. The Effect of Land Policy on Foreign Direct Investments in the Solomon Islands. University of the South Pacific Law School (1988-2000).
26. Ibid.
27. Humanitarian Policy Group (HPG), 26 March 2009, Where to Now? Agency Expulsions in Sudan: Consequences and Next Steps

ANNEX I: RESEARCH THEMES AND QUESTIONS

Theme 1: *Customary tenure and traditional authority*

Hypotheses:

- 1) Customary land tenure is robust and functioning well in all rural communities.
- 2) International trends in globalization and liberation are likely to affect customary land system.
- 3) Age and education of traditional leaders are likely to positively influence land tenure systems in rural areas.

Research Questions:

- 1) What factors have contributed to upholding customary tenure system among rural communities?
- 2) How are international trends in land ownership likely to affect traditional customary land tenure system?
- 3) To what extent will customary land tenure system accommodate the need to provide secure land and property rights for women? For land administration and land for development?

Theme 2: *Relations between GOSS, State government, and communities*

Hypotheses:

- 1) The view that “land belongs to the community” means different things to different entities.
- 2) The expression “land belongs to community” has restricted proper management of areas, gazetted forests, and wildlife area.

Research Questions:

- 1) What are the principles by which the state acquires land for public purposes?
- 2) What are the powers or mandates of each level of government over land?
- 3) In the context of the notion “land belongs to community,” what would be the best approach?

Theme 3: *Urban management and Informal settlements*

Hypotheses:

- 1) Urban land management is stagnant/at a standstill in Southern Sudan.
- 2) Urban planning in Southern Sudan is not directed to meet future development needs.

- 3) Informal settlements in Southern Sudan are feature of conflicts.

Research Questions:

- 1) Factors influence the development of informal settlements in Southern Sudan.
- 2) What are the socio-economic characteristics of the residents of informal settlements?
- 3) What options are available for managing informal settlements?
- 4) How does current planning propose to deal with informal settlements?
- 5) What is the relationship between informal settlements and planning standard?

Theme 4: Resettlement of refugees and restitution of land and property rights

Hypotheses:

- 1) Most returnees have resettled in their ancestral lands.
- 2) Lack of basic services in rural areas acts as a deterrence to returnees unwillingness to resettle in their ancestral land.
- 3) Most returnees have regained access to their lands and properties.

Research Questions:

- 1) What factors deter some returnees from settling in their home areas?
- 2) To what extent have returnees had access to their lands and properties?
- 3) Under what conditions did IDPs settlements occur and what problems of resettlement and restitution has this created? What is the best method for the effective implementation of restitution and property rights?

Theme 5: Women's rights to access land property

Hypotheses:

- 1) Existing statutory tenure systems do not guarantee women equitable rights to access land and property.
- 2) In rural areas, customary land tenure systems deny women the right to access land and property.
- 3) Traditional land tenure systems hinder children from accessing land and property.

Research Questions:

- 1) What are the factors that constrain women's rights to equitable access to land and property in rural area?
- 2) To what extent have the customary laws guaranteed women's right to access land and property?
- 3) To what extent have statutory tenure systems enhanced women's right access land and property in urban areas?
- 4) To what extent do customary tenure systems hinder children access to land and property?

Theme 6: Conflict over resources

Hypotheses:

- 1) Most inter-ethnic conflicts among rural communities result from land and property disputes.
- 2) Inter-ethnic violence among pastoralist communities is connected to access and use of grazing land.
- 3) Most conflicts among rural communities are exacerbated by lack of the demarcation of county and state boundaries.

Research Questions:

- 1) To what extent has the lack of state and county border demarcation impacted the inter-ethnic violence in Southern Sudan?
- 2) What type of resources are source of inter-ethnic conflicts in Southern Sudan?

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JURISDICTION OF GOSS, STATE, COUNTY, AND CUSTOMARY AUTHORITIES OVER LAND ADMINISTRATION, PLANNING, AND ALLOCATION: JUBA COUNTY, CENTRAL EQUATORIA STATE

DECEMBER 2010

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DISCLAIMER

The author's views expressed in this publication do not necessarily reflect the views of the United States Agency for International Development or the United States Government.

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ABBREVIATIONS

CES	Central Equatoria State
CPA	Comprehensive Peace Agreement
GNU	Government of National Unity
GOSS	Government of Southern Sudan
ICCES	Interim Constitution of Central Equatoria State, 2006
ICSS	Interim Constitution of Southern Sudan, 2005
INC	Interim National Constitution
JOSS	Judiciary of Southern Sudan
LGA	Local Government Act, 2009, of the Laws of Southern Sudan
MOLACD	Ministry of Legal Affairs and Constitutional Development
MPI (CES)	Ministry of Physical Infrastructure of Central Equatoria State
NISPDS	Nile Institute of Strategic Policy and Development Studies
SPLA	Sudan People's Liberation Army
SPLM	Sudan People's Liberation Movement
SSLC	Southern Sudan Land Commission
USAID	United States Agency for International Development

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Lomoro Robert Bullen,

Team Leader

EXECUTIVE SUMMARY

Sudan has experienced a fundamental change in governance system in the country since the signing of the Comprehensive Peace Agreement (CPA) in 2005. The Comprehensive Peace Agreement brought a new dispensation of governance, based on decentralization or devolution of powers, delegating power from the central government to the lower levels of government. This is a departure from the earlier system of governance in Sudan before the signing of the CPA, which was more or less a system of decentralization that rested on deconcentration of power.

The earlier land laws and land practices had been shaped by the existing system whereby all land had been regarded as the property of the state or Allah in the Islamic context and land administration had concentrated powers in the central government in Khartoum. However, with the signing of the CPA, this system of land administration changed; for the first time in the history of the Sudan, the written laws gave prominence to customs, traditions, and values of the people and gave recognition to the rights of the indigenous communities to own land which they have been traditionally relying on for survival. Ownership of land vested in government had to be through the designated level of government and decentralized. The Interim Constitution of Southern Sudan (ICSS), 2005; the Interim Constitution of Central Equatoria State (ICES), 2006; the Land Act, 2009; and Local Government Act, 2009 of the Laws of Southern Sudan; and the Local Government Act, 2008 of the Laws of Central Equatoria State have confirmed this system of governance and incorporated the principles of devolution of power in land administration.

However, though the Interim Constitutions and new laws have introduced a new regime in land administration, the exercise of concurrent powers, the usurpation of powers by other institutions, and the quest for concentration of powers in single institution have caused a clash in exercise of jurisdiction by institutions at Government of Southern Sudan (GOSS) and the state and local government levels. Exacerbated by lack of clear understanding of these laws, there was a collapse of the system, partly through lack of competent staff, lack of proper functioning of the current institutions, or non-existence of institutions. There has consequently been a real power crisis in land administration and confusion in roles of some of the existing institutions at the different levels of GOSS and state and local government. This did not only affect the system of land administration, but also the aspect of ownership of land. With the requirement of registration of land by communities, different levels of government, and individuals, as provided under the 2009 Land Act, there has been a clash in the quest for the control of land which belongs either to the communities or individuals within the communities and to certain levels of government. As a result, land planning and allocation has been a big challenge facing the different governmental levels. There was therefore a need to define the jurisdictions of these different levels of government. This necessitated the conduct of the present research. The research was carried out in Juba County and Juba Town in particular in the State of Central Equatoria (CES) between June and August 2010.

The findings of this research showed that there was usurpation of powers at the different levels of GOSS with some institutions not understanding their mandates; as a result, they were undertaking certain activities/functions which had been legally assigned to other legal institutions. The research also found out that the Southern Sudan Land Commission (SSLC) has usurped the powers of the GOSS institutions in the making of laws and policies that are to govern land administration in Southern Sudan. This has led to the Ministry of Housing and Physical Planning, GOSS, being redundant and therefore encroaching into the roles of implementation of laws which legally have been assigned to the State Ministry, in particular the local government within the state. Further, GOSS has been fighting to take control over the land

registry and this has been criticized by the states which have asserted control over land registration and therefore the keeping of the Land Registry.

The crisis was more evident in Juba in Central Equatoria State, which is experiencing a lot of land transactions and influx of people seeking land for settlement or investments. Lack of awareness and/or ignorance of the laws and delay in establishing the relevant institutions and policies that would have enabled the implementation of the decentralized system of administration are cited as some of the underlining causes of the crisis in land administration in Southern Sudan. Further, control over the land registration process and the Land Registry, and the concurrent powers given to the GOSS and state (as per Sections 53, 54, and 55 of the 2009 Land Act; the Schedules to the ICSS; and ICCES) make the states assert their original jurisdiction over land administration. This attempt to control the Land Registry and its decentralization are some of the issues behind the power crisis seen in GOSS and the states.

Though the Land Act has provided the basic law for guiding the institutions, the principles of the Land Act need to be operationalized through enactment of other enabling legislations, principles, and subsidiary laws. The findings reveal that most of the current institutions at all the levels of government work without enabling laws, have poor staffing, and the process and procedure of land acquisition is not legalized and/or working according to the law.

The need for introduction of new technology and machines in land registration and e-commerce, as well as assuring women's rights and participation of communities in decision making regarding communal lands, are serious challenges facing GOSS. Adequate attention and consideration are therefore recommended. As Southern Sudan braces itself for the brunt of decentralization, as well as matching the standards and trends of the international community via globalization and liberalization of economy, the various levels of government need to cooperate and assist one another in the fulfillment of the constitutional mandates of their institutions at different levels. This will be done if respect for and recognition of the roles played by the different institutions at different levels is undertaken and applied on the ground.

Further, it is recommended that SSLC concentrates on land disputes claims and gives room for Ministry of Housing and Physical Planning to do the work of creating laws and policies. The policies for the devolution of powers to state governments are being implemented, just as local governments are being empowered to deliver the desired services to the communities at the grassroots level. Communities, with regard to land matters and decision making, should be consulted in land acquisition or anything concerning their interests in land. Laws to effect the process of land registration as recommended above should be created and the current laws be amended to take into consideration the changes that have been identified through this research.

I.0 INTRODUCTION

I.1 CONTEXT OF THE STUDY

Sudan has experienced a fundamental change in the governance system of the country since the signing of the Comprehensive Peace Agreement (CPA). The CPA has brought to Sudan a new dispensation of governance based on decentralization. The decentralization process has been implemented through the devolution of powers, the delegation of power from the central government to the local governments, and/or the pushing down of authority and power of decision making to the lower levels of government. The essence of this is the transference of authority from higher levels to the lower levels of governance structures.¹ This is a departure from the earlier system of governance in Sudan before the signing of the CPA, which was a system of decentralization that rested on deconcentration of power.

Under Article 39(1) of the Interim Constitution of Southern Sudan (ICSS), 2005, decentralization has been provided as the basis of governance. The Article states that “Governance in Southern Sudan shall promote democratic principles and political pluralism, and shall be guided by the principles of decentralization and devolution of power to the people through the appropriate levels of government where they can best manage and direct their affairs.”² This is the current constitutional arrangement that governs Southern Sudan and has defined the land administration in the region. The Interim Constitution of Central Equatoria State (ICES) of 2006 and the new laws (the Land Act [2009] and Local Government Act [2009] of the Laws of Southern Sudan, and the Local Government Act [2008] of the laws of Central Equatoria State) have confirmed this system of governance and incorporated the principles of devolution of power in land administration. The devolution of powers to lower level(s) is therefore provided for in the exiting constitutional arrangements.³ The new 2009 Land Act, under Section 6(a) and (b) and Section 41, has provided for the exercise of power through the designated or appropriate level of government. This is now the new land administration to be used in Southern Sudan.⁴

I.2 SUMMARY OF RESEARCH ISSUES

I.2.1 Government’s Quest to Control Land in Southern Sudan

Land has always been a source of conflict and tension in Southern Sudan (Johnson, 2003 and Nyaba, 1997), and the issue of land in Southern Sudan is becoming a big challenge to GOSS and state, county, and customary authorities. As the case of Juba in Central Equatoria State illustrates, currently there is competition over land and natural resources which has long been a source of tension between different groups in Southern Sudan. The need for promoting investment and private development by GOSS, state, and local government authorities has caused these government authorities to attempt to exercise control over the allocation of land. This is being resisted by the community leaders who assert control over

¹ Article 1 of the Power Sharing Agreement of the CPA.

² Article 39(1) of ICSS.

³ See Article 38 of the ICSS and Dr. Dhieu Mathok Diing Wol, *The South Sudan Post-Secession Options Of Governance: Lessons And Experiences 1-4*, Friday 30/7/2010, The Citizen, Page 8.

⁴ Section 2 of the Land Act, 2009, repealed all existing laws in Southern Sudan save the proceedings, orders, and regulations taken or made thereunder.

communal land held under customary laws. This has caused tension; has strained the relationship of these three levels of government; and raises the question of who has the primary responsibility over the allocation, planning, and administration of land.

1.2.2 Tension between Community and Government

Similar tension has now pitted the community and their traditional leaders against the government over the control and management of communal land. Historically, the people of Southern Sudan had never had a formal system of governance and had been largely unaffected by the succession of early states in the North (Johnson, 2003). Southward expansion was halted by the resistance from the indigenous people of the Shilluk Kingdom and the Dinka against foreign intrusion from the North. Though this was later upset by the Turko-Egyptian rule of Sudan, the British Colonial government later introduced Native Administration whereby the authority of the local chiefs was recognized (Johnson, 2003). The traditional chiefs exercised both judicial and administrative functions under the supervision of the British District Commissioners. The introduction of this native administration did not benefit the British colonial government much due to the fact that the South had lacked hierarchical traditional structures, except for the Shilluk and the Azande Kingdoms. Most of the ethnic communities however had no ready structures to be used by the British to further their indirect rule (Johnson, 2003). As Douglas H. Johnson opines, as a whole, the South remained on the periphery of central government thinking throughout the Condominium period (Johnson, 2003). Later, the various governments that took control in Khartoum did not substantially administer, impairing their control over resources. Therefore, this suggests the fact that the roles of community leaders and traditional authorities over community affairs and customary laws had remained intact with not much interferences from the central governments in Khartoum.

Thus, it is widely accepted that different communities of the South rose in arms in defense of their land. The civil war in South Sudan came against a background of many contentious issues and contradictions, which pitted South Sudan directly against the regime of Gaafar Nimeri, and the northern political establishment in general (Nyaba, 1997). These included, inter alia, the issue of digging of the Jonglei Canal which generated a lot of protest from the South in 1974, and the attempts by the Nimeri Regime to re-draw the Southern Boundaries to annex parts of oil-rich Bentiu and fertile lands of northern Upper Nile with the intention of annexing them to Southern Kordofan and White Nile Provinces in the North (Nyaba, 1997). Thus the issue of the resistance of the people to occupation of their ancestral lands or communal lands had always been a very contentious matter (Nyaba, 1997).

1.2.3 Laws Not Defining Ownership and Rights in Land

Therefore, the land factor stood high among the rest of the factors behind conflicts in Southern Sudan and this could not be resolved by the subsequent legalization and placing ownership of land in the hands of the government in Khartoum. The 1970 Land Act, introduced by the Khartoum Regime, gave rights to the government to takeover unregistered land from the community. This made the communities in Southern Kordofan, Blue Nile, and other areas of the South to fight in defense of the land during the Sudan Peoples' Liberation Army (SPLA) war of liberation. The philosophy and manifesto preached by the Sudan Peoples' Liberation Movement Army (SPLM) sought to restore the rights of the marginalized people of the Sudan and recognition of the rights of the communities in as far as the land factor was concerned. The SPLM/SPLA proclaimed the maxim "land belongs to the community" as a way of mobilizing the community to rise in arms against the central government, which had been attempting to take away the community land. The communities and peasants of the South and other parts of the Sudan saw the genuineness of the cause of the war and therefore supported the 1983 SPLA war of liberation. The 1983 SPLA war ended with the signing of the CPA in 2005, which included the new principles of sharing of wealth and natural resources of the South with their northern counterparts and recognition of the rights of the communities in ancestral lands.

However, it has to be noted that the CPA did not address the ownership of land in Southern Sudan; it only provided that customary land rights shall be recognized and that the regulation of land tenure and rights to land shall be a concurrent competence to be exercised at the appropriate level of government. Therefore this provision has not resolved the question of ownership of land but has created a loophole as to which level of government is indeed appropriate. According to the CPA, rights in land owned by the Government of Sudan shall be exercised through the appropriate or designated levels of government. This provision has been included in Article 180(2), ICSS. Consequently, due to a lack of clear definition, each level of government in GOSS, state, and local government is trying to exercise control over the allocation and administration of land. The CPA did not address issues of government or public land, communal land, and private land and this has remained a problem to date.

Though the current laws (the ICSS, 2005; the Land Act, 2009; the Investment Promotions Act, 2009; and the Local Government Act, 2009) aim to resolve the land problems in Southern Sudan, the problem is legally made complicated by the concurrent powers of the government and traditional leaders to allocate land as provided under Section 4 of the Land Act. The 2009 Land Act therefore did not substantially resolve the issue of the concurrent competence, nor did it define what the level of government which should actually be vested with absolute powers over land allocation and administration. This provision creates tension among the different levels of government. Thus there is the question of whether the current laws regulating the relations of these distinct authorities over the control of land in Southern Sudan is adequate and/or has clearly spelled out the jurisdictions of these different government levels.

1.2.4 Issues Surrounding Concurrent Powers

As discussed above, both governmental and traditional leaders have been given powers to exercise control over and allocate land independently of the other's control, especially if such land is registered by that level. Thus when land owned by a given level is registered as provided in Section 53 of the Land Act, the control by the other level of government is restricted. The provision under Section 6 of the Land Act, which states that ownership of land shall be through designated level of government, contradicts Section 53 of the Land Act.

The Land Act therefore did not substantially resolve the issue of the concurrent competence and the level of government which should actually be vested with absolute powers over land allocation and administration. This provision creates tension among the different levels of government. The clearest example is when the Governor of Central Equatoria State issued an order, *Central Equatoria State Order No. 5/2009*, to evict those who illegally settled on demarcated and allotted plots so that the rightful owners could settle there. When petitioned by the residents of Tong Piny and Jebel Dinka who claimed the exercise unfairly targeted them, the GOSS President ordered the reversal of the State Order until surveyed land was obtained to resettle the inhabitants of these areas.

Further, the general principles of decentralization policy (Sections 6 and 41 of the Land Act) and decentralization of the registration of land (Sections 53, 54, and 55 of the Land Act) have made the states to claim original jurisdiction over land administration. Thus the quest by GOSS to control the Land Registry has caused a crisis to emerge in land administration. The Land Registry in the Judiciary has been suspended by directives of the Honorable Chief Justice and President of the Supreme Court of Southern Sudan, asking it to be transferred to the GOSS Ministry of Housing and Physical Planning as provided in Section 54 of the Land Act. As evidenced in the letter of the Office of the Director of Courts Administration, Judiciary of Southern Sudan (JOSS), dated 13 August 2010, the situation has resulted in the delay in resolving land disputes by the courts. The letter further indicated that this has encouraged serious land malpractices and crimes by land trespassers. Therefore, the same court formed a temporary

committee to handle land assessment and verification while the issue of Land Registry as per Section 54 of the Land Act and the directive of the Honorable Chief Justice was being implemented.⁵

1.2.5 The Place of Local Government in Contested Land Debates

Further, apart from the fact that there is conflict between GOSS and the state over land registry and the question of which is the appropriate institution to control the land registry being unresolved, the challenges of local government empowerment is now taking prominence. The ICSS in Article 173 calls on the Presidency of the South and the State Governments to establish and create laws and policies that shall lead to the establishment and support of the effective role of the local government. The institution of the local government is something new introduced by the CPA and has not been tested at all.

Counties as the highest local authority of the local government in the State have been sidelined and ignored in the land registration, planning and allocation. In the past, the registration and administration of first-, second-, and third-class residential areas were under the counties. But currently, the State MPI has been directly involved in the distribution of first, second and third class residential areas. Payams which are lower than the counties in hierarchy at the local government are involved in distribution of land for residential areas. The payams are responsible for fourth class and allocation of shops ('kushuks). This therefore completely negates the role of the counties in the matter of control of residential plots and commercial activities operating therein. The absence of the County Authorities in the administration, planning, and allocation of the first-, second-, and third- class plots therefore compounds the situation.

It is widely accepted that counties were created by states to function as their administrative appendages (Bowman & Kearney, 2002). In other words, counties were expected to manage activities of statewide concern at the local level. Their basic set of functions traditionally included property tax assessment and collection, law enforcement, elections, record keeping (pertaining to such matters as land transactions, births, and deaths), and road maintenance (Bowman & Kearney, 2002). In Juba County and the same in Yei, counties which were originally involved in allocation of first-, second- and third-class residential plots now no longer do have functions as the Ministry of Physical Infrastructure of Central Equatoria State (MPI [CES]) has taken over these functions. On the contrary, there are allegations that the County Commissioners are involved in distribution of land to investors and private businessmen. The basis for the involvement of the County Commissioners in such transactions has not been verified and clarified. Thus the need to examine the available laws providing for the roles of the County Authorities and in particular the duties of the County Commissioner in land allocation is important.

1.2.6 Definition and Unclear Roles of Customary Authorities

Further, there is a lack of clarity in the definition of traditional or customary authority, the roles they play in the process of allocating customary land and who should bear responsibilities for the acts of the chiefs in the Courts. Though Section 112 of the Local Government Act [(LGA), 2009] has attempted to define the status of the traditional authorities and that the traditional authorities should observe, respect and adhere to the Acts of Rights as enshrined in the CPA, the Sudan, Southern Sudan and State Constitutions, there is a legal complication in the fact that the traditional authorities are mandated to follow and apply customary laws within their jurisdictions. It has to be noted that customary laws are undefined and varies from community to community.⁶ Some of the customs and traditions may not have provided the limits of the powers of the chiefs. The laws, thus, have not attempted to define the exact roles and limits of the powers of these customary authorities and as a result, the customary authorities have been exceeding their

⁵ Section 54. 2009 Land Act of Southern Sudan.

⁶ *Law Advocacy for Women in Uganda v Attorney General - Constitutional Petitions Nos. 13 /05 /& 05 /06 [2007] UGCC I (5 April 2007).*

mandates in issuing leases and certain agreements which by law are not the functions of the chiefs. There are allegations that the chiefs have been unilaterally selling community lands without consulting the communities and/or involving the participation of the communities. Further, there are other allegations that the chiefs are dealing directly with and selling community land to “top” government officials. These allegations are common in Rajaf and Northern Bari counties where investment activities are currently being undertaken by several participants involving senior government officials and businessmen/investors. The issue therefore revolves around whether there is encroachment on or assumption of the other’s power to allocate land by these customary leaders at their respective levels of authority.

1.2.7 The Definition of Public Land

Legally, both the government and the traditional leaders have concurrent powers to allocate land;⁷ the difference is that the traditional leaders have powers to allocate customary land rights, whereas the government has powers to allocate and hold public lands. What constitutes public land has not been properly defined. Section 4 of the Land Act defines public land as land owned and/or held by GOSS, state, or local government. Yet Section 10 of the Land Act stipulates that such public land is owned collectively by all people of Southern Sudan and held in trust by the appropriate level of government. As provided in Section 10(2) of the Land Act, such land may be lawfully held, used, or occupied by any government ministry, department, agency, or local authority. This provision creates a situation of conflict or jurisdictional issues. Lack of consultation during allocation to private individuals has been the justification for the confiscation of Gudele Blocks 1, 2, 3, and 4 by the communities during the process of allocation of these plots to the private individuals.⁸

The wording of Subsection 1 of Section 10 of the Land Act (that public land is owned collectively by the people of Southern Sudan and held in trust by the appropriate level of government) is ambiguous and has not clarified the exact level of government which controls public land in any given area. This creates a gap for assumptions to emerge and thus the loophole in such laws gives reasons for assumptions of powers and encroachment into the roles of the other levels of government. The requirement of registration of land held by the different levels of government creates another challenge. This has been complicated by the fact that county, payam and Boma administrations are the same areas where the traditional authorities have jurisdiction over land and exercise their powers within the same government. Thus GOSS, state, and local governments are part of the same government in Southern Sudan and have therefore respective jurisdictions pertaining to powers assigned to them.

1.2.8 Government’s Attempt to Stimulate Development and Investment and the Application of “Eminent Domain”

Further, there is need for land for investment and development purposes. As current examples can illustrate, there is serious land grabbing of people’s land in Juba; Yei; and most of the big towns of Southern Sudan that are experiencing high numbers of returnees, internally displaced persons (IDPs), and foreigners looking for land to settle and invest, respectively. This raises the issue of whether the government can acquire land through “eminent domain” so that adequate land for settlement and investment is provided for those who need land. The communities and their customary leaders oppose such moves by the government to acquire land. The question which therefore arises is whether the

⁷ Section 15 of the Land Act, 2009.

⁸ Letter by the Minister to the Chiefs of Northern Bari.

government in Southern Sudan can resort to its inherent powers of eminent domain to acquire land from either the communities or private landlords to make available land for development and investment.

Eminent domain is the inherent power of the state to seize a citizen's private property, expropriate property, or seize a citizen's rights in property with due monetary compensation, but without necessarily obtaining the owner's consent. The property can be taken either for government use or by delegation to third parties who will devote it to public or civic use or, in some cases, economic development. This is becoming a global problem, not only affecting developing countries including Southern Sudan but many governments in the world. The most common uses of property taken by eminent domain are for public utilities, highways, and railroads. However, it may also be taken for reasons of public safety. The issue is whether eminent domain may be extended to refer to compulsory purchase and expropriation as it does in numerous countries around the world (Wikipedia). Some jurisdictions require that the government body offer to purchase the property before resorting to the use of eminent domain (Wikipedia). In the context of Southern Sudan, this has not been resolved, as attempts are still being made to define the issue.

The issue whether Southern Sudan should incorporate the principles of eminent domain to allow GOSS available land for development and investment has not been explored properly. Therefore, the advantage of pursuing the incorporation and implementation of the principles of eminent domain in land acquisition by the government has not been properly assessed. Additionally, the question of which levels of government should be vested with powers to exercise this eminent domain has yet to be explored.

It is important to note the dangers of exercising eminent domain in acquiring land in the pretext of serving public interest or benefits. The property or land in question is usually taken by the government and given to private business people or investors who happen to be the friends and associates of the persons in authority. The disadvantages of pursuing land acquisition using eminent domain can be clearly shown by the Supreme Court's decision in *Kelo v. City of New London*, 545 U.S. 469 (2005). The Supreme Court in this case affirmed the authority of New London, Connecticut, to take non-blighted private property by eminent domain, and then transfer it for a dollar-a-year to a private developer, solely for the purpose of increasing municipal revenues. The majority decision of the Supreme Court received heavy press coverage and inspired a public outcry that eminent domain powers were too broad. As a reaction to *Kelo*, several states enacted or considered enacting state legislation that would further define and restrict the state's power of eminent domain. The Supreme Courts of Illinois, Michigan (*County of Wayne v. Hathcock* [2004]), Ohio (*Norwood, Ohio v. Horney* [2006]), Oklahoma, and South Carolina ruled to disallow such takings under their state constitutions (Wikipedia).

On June 23, 2006, on the one-year anniversary of the *Kelo* decision, the then-President George W. Bush issued Executive Order 13406, which stated in Section I that the federal government of America had to limit its use of taking private property for "public use" with "just compensation," which is also stated in the Constitution, for the "purpose of benefiting the general public." The order limits this use by stating that it may not be used "for the purpose of advancing the economic interest of private parties to be given ownership or use of the property taken."⁹ However, eminent domain is more often exercised by local and state governments, albeit often with funds obtained from the federal government.

Southern Sudan must address the question of which mode would be appropriately applicable in the country, taking into consideration the centrality of the land question and popular animosity toward government control of land, a source and major factor in the just ended civil war. Many countries the world over recognize eminent domain to a much lesser extent than the English-speaking world, or do not recognize it at all. Japan, for instance, has very weak eminent domain powers, as evidenced by the high-profile opposition to the expansion of Narita International Airport, and the disproportionate amounts of

⁹ "Executive Order 13406: Protecting the Property Rights of the American People." 2006-06-23. <http://georgewbush-whitehouse.archives.gov/news/releases/2006/06/20060623-10.html>. 071 F.R. 36973.

financial inducement given to residents on sites slated for redevelopment in return for their agreement to leave, one well-known recent case being that of Roppongi Hills (Wikipedia). There are other countries, such as the People’s Republic of China, that practice eminent domain whenever it is convenient to make space for new communities and government structures. Singapore practices eminent domain under the Land Acquisitions Act which allows it to carry out its Selective En bloc Redevelopment Scheme for urban renewal. The Amendments to the Land Titles Act of Singapore allowed property to be purchased for purposes of urban renewal, and therefore an owner sharing a collective title would be displaced if the majority of the other owners wish to sell. Thus, eminent domain often invokes concerns of “majoritarianism,” that is, consideration of the majority wishes prevailing over the minority wishes. Most recently (and infamously) in Zimbabwe, the government of Robert Mugabe seized a great deal of land and homes of mainly white farmers. The Mugabe Government argued that the land reform in Zimbabwe was necessary to redistribute the land to Zimbabweans dispossessed of their lands during colonialism. However, the redistribution promised by the Mugabe government has either not occurred and much of the land remains in possession of Mugabe’s allies, or what land has been redistributed has caused Zimbabwe’s agricultural production to plummet. This shows a major weakness of this approach to land acquisition.

I.3 RESEARCH OBJECTIVES

This research was initiated by Tetra Tech ARD and the United States Agency for International Development (USAID) and the Nile Institute for Strategic Policy and Development Studies (NISPDs) was contracted to identify and guide researchers to study the jurisdiction of GOSS, state government, and county and traditional authorities over land administration, planning, and allocation. The purpose of the study was devising realistic policy recommendations that may be used by the government and stakeholders in developing suitable land administration system for the country.

I.3.1 Strategic Objectives

The research has the strategic objective of defining the jurisdiction of GOSS, state governments, and county and customary authorities over land administration, planning, and allocation. The aim of this objective is to examine the functions and roles of these different levels of government, the powers and administrative relationships, and the rules of engagement among these different levels. Therefore, the ultimate result of this research is to come up with smooth power relations over land tenure and property rights between GOSS, the state, and local government vis-à-vis traditional authorities.

I.3.2 Secondary Objectives

Further, the research has the following objectives to achieve:

- To examine the laws and policies governing land management, planning, and allocation; and procedure of acquisition of land under the customary land tenure by citizens and investors;
- To examine participation of local communities on matters of land administration, planning, and allocation; and the benefits to the local communities; and
- To investigate into the exercise of eminent domain or compulsory acquisition of land by government.

2.0 METHODS AND STUDY AREA

2.1 STUDY METHODS

This research was carried out in Juba County, Central Equatoria State, between June and August 2010. The method involved the selection of the institutions at GOSS, state, and local government levels and key stakeholders carrying out functions related to land administration, planning, and allocation. These institutions and stakeholders were chosen as key informants to provide primary information. Government officials at the GOSS, state, county, and payam levels and traditional chiefs were selected for interviews; the same was extended to representatives of the legal profession (Advocates), the Judiciary, and opinion leaders. Both men and women were interviewed, as gender was not the basis of selection. Case narratives and documents were reviewed as other sources of information and for comparative analysis.

For reliability and validity, a structured questionnaire was used and the interview was conducted using face-to-face discussion; this helped the researcher to record accurate information and probe further where the answer was unclear. English, Arabic, and local languages spoken widely in Juba were used; this helped in building rapport and confidence during the interviews.

2.2 STUDY AREA

Southern Sudan lies in an area of approximately 650,000 sq kms. It is an area in the Nile Basin which is bordered by the States of Blue Nile, White Nile, and Southern Kordofan in the north; Ethiopia in the east; Kenya in the southeast; Uganda in the south; Democratic Republic of Congo in the southwest; and Central African Republic in the west. Juba is the capital of South Sudan. In order to determine the success of the research, a multistage purposive sampling procedure was adopted, involving selection of Juba County in Central Equatoria State.

Juba County was chosen because of its uniqueness. Juba is the capital of both GOSS and Central Equatoria State. Juba has many levels of local government, including Juba County; the 17 payams within Juba; and numerous Bomas, which include rural and urban councils. The selection of Juba was guided by the availability of different institutions that were targeted by the research. Thus carrying out the research in Juba would give the researchers a good chance of interviewing all the stakeholders from the different levels of government: GOSS, state, and local government. Juba further has the different levels of judiciary: the Supreme Court, Court of Appeal, High Court, the County Courts, and the Traditional Courts. This is important, as the judiciary has been an active player in land administration, controlling the Land Registry. The traditional courts are presided over by the chiefs.

Further, Juba County was chosen because it is growing fast; there are many land transactions and an influx of returnees and investors, and thus has many land ownership cases. Juba is indeed regarded as a cosmopolitan town, an area of convergence—regionally and internationally—with people of different political, socio-economic, ethnic, cultural, and religious orientation. Business people locally and internationally are all located in Juba, and thus there is opportunity of interviewing all the actors in land transactions and the stakeholders from the political, religious, and cultural leaders.

Four payams were chosen within Juba County to represent rural and urban councils: Munuki, Kator, Rajaf, and Northern Bari. Munuki and Kator were chosen as payams in the center of Juba; Rajaf and

Northern Bari were chosen because they are accessible by roads and they have significant volumes of land transactions. This provided the basis for understanding what is happening with regard to land transactions in the rural and urban areas of Juba.

2.3 DATA COLLECTION

The research generally used a survey method and basically qualitative rather than quantitative as statistics were not used during the study. In carrying out the research, various methods were used to collect the data.

2.3.1 Primary Sources

Primary sources included collecting key informant interviews. Discussions were held with government officials from the respective institutions at the different levels of government: GOSS, state, and local government. The key informants included officials such as the Chairperson of the Southern Sudan Land Commission, Director Generals, and directors and officials at the different levels of government. Use of structured questionnaires guided the discussion and the key informant interviews, which were focused on:

- Documentation or policy guidelines used by the institution;
- Roles and functions of the institution;
- Relationship of the institution with other institutions of government dealing in land matters;
- Importance of traditional authorities to the institution;
- Adequacy of the current laws with regard to land administration, planning, and allocation;
- Use of eminent domain and acquisition of land for business and investment purposes;
- Community participation and consultation in matters affecting communities' interests; and
- Challenges facing the institution and recommendations.

The chiefs and traditional elders were further interviewed and the questions focused on their roles in land administration, planning, and allocation; their levels of understanding of the laws governing their functions; the challenges facing them; and recommendations.

2.3.2 Secondary Sources

Other sources used during the interview include document review and court cases. The information obtained from document review and decided court cases was used to analyze the data obtained from the key informants during the research.

2.4 PROBLEMS ENCOUNTERED

Since the research involved the jurisdiction of GOSS, state, and local government as well as chiefs, the targeted persons to be interviewed avoided the researchers for political reasons. The staff in the targeted institutions requested approval from their immediate superiors. Even with permission, they sometimes refused to cooperate, referring us to somebody else in other institutions. They would further give wrong time just to avoid us and this delayed the process of data collection.

There was a language and translation problem. Though the staff would use English, Arabic, or Bari language, translation of the final version into English was a challenge as simultaneous translations were made. This affected the time spent in data collection.

2.5 HOW THE PROBLEMS ENCOUNTERED WERE OVERCOME

The researchers sought means of overcoming the challenges posed by the study. Among the strategies used, the researchers obtained permissions from the top leadership or the immediate supervisors of the target staff. Further, the researchers had to approach the institution by carrying out interviews first with the top management, who at times further referred the researchers to his or her subordinates with better information on the subject or department concerned.

The researchers made use of rapport; this involved building trust and confidence in the key informant by assuring the interviewee that the research was meant to support the development of the land laws, policies, and regulations.

The researchers adopted flexibility in the use of the language. The local language preferred by the interviewee was usually considered and this gave access to information which the interviewee would not have communicated had English or Arabic only been used.

Thus, the reliability and credibility of this research was enhanced and maintained throughout the research.

3.0 FINDINGS

3.1 INTRODUCTION

The section presents findings on the jurisdiction of GOSS, state, and local government in Juba County, Central Equatoria State. We focus on the roles/functions of the different levels of Government: GOSS, state, and local government as provided for under the current laws: the ICSS and ICCES; the Land Act, 2009, and the Local Government Act, 2009, of Southern Sudan; and the Local Government Act, 2008, of the State of Central Equatoria. It further includes an examination of such existing laws and how the laws have helped resolve or complicate the issues of land administration in Juba County.

The use of guidelines or laws that define the jurisdiction of government institutions are usually overlooked; and as a result, the office or institution is becomes a personal fiefdom because no reference is made to the laws or guidelines or policy governing the powers of the institution or document stipulating the mandate of the office. Evidence from key informant interviews reveal that the opinion of the boss or head of office is highly regarded and reference is made to it more than the law or policy guideline governing that institution. As a result, the senior official's views are seen as the law or guideline, with everything regarding the institution being dependent upon him/her.

Issues of institutional competence therefore arise because the system or structure created by the law does not exist. Observation has shown that though the system may have been created by the existing laws as the case of Juba County shows, there are no policies to operationalize the law and the reason is because there is confusion over the question of who has the roles of developing the policies, rules and regulations. Other factors which may not be overlooked but have been observed during the study are that the staff of the institution may not know their mandate and as a result the mandate of the institution are not properly executed as laid down by the law. Further, behind institutional incompetence include factors like lack of properly trained technocrats and technical personnel, shortage of capital and human resources. These are some of the issues dealt with in this section.

The section will further look at the process of land allocation and acquisition and determine which appropriate level of government ought to carry out the duties prescribed by the ICSS, ICCES and the laws operational in Juba. Reasons for the cooperation or hostility of the people or local communities with the government about land allocation or acquisition will be explored. Since pre-colonial time, the people of Southern Sudan have always resisted the taking over of their land or anything that endangers their interest in communal land. Thus the level and means of participation of the communities in the process of decision making concerning customary lands will be examined.

3.2 WHAT THE LAW PROVIDES AS THE JURISDICTION OF GOSS, STATE, COUNTY, AND CUSTOMARY AUTHORITIES

3.2.1 Jurisdiction of GOSS

The Government of Southern Sudan was formed after the signing of the CPA. Its powers emanate from Schedules B and D, Article 161, of the Interim National Constitution (INC), and it has the primary responsibilities of linking Government of National Unity (GONU) and states, and protection of rights and

interests of people of Southern Sudan.¹⁰ Under Article 170 of the INC, it is stipulated that the powers reserved for GOSS under ICSS shall confirm to Schedules B and D of the INC. Thus among the powers given to GOSS in land matters, the following are included:

- Exploitation of subterranean resources;¹¹
- Enactment of legislation at GOSS level;¹²
- Planning for GOSS services;¹³
- Coordination of services;¹⁴ and
- Setting minimum standards and uniform norms.¹⁵

It is important to note that Item 9 of Schedule B of ICSS has given wider powers for GOSS to coordinate or set minimum standards and uniform norms over any matter exclusive for the state under Schedule C (except State Constitution) and has concurrent powers under Schedule D.

Therefore the research found out that the powers and functions of GOSS over land administration, planning, and allocation are clearly stipulated as per the ICSS; the Land Act, 2009; and the Local Government Act, 2009. As one respondent stated:

The Schedules to the Interim Constitution of Southern Sudan give what is to be handled by the State or GOSS. The Local Government Act does not give the function of the GOSS or State. The Local Government Act is blurred. Many of the things that may be handled by GOSS are in [S]chedule C. Concurrent powers are in the Schedule D. For example, all roads connecting capital cities of the States and those of other states are the functions of GOSS and feeder roads are duties of the states. The function of land administration and allocation is supposed to be the duties of the Local Government. GOSS develops the policy and the implementation of the policy is the work of the state. This is clear in Schedule D.

One key informant from the SSLC was able to summarize in vivid terms the legal stance by stating that:

The laws governing land administration in Southern Sudan have clearly stipulated the jurisdiction of the Government of Southern Sudan, State Governments, County Authorities, Payam Authorities and the Traditional Authorities. When you need to discover the powers of the Government of Southern Sudan and the State Governments, the Schedules to the Interim Constitution of Southern Sudan, 2005 have clearly stipulated those powers. The Schedules to the Interim Constitution have provided the powers that may be handled by the Government of Southern Sudan and what powers belong to the State Government. Even the Local Government Act, 2009 have provided the powers of the local government entities, the Counties, Payams and the Bomas.

¹⁰ Article 162, INC.

¹¹ Article 2 of Wealth Sharing, CPA, Chapter 3 of INC and S.6(6) Land Act.

¹² Item 4 of Schedule B.

¹³ Item 6 of Schedule B.

¹⁴ Item 9 of Schedule B.

¹⁵ Item 9 of Schedule B.

Though no respondent was able to quote the ICCES of 2006, as providing the powers that are reserved for GOSS and those that are exercisable by the State of Central Equatoria and local government within the state, the Schedules to the Interim Constitution of Central Equatoria State of 2006 are replica of the Interim Constitution of Southern Sudan. Thus the structures envisaged in the land administration under the ICCES are the same as provided in the Schedules to the ICSS. The ICCES has therefore in principle conformed to the provisions of ICSS in that regard.

The Land Act, 2009, is the main point of reference when discussing the jurisdiction of GOSS, state, county, or traditional authority/leader. As a judge from JOSS, when asked about the jurisdiction of GOSS, stated, “As of now, we are not left with any room to guess with the fact that the Land Act, 2009 is promulgated. The responsibility of GOSS is defined in the Land Act, 2009.” This was confirmed by another respondent from the Ministry of Legal Affairs and Constitutional Development (MOLACD), who said that “the jurisdiction of GOSS is specified in section 42 and 44 of the Land Act.”

In clear wording, Section 42 of the Land Act, 2009, provides that

...without prejudice to the provisions of Schedule B of the ICSS in relation to land, the functions of GOSS shall be, inter alia, to provide for land and natural resources regulation by enacting policy and legislations, making relevant intervention in town and rural planning, development of a master and physical plan for the capital city, define and demarcate its territory, keep and manage the land cadastre and registration system in Southern Sudan, and matters of land, interstate waters, environmental issues and other issues affecting generally Southern Sudan and requires the attention or intervention of GOSS and may be appropriately dealt with by GOSS as per Schedules C, D, E and F.

Thus, the provision of Section 42 of the Land Act has given *powers* to GOSS to develop master and physical plans for the capital city, whereby GOSS exerts control over the administration of Juba as the capitol city of GOSS, as per the ICSS. However, this plan is being contested by the State of Central Equatoria which contends that Juba is the capital of the Government of the State of Central Equatoria, as per the ICCES. As a result, the administration of Juba has not been properly defined, leaving GOSS and the State of Central Equatoria in dilemma. In recent development, GOSS Council of Ministers approved the master plan for Juba city and has proposed that the capital city of CES be relocated to Yei so that Juba remains the capital of GOSS. The issue of relocation of the capital city of CES to Yei had been a heated debate during the 2010 April elections. It is yet to be seen whether the newly approved master plan of Juba will be accepted by the state authorities of CES without contention. Further, there is the issue of houses and ministerial areas which were the property of CES but now being occupied by GOSS. There is attempt by CES to repossess these houses and ministerial areas.

Table 1: A summary of the provisions from the Schedules to the CPA, ICSS, and the ICCES; giving exclusive functions of the state or matters of concurrent powers to GOSS

Matters Exclusively under State Jurisdiction	Matters under Concurrent Powers of GOSS and State
State Constitutions, legislations, and policies (Articles 167 and 168, ICSS; Item 1, Sch. C)	Urban development, planning and housing (Item 5, Schedule D)
State land and natural resources (Item 8, Sch. C)	Airports not falling under GOSS, (Item 11, Schedule D)
Management, lease and utilization of lands of state (Item 13, Schedule C)	River transport (Item 12, Schedule D)
Registration of inheritance (Item 18, Schedule C)	Environmental management, conservation and protection (Item 17, Schedule D)
Airstrips (Item 24, Schedule C)	Water resources and other interstate waters (Item 27, Schedule D)
Intrastate roads (Item 25, Schedule C)	Regulation of land tenure, usage and exercise

State statistics and surveys (Item 28, Schedule C)	of rights in land (Item 32)
Quarrying regulations (Item 31, Schedule C)	
Town and rural planning (Item 32, Schedule C)	
Traditional and customary law (Item 34, Sch. C)	

Table 2: A summary of the provisions of the Land Act giving powers to GOSS and state

GOSS Powers	State Powers
Has full powers over subterranean resources (S.6[6] of Land Act, 2009)	Coordinates with GOSS in subterranean resource exploitation (S.42 [g] Land Act)
Own land through designated level which recognizes customary land rights (S.6[3] of Land Act)	Management of state land and natural resources (S.43[a] of Land Act)
	Lease and utilization of state land (S.43[b] of Land Act)
	Quarrying regulations (S.43[d] of Land Act)
	Protection of customary seasonal rights (S.6[50] of Land Act)
Enactment of policies and legislations (S.42[a] of Land Act)	Regulations of land tenure, usage, and rights (S.43[i] of Land Act)
Real property tax system	State Constitutions, legislations, and policies under Item I of Schedule C
Capital city (S.42[c] of Land Act)	State capital [Article 58 of ICCES]
Intervention in town and rural planning (S.42 [b] of Land Act)	Town and rural planning (S.43[e] of Land Act)
	Land zoning and gazetting (S.43[m] of Land Act)
	Supervision and coordination land administration levels in the state (S.43[o] of Land Act)
	State physical planning (S.43[p] of Land Act)
Inter-state water disputes	

3.2.2 Level of Understanding of Laws Governing Land Administration, Planning, and Allocation at GOSS Level

The research findings revealed that the respondents at GOSS level showed high level of ignorance about their roles as defined by the ICSS, ICCES, and laws. Thus generally, most of the respondents showed ignorance about the documentation or guideline that spells out the jurisdiction of GOSS. For example, one of the respondents had this to say: “There is no documentation and guideline that spells the jurisdiction of GOSS, except the old system. When you need land, what I have seen is only papers given and you pay fees; then next is to go to the court and survey department with your papers. There is no recording in the process.”

The research also found out that legal counsel at MOLACD was ignorant of the operating laws. One respondent from MOLACD was of the same perception that there are no documentations or guidelines being used by almost all the institutions at GOSS level, except the old legal framework inherited by those institutions. Another respondent from the Ministry of Housing and Physical Planning confirmed to us that they did not have any documentation: “No, we do not have any documentation. This is simply because land administration before the formation of GOSS had land regulation under the state and as in CPA, land belongs to the community.”

Another respondent was able to add that “When the government of Southern Sudan was established land was under the State. But when the Land Act was enacted, the Land Registry should be established at GOSS level. As such all records will be transferred to the Ministry of Housing at GOSS. We are still waiting for the registry to be established. There is a letter from the Chief Justice suggesting that we take over the land registry at the judiciary, it is for this reason that registration was suspended.”

3.3 THE JURISDICTION OF THE STATE

According to Article 180(1) and (2) of the ICSS, the regulation of land tenure, usage, and rights shall be a concurrent competence, exercised at the appropriate level of government in Southern Sudan and rights vested in GOSS shall be exercised through the appropriate or designated level of government in Southern Sudan.

The state has the role of implementing the land policies and laws created by GOSS over matters that affect Southern Sudan generally by reducing these laws and policies to meet the peculiar circumstances of the state. One key stakeholder from SSLC stated “The policy we are having is the policy for Southern Sudan. Each State must come out with its Land Policy or Land Act. The reason is that the state has its peculiarities. For example, in CES, about 99% of the people are engaged in agriculture while in Warrap it is about 99% pastoralists ...”

The major and overall functions of the state government with relation to land are that of land regulations and policy making. Most of the attributes given to the state are in terms of setting regulations and the role of managing, overseeing, and coordinating different levels of land administration and management in the state. Thus management of state land and natural resources, town and rural planning, regulation of land tenure, usage and exercise of rights in land, management of survey office, boundary demarcation between community lands, land zoning and gazetting, and development and implementation of state physical planning are some of the functions of the state government. This is clearly provided for in Section 43 of the Land Act.

3.3.1 Power Relations Between GOSS and the State

As summarized in the preceding tables, the responsibilities of the GOSS and State are to a large extent clearly defined. What is required is for the technical and legal experts to sit down together and to understand their roles, responsibilities, and boundaries of authority.

3.3.2 Conflict over the Land Registry and Registration

The research sought to establish which of the level of government should have control over the Land Registry. Issues surrounding the establishment of the Land Registry are very critical and therefore the control over the Land Registry is central in land administration.

The research was able to establish that both GOSS and State have powers over the keeping of the Land Registry. According to Section 54 of the Land Act, 2009, the Land Registry shall be established at the Ministry of Housing, Physical Planning and Environment in GOSS and shall be decentralized; hence the State through the concerned Ministry shall keep the Land registry in coordination with the Ministry of Housing, Physical Planning and Environment in GOSS.

Commenting on the provision of Section 54 is the opinion of the Advocate General, MOLACD, Jeremiah Swaka:

From the beginning, it is worth stating that the wording of [S]ection 54 of the Southern Sudan Land Act, 2009 is very plain [sic] *to the point and does not need interpretation and or*

explanation. As it is, this section establishes land offices at GOSS level, State level and offices at each level of land administration in Southern Sudan. This means all the levels of government in Southern Sudan have land registration offices. The question that posts [sic] itself is “what are the roles assigned to each land office at a certain level of government by the law?”

Section 54(1) of the Southern Sudan Land Act, 2009 states that “Land registry office shall be established in the GOSS Ministry of Housing, Physical Planning and Environment and shall be decentralized throughout Southern Sudan.” This section does not spell out the roles of the land registry offices in the Ministry and its branches at the state level.

Section 54(2) gives to the concerned Ministry at the state level the role of keeping the land registry in coordination with the Land Registry office at GOSS level. On the other hand subsection 3 of section 54 establishes registration offices at each level of land administration in Southern Sudan.

Taking the provisions of Section 54 above, it appears that land registry offices are established at all levels of the government and all levels of land administration. This shows the legislator was unable to determine which level has the role of registering land and all transactions involving land. As it is, each level can assume the responsibility and the role of registering land under the section.

Section 55 offers a great assistance to the quest for roles of each land office. Section 55(2) of the Southern Sudan Land Act, 2009 gives the concerned state authorities the role of carrying out initial registration of land. This section does not only qualify section 54 but renders it redundant. An initial registration is in fact a land settlement (see Land Settlement and Registration Act, 25). Since the initial land registration is carried out by the state authorities, it is these authorities to carry out the whole registration process.

From the above explanation and since the initial land registration is the role of the state authorities, understandably all the transactions on land including keeping and custody of land registers should be carried out by the same.

However it is to be noted with great concern that there is an urgent need to review the Land Act 2009 with the view of clearly spelling out the roles, powers and functions of the public institutions which are to manage, register and regulate the land use in Southern Sudan in the light of the provisions of section 41 of the Land Act, 2009.¹⁶

The opinion of the Advocate General was confirmed to the study team by different respondents who agreed that the control over the Land Registry is the primary responsibility of the respective states. According to one respondent from MOLACD, “under Sections 53 and 54 of the Land Act, 2009, GOSS has land registry which is decentralized. If decentralized and devolved, hence, GOSS devolves the power. The Land Registry in GOSS under Section 54 of the Land Act is devolved to the State.”

According to Section 54(2), the state, through the concerned Ministry, shall keep the Land Yet as provided in Section 54(1) of the Land Act, the Land Registry shall be established within the Ministry of Housing, Physical Planning and Environment in the Government of Southern Sudan and shall be decentralized throughout Southern Sudan.

With regard to Section 54, the research finds that the Ministry of Housing, Physical Planning and Environment in GOSS has been renamed. Further, the research found out that Southern Sudan Legislative Assembly has not yet enacted the law that regulates the Ministry. Hence, the Ministry is still operating

¹⁶ Legal Opinion by Jeremiah Swaka, Advocate General, MOLACD, dated 3/3/2010.

using the old laws which have been outlived by the legal system operating in the country. This has added more confusion on the exact roles of the Ministry. But the fundamental functions may not have changed much.

Further, the provision that the Land Registry shall be established in GOSS and decentralized throughout Southern Sudan, (Section 54) coupled with the fact that the state shall keep the Land Registry in coordination with the Ministry of Housing and Physical Planning (Section 54, Subsection 2) is a duplication of functions. It therefore means the state has an original function in regard to land registry, rendering the establishment of the Land Registry in GOSS redundant.

The exact roles of GOSS with regard to the Land Registry have not been adequately covered. Above all, the function of the Land Registry is a concurrent power given to GOSS and state; but as provided in decentralization policy and noting the need for devolution of powers as enshrined in Articles 51 and 52 and the Schedules to the ICSS, the state institution is more competent than GOSS to handle this matter, as it is the most appropriate level of government closer to the people. Most of the issues concerning land matters have been adequately provided in Schedule C which gives the powers to the State. Item 9 of Schedule B to ICSS has set the roles of GOSS regarding matters under State jurisdiction; the role of GOSS is to set the minimum standards and uniform norms for States to adopt. Noting the provisions of Articles 51, 52, 173, 180, and Schedules to the ICSS, read together with Section 6 of the Land Act, the state is in a better position to keep the land registry. As states have been given supremacy in their spheres (within the states), GOSS could do no more than impose minimum standards on states on how to manage the land registries under the ten states of Southern Sudan. This is the position in most federal governments like the US.¹⁷

3.3.3 The Question of Land Ownership versus Land Allocation

The research sought to establish that the legal requirement of each level of government, institution, community, or individual registering land owned by it has affected and/or deprived GOSS of the functions of allocating land. The states therefore take central roles of allocating land as GOSS has no land. When Communities have registered their land or state lands have been registered in the name of the states, GOSS has no land. This restricts the function of land allocation to States only. This has been confirmed by the research findings.

A respondent from the Ministry of Housing and Physical Planning at GOSS confirmed the above statement in these words. “Foreign investors when they get cleared from the Immigration Department, they come to the Ministry of Investment and Ministry of Legal Affairs and Constitutional Development (GOSS) for approval of their papers and registration of their business. And when they need land, we consult the states to locate a place for them. This is because we have no land; the land belongs to the State.”

The respondent was therefore stating that GOSS has no land and therefore the role of GOSS in land allocation is restricted. One respondent from the MOLACD supported this statement and said, “GOSS is restricted in involvement in Land issues – it has to act as a trustee. GOSS is given power of control, administration for a specific land – land held under GOSS.” Thus GOSS has only the premises that it occupies; and as the same respondent put it, “Government institutions are public property owned by the people of Southern Sudan collectively.”

With regard to relation the GOSS to land in general, the Land Act has introduced a new principle of trusteeship in the current land administration in Southern Sudan. The ownership of land has been given to

¹⁷ Lee Epstein & Thomas G. Walker, (2nd Edition 1995) *Constitutional Law For A Changing America* Congressional Quarterly Inc., Washington D.C. 20037.

the people of Southern Sudan, but the control over its usage is entrusted to GOSS.¹⁸ Thus ownership of land in Southern Sudan has been now placed in the people and people mean the communities. Thus, the research found out that the local people, the real owners of land, and chiefs' functions within the local government in the states are in a better position to carry out the function of land administration and allocation of communal and state lands. Thus the statement that "land belongs to the people" is true, as far as Section 10 of the Land Act is concerned. This augurs well within the current legal regime which encourages decentralization and devolution of powers. The state finds itself with the capacity to request land for allocation from its local population compared to GOSS. This buttresses the argument in favor of the state versus GOSS control.

Further, with the requirement that all levels of government register land as provided in Section 53 of the Land Act, and that land ownership shall be through the designated level of government as provided in Section 6(3) of the Land Act, GOSS cannot allocate and distribute land which it does not own. The states, therefore, have the primary responsibility of land allocation, and through the state, the local government institutions. Counties and local government in particular are arms of the states (Bowman & Kearney, 2002). Local governments, including counties, payams, and Bomas, are usually the closest level of government to the people and answerable to the states. Thus, traditional chiefs carrying out the function of land allocation in regard to customary land can easily cooperate with local governments than dealing directly with GOSS.

The research notes that GOSS has the function of carrying out initial or systematic registration upon request by the state or on its own motion. Thus the role and functions of GOSS vis-à-vis the state has not been properly defined and the same applies to the intention of carrying out systematic registration.¹⁹ States have primary responsibilities as clearly seen from the provisions of Sections 53, 54, and 55 of the Land Act when read together. This has placed the registration of land in the states.

3.3.4 Jurisdiction in Land Planning

The research was able to find that the role of developing master plans surveys and a tax system are matters of concurrent powers, as provided in Schedule D of the ICSS and ICCES. However, the role of developing the plans can be adequately handled by the state which owns the state land; apart from Juba being the capital of both GOSS and CES, most towns are within the powers of the states. The rules for planning can be developed by federal government, but the actual planning specifically to meet the needs of the towns are the duties of the state, and in particular the local government authority. Whereas GOSS shall set the minimum standards and uniform norms to be adopted by states, the planning process and implementation is the duty of the particular state. This is what is envisaged in the Schedules of the Interim Constitutions.

As is widely accepted, any coherent system of planning control is necessarily dependent on a proper administrative structure (Galbraith, Stockdale, Wilson and Davenport, 1998). As in the United States, the overall structure for administering the rules on planning is headed by the Secretary of State for Environment, who has power over local planning authorities—county councils, district councils, metropolitan authorities, and other bodies vested with planning responsibilities (Galbraith, Stockdale, Wilson and Davenport, 1998). In Southern Sudan, the peculiarities of the system have it that the states, just like GOSS, have legislative powers to enact laws, policies, and regulations. Town and rural planning, as well as management of state lands, are roles of the state. Therefore, the state has a better space to modify the rules set by GOSS over town and rural planning.

¹⁸ See also Section 10 of the Land Act, 2009.

¹⁹ See Section 55 of the Land Act, 2009.

3.4 LEVEL OF UNDERSTANDING AT THE STATE LEVEL

At the state level, respondents were selected from the different institutions such as the Ministry of Physical Infrastructure, the Survey Department, town planning authorities, Ministry of Local Government, the County Authorities of Juba, payam directors and staff, and the customary authorities. The questions asked sought to find out the type of laws used, the use of policy guideline and regulations and whether there are assumptions of powers or overlap in powers at their level, from either GOSS or within their system.

3.4.1 Use of Past Laws

The findings of the study showed that the State Ministry of Housing and Physical Infrastructure has been using old laws. Thus the study has established that to be effective, the State Ministry of Physical Infrastructure must be guided by the relevant legal framework. The use of past laws is part of the root causes for the conflict seen in the State Ministry. One of the key stakeholder from the Ministry of Physical Infrastructures, CES, stated, “We are operating without any document or guideline. We are using the 1956 Land Scheme Act. In the North, there are changes in this law (I think 2004 or 1996) but in the South no such amendments. We are following this Land Scheme Act.”

One of the respondents from the Court of Appeal (JOSS) confirmed, “It is very unfortunate that we have just received the Land Act, 2009. We were applying the Land Settlement and Registration Act, 1925 with all the amendments. We try to avoid anything Islamic. As of now we shall apply the Land Act, 2009.” Although it was difficult to find whether this is the general view of the justices of the Court of Appeal, the above comment shows that not only the State Ministry of Housing and Physical Infrastructure has been using the old laws, but also one justice from the Court of Appeal was following the old laws with the subsequent amendments. However, at the High Court level, a judge of the High Court was able to confirm that “the Land Act, 2009 provides the government the power over land” and the High Court in Juba is using the new law, the Land Act, 2009.

3.4.2 The Jurisdiction of County

The research sought to examine the contents and provision of the law with regard to functions of the county in land administration, planning, and allocation. The research established that in the county, the major roles are given to the County Commissioner and the County Land Authorities. The research looked at the legal provisions and how they brought assumptions or conflicts in jurisdictions with the other institutions or levels of government. The practical situation at the county level was also assessed to determine the level of understanding of the law by the different respondents and how the legal provisions were being applied at the county level.

3.4.3 The Legal Duties of County in Land Administration

According to the Land Act, the state has the responsibility of specifying, by law and regulations, the structure and organization of the County Land Authority.²⁰ The state has functions with regard to establishment of the Payam Land Council and as provided by the Land Act, the members of the Council are to be nominated by the concerned ministry of the state upon recommendation of the Commissioner and after consultation with the traditional authority in the payam.²¹ The research found that although both

²⁰ Section 45 of the Land Act, 2009.

²¹ Section 49 of the Land Act, 2009.

the County Land Authority and Payam Land Council are not operating at the moment, the legal provisions stipulating their compositions and functions are there.

The research discovered that the law has provided that appeals from the County Land Authority go to the concerned ministry in the state.²² The concern raised by this research is that Subsection 2 of Section 47 of the Land Act makes it mandatory for the appeal process and thus may usurp the immediate authority of the court process and forestall quicker remedies for any aggrieved party.

The research notes the redundancy stemming from requiring consultation with the traditional authorities with regard to the establishment of the Payam Land Council, when the members of the same Payam Land Council are nominated by the state ministry, which can lead to confusion. The state is placed in a difficult situation to meet both requirements of taking the recommendations of the county commissioner and consulting with the traditional authorities when appointing members to the Payam Land Council.

Further, issues of jurisdiction arise in appointment and the functions of the County Land Authority. At the county level, there is the County Land Authority, which consists of such persons as appointed by the Governor with recommendation of the Commissioner.²³ The major functions of the County Land Authority are to hold and allocate public lands with approval of the state ministry, make recommendations and give advice to the state, facilitate registration and transfer of interest in land, support and assist any cadastral operation and survey in its jurisdiction, and liaise with SSLC. The County Land Authority has the functions of assisting the traditional authorities on their major attributions; liaising between the community leaders and the state ministry; advising the local community on issues related to land tenure, usage, and exercise over land rights; and chairing the consultation process between community and state government.²⁴ Thus, the findings reveal that the County Commissioner must always consult with the state ministry regarding any allocation of public lands. However, the issues that are of major concerns are the roles of facilitating registration and transfer of interest in land, cadastral operation, and survey. The powers given to the counties (Section 46) in the Land Act are in conflict with the powers of registration of land and survey given to GOSS and States by the Interim Constitution and the Land Act (in the ICSS, ICCES and sections 42, 43 of the Land Act). This may eventually lead to several institutions involved in the registration process; and as a result multiple registrations are conducted, eventually causing confusion in the land registration process.

Another legal confusion is the role of the County Commissioner with regard to appointment of Payam Land Council and the role of County Land Authority in receiving appeals from the decisions of the Payam Land Council. According to the Land Act, the County Commissioner gives recommendation after due consultation with the concerned ministry regarding any nomination to the membership of the Payam Land Council and the County Land Authority receives appeals from the decisions of the Payam Land Council.²⁵ Further, according to Section 94(1) of the Land Act, 2009, the County Land Authority, the Payam Land Council or the traditional authority have jurisdiction over a dispute that is referred to it for arbitration. The role of mediation is given under Section 92(2) of the Land Act, 2009. Thus, there is real confusion over the role of land disputes; giving the role of land dispute resolutions to so many institutions jeopardizes the search for justice. If the County Land Authority or the Payam Land Council—which exercises some functions of land registration, survey, and cadastral registration—is given powers over land disputes resolution, whether by way of arbitration or mediation, is breaching the rules of natural justice which forbids the same person who may be a party to the case the powers of adjudicating or arbitrating

²² Section 47 of the Land Act, 2009.

²³ Section 44 of the Land Act, 2009.

²⁴ Section 46(f)–(h).

²⁵ Section 51(1) of the Land Act, 2009.

over the same case. The Land Act, 2009, has appointed therefore so many actors in land dispute resolution: the courts of judicature, the Land Commission, the County Land Authority, the Payam Land Council, and even the traditional chiefs who apply their customary laws in certain land disputes. This is watering down the quest of justice and assuming the roles of the judiciary in dispute resolution.

The research also found out that the Commissioner has major function in consultation of the communities before land is acquired for business or development purposes and land acquisition by the government. Further, according to Section 88 of the Local Government Act (LGA), 2009, land surveys and land use master plans shall be developed by the state authorities in consultation with the Local Government Councils and the communities concerned and this involves the roles of the County Commissioners. This provision is in conflict with Section 89 of the LGA. According to Section 89 of the LGA, 2009, acquisition of land within the Local Government Council area shall be the respective function of the Local Government Council.²⁶ Further, this is conflicting with Section 73 of the Land Act, which has given powers to any government institution at whatever level to expropriate properties. Section 88 of the LGA has restricted the acquisition of land within Local Government Council area. According to Section 88 of the LGA, no acquisition without the consultation of the Local Government Councils and the Communities concerned. Therefore, these provisions conflict and it is therefore difficult to apply one section without referring to the other. This is a major loophole in the law here.

3.4.4 The Current Roles Played by County in Land Administration, Planning, and Allocation

The findings reveal that the staff in Juba County are confused as to the exact nature of their duties with regard to land administration, planning, and allocation. One stakeholder had this to say: “There may be alterations introduced by the Land Commission. The alterations modify responsibilities/roles of the State, County and native administration.” Thus the staff could not exactly tell which their main functions were. What the research found out is that the county authorities in Juba are involved in issues of land regarding big investments, and the roles and functions of the Commissioner of the County are evident here. In Rajaf Payam, there are evidences of the Commissioner of Juba County referring investors to the Payam Authorities for allocation of land for investments. Payam Authorities admitted that they received letters written by the Commissioner directing the allocation of land to certain investors and that they could do nothing other than comply with those orders.

The research also found out that the County Commissioner resolves land disputes and serious issues of land malpractices that are referred to his office. In Rajaf, the County Commissioner was asked to intervene in land that had been illegally grabbed by certain government officials. The interviewees did not provide any documentation specifying these powers of the Commissioner. The research established that chiefs referred matters of land involving senior government officials or investors to the Commissioner to resolve. However, in the allocation of land, the chiefs do not often refer the matter to either the Payam or the County Commissioner. Thus, when it comes to signing land agreements involving communal land, a private agreement is signed by the Chiefs or community members representing the communities and the investors or government officials. The consent, attention or advice of the County Commissioner is not sought. It is only when such agreements develop into serious land conflicts that the Commissioner’s attention is required.

The research findings at the county level reveal that the role of the county authorities with regard to land administration, planning, and allocation was not properly understood. At the County, there was low level of understanding of the exact roles the County plays in land administration, planning and allocation. For example, one respondent, when asked about the functions of the County with regard to land administration, planning, and allocation, said:

²⁶ Section 89 of the Local Government Act, 2009.

The County was responsible for 4th class. In the past, County was responsible for 1st, 2nd and 3rd Class. With upgrading of land from 4th class to 3rd class up to 1st Class, the responsibility of managing the 1st, 2nd and 3rd class plots is the role of the State. The County is limited to nothing as a headquarter, [sic] but the Payam is now having the roles over kushuks [shops] allotted on temporary basis. In this sense, the Payam creates the kushuks [shops] and stalls, and in this way the Payam represents the County.

When creating residential areas, the Payam authorities with collaboration of the traditional leaders, plan, identify and forward their requests to the County and the County requests the Ministry of Housing and Physical Infrastructure of the State to take action. Hence we have no roles in land being allocated for business and investments but we are involved in big investments. When an investor is interested in investing in Juba, they first go to GOSS line ministry according to the nature of their investment, which will direct them to the State and the State will direct them to the County where the project is going to be implemented. For example, a company, Central Equatoria Teak Co. Ltd [South African company] came to GOSS Ministry of Agriculture, signed a memorandum of understanding which naturally involved the CES government and then CES government directed this Company to the County where the investment is going to be implemented. In most cases, the investor will go to the line Ministry of their interests. For example, if you are interested in carrying out the business of establishing a school and you need land to build the school, you first go to the Ministry of Education at GOSS and then GOSS will refer you to the State Ministry of Education where the State Ministry of Education will refer you to the County.

At the County, the investor will request for piece of land. We do the identification of land and show the investor where to go. The land is identified by the County and this is after consultation with the traditional leaders and landlords. The County will request land to be given to the investor by the chief of that area and this is usually done by way of letters of requests. In most cases, most of the letters are honoured [sic].

The application of such procedure is really problematic and the end result is that with no proper procedure in place, there are high chances of persons exceeding their mandates and powers as envisaged under the law.

3.4.5 Role of the Customary Authorities

The major function of the traditional authority is in respect to the allocation of customary rights in land. The law has given the traditional authorities powers to allocate land under customary land and this power is exercisable concurrently with that of the government.²⁷ The traditional authority may allocate customary land for residential, agricultural, forestry, and grazing purposes. This role, which is exercisable concurrently with the powers of the government to allocate land, is indeed the biggest challenge in land administration. The chiefs have now asserted control and have exceeded their real mandates. In Rajaf and Northern Bari areas, the research was able to uncover reports of illegal sale of land by certain chiefs. Though the chiefs deny this allegation, the research was able to confirm that the illegal sale comes as a result of the chiefs dealing directly with certain investors without consulting the communities concerned. In Rajaf Payam, one sub-chief was able to lay the blame on the Paramount Chief, Denis, for his role in facilitating government officials and investors in taking community lands. Thus, the role of allocation of land given to the chiefs without proper control and procedure laid down by the law is indeed the biggest problem found on the ground.

²⁷ Section 15 of the Land Act, 2009.

Further, the role of the allocation of land by the chiefs has been restricted. According to Section 15(3) of the Land Act, 2009, there is need for consultation with the County Land Authority. But the information from the Juba County office is that the institution of the County Land Authority is not established. The chiefs, as the research confirmed, have been entering into several agreements for allocation of communal land for either business or settlement. Thus the procedure is not properly put in place, but the process of allocating land without consulting the County Land Authority is on-going. The Section requires the seeking of approval not only from the County Land Authority but from either the Payam Land Council or other relevant land administrations. Unfortunately this has not been properly defined. Thus, the allegation of carrying out the allocation of land without prior approvals or consultation with the County Land Authority, Payam Land Council or any other land administration is arises because there is a serious loophole exploited by certain chiefs and the commissioner in giving land to connected individuals. The allegation of sale of communal land without the knowledge of the communities concerned has been widespread and has been confirmed by this research.

The research, further, was able to establish that information pertaining to the registration of such land allocated by the chiefs being submitted for recording at the MPI or Payam Administration office. According to Section 15 of the Land Act, this recording has to be done but the institution recording this information is not mentioned. The research notes that this leads to several assumptions as to the intention of the drafter of the law. Thus the MPI (CES) has assumed the responsibility of conducting certain registration of communal land given by the communities or their chiefs to certain business people. The research was also able to find evidence of registration of lands given by the communities at the payam level, Rajaf Payam.

There are several concerns that have been identified during the study. According to the Land Act, the traditional authority is restricted in dealings with land greater than 250 feddans. Beyond this size, such cases are referred to the Payam Land Council or the County Land Authority to be transmitted for approval by the state ministry, and they shall notify the County Land Authority or the Payam Land Council about any transactions on customary land they have carried out.²⁸ The research found out that this provision is vague and likely to cause confusion as to the process and procedure of land acquisition for land size greater than 250 feddans.

Further, the traditional authority may cancel any rights so issued,²⁹ and this is likely to lead to abuse of power. The procedure for such cancellation has not been stated. The other problem regards how the chiefs can cancel rights registered in the land register at MPI (CES) or payam, as the findings reveal. The law has not provided the mechanism of enforcing these rights of the chiefs to cancel registration of rights in land. In Rajaf Payam, the research found out that the Payam also has the right to cancel fourth-class plots issued on communal land. This is another major contradiction. If the land where the fourth-class titles are issued is regarded as the land of the community, then there is an issue coming from this kind of activities. The jurisdiction of both the chiefs and Payam Administrators has not been clarified.

Further, under Section 58 of the Land Act, the traditional authority may register communal land in their own name in trust for the concerned community. This is the biggest anomaly. According to Section 60 of the Act, the certificate of registration, once issued, is conclusive proof of the particulars. The concerns by the respondents to this are that it gives the chiefs the opportunity of holding out as the owner of the land and the ability give out the land illegally. The research has noted the presence of certain transactions done by sons of the chiefs who extort money and claim to be owners of the land. Legally, under the new legal regime of the Local Government Act, the office of the local chief is elective and the communities are empowered to elect someone of their choice. The hereditary system is not encouraged by the new legal

²⁸ Ibid.

²⁹ Section 16 of the Land Act, 2009.

system under the Local Government Act. Thus, the function of the chief is not transferrable to any of his sons or daughters. Thus the research found that such transactions purportedly done by the sons of the chiefs are illegal. The issuing of certificate of registration in the name of the chief has made the whole process personalized and is the source of confusion. Land once registered in the name of the chief may mislead the public. The law has not captured the circumstances when the chief dies and still has his name on the register and what should be done after the death of the chief. This has shown the weakness of the law. This point was confirmed to us by one respondent from MOLACD who had this to say: “Any transaction by the chief in the absence of any information to the contrary is legal, all that the person alleges is the certificate of title stipulating the ownership in the name of the chief. The chief becomes the absolute owner of the land. This can make the chief and his or her family misbehave with communal land. What happens when the chief dies, should the land title be changed? What is the procedure for changing the ownership? Therefore, this is a cause for concern.”

3.5 LEGAL UNDERSTANDING BY COUNTY AND CUSTOMARY AUTHORITIES

At Juba County, we were able to note that the County was not very active in land allocation as the Payams were now in charge in the issuance of the fourth class residential areas. The research found out that in the past, the Counties were responsible for allocation of first, second and third class residential areas but now this is done by the state MPI directly. But when we interviewed further, we found out that the County was involved in land allocation when big land was needed for investment and this is usually done by way of reference from the State Secretariat or State Ministry of Physical Infrastructure. The respondents did not mention any legal framework which provides for this process.

In Rajaf Payam, the research was able to establish that land allocation was being done by orders coming from the Governor, the Minister of MPI, or the Commissioner directing the allocation of land to certain investors. The study uncovered a transaction in Logo West whereby the Governor of the State of Central Equatoria in agreement with Paramount Chief Denis, gave a certain piece of land to an investor. The procedure was not properly done as envisaged under the new laws: the Land Act and the LGA. This was confirmed to us by a respondent who narrated this case:

There was a case in Logo West which fall [sic] under Chief Christopher. We were just called and informed that there was a celebration and the purpose was that land was being given to investors. I was just invited. When I went, I saw the Governor, Prof. Ladu Bureng, the Minister of MPI and the Commissioner of Juba at the celebration. The area given is about 5 km².

During the speeches, the Commissioner spoke that he was very happy to note that it was investors being given the land but he noted that the real owners of the land were not present, including the chief of the area. To the Commissioner, he stated that the process used in giving the land was not right. The Governor spoke later and said that the Commissioner was right as the Commissioner was not made aware of the process but he, the Governor made consultation with the local chiefs. But you can see that the chief of that area was angry and did not attend the celebration. It was the Paramount Chief who was consulted and not the sub-Chief. You can see how the Paramount Chief is interfering in the work of the lower chiefs as well.

This shows how some companies come from above. In this process, the Governor was the one involved with only one chief without the notice of the Commissioner, Payam administrator and the chief of the area. The Chief of the area came and complained to me about investment taking place in his area. He stated that the investor was brought by the Governor. The chief was not put in the picture.

At MOLACD, we were able to confirm that the customary authorities themselves were engaged in sale of land without consultation with the immediate responsible sub-chiefs or community members of the area. The respondent stated that

The sale of land by the chief is illegal. This is without the approval of the other members. To make it legal – it should be through the consensus of the community members. When the government wants to construct schools or hospitals etc, the community should be consulted. The chief should not decide on his own. The chief should go to a council of elders or to his sub-chiefs and intellectuals of the area. There is lack of consultation by the chiefs with the community members. This is common with Paramount Chief Denis. He is seen as the main broker. Because Juba is advancing towards the West, an area under him, he is selling the area and giving it away without the approval of the community members. See the area of Gudele, Jebel all fall under him.

3.5.3 Land Commission Usurping GOSS Power

The need to examine the roles or functions of the SSLC in land administration emerged during the process of the research. The research sought to find out the reason why the GOSS Ministry of Housing and Physical Planning was not performing well. The findings of the study showed that the GOSS Ministry of Housing and Physical Planning—and even the state Ministry of Physical Planning, the County Authorities, and many stakeholders—had been relying on and regarding the SSLC as the body mandated to create all the enabling laws and regulations needed in regulating land administration, planning, and allocation. There was the need to examine the provision in the Land Act which gave powers of enacting land regulations and policies under the Land Act, 2009, to SSLC.

The study found out that there is confusion over the exact roles to be performed by SSLC and GOSS Ministry of Housing and Physical Planning. The research found out that SSLC is not performing its mandates under Article 181 of ICSS; Chapter 13 of the Land Act and Section 52 of the Land Act, 2009; or as envisaged under the CPA. The mandates of the SSLC, as provided originally under Article 2.7 of the Wealth Sharing Protocol of the Comprehensive Peace Agreement, are over arbitration, resolving land claims between contending parties, assessment of compensation payable to aggrieved persons in land disputes, making recommendations to government on land reform policies and recognition of customary land rights, and/or law and advice different levels of government on how to coordinate policies on GOSS projects. In so acting, SSLC is independent and can relate to GOSS, state, and local governments to the extent of advice and research.

There are evidences which showed that the Commission is performing the duties that are legally assigned to the GOSS Ministry of Housing and Physical Planning. One respondent from MOLACD was able to confirm that the Land Act, 2009, was the work of the SSLC and not the GOSS Ministry of Housing. Further, at the SSLC compound, the researchers were shown copies of the Land Regulations, 2010, which was still being worked upon.

Therefore, it is worth mentioning that legislations and policy enactments are duties of GOSS or state, depending on the level for which the legislation or policy is being developed. If the legalization or policy is to affect Southern Sudan generally, the duty of enacting such legislation or policy lies in the concerned GOSS ministry; and if the legislation or policy is in respect to the state only, the duty lies in the concerned state ministry and the state legislative assembly. This provision is clearly mentioned in the Schedules of the ICSS and ICCES. The powers of SSLC are undefined with respect to enactment of land laws and policies to govern the whole of Southern Sudan and to be adopted by the ten states.³⁰ The

³⁰ Under Schedule B, Item 4 provides for legislations; Item 6 for planning; and Item 9 for coordination of services, establishment of minimum standards, and uniform norms. Item 19 of Schedule B and Schedule D provide for concurrent powers of GOSS and states.

powers of SSLC to create land regulations and policies to effect the provisions of the Land Act, 2009, as stipulated in Section 101 is indeed a gross irregularity and erroneously done. This is in total contravention of the powers of GOSS to legislate and enact laws and policies to govern land in Southern Sudan generally and set the minimum standards and uniform norms to be adopted by the states of Southern Sudan.

4.0 DISCUSSION AND RECOMMENDATIONS

4.1 DISCUSSION

Land administration in Southern Sudan has really been shaped by the governance system of the country. Therefore it is difficult to start talking about land administration in Southern Sudan without looking at the governance structure of the country. As enshrined in the ICSS, Article 39 provides for decentralization and devolution of powers. This has fundamentally affected the system of land administration, as well as the ownership and control of usage and rights in land, as shown in Section 6 of the Land Act, 2009. The rationale of the devolution is found in the provisions of Article 51 of ICSS which provides in essence that “there shall be the devolution of powers to the lowest governmental institution nearest to the people.” The main objective of decentralization is to promote development, transparency, accountability, and empowerment to the people to control their own destiny, as enshrined in the Constitution. This is the same provision in the Local Government Act, 2009. Good governance has been made the basis of land administration as well. Sections 5, 6, and 41 of the Land Act, 2009, clearly mention the objectives and general principles of land administration in Southern Sudan.

Further, Articles 39, 50, 51, 52, and 173 of the ICSS require that the functions, powers, and responsibilities of government are devolved and transferred from the central government to local government unit in a coordinated manner, and that decentralization shall be a principle applying to all levels of local government and in particular from higher to lower local government units to ensure people’s participation and democratic control and decision making. This has been incorporated in land administration, as can be seen in Article 180, ICSS.

Therefore, when Articles 39, 50, 51, 52, 173, and 180, ICSS are compared and read together with Sections 5, 6, and 41 of the Land Act, 2009, it is clear that what the law has provided for is the exercise of power through the designated or appropriate level of government in land administration. Decentralization and devolution of powers is the basis of the current land administration in Southern Sudan. What then is required from the higher government tiers is the assistance to enable devolution of powers to be fully realized. As provided in Article 52 of the ICSS, the system shall be such as to ensure the full realization of democratic governance at local government levels and appropriate measures shall be taken to enable local government units to plan, initiate, and execute policies in respect of all manners affecting the people within their jurisdiction.

In light of the prevailing constitutional and legal framework, the jurisdiction of GOSS is to set minimum standards and uniform norms to be applied in Southern Sudan. The minimum standards and uniform norms shall set all the policies and laws applicable in all parts of Southern Sudan. The laws being created by GOSS are to be a model that shall be adopted and modified by the states when enacting their own laws. The state governments have powers to tailor such laws to conform with the local context, based on the minimum standards and uniform norms set by GOSS. The institution that may implement these policies and laws shall be the local government.

The findings confirm that GOSS is not performing its functions as per Articles 50, 51, 52, and 173 of the ICSS. The GOSS Ministry of Housing and Physical Planning has abdicated its functions to SSLC, and SSLC has abandoned the main function of arbitrating on land disputes and claims. It has therefore sought to exceed its mandate for which it was set up as provided in Article 181 of the ICSS by usurping the

powers and functions of GOSS institutions in legislative enactments. The findings from the respondents in both the GOSS and state levels referring to SSLC creating those policies and regulations confirm the popularity or notoriety of the SSLC in land enactments.

It is worth mentioning that the SSLC is an independent institution created specifically to deal with land rights restitution, dispute resolutions for reclaiming land, and compensation, as set out in Article 181 of the ICSS and Chapter 13 of the Land Act, 2009. The relationship between SSLC and the government institutions is, as provided in Article 181(f) of the ICSS, to the extent of giving advice to these government institutions and no more than that.

Whereas SSLC has the role of developing policies and legislations to govern land in Southern Sudan generally, the role and function of GOSS institutions (Articles 53 and 55 of the Land Act; Schedules to the ICSS), such as Ministry of Housing and Physical Planning are rendered redundant. The Ministry of Housing and Physical Planning now sees itself as having no roles to perform in developing legislations, policies, and regulations to govern Southern Sudan generally. Hence, the GOSS Ministry of Housing and Physical Planning finds itself encroaching on the roles of the state, including keeping the Land Registry.

Further, GOSS has to realize that the state has original jurisdiction with regard to the registration of land and record keeping. This is very clear with respect to Sections 54 and 55 of the Land Act, 2009. This does not mean the Land Registry ends at the state level, and therefore only established at state capital, but it may be devolved to the local government levels such as the county.

The findings confirmed that the registration of first-, second-, and third-class residential areas used to be performed by Juba County authorities until the CPA was signed. After this, registration of first-, second-, and third-class residential areas were relocated to the state ministry. The rationale has not been provided. It has to be remembered that the contents of the CPA did not alter or affect the old system of land registration or the decentralization system. Rather it confirmed it, devolving it further to where the community or the citizens of Southern Sudan are found.

As per Article 173 of the ICSS and Sections 53 to 55, the local government is under the state which is obliged to devolve some of those functions to the local government, hence, the registration of first-, second-, third-, and even fourth-class plots are supposed to be done at the level of the county or payam. This is what is originally intended by Article 173 of the ICSS. The County Land Authority established under Section 44 of the Land Act, 2009, and Payam Land Council established under Section 48 of the Land Act, 2009, are supposed to carry such functions in coordination and consultation with the state ministry. The findings confirm that the state ministry has the line departments in the levels of county and payam; hence the state ministry could have utilized this arrangement to reach down to the beneficiaries of the state services.

It is the global trend that local government has to be empowered to do service delivery. In most federal governments, such as the United States, the counties carry out the function of record keeping of births, marriage, land, and so forth (Bowman and Kearney, 2002). The local government authorities are there to help in the carrying out of such services. Thus local government, state government, and federal government cannot act in the absence of the others. What is important is carrying the constitutional mandates within the limits provided by the law. Thus each level of government supports and assists the other. In the context of Southern Sudan, this is clearly provided in Articles 39, 50, 51, 52, 173, and 180 of ICSS. In order for the state government to concentrate on developing policies and legislations for the state effectively, it has to give room for the local government to execute those policies. The functions of the state shall be policy making and supervision over the local government, as intended in Articles 167 and 168 of the ICSS and Articles 51 and 53 of the ICCES. This is intended to reduce the power crisis and has been clearly mentioned in ICSS.

Further, there is real conflict between the states and GOSS over the issue of Land Registry. The findings reveal that the need for establishing one single registration office to be headed by a legal person or a judicial officer who has the necessary qualification to solve land disputes and title claims is overwhelming. Moreover, the findings reveal that there is inadequate staffing at both the Department of Lands and the Survey Department at MPI; and as such, the process is slow and marred with a lot of irregularities due to absence of clear procedures. There are three offices: Department of Land Administration, which issues leases; Department of Surveys, which issues croques; and the Land Registry in Juba Courts, which issues search certificates. These three institutions are operating separately and acting independent of the other. With the long process and different offices located at different locations, follow-up and accountability becomes difficult. The registration office has not been equipped with the necessary personnel such as lawyers or qualified surveyors, and is not placed in one single premise in order to give good supervision and minimize irregularities. Concentrating these three offices in one place will enable management to supervise the entire work properly. Thus the separate existence of the Survey Department, Department of Land Administration, and Court Land Registry as the case of Juba shows, is cause for inefficiency and ineffectiveness of the current system. It is difficult to identify where the major problems occur, as each of these three institutions transfer the blame to the others, as the research findings reveal.

Further, the research confirmed that the traditional authority is giving out land from the communal lands under their responsibilities. The major function of the traditional authority is with respect to the allocation of customary rights in land. The traditional authority may allocate customary land rights for residential, agricultural, forestry, and grazing purposes. The information pertaining to the registration is thereafter submitted for records at MPI or Payam Administration. The traditional authority is however, restricted in their dealings with land greater than 250 feddans, whereby such cases/dealings are referred to the Payam Land Council or the County Land Authority to be transmitted for approval by the state ministry and they shall notify the County Land Authority or the Payam Land Council about any transactions on customary land they have carried out. The research found that this is the cause for many irregularities. The process and procedure of carrying out this kind of function by the chiefs is not regulated properly by the law.

Further, as provided in Section 16 of the Land Act, the traditional authority may cancel any rights so issued. The traditional authority, as stated under Section 58 of the Act, may register communal land in their own name in trust for the concerned community. The research finds this the biggest anomaly. According to Section 60 of the Act, the certificate of registration, once issued, is conclusive proof of the particulars. Another issue arising from this is that the Payam Authorities reserve the right to cancel fourth-class allocations issued by them in respect to land originally allocated by the chiefs in communal land. This procedure has not been properly defined. Further, the issues raised by the respondents to this are that it gives the chiefs the opportunity of holding out as the owner of the land and gives out the land illegally. This is the cause for illegal sale and corrupt practices of the chiefs and payam authorities. The functions of the chiefs needs to be properly defined, otherwise giving them concurrent powers without limitations or guidelines as Section 15 of the Land Act, 2009 shows is a real cause of concern.

The findings confirm that there are only two types of land ownership existing in Juba: public land and communal land. Areas which were originally communal land but have been demarcated and allotted to people by the government are considered public land, as per Section 10 of the Land Act, 2009. Though Section 7 of the Land Act provides for public land, private land, and community land, the interpretation of the section raised a lot of concerns from some of the respondents. Thus the Land Act has not clarified the issues with regard to ownership of land and to that effect must be reviewed accordingly.

There is major contradiction between the provisions of Section 73 of the Land Act and Section 88 of the Local Government Act, 2009. This raises the issue of the institution responsible for carrying out the function of acquiring land from the communities or private individuals. The procedure for use of the eminent domain of the government has not been clearly defined to limit public servants from exploiting

the means for their self-enrichment in the name of government or public use. The procedure of involvement of the communities in decision making processes with regard to any land transaction that threaten their communal interest is very fundamental. This is the basis of customary land ownership.

The overall findings with regard to the process of acquisition of land reveal that there are no policies or procedures being followed. The current procedure for acquiring land is rather confusing as form and rules for applications are lacking, the institution is weak and so is the procedure, and more complex to understand. As the process is not regulated by law, the whole proceeding is rendered illegal and the entire process void *ab initio*. This may be a cause for litigation. The procedure should be simple, clear, and legally binding.

The other issue is with respect to land planning. The roles of town and rural planning have to be left to the states. Except with the case of Juba, where intervention of GOSS may be required by virtue of it being both the capital city of Southern Sudan and capital city of the State of Central Equatoria, town and rural planning is the work of the States. In most federal governments, and even in Sudan itself, the capital City and in the case of Sudan, Khartoum is in the hands of the state government. Thus, in Southern Sudan, Juba being the capital city of both GOSS and CES, the role of the planning for this town can be adequately handled by the CES. The issue is the financial constraints being faced by CES like all state governments in any federal government, the world over.

5.0 POLICY RECOMMENDATIONS

The land administration in Southern Sudan is in dire need of reform. The system is currently malfunctioning. The current institutions responsible for land administration both at GOSS, state government, and local government levels are weak and the institutions such as the Land Registry, County Land Authority, and Payam Land Council are still non-existent. Thus, although the necessary reforms may take real time, the Land Act has provided the basic law required for guiding the institutions. The principles of the Land Act need to be operationalized through enactment of other legislations, principal laws, and subsidiary laws to make sure that the much-needed institutions are in place.

The research recommends the following to be urgently considered for necessary actions to be done:

- The institutions at GOSS and state levels need to refocus their attention to their constitutional mandates during decision-making processes. GOSS and states as policy makers at their respective levels must concentrate in creating the necessary laws and policies to help in the administration, planning, and allocation of land in Southern Sudan and states.
- GOSS Ministry of Housing and Physical Planning should refocus and take over its functions of creating the necessary laws that will set the minimum standards and uniform norms to be adopted by the state ministries. The role of enacting legislations and policies are not the constitutional mandates of the SSLC, but rather of GOSS institutions.
- SSLC must refocus its activities to fit within its constitutional mandates and stop encroaching into the mandates of the constitutionally created institutions at either GOSS or state levels, save to the extent of giving advice to enable these government institutions to deliver services well with respect to land.
- The provisions about concurrent powers given to GOSS and state must be properly redefined to enable the state work without much interference and intervention by GOSS. Further, the states must devolve powers to the local government in order to empower local government deliver the necessary services required by the communities under its jurisdiction. The necessary laws and policies must be enacted accordingly.
- The roles of the local government need urgent review to make sure that local governments in Southern Sudan are empowered as envisaged under Articles 39, 50, 51, 52, 173, and 180 of ICSS.
- Concurrent powers given to traditional authorities need to be defined adequately and their roles delimited to only land dispute resolution. Their power over acquisition of customary land should be clearly stipulated.
- The role of traditional authorities needs to be redefined. Giving them dual positions as government representatives and community leaders lead to great abuse of the chiefs' powers. There is need to develop policy guideline to regulate the activities of the chiefs. They should not be given powers and roles of granting land rights over community land; but a committee should be empowered to do so, based on the numerous mal-practices in which the chiefs have been involving themselves.
- Chiefs should not be permitted to have their names registered over communal land. The current law does not provide for what happens when the chief dies, becomes unable to govern, or loses the

position of the chieftaincy, as the Local Government Act, 2009, makes the position of traditional authorities elective and not hereditary. A necessary reform in terms of policy and legislation is urgently required.

- The Land Act, 2009, needs to be amended to reflect other recommendations made here.
- The government should come out with clear policies and regulations to provide for the process and procedure of land acquisition. The institution to carry out this function needs to be clearly defined and the role of the commissioner or county must be expressly defined.
- State governments must adequately fund the survey of land and land registry by investing in staff training— not short seminars and workshops, as have been done in Southern Sudan by the NGOs which are supported by the current government, but rather long-term trainings for better equipment of competent staff to assist with functions of the land survey and land registry. The training should target young individuals who can be reliable, in terms of retirement age or years of service.
- The government should develop proper ways of engaging community participation in issues of land acquisition for public use or interest. Laws and policies should be created to define the process of land acquisition and their implementation followed.
- The land registration offices should be established at the local government level—preferably the county level, being the highest tier of local government in Southern Sudan—and the necessary structures and laws for enabling the institution to function well should be created. The office should be independent of executive, legislative, or judicial influence; the Land Registry should be regarded as an independent institution, to be headed by at least a lawyer who is equivalent to a magistrate. This will allow the Registry to decide on issues of titles to plots, and the decisions of the Registrar appealable or subject to the judicial review process of the court.

6.0 CONCLUSION

Sudan since the signing of the CPA, Southern Sudan has witnessed a new dispensation of governance based on decentralization, the delegation of power and decision-making from the central government to the local governments. Further, the CPA and the written laws of the country for the first time in the history of Sudan gave prominence to customs, traditions, and values of the people, and gave recognition to the rights of the indigenous communities to own land on which they have been traditionally relying for survival. Ownership of land vested in the government had to be through the designated level of government and decentralized. The government has been made as a trustee; therefore the government holds all land in Southern Sudan in trust for the people who have the true ownership of the land. This is very clearly spelled out in the Land Act, 2009.

Further, the Interim Constitution of Southern Sudan, 2005; the Interim Constitution of Central Equatoria State, 2006; the Land Act, 2009, and Local Government Act, 2009, of the Laws of Southern Sudan; and the Local Government Act, 2008, of the laws of Central Equatoria State have confirmed this decentralized system of governance and incorporated the principles of devolution of power in land administration.

However, the study has found that though the Interim Constitutions and new laws have introduced a new regime in land administration, the exercise of concurrent powers, usurpation of powers by other institutions, and the quest for concentration of powers in single institution have caused a clash in exercise of jurisdiction by institutions at GOSS, state government, and local government. Exacerbated by lack of clear understanding of these laws, the collapse of the system, lack of competent staff (both technical and technocrats), and an absence of proper functioning of the current institutions, and/or non-existence of those institutions that have been created by these laws, there has been a real power crisis in land administration and confusion in roles of some of the existing institutions at the different government levels. These factors did not only affect the system of land administration, but also the aspect of ownership of land. With the requirement of registration of land as provided under the 2009 Land Act by communities, different levels of government, and individuals, there has been a clash in the quest for the control of land between communities or individuals within the communities and certain levels of government. As a result, land planning and allocation has been a big challenge facing the different government levels.

As by law established, the role of GOSS with regard to land administration, planning, and allocation is to establish minimum standards and set uniform norms to be applied by all the ten states. The role of GOSS is to make necessary interventions when the matter cannot be properly handled by the state, or if the matter concerns interstate disputes. The mandates of GOSS and states have been adequately covered under the Schedules to the CPA, ICSS, and ICCES. Thus the jurisdictions of GOSS, state, county, and customary authorities are clearly provided under the existing laws.

However, the research notes that there are areas of the legal provisions which cause confusion and may need urgent reforms. The issues that were raised by the research findings and the recommendations given are very important and need a quick solution. There are many illegal actions taking place due to non-compliance with the current provisions of the law. As the Land Act, 2009, is currently in place and enforceable, there is need to implement the provisions of this Act.

The research findings reveal that the states and local government institutions need to be assisted greatly and so are the local government institutions. Empowerment of the local government institutions will reduce many of the disputes between the communities and GOSS/states. Further, all the recommendations mentioned here need to be taken seriously. SSLC must quickly give the necessary

advice to GOSS to take-over the creation of laws and policies to effect the provisions of the Land Act. The institutions created under the Land Act need to be established quickly for good development and investment to be carried out. Where the ICSS has provided for decentralization to be effected within four years of the transition period, GOSS has not adequately taken steps in decentralizing services and empowering the local government. Therefore, the research strongly recommends the devolution of powers and respect to devolved powers of the state. The state should consider the local government—particularly the county—as its strong arm in implementing the policies and laws of the state. County authorities have greater roles to play in land registration process and keeping custody of vital documents. Thus, the research recommends the establishment of the Land Registry at county level, which is the currently practice globally. As the ICSS recommends incorporation of current trends and international practice, there is need for Southern Sudan to be at par with the rest of the world. Therefore, the advantage of counties in land registration should be extended to cover custody of documents such as certificate of titles, leases, and such documents or records as may be deemed important.

The role of customary authorities in land administration, planning, and allocation is rather confusing. It is therefore recommended that the law providing for the roles of the chiefs and their functions should be revisited. The roles of the chiefs must be restricted to customary dispute resolution and customary claims. Giving the chiefs the right to conduct registration and cancellation of land rights should be reviewed.

REFERENCES

1. Anne Galbraith, M. Stockdale, S. Wilson, and A. Davenport, (1998, 4th Ed.) *Galbraith's Building & Land Management Law for Students*, Butterworths, Oxford
2. Dancaescu, Nick. Note. Land reform in Zimbabwe. 15 Fla. J. Int'l L. 615 (2003).
3. Daniel Deng, Deng Simon and Okello James, *Urban Land Conflict in Eastern Equatoria*, Juba Briefing, July 2010, page 3
4. Douglas H. Johnson (2003), *The Root Causes of Sudan's Civil Wars*, Fountain Publishers, Kampala
5. Dr. Dhieu Mathok Diing Wol, *The South Sudan Post-Secession Options Of Governance: Lessons And Experiences 1-4*, Friday 30/7/2010, The Citizen, Page 8.
6. Jeremiah Swaka, Advocate General, *Legal Opinion*, 3/3/2010, MOLACD
7. Lee Epstein & Thomas G. Walker, (2nd Edition 1995) *Constitutional Law For A Changing America* Congressional Quarterly Inc., Washington D.C. 20037
8. Letter of the Office of the Director of Courts Administration, JOSS, dated 13 August 2010,
9. Letter by the Minister MPI to the Communities of Northern Bari asking for another land in April, 2009
10. M. H. Kanyane, J. H. Mai and D. A. Akuoi, *Liberation Struggle in South Sudan*, Reach Publishers, Wandsbeck, p.95
11. Micheal Ochieng Odhiambo, *Southern Sudan Land and Property Study and Workshops: A synthesis of Policy and Legal Issues*, December 2009.
12. P. A. Nyaba (1997, 2nd Edition), *The Politics of Liberation in South Sudan: An Insider's View*, Fountain Publishers, Kampala
13. Public Notice of 9 November 2009 of the Chief Justice and President of the Supreme Court of Southern Sudan.

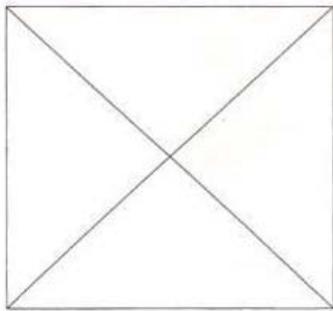
ANNEXES

ANNEX I: CROQUE ISSUED BY RAJAF PAYAM

RAJAF PAYAM.

Plot No: 354 block No: 5

Square meters: property Of: .



This is to certify that the dimensions shown on the above mentioned croquis are correct and true for the side plot and the sum of 5 SDG being cost of croquis has being collected date: 17/10/2007.

For / Director
Engineer of survey
Central equatoria state -Juba.



ANNEX 2: ALLOTMENT PAPER ISSUED BY RAJAF PAYAM FOR FOURTH-CLASS RESIDENTIAL AREA

**DIRECTOR'S OFFICE
REJAF PAYAM
JUBA COUNTY**

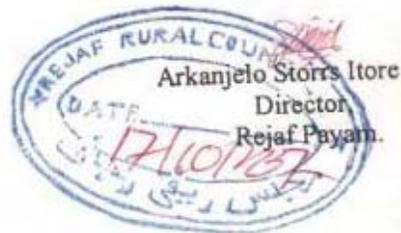
No. RP/JC/38.A.1.

Date: 17/10/2007

The Director,
Department of Survey,
CES/Juba.

Subject: Allotment of Plot No. _____ Block _____ Woliang 4th
Class Residential Area - Juba County/CES

1. Director Rejaf payam, hereby allocate Plot No. 354 block F fourth (4th) class residential area Woliang to _____ de Rejaf payam Mr./Mrs./Miss approval letter No. RP/JC/38.A.1 dated 17/10/2007
2. Please hand to the allottee the above plot upon paying the survey fees.
3. The allottee is expected to develop the afro plot within one year from the date from the date of allotment.
4. Rejaf Payam reserve the right to withdraw and confiscate the above plot if not developed within the specified period.



CC: Commissioner - Juba County.
CC: Allottee Mr./Mrs./Miss _____

ANNEX 3: TEMPORARY PERMIT ISSUED BY NORTHERN BARI PAYAM TO BUSINESS PEOPLE

Director's office
Northern Bari Payam
Juba county

.....

No. NBP/JC/20.K.1

Date: ____/____/200__

TEMPORARY PERMIT

This is to certify that the administration of Northern Bari Payam has given an approval to Mr. / Mrs. _____ the bearer of this permit, to run his/her business of _____ in _____ for a renewable period of _____

Sign: _____
Director
Northern Bari Payam

ANNEX 4: LETTER FROM THE DIRECTOR OF COURT ADMINISTRATION
ON ISSUE OF COURT LAND REGISTRY

JUDICIARY OF SOUTHERN SUDAN.



**OFFICE OF THE DIRECTOR OF COURTS
ADMINISTRATION.**

Our Refer:

Juba_19th, August, 2010.

Your Refer:

To: **The President of Equatoria Circuit.**
Re: **The President of High Court Juba.**

Subject : **Land disputes.**

It has come to the notice of the Honourable President of the Supreme Court of Southern Sudan that, there are many petitions concerning land disputes pending before our Courts in Juba, either waiting for assessment of the value of land in dispute or any sort of verification requested. The situation has resulted to the delayment in resolving land disputes and has encouraged Land Trasspassors to continue with their malpractices.

Therefore, and without prejudice to the Provisions of the land Act 2009 and the previous directives of the Honorable President of the Supreme Court of Southern Sudan, in his important notice to the public issued on 9th, November 2009, The Honourable President has formed a temporary Committee headed by our Land Registrar, Mubarak Hassan and two members., Delifino Abbas and Paulino Dak.

The committee formed shall conduct the assessments of the value of Land required and any verification, requested regarding the registered plots or plots in dispute immediately.

This directive is passed to your end to inform your Courts accordingly.

Thanks,


Justice Lako Tranquilo.
Director of Courts Administration,
Judiciary of Southern Sudan.



Office of the Director of Courts Administration : Subject : Land Disputes.

ANNEX 5: LETTER OF COMPLAINT AGAINST ILLEGAL AGREEMENTS
SIGNED BY CHIEFS AND SENIOR GOSS OFFICIALS



ANNEX 6: SURVEYORS TESTING GPS MACHINE LOANED FROM KHARTOUM



ANNEX 7: QUESTIONNAIRE

QUESTIONNAIRE

1. What is the jurisdiction of the following over land management, planning, and allocation:
 - a. GOSS;
 - b. State; and
 - c. Local government?
2. Describe the functions and roles of your institution with regard to land administration, planning, and allocation.
 - a. What is the relationship between your institution and the other institutions of government over land management, planning, and allocation?
 - b. Can you give examples of cooperation between your institution and the other institutions of government over land management, planning, and allocation?
3. Describe the functions and roles of the traditional authorities with regard to land administration, planning, and allocation?
 - a. What is the importance of traditional authorities to your institutions?
4. What are the laws governing land administration, planning, and allocation?
 - a. What are the legal provisions and principles governing the jurisdiction of GOSS, state government, and local government over land administration, planning, and allocation?
 - b. Are the current practices of land administration, planning and allocation by GOSS, state, county, and traditional authorities in conformity with the law?
 - i. If yes, how? If no, why?
5. Are there policies, rules, and regulations in place to operationalize the legal provisions governing land administration, planning, and allocation?
 - a. If yes, are you satisfied with these policies, rules and regulations?
 - b. What is the level of your satisfaction?
 - c. What are the gaps in the policies, rules, and regulatory framework governing land administration, planning, and allocation?
6. How is land acquired and allocated for:
 - a. Settlement of local persons in the community;
 - b. Settlement of non-community members;
 - c. Business and investment by local persons; and
 - d. Business and investment by foreigners?
7. Describe how communities are consulted during the process of planning and allocation of land.

8. Describe how communities' interests are safeguarded and met during the process of land planning, and allocation.
9. Describe how the interests of youth and rights of women are safeguarded and met during the process of land planning and allocation.

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SUDAN

LAND TENURE AND PROPERTY RIGHTS IN SOUTHERN SUDAN: A CASE STUDY OF INFORMAL SETTLEMENTS IN JUBA

DECEMBER 2010

This publication was produced for review by the United States Agency for International Development. It was prepared by Tetra Tech ARD.

LAND TENURE AND PROPERTY RIGHTS IN SOUTHERN SUDAN:

A CASE STUDY OF INFORMAL SETTLEMENTS IN
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DISCLAIMER

The author's views expressed in this publication do not necessarily reflect the views of the United States Agency for International Development or the United States Government.

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ABBREVIATIONS

CES	Central Equatoria State
CPA	Comprehensive Peace Agreement
GOSS	Government of Southern Sudan
ICSS	Interim Constitution of Southern Sudan
IDP	Internally Displaced Person
JIU	Joint Integrated Unit
KII	Key Informant Interviews
MPI	Ministry of Physical Infrastructure
NISPDS	Nile Institute of Strategic Policy and Development Studies
SAF	Sudan Armed Forces
SDG	Sudanese Pound
SPLM	Sudan Peoples' Liberation Movement
SSLC	Southern Sudan Land Commission
TLS	Disposal of Town Lands Scheme Act of 1947
USAID	United States Agency for International Development

EXECUTIVE SUMMARY

This report is commissioned by the Nile Institute of Strategic Policy and Development Studies (NISPDs) and presents the findings and recommendations of an exploratory study carried out in Juba to examine land related issues in informal settlements in Southern Sudan. Identified as a key concern in their Scoping Paper on Land Tenure and Property Rights in Southern Sudan, NISPDs is working with Tetra Tech ARD (contracted by United States Agency for International Development [USAID]) to support the Southern Sudan Land Commission (SSLC) in developing the Southern Sudan Land Policy.

While there are no reliable statistics to examine demographic trends, towns in Southern Sudan are growing rapidly since the signing of the Comprehensive Peace Agreement (CPA) in 2005. In Juba, as well as in other towns in the region, much of this growth is reported to be occurring on land through informal arrangements, both within the town and on its periphery. These arrangements are providing some security of tenure for informal settlement residents. However, the tenure types, land rights, spatial units, and modes of shelter found in these areas are inconsistent with the provisions of the Land Act 2009 and generally accepted planning practices. As a result, residents of these areas do not have sufficient tenure security to alleviate poverty, inadequate basic services, or high exposure to crime and land-related conflict.

In order to strengthen land tenure security for residents of informal settlements, and to meet the objectives of the Land Act 2009, informal arrangements should be integrated into formal systems. Experiences in other countries of Sub-Saharan Africa demonstrate that conventional land administration approaches do not generally work in informal settlements. Lessons learned to date show that it is necessary to build links between local tenure rules and statutory land regulations to develop land administration tools that fit the realities. However, in a post-conflict area, such as Southern Sudan, land rights are a particularly sensitive issue. Addressing not only the concerns of informal settlement residents, but also the regional, state, and local government and customary landholders on the urban periphery will require an approach that is based on a clear understanding of the diversity of land interests and varying contexts and that ensures open participation at all levels.

RESEARCH OBJECTIVES

In order to examine land issues in informal settlements in Southern Sudan, an exploratory case study of Juba has been carried out. Due to the lack of previous work and quantitative data, this has been largely a qualitative study. Drawing on the NISPDs scoping paper, the primary objectives of the research were as follows:

1. To examine how current planning proposes to deal with informal settlements;
2. To understand the pattern and differing characteristics of informal settlements in and around Juba; and
3. To investigate the socio-economic characteristics of those living in informal settlements in Juba and the main reasons people choose to live in these areas.

PRINCIPAL FINDINGS

Urban Land Management and Administration

- Decades of conflict have resulted in weak urban management and limited human resource capacity in urban authorities. The state supply of land for residential purposes has been limited, and there is a considerable gap between existing institutional arrangements and those necessary to provide people (particularly lower income groups) properly with land on which to live. In practice, there is no alternative means of accessing land for many urban residents other than informally.
- Existing institutions of urban land management are inherited from the British colonial era and do not reflect current reality. Land administration systems are centralized, expensive, and time consuming, making them inaccessible to many people. In addition, the standard grid and plot classification system on which urban planning is based is inflexible and ignores informal settlements.
- The fact that forced evictions are a common phenomenon in and around Juba remains a critical concern. Although there is a lack of quantitative data, evictions are leading to a subsequent increase in informal settlements on the edge of towns, which the state government's policy seeks to avoid.
- The difficulties in obtaining land from rural communities for the expansion of Juba point to the fact that attitudes to land are deeply rooted in cultural values. This is compounded by underlying tensions between the Government of Southern Sudan (GOSS) and Bari traditional authorities, increasing land values, and broader tensions over land. This indicates there are likely to be limitations to institutional capacity building in the short- to medium-term at least.

Land Legislation

- The existing legal framework is inadequate to address the needs of those living in informal settlements. The Land Act (2009) does recognize informal settlement residents' land rights and does not adequately protect them from forced eviction. Although there is some provision for adverse possession and group ownership of land, this is very limited and/or poorly defined. There are no provisions for incremental tenure systems that might support the regularization of informal settlements and protect informal settlement residents from market-based evictions.
- One strength of the new legal framework and the Local Government Act (2009) is that it promotes a decentralized structure. Decentralization of urban land administration to the payam level, when working in close cooperation with local communities, has the potential to provide a means for more innovative approaches to land management in informal settlements.

Pattern and Differing Characteristics of Informal Settlements

- Informal settlements have emerged within Juba and on its periphery on different categories of land (state owned, private leasehold, and customary). Different forms of informal land access have existed since before the second civil war and have continued during the war and since the signing of the CPA. Pressure on land in recent years through the arrival of large numbers of people has also seen some of these structures eroded with people squatting without permission, others forcibly taking land from current residents, and increasing informal land sales.
- There are relatively few land conflicts and most of these are resolved locally, the exception being where military actors are involved.

- Investment in shelter represents a substantial household investment, especially in relation to poverty levels in some communities.
- Communities have varying degrees of organization relating to land administration. Some maintain registers of households living in the areas and define their own eligibility criteria for inclusion. Residents are willing to pay to be included on these registers in the hope that they will be eligible for allocation of a demarcated plot.

Socio-Economic Characteristics

- Informal settlements are varied, complex, and often have high levels of structural poverty. This includes limited access to basic services, high rates of crime, poor sanitation, and a large proportion of informal income-generating activities. They contain many vulnerable groups that rely on fragile livelihoods and social networks in order to survive. Rapid formalization of land tenure is likely to lead to unpredictable consequences on the position of the lower-income groups, including the potential for market-based evictions.
- Spatial arrangements can greatly facilitate social support networks and access to livelihoods; but at the same time, the concentration of certain groups can raise the potential for exclusion of some groups or even community conflict.
- Female-headed households represent a particularly vulnerable group in terms of livelihoods and land access, and may be prone to land grabbing.
- Although many households are evidently materially very poor and have difficulties meeting their basic needs, some households have members who are in formal employment and who have been able to invest in more permanent shelter. In addition, many households have to be seen within the context of rural-urban linkages and as parts of extended families maintaining a stake in the town. In particular, access to education for one's or one's relatives' children is of considerable importance.

Overall, the study suggests that any government intervention will need to build on the existing situation. An attempt to change this significantly will risk severe social upset and a worsening of living conditions for many households. The impact of removing shelter will place demands on residents, many of whom are unable to cope with the demands. Tenure upgrading and legalization policies therefore need to be sensitive to community needs. Understanding the livelihood activities of informal settlement residents is particularly important so that people's livelihoods can be strengthened (where possible) and the negative impacts of upgrading on people's livelihoods can be minimized.

KEY RECOMMENDATIONS

It is important to emphasize the challenges that will be involved in implementing any policies relating to informal settlements in Juba. The nascent GOSS is still developing its structures and the upcoming referendum and potential separation of Southern Sudan from the North is creating further uncertainty. Current attitudes towards informal settlements, increasing land values and broader tensions over land mean that regularization approaches may be resisted by some segments of the population. Moreover, given the relatively recent emergence from civil war, administrative capacities of urban authorities are likely to be inadequate to address informal settlements. They will need significant support to acquire this capacity in the longer term.

It is likely that there will be a lengthy transitional period of many years before the necessary legislation is put in place, research is conducted, data gathered, and capacity to support implementation is present

across all 10 states. Although the recommendations below refer to the town of Juba, they will have relevance for other towns in Southern Sudan.

Support Further Development of Land Legislation that Incorporates the Principles Mapped Out in the Habitat Agenda

This might include:

- Protection against forced evictions should be the overriding priority;
- Taking advantage of adverse possession to provide security of tenure to households in some existing informal settlements;
- Laws to support the potential for community ownership, group titling, and incremental tenure policies in urban areas;
- Regulating informal tenancies;
- Supporting the establishment of community-based committees in informal settlements;
- Allowing the designation of informal settlements as “special zones”; and
- Flexible building standards.

Development of a Regional Implementation Framework

A practical aspect of incorporation of the Habitat Agenda will be implementing pilot projects on land tenure regularization. This should include:

- Carrying out land audits, obtaining necessary baseline data, and distinguishing between settlements that might be possible to regularize and those that are in environmentally hazardous areas or sites that might be needed for a public purpose;
- Ensuring necessary legislation is in place;
- Identifying pilot areas;
- Ensuring an incremental approach to implementation where small achievements will build confidence and address potential reservations regarding regularization policies; and
- Developing budgets and identifying sources of funding.

Review the Current System of Urban Land Management to Support Provision of Tenure Security to Informal Settlement Residents

This should include:

- Updating land management techniques, including the revision of the current planning system and existing urban master plans designating informal settlements as “special zones” where flexible land tenure rules and construction requirements (in particular allowing land to be developed in phases) are allowed;
- Supporting recognition by the Land Registry of data collected by authorized community-based committees and the relevant urban authority;

- Developing underutilized private land;
- Clarifying urban land management roles across different tiers of government; and
- Developing improved procedures to allow for the expansion of towns and to establish town/municipal boundaries.

Additionally, the Land Policy Should Support:

- Effective medium- to long-term capacity building programs both in urban authorities and local communities;
- Improving procedures around resettlement;
- Developing affirmative action policies with regards to land allocation to female-headed households;
- Improving coordination between civilian and military actors, both at community and local government levels, with regard to the land needs of soldiers and demobilized soldiers;
- Improving governance of urban land management including going through decentralized structures to the community level;
- Provision of accessible finance at the informal settlement level;
- Data-gathering and further research on informal settlements; and
- Coordination across sectors.

I.0 INTRODUCTION

I.1 INFORMAL SETTLEMENTS AS A CRITICAL LAND POLICY ISSUE

Whilst there are no reliable statistics to examine the growth of informal settlements in Southern Sudan, the 22-year long second civil war and the subsequent signing of the CPA in 2005 has seen population growth in major towns. Although the majority of the population of Southern Sudan currently lives in rural areas,¹ there are many internally displaced persons (IDPs) who fled to urban areas for safety and have since remained. In addition, the signing of the CPA has seen urban populations grow rapidly with a significant number of the returnee population choosing to settle in urban areas. However, in Juba and other towns in the region, formal land administration systems are failing to cope with the influx of people. As a result, it is estimated that a large percentage of the urban population is now residing on land that is not formally registered or that falls outside the formally planned areas. This is leading to an increase in urban and peri-urban informal settlements with the attendant issues of lack of tenure security, poverty, increasing land disputes, and absence of basic services (Deng, Simon, and James, 2010; Pantuliano, 2009; Pantuliano, Buchanan-Smith, Murphy, and Mosel, 2008; Pareto, 2008; UNEP, 2007; USAID, 2005, 2007a).

Urbanization—the process whereby an increasing proportion of the national population comes to live in the towns—is an almost universal corollary of modern economic development. Yet rapid urbanization in Southern Sudan is seen as a major problem by the Government of Southern Sudan (GOSS). Firstly, it is occurring at a rate that is overwhelming the capacity of urban services. Fifty years of almost-continuous warfare has meant that the region lacks a developed urban structure and capable land management functions. In addition, the 10 state capitals still need to develop their economic functions in order to have the capacity to provide services and support the influx of people. Secondly, urban development is confronting a difficult meeting point of traditional and statutory law—especially with regard to land tenure, which is hindering the expansion of urban areas. Most residents who are living in the periphery of Juba do not have legal titles to the land they occupy. Peri-urban settlements and housing plots form part of an informal land market that is growing.

The key issue for Southern Sudan regarding urbanization is that much of the growth is unplanned and unmanaged (USAID, 2007b). If urban growth is not properly planned for and accommodated, Juba and other towns in Southern Sudan could become beleaguered with social, economic, and environmental problems. To address this, sustainable and inclusive urban land policies are needed.

Although “taking the towns to the people” and rural transformation remain key policy objectives for GOSS,² such approaches in other parts of Africa have not proven effective at addressing urbanization (Beall & Fox, 2007; Mehta, 2006). Based on trends in other developing countries, urban governing authorities in Southern Sudan need to recognize that without appropriate land policies, informal settlements are likely to continue to be a growing feature of urban and peri-urban areas. The current development of a Land Policy provides an opportunity to create appropriate policies that strengthen land rights and secure livelihoods for the majority of the urban population, thus in the long run supporting sustainable urbanization.

¹ Around 70 percent of the population in rural areas rely on subsistence agriculture (USAID, 2009a).

² H.E. President Salva Kiir Mayardit's Inaugural Speech on 21 May 2010 available at: <http://www.gossmision.org/>.

I.2 RESEARCH OBJECTIVES

Drawing on the NISPDS scoping paper, the primary objectives of the research are as follows:

1. To examine how current planning proposes to deal with informal settlements;
2. To understand the pattern and differing characteristics of informal settlements in and around Juba. This includes an examination of the locations of informal settlements in Juba and the reasons for this. How people access land is also considered; and
3. To investigate the socio-economic characteristics of those living in informal settlements in Juba and the main reasons people choose to live in these areas.

I.3 DEFINING INFORMAL SETTLEMENTS

There is no one definition of the term “informal settlement.” Also referred to as slums or as irregular, unplanned, spontaneous, or squatter settlements, the key criterion is lack of regulation by formal institutions (Jenkins, 2006).

Hansen and Vaa (2004) outline how informal settlements take three principal forms. The first is infilling and densification through illegal or clandestine subdivision of land in conflict with planning regulations. The second is the construction or use of houses without permission and in contravention of building codes. The third is illegal occupation of land that infringes on communal or individual property rights in the extension of the urban fringe, creating urban sprawl. This process has been termed the horizontalization of the urban slum (Davis, 2006), with the lower-income groups pushed to the periphery of urban areas and into peri-urban areas where land is often cheap, free, or occupied out of the confines of existing urban land management.

UN Habitat categorizes informal settlements into two kinds (UN-Habitat, 2003a: pp. 82-83):

- Squatter settlements—where land and/or buildings have been occupied without the permission of the owner; and
- Illegal land development—where initial occupation is legal but where unauthorized land developments occur.

They also provide a more operational definition where informal settlements have the following characteristics to varying extents (UN-Habitat, 2003a: pp. 11–12):

- Insecure tenure – “the right of all individuals and groups to effective protection by the State against unlawful evictions”;
- Inadequate access to safe water;
- Inadequate access to sanitation and other basic infrastructure and services;
- Poor quality of housing;
- Overcrowding; and
- Unhealthy living conditions and location on hazardous land.

The Cities Alliance describes slums as:

“Neglected parts of cities where housing and living conditions are appallingly poor. Slums range from high-density, squalid central-city tenements to spontaneous squatter settlements without legal recognition of rights, sprawling at the edges of cities.” (CitiesAlliance, 1999)

Since this research is primarily concerned with the Land Policy and the issue of land tenure, following UN Habitat above, the definition of informal settlement adopted in this study are “groups of households that do not have a legal right to the parcel of land on which they have settled and who have no protection from arbitrary eviction.” In Southern Sudan, such land is often on vacant government or public land, private leasehold land, or peri-urban customary land.

I.4 LINKS BETWEEN INSECURE LAND TENURE, POVERTY, AND LACK OF BASIC SERVICES

Insecure tenure covers a range of local situations, from total illegality to various forms of tolerated occupation, or occupation legitimized by customary practices (Payne, 2002). At its most fundamental level, security of land tenure is about predictability of occupation regarding land. This derives from the use and access rights to land based on a set of rules that are clear, known, and are regulated and enforced by what is regarded as a legitimate institution, whether it be state, customary, or informal (Unruh, 2007). For example, Payne (2002) describes how for squatters who have lived in an informal settlement for years, their perceived security of tenure may be indistinguishable from households living in legal housing. It may also be easier for them to buy and sell such rights compared to residents in formal tenure categories.

The formation and growth of informal settlements can be understood as being part of households’ livelihood strategies, as well as a failure of formal tenure systems and land management tools to meet the needs of people, especially lower-income groups, moving to urban areas. Access to land in locations that facilitate access to employment as well as basic services is a key factor since lower income groups depend on living in or near locations which maximize livelihood opportunities. Time and money spent traveling long distances is a major constraint to building livelihoods; and many therefore choose to live without formal land rights on undeveloped land in central town locations or on the edges of towns. In addition, in a post-conflict context, high rates of urban population growth are attributed to a variety of other factors, including continued insecurity in rural areas, the existence of landmines along roads, and the attraction of better job prospects, infrastructure, and services (Junne, Poerink, and Verkoren, 2004).

Generally, in Sub-Saharan Africa, formal land administration systems are failing to address the needs of poorer urban residents. The reasons for this vary, but many observers argue that human settlement planning and land management in Sub-Saharan Africa is a legacy of the colonial past where the aim was racial segregation and containing settlement. Existing institutions of land management, zoning laws, building standards, and other planning regulations were inherited from the colonial era and have changed little to reflect changing circumstances. These systems tend to be centralized, expensive, inflexible, and involve complex regulations which can restrict the provision of affordable housing for lower-income groups (Hansen & Vaa, 2004).

With regard to the failures of formal land management systems, Rakodi (2006) finds that in certain respects, informal land supply systems can work better and contribute to improvements in overall land management. Kombe and Kreibich (2000) observe that the deficits of the formal land management sector have been largely compensated by the increasing importance of informal land access.

Informal access to land varies. In many informal settlements, land supply has become commercialized and informal land markets have emerged (Mabogunje, 1990). There can also be a concentration of ownership and narrowing of family or customary rights to land as land becomes commercialized

(Maxwell, 1996). This leads to in some cases the majority of residents being tenants rather than owner-occupiers. Customary agents often remain in control of land delivery and, depending on the context, there may be a wide web of actors who act as intermediaries for those holding traditional rights (Aina, 1989). Other informal/illegal sources of land can be politicians or staff within government agencies and or private developers (Jones and Ward, 1994).

While the relatively quick and easy access to land in urban areas can be regarded as an advantage of informal settlements in developing countries, studies on the socio-economic situation of households living in informal settlements indicate a strong correlation among tenure status, urban poverty, and access to basic services. Informal settlements generally have a negative impact on people in terms of their ability to improve their livelihoods, vulnerability to harassment, access to basic services, and health. Given that at any point in time those living in informal settlements can also be evicted, people lack the incentives to invest in, for example, housing improvements, home based income-generating activities or to improve their environment (Payne, 2002). Furthermore, not being able to use the land as collateral is argued to severely limit people's access to credit (De Soto, 2000). Insecure tenure also impacts most negatively on women and children. Due to poverty and because they may face other constraints, female-headed households often reside in the cheapest areas of informal settlements (Hansen & Vaa, 2004). Additionally, the location of informal settlements is often on hazardous or marginal land.

From the point of view of government, insecure tenure also has a negative impact on the rate of tax recovery through local taxation on land and economic activities. In addition, without being able to identify beneficiaries of urban services, cost recovery for services is difficult. Lack of security of tenure also undermines long-term urban planning and distorts land prices (Durand-Lasserve, 2006a).

I.5 BEST PRACTICES IN ADDRESSING INFORMAL SETTLEMENTS

The UN Millennium Declaration described the growth of informal settlements as the global challenge of the new millennium and set a target of achieving “significant improvement in the lives of at least 100 million slum dwellers by the year 2020.” This target has been grouped as Target 11 under Millennium Development Goal 7, to ensure environmental sustainability. The United Nations Human Settlements Program (UN-Habitat), the body responsible for the implementation of this target and for monitoring global progress towards it has focused attention on upgrading informal settlements (global campaign for secure tenure) and institutional strengthening of local government in urban areas (global campaign on urban governance).

I.5.1 Land Tenure

Populations in informal settlements face problems of a lack of access to basic services and no security of tenure. The Istanbul Declaration and Habitat Agenda provide the international policy and legal context for any review of the policies, laws, and practices relating to urban land tenure. This includes:

- Providing legal security of tenure and equal access to land to all people, including women and those living in poverty;
- Ensuring transparent, comprehensive, and accessible systems in transferring land rights and legal security of tenure;
- Protecting all people from and providing legal protection and redress for forced evictions that are contrary to law; when evictions are unavoidable, ensuring, as appropriate, that alternative suitable solutions are provided.

In recent years a common approach by governments in Sub-Saharan Africa has been through slum upgrading programs. These have included large-scale individualized land registration and titling programs

with the aim of providing security of tenure. However, arguments implying that this can reduce poverty are not supported by evidence. These programs have generally encouraged higher land prices with property titles in regularized areas being attractive to land developers. This often leads to market-based evictions of lower-income groups with the process of informal development merely replicated elsewhere. In addition, rapid integration of informal settlements disrupts livelihoods and community cohesion. It is therefore argued that whilst formal tenure systems can facilitate more efficient urban land management, a move to a more formal tenure system needs to be at a rate consistent with local norms and institutional capacity (Durand-Lasserve, 2006b).

As a result, the World Bank has recently adopted a more flexible attitude regarding land titling issues:

“increasing security of tenure does not necessarily require issuing formal individual titles, and in many circumstances more simple measures to enhance tenure security can make a big difference at a much lower cost than formal titles” (Deininger, 2003: pp. 39).

In support of this UN-Habitat generally believes that:

“freehold and rigidly individualised [sic] title/deed for occupants of customary land is not a recommended approach.” (UN-Habitat, 2003b)

Recognizing that past land policies and legislation have failed to address adequately the needs of those living in informal settlements, a number of African countries have started land reform processes to address land rights in informal settlements and are experimenting with new approaches to land tenure. Instead of the provision of individual formal titles, these processes build on the existing informal land tenure systems in informal settlements and use simplified procedures that are accessible and affordable.³ These programs are often linked with the provision of basic services. Among some of the main aspects of these approaches are:

- Protection against forced eviction;
- Taking advantage of adverse possession,— the situation where people may have lived as squatters for many years;⁴
- Provision of group rights or communal arrangements;
- Preventing market eviction through community controls; and
- Incremental approaches to formal tenure (UN-Habitat, 2009).

Given the diverse range of situations in which informal settlements tend to arise, policy on land tenure needs to encourage a diverse range of options, rather than putting emphasis on a single option. This will involve adapting and expanding existing tenure and land administration systems, where possible, and introducing new ones selectively. In particular, UN-Habitat suggests an approach based on group rights or communal arrangements where land titles can be upgraded incrementally. Such approaches can be used both for regularizing informal systems and when settling households on vacant land (UN-Habitat, 2003b). This also allows government time to address technical and administrative procedures within their resource capacities. These approaches all rely on an appropriate legal and regulatory framework and procedures for

³ Examples of approaches include Community Land Trusts in Kenya (Voi), Temporary Occupation Rights in Kenya (Nairobi), flexible land tenure arrangements in Namibia, Certificate of Rights in Botswana, temporary land rental in Thailand, the Patta Act in India.

⁴ See, for example, Art. 12(b) of the 1997 Mozambique Land Law and section 3(4) and (5) of the Extension of Security of Tenure Act 62 of 1997 (South Africa). Tanzania, Sri Lanka, and Indonesia also have adverse possession laws that support the rights of informal settlement residents.

land tenure, land use, and construction which are flexible and appropriate to local contexts (Durand-Lasserve, 2006a).

1.5.2 Land Administration Arrangements

The implementation of alternative tenure programs depends on the availability of reliable land information and social cohesion within communities. The capacity of local communities to support informal land administration systems and to generate and maintain land information that can support such interventions is of considerable importance. As a result, such programs attempt to build on community structures to create legitimate community organizations that can identify rights holders and provide eligibility criteria for inclusion. Community organizations are also important for maintaining records on rights, providing community controls, and supporting mobilization of financial resources. Additionally, they are important in conflict resolution within the community and between the community and other actors (private landowners, customary landowners, government, etc.) (Durand-Lasserve, 2006a).

Additionally, such approaches are argued to support socio-economic development by giving households time to save or raise funds to pay for the next steps in the tenure upgrading and regularization process.

At the government level, to be effective, such programs need to a cohesive approach across regional and local levels. A range of options may be necessary and whether the settlement is on state, private leasehold, or customary land will require different solutions. Decentralized structures that can work with local communities are important. Financial resources and political will are key, as such programs can take many years.

1.6 REPORT STRUCTURE

Following this Introduction, Section 2 gives a brief history of urban land management in Southern Sudan and gives an outline of the new legal framework and land legislation. It also considers some of the main urban land issues that are arising in urban areas. Section 3 provides a brief background to Juba, the study methodology, and the constraints that were faced in conducting the research. Section 4 details the main findings and conclusions from the research. Section 5 goes on to examine appropriate urban land policies. Recommendations are based on the literature review provided in the Introduction.

2.0 METHODOLOGY

2.1 BACKGROUND TO JUBA

Juba is situated on the White Nile, at the uppermost navigable point, in Sudan's southern-most part. It became the capital of the British Equatorial Province in 1930 during condominium rule and subsequently developed into a large colonial town with administrative buildings, military barracks, a hospital, airstrip, schools, and civil service training facilities (Collins, 2002; El-Bushra, 1967). Juba continued to expand after the independence of Sudan in 1956 and new areas were surveyed, such as Kator in the 1960s and Munuki and Tong Ping in the 1970s. During the second civil war, Juba became a military garrison town and, as such, was under the control of the government in the North. The rural areas surrounding the town came under the control of the Sudan Peoples' Liberation Army (SPLA) opposition forces. As a result, movement in and out of the town was limited; even so, Juba saw its population increase as a result of IDPs who settled in the town to avoid insecurity in rural areas. Little physical expansion of the town occurred during this time, although the areas of Hai Seminary and Gudele were demarcated.⁵ After the signing of the CPA in 2005, Juba became the capital of Southern Sudan, as well as of the Central Equatoria State (CES), and both the GOSS and the CES Government are based there. In addition, UN agencies, most international nongovernmental organizations, and other agencies, as well as businesses, have their Southern Sudan headquarters in Juba.

There is no accurate data on the population of Juba. The fifth Sudan Housing and Population Census put the population of Juba at 372,000, although the census has been rejected by the GOSS. It has not been possible to obtain estimates of the number of returnees that have settled in Juba, but in 2005 it was estimated that the population would double to around 500,000 within a few years, and that a further 22,000 plots would be required (USAID, 2005). Other estimates in the gray literature suggest that Juba has far more residents, and government sources and local analysts are quoted as suggesting a figure between 750,000–800,000 residents (Pantuliano et al., 2008). Regardless of the actual figure, what appears unquestionable is that Juba's population has expanded rapidly since the signing of the CPA. This rapid increase has seen a surge in the demand for land and consequent growth in informal settlements.

Table 1: Juba Population Trends

Year	Population total
1973 (municipal survey)	56,737
1983 (municipal survey)	83,787
1992 (municipal survey)	114,980
2005 (estimated)	163,000 resident population; 250,000 including IDPs
2009 (5 th Sudan Housing & Population Census)	372,000

Modified from: USAID, 2005

Juba does not have a municipal council but is made up of three urban payams (Juba Town, Munuki, and Kator), the directors of which report to the Juba County Commissioners Office. The area around Juba (Rajaf and Northern Bari Payams) traditionally falls under the customary ownership of two Bari chieftainships. Whereas during the war, peri-urban Juba was virtually uninhabited, the area around Juba has become typified by new housing of various standards since the signing of the CPA. Many lower-

⁵ Some Bari chiefs complain that this was done by the Northern Government without proper consultation.

income newcomers to Juba, including returnees and rural-to-urban migrants, have squatted around Juba and have no customary rights to the land, as they are not indigenous to the area. Some other people living in the area represent those forcibly evicted in the last two years from informal settlements within the town, many of whom are reported to be IDPs to Juba during the war.

2.2 METHODOLOGY AND RESEARCH DESIGN

The research draws on the Asset Vulnerability Framework (Moser, 1998) which helps to place the livelihood framework in the urban context and focuses on households assets. Due to the fact that few households living in poor countries have the ability to support themselves on one activity (such as wage employment), the social, physical, financial, productive, and human capital included in the framework is useful to disaggregate the varied resources upon which the poor depend. This allows an analysis of the links between household poverty and vulnerability to inform interventions that promote opportunities for lower-income households to use their assets productively. These issues were examined within the wider context in order to understand the institutions, policies, and processes that are impacting land access within Juba. Particular attention was paid to settlement layout, modes of land access, perceptions of tenure security, land disputes, community organization, and livelihoods.

A summary of research methods and approach is provided in Appendix 1. Secondary research involved an extensive desk study of the literature, current legislation, policy documents, and donor and research reports. The purpose of the literature review was to obtain background knowledge regarding Juba and the Southern Sudan in context, particularly with regards to the history of land legislation and land-related issues since the signing of the CPA.

Primary data was collected at both town and settlement levels. The research was qualitative, due to time and resource constraints and the general lack of quantitative data relating to informal settlements in Southern Sudan. Key informant interviews were conducted with key urban management actors at GOSS and Central Equatoria State (CES) levels to assess their proposals for managing informal settlements and their attitudes towards them. Some traditional leaders were also interviewed. All respondents were assured of their anonymity.

Informal settlement-level study areas were selected in the first week of the research based on the knowledge of the research team and NISPDS. The settlements were selected to represent different socio-economic conditions to include, for example, “urban old informal,” “urban recent informal,” and the transition from urban to peri-urban. These criteria were considered important for their potential influence on settlement layout, modes of land access, tenure security, land disputes, community organization, and livelihoods.

Four local researchers supported the research—two men and two women. The team worked in each area for two-to-three days, depending on its size. Additionally, two days were also spent visiting squatters on private leasehold plots in and around Tong Ping and Dressers Land.

Table 2: Study Settlements

Settlement	Approximate time of establishment	Urban/peri-urban
Gabat	1960s	Urban (old)
MTC/St Mary’s	1980s and 1990s	Urban (conflict)
Hai Nyakama	Post-CPA	Urban (new)
Lologo	1970s	Urban fringe (old)
Gudele West	Post-CPA	Urban fringe (new)
Hai Mesikin	Post-CPA	Urban fringe (new)

The studies primarily relied on participatory rapid urban appraisal tools and in particular interviews. These were used to gain an understanding of settlement layout, land access mechanisms, perceptions of tenure security, community leadership, and livelihoods and social organization in the settlements. Initially, semi-structured interviews were carried out with community leaders and members of committees in each community where possible (e.g., youth, borehole, demarcation, women's). In addition, in each settlement a participatory mapping exercise was carried out, along with transect walks (initially with community leaders where possible), with some information obtained through observation. Time was spent where possible with a community leader mapping the boundaries of the settlements. The same questions and techniques were used in the settlements to allow triangulation of data and subsequent comparison.

In addition, in each community, at least two focus group discussions were carried out with women, male and female youth, and various other relevant groups depending on the context (e.g., soldiers, foreign migrant workers, etc.). In Lologo and Hai Nyakama, due to the high population of soldiers, two focus group discussions were carried out with soldiers. Group discussions were informally structured through approaching people in their communities, in the street, in the market, in restaurants and bars/merissa⁶ joints, by boreholes, by playing fields, etc. This helped the team to ensure access to a more representative cross-section of the community, and also to meet people who might be reluctant to talk otherwise.

As well as the focus group discussions, a number of interviews were also carried out with individuals referred to by community members and who had particular knowledge of the area. For example, in Lologo North the team met with Bari landowners who farmed the land on the edge of the settlement. The team also met with the chiefs of the Nuer and Dinka communities. The team also interviewed the current Head of the Joint Integrated Unit (JIU). Head teachers of local schools were interviewed in Gudele West and Hai Mesikin.

2.3 CONSTRAINTS

It is necessary to stress that the study has been constrained by a number of factors.

The research has focused only on one urban area in Southern Sudan, and thus it has not been possible to assess how the differing contexts across the region impact on the formation and socio-economic profiles of informal settlement residents. Nor does it consider how urban authorities in different states address the issue of informal settlements.

Within Juba, given the sensitivity of land issues, the research was carried out as transparently as possible in terms of informing community members of the research aims, including different groups, and ensuring community leaders were included. However, on some occasions, it took time to locate and meet with community leaders before carrying out the research. Mainly for security reasons and reasons of access on public transport, the work was carried out in the daytime only, which means that people working in the formal sector or outside the settlements are likely to be under-represented in the results. To address this to a certain extent, the research started early in the morning and was also carried out on Saturdays.

The research was limited in terms of time and resources, and it was not possible to collect quantitative data. Thus the results presented here may improve understanding of various phenomena, but do not provide information on the extent and pervasiveness of such phenomena.

More broadly, the data collection methods used during the fieldwork are all based on communication between the research team and respondents. These kinds of data collection methods have limitations associated with the behavior of both the research team and the respondents. On a few occasions people

⁶ Merissa is a form of locally made beer made from sorghum.

did not have the time or did not want to answer any questions. In addition, respondents may choose to deliberately answer a question with a response that is inconsistent with their actual beliefs or intentions, or provide answers they deem the researcher might want to hear. Representatives of communities may feel obligated to give answers that may bring about benefit to the settlement residents. The researchers made sure respondents were informed of the purposes of the research so as not to give communities false expectations.

3.0 BACKGROUND TO URBAN LAND LEGISLATION AND LAND MANAGEMENT IN SOUTHERN SUDAN

3.1 INTRODUCTION

Urban land law forms the basis for the process of urban land management and planning. The legal basis for informal settlements is determined by the legal rights pertaining to the land under occupation. In addition, urban land law determines how future land development can occur in and around towns. This is important in addressing existing informal settlements through upgrading existing areas of towns. Secondly it is important in preventing the formation of new informal settlements by developing new areas that support the expansion of towns.

3.2 BRIEF HISTORY OF URBAN LAND LEGISLATION AND LAND MANAGEMENT

The history of land legislation in Southern Sudan, like other parts of Africa, is a result of the interaction of colonial/western land law and customary land law.⁷ The influence of British colonial rule on land management and legislation can be traced back to ordinances that were enacted during the Anglo-Egyptian Condominium government which was based in Khartoum. This ruled according to the principle that all land belonged to the State. However, in Southern Sudan, the state had limited reach. Thus in rural areas, supported by the Southern Policy of 1930, communal systems continued as the principle means of local land management. This resulted in a dual land law system of customary tenure in rural areas and statutory tenure in urban centers.

3.2.1 Gazetting Town Boundaries

Urban areas were determined through gazetting town boundaries.⁸ Initially, this involved the Colonial Administrator defining the township within a given radius of the flagpole outside the Colonial Offices. Within this area, the Colonial Administrator would assert responsibility for allocating land; beyond this boundary, land would be administered under communal systems. Later, municipal councils were formed, which were responsible for urban planning and land management (Post, 1996).

⁷ Formal law was initiated during the Turko-Egyptian Rule in 1821–1885. The Anglo-Egyptian period, 1898–1956, created the first land ordinances of 1906, 1925, and 1928.

⁸ Tom Carter has provided input with regards to urban planning in Juba, the TLS (1947) and Housing Policy Discussion Paper (1979).

3.2.2 Disposal of Town Lands Scheme 1947

The current land administration and regulations in Southern Sudanese towns is based on the Disposal of Town Lands Scheme Act (TLS) of 1947. The Act stipulates that leases are given to urban residents based on four classes of residential plot. These were kept geographically separate in town plans which were based on a simple grid system. This derives from the colonial practice of segregating different ethnic groups wherein first-class areas were allocated to whites working with the colonial government, second-class areas were allocated to Northern Sudanese and Egyptians officials, and third-class were allocated to educated Southerners employed in government service. Fourth-class areas were for “temporary urban workers” who were given no leasehold and who were not allowed to use permanent materials. According to the regulations, access to services is also concentrated in first-class areas where plots are bigger than other plot classes. Higher standards of construction are also required. The TLS also had associated regulations which set out lease terms, charges, and allotment procedures for first-, second-, and third-class plots along with building standards. These subdivisions remain today, although during the second civil war in Juba, the fourth-class plot⁹ classification was merged with third-class.

3.2.3 Housing Policy Discussion Paper 1979

After Independence in 1956 and until the Addis Ababa Agreement in 1983, there were few changes to land administration in the South, mainly as a result of the first civil war. After the peace in 1983, the TLS also underlaid mainstream town planning practice during the Southern Regional Government period (1972–1983). A Housing Policy Discussion Paper issued in 1979 by the then Regional Ministry of Housing and Public Utilities noted how the TLS was an inappropriate policy for progressive housing and supporting the urban lower-income groups. It recommended a more flexible approach, abolishing the plot classification system, and allowing plots of different sizes to be mixed. Since then, in some towns in Southern Sudan a more flexible approach has in fact been adopted.

3.3 THE NEW LEGAL FRAMEWORK AND THE LAND LAW OF 2009

The current legal framework relating to land in Southern Sudan, during the interim period leading up to the referendum in 2011, is based on the Interim Constitution of Southern Sudan (ICSS), the Interim National Constitution and the Land Act (2009). Unlike North Sudan, which has maintained a statist position towards land, the SPLM/A’s position was that the “land belongs to the people” with the state being “a custodian of the land,” both of which have been significant rallying principles and persist as widely-held popular expectations.

With regard to urban land law and management, the Land Act has a number of weaknesses. The Act abolishes (or they “cease to operate”) all previous laws where the Act addresses (land) “issues.”¹⁰ However, where regulations have been made under the national law (e.g., a statutory instrument or land regulations), these appear only to be repealed where inconsistent with the Act or explicitly repealed. As the Act lacks new laws and subsidiary regulations relating to urban land, urban authorities are continuing with established practice based on the TLS.¹¹

⁹ There areas were originally the native lodging areas such as Atlabara.

¹⁰ The Act provides that upon its coming into effect “any national law addressing issues under this Act shall cease to operate in Southern Sudan provided that all proceedings, orders and regulations taken or made thereunder, except to the extent they are repealed by or are otherwise inconsistent with the provisions of this Act, shall remain in force or effect until they are repealed or amended in accordance with the provisions of this Act.”

¹¹ It was not possible to obtain a copy of the Act so it is unclear how this has been modified through practice since it was enacted.

The Act recognizes customary, freehold, and leasehold tenure systems¹² and gives women the right to own and inherit land reflecting the ICSS.¹³ However, it does not recognize informal settlements nor the tenure systems and land rights in these settlements. The doctrine of adverse possession is recognized to a limited extent in that the Act allows an occupier of urban land to obtain legal title after *uninterrupted* occupation of 30 years, if they occupied the land from 16 May 1983.¹⁴ This means that all current informal settlement residents do not have formally recognized land rights. The Act has provisions for unlawful occupancy, which refers to any person who settles or occupies land without a customary or legal title or without consent of the owner and allows for proceedings for their eviction.¹⁵

The Act contains provisions for group ownership and allows communities to register community land through community associations. It also allows individual members of a specific community to request individual registration after the plot of land has been partitioned from the relevant community.¹⁶ However, how to differentiate communal and individual ownership within communities is unclear. This is an issue in peri-urban areas. Also the terms “community” and “community land” are not defined and the emphasis in the Act appears to be on rural areas.

Additionally, the Act has provisions for the expansion of towns including for the GOSS, state governments, or other public authorities to expropriate land in the public interest for urban development and sanitary improvements.¹⁷ It stipulates that rural land is owned by communities to be managed by traditional systems and that expropriation of land is subject to equitable compensation, as determined by a Compensation Committee that includes community representatives.^{18,19} More broadly, responsibility for urban land management, urban planning, and land allocation is divided between the regional, state and county establishments (County Land Authority).²⁰ However, there is a lack of clarity with regards to the relations between these different levels of government and also traditional authorities and how responsibilities are to be split between them. This system of government has caused tension in larger towns, including Juba, where the three different levels of government, as well as individuals and communities, compete for land (Oystein, 2009; Pantuliano, 2009).

The Act also has provisions for subleasing which would allow people access to already registered plots. Although studies have not been carried out to explain dynamics of land prices in Juba, there is anecdotal evidence suggesting a remarkable growth in prices for the transfer of already registered leasehold plots.

The Act has also been criticized for not adequately addressing the land rights of various vulnerable groups such as returnees, including matters of resettlement or restitution of land and property; and women, in such issues as property grabbing, conflict management, and dispute resolution (see also (NISPSDS, 2010; Oystein, 2009; Pantuliano, 2009).

¹² Section 7.

¹³ Section 13.

¹⁴ Section 82 allows that “any person who unlawfully occupies a piece of land for 30 years without interruption in an urban area, from May 16, 1983 shall be granted legal title or rights thereon.”

¹⁵ Section 84.

¹⁶ Section 58.

¹⁷ Section 73.

¹⁸ Section 33.

¹⁹ The Act does not specify how collective owners of communal land are included in the consultation process and to what extent the community can exert control. It is also difficult to determine compensation partly due to the lack of a land market.

²⁰ Sections 43–46.

In addition to the Land Act, the Local Government Act (2009) addresses some aspects of urban management and makes different provisions for urban areas based on population. One of its strengths is that it supports decentralized land management structures. However, there is confusion regarding what constitutes an urban area, i.e., where land comes under management by the state replacing customary management. Neither it nor the Land Act set out procedures to define municipal and town council boundaries.

3.4 LAND MANAGEMENT

A number of assessments and reports carried out on in Southern Sudan since the signing of the CPA highlight the weaknesses in land management institutions including in urban areas.²¹ These have effectively collapsed after the many years of conflict. Main weaknesses include limited human and financial resource capacity to use new regulatory tools effectively, incomplete or non-existent records, weak revenue generation systems, and inconsistent land management approaches across states. This is compounded by the fact that dissemination of the Land Act (2009) has been limited. Moreover, a large proportion of land surveying is carried out by the under-resourced Survey Department, which is currently focusing on demarcating communal areas. This is constraining the rate at which urban land can be surveyed prior to land regularization of any form. (USAID, 2009b).

Urban planning, demarcation, and allocation of urban plots of land are performed by the state Ministry of Physical Infrastructure (MPI). However, new allocation and registration procedures have yet to be formulated and current procedures lack transparency.²² Plot charges and procedures for communities to pay the Survey Department to demarcate land also require clarification. In addition, registration of land by individuals and communities is time consuming, centralized, and expensive.

3.5 CONCLUSIONS

Many years of conflict have resulted in weak urban management and limited human resource capacity in urban authorities. Current practice for managing urban land is derived from British colonial times, which supported the segregation of people along ethnic lines, leading to separation of groups by their socio-economic status. It is also hindering appropriate responses to rapid urbanization as it does not support flexible, decentralized, and quick access to urban land. Land administration systems are centralized, expensive, and time consuming, making them inaccessible to many people, particularly lower-income groups. In addition, the standard grid and plot classification system on which urban planning is based is inflexible and ignores informal settlements.

The existing legal framework is inadequate to address the needs of those living in informal settlements. The Land Act (2009) does not recognize informal settlement residents' land rights and does not adequately protect them from forced eviction. Although there is some provision for adverse possession and group ownership of land, this is very limited and/or poorly defined. Additionally, there are no provisions for incremental tenure systems that might support the regularization of informal settlements and protect informal settlement residents from market-based evictions.

More broadly, the Land Act (2009) lacks subsidiary laws and regulations with regard to urban land, and so has created a vacuum with regard to its regulation. It does not detail procedures to define the boundaries of town or municipal areas and how responsibilities for urban management are split across the different levels of government (GOSS, state and local governments) and traditional authorities.

²¹ These include (Deng et al., 2010; Oystein, 2009; Pantuliano, 2007, 2009; Pantuliano et al., 2008); Pareto, 2008; and USAID, 2005, 2007.

²² Land registration has been moved from the State Judiciary to the GOSS Ministry of Housing, Physical Infrastructure and Development in the Land Act (2009).

One of the strengths of the new legal framework and the Local Government Act (2009) is that it promotes a decentralized structure. Decentralization of urban land administration to the payam level, when working in close cooperation with local communities, has the potential to provide a means for the implementation of tenure upgrading programs outlined in Section 1.

4.0 FINDINGS AND DISCUSSION

4.1 POLICIES TOWARD INFORMAL SETTLEMENTS IN JUBA

It is not known what proportion of Juba's population lives in informal settlements, but it is significant. Informal settlements in Juba are generally of three types: squatter settlements on public land, squatter settlements on private leasehold land, or squatter settlements on the edge of Juba spilling onto customary land. They vary in size from less than a hectare to hundreds of hectares on the edge of the town. Within Juba, these settlements are located near sources of employment opportunities (e.g., near markets such as Konyo Konyo, Hai Nyakama, near Juba town) or on marginal ground, such as near the Nile River.

Broadly, current approaches to informal settlements by state and regional government are unsupportive to residents of these areas and no attempts are being made to upgrade or provide services in these areas. Many public officials regard the presence of informal settlements as an embarrassment. They explain that informal settlements are the result of the war and the population displacements that occurred throughout that time. People born in the areas, returnees, and foreign migrant workers are lumped in with populations displaced by the conflict, many of whom have lived in Juba for up to 25 years. They are all generally considered as “temporary” or as “newcomers” who should return to their places of origin.

In the few cases where residents of informal settlements are regarded as having land rights, and therefore a right to compensation, the plan is to demolish these areas and provide compensation through the provision of land in rural areas around Juba. However, public officials complained of the length of time it was taking to reach agreement with rural communities regarding the allocation of land for resettlement.

4.1.1 Forced Evictions

The state government has a policy of forced eviction²³ towards residents of informal settlements, especially those established during or after the war. There is a commitment to continue with the process until no informal settlements exist within Juba.²⁴ In January 2009, the authorities in Juba began a new forced eviction campaign.²⁵ The United Nations Office for the Coordination of Humanitarian Affairs estimating that around 27,800 people were affected (UN-Resident Coordinator, 2009). Authorities have stated that the evictions will enable development, the building of roads, and allow for better access to basic services. It is not known what proportion of people (re)located to their rural areas of origin; but since the evictions, some informal settlements have been re-established.²⁶ In other cases, evictees have

²³ The Centre on Housing Rights and Eviction (COHRE) refers to “forced eviction” as “the removal of people from their homes or lands against their will, directly or indirectly attributable to the State. Under international human rights law, everyone has a right to be protected against forced eviction. Evictions are permitted only in exceptional circumstances, and then only under strict conditions. The right to protection against forced evictions is part of a broader right to housing and a range of related rights. According to international law, forced eviction is a gross violation of human rights, depriving women, men and children of the human right to adequate housing. (For more on the right to adequate housing, please see our section on Housing Rights.) The right to housing guarantees security of tenure and legal protection against forced eviction for all people.”

²⁴ The state Governor clarified this commitment during the 7th Governors' Forum in 2009.

²⁵ Based on CES State Order no. 5/2009 issued by the Governor on 16 January which defined 26 demolition sites.

²⁶ For example, St Mary's (see next section) and Gongoroki near New Customs.

moved to the outskirts of the town. All evictees encountered in this study had occupied the land they were evicted from for many years, some for decades, and many are IDPs from the civil war.²⁷ During this study, it was noted that forced evictions were occurring on the outskirts of Juba.²⁸

4.1.2 Provision of New Plots within Juba

Since the signing of the CPA, the state government has not been able to provide a sufficient number of demarcated plots for the influx of people into Juba. Where urban planning has supported the provision of residential plots, the needs of informal settlement residents have been ignored. A number of plots have been demarcated in the town, such as Gudele Block 9 extension and Jebel Kujur, but public officials in the MPI state that plot allocation is targeted at heads of households with formal employment. The allocation procedure for plots is unclear and it is not apparent that, even where a current resident does meet the criteria of a household head in formal employment, they are given priority for a plot. As a result, people residing in the area are displaced.

Where undemarcated areas within the town are brought into the formal system, the MPI draws up plans in accordance with established practice and based on the standard grid of first- and third-class plots. These plans are then superimposed on any existing informal settlements, thus ignoring existing structures, basic infrastructure, and services (such as boreholes, markets, etc.), which are destroyed.

The provision of around 5,000 first- and third-class plots by the state government is now occurring in Durupi to the southwest of Juba near the Yei Road. A small number of plots (around 350) are being provided for resettlement of residents of an informal settlement in Juba under a pilot slum upgrading program being implemented by the United Nations Development Program. GOSS has acquired an area 5.5km by 5.5km nearby on the outskirts of Juba for the proposed creation of Liberty City over the next 10 years.²⁹ Housing will mainly be for government employees, embassies, and for embassy employees. Both these developments are leading to forced evictions.

Besides the lack of formal plots, application for a plot is expensive. Until recently, a third-class plot cost just under 100 Sudanese pounds (SDG) (around US\$45). However, the state government has increased the cost of registration to SDG3,000 (around US\$1,300).

4.1.3 Extending the Boundaries of the Town

There is a need to extend the boundaries of Juba in order to provide serviced land for residential purposes. However, there is a lack of clarity regarding existing boundaries. For example, the boundary between Munuki Payam (an urban payam) and Northern Bari Payam (a rural payam) is disputed by payam leaders. This dispute appears to center on the nearby market and which payam should receive the tax revenues from it. Also there is some argument regarding whether or not Lologo South should be in Kator Payam, an urban payam, or Rajaf Payam, a rural payam.

Some public officials complain of the complexity of negotiations and the length of time they take with customary landholders for the provision of land to support the expansion of Juba or resettlement programs. Bari chiefs state they are concerned with giving away communal land which is under their custodianship for future generations. There also are tensions between the state government and GOSS regarding land allocation for government purposes.

²⁷ During this study, evictees were encountered in Gudele West/Hai Battery and Hai Mesikin. Two evictees were encountered in Lologo, although they lived there before and had moved into the center of the town in 1992.

²⁸ Site of Liberty City (see later).

²⁹ See <http://www.libertycityjuba.com/default.html>.

4.2 BACKGROUND TO THE CASE STUDY SETTLEMENTS

A summary of the case study settlements is provided in Table 3. A brief profile is then provided of each of the areas.

Table 3: Background to case study settlements

	Gabat	Lologo	MTC/St. Mary's	Hai Nyakama	Gudele West/Hai Battery	Hai Mesikin (Dorupi)
Population size (according to estimates of community key informants)	Unknown; 400–1,000+ households	Unable to obtain a reliable estimate	200 households	Unable to obtain a reliable estimate	2,000 households in area studied. Around 4,000 households in Gudele West.	In 2008, 234 households; in 2009, 285, based on Community leaders' register. The community school has 337 pupils
Location	Juba Town Payam, close to airport	Kator Payam (north & center) and Rajaf Payam (south)	Juba Town Payam close to river and Konyo Konyo market	Juba Town Payam Close to ministries on old military training college	Northern Bari Payam	Rajaf Payam
Urban/Rural	Urban	Urban & Rural	Urban	Urban	Rural	Rural

4.2.1 Squatters on Public Land (Gazetted)

Gabat (meaning forestry)

The area is about half a kilometer from Juba Town Centre. Community leaders' estimates range from around 400 households in the area to over 1,000 as a result of subdivision of plots. It is very close to Juba International Airport; according to some public officials, is a prime site for commercial development. The area is densely settled and close to the banks of the Nile. Community members complain of severe flooding during the wet season. The settlement has a market, where produce grown on the nearby islands is sold.

According to members of the community and public officials, in the 1960s, a group of households working for the state Department of Forestry occupied vacant land near the Department's headquarters in Juba with permission from state government authorities. These households represented people from various locations in Greater Equatoria. Additionally, as a result of flooding along the Nile, additional households from the Bari community moved into the area. There are also a number of Dinka households and their descendents, who were brought in as laborers during the flooding and also who were displaced when the extension to the airport was built in the 1970s.

In 1972, the government demarcated roads in the area; when the war resumed, households moving into Juba settled on the roads. During the war, there was also an attempt by the MPI to upgrade the area to second-class, but it failed. People coming into the area at that time, and since the signing of the CPA, were often relatives of those residing in the area. People who moved to the area during the war have largely remained.

Dressers Lane

Dressers Lane is a small area next to Juba Teaching Hospital close to Juba town Center. There is no market and only a couple of shops. Many of the people residing in the area used to work in the hospital or claim to be descendants of hospital workers. They mainly represent people of Equatorian tribes. During the second civil war, many people left, whilst other people came in from rural areas. Others have arrived since the signing of the CPA.

The area is due to be demolished, but the MPI regards the people as having a right to compensation. The plan is that households will be provided with five hundred plots in Gudele West and Rajaf Payam (Gumbo), about 10 kilometers outside Juba. The community leaders have registered people who will receive plots based on length of time residing in the area. The plots in Gudele West have already been identified and shown to the community leaders. The remaining plots in Gumbo have not been identified and informants in the MPI said that negotiation for these plots with traditional authorities is ongoing. Community members consider Gumbo insecure and too far away for their livelihoods in the town.

4.2.2 Squatters on Private Land

Hai Nyakama

The area is densely settled and about four kilometers from Juba town center. It is opposite the Southern Sudan Legislative Assembly and close to the main bus hub and Hai Nyakama Market. Along the roadside and within the settlements close to the road are many market stalls, hotels, bars, and restaurants. There is also an area where there is a concentration of commercial sex workers who rent accommodation from military actors.

Before the war, the land had been used as a technical training area. During the war it was occupied by the Sudan Armed Forces (SAF). In 2005, a group of SPLA soldiers occupied the area, after being given permission by the Governor of the state. As a result, one part of Hai Nyakama now has a large number of soldiers and their families living there. There is also a large number of foreign migrants, particularly people from Uganda and Ethiopia, who work in the market. Another part of the area has a higher proportion of civilians.

St. Mary's, MTC, and squatters in Tong Ping

St. Mary's and MTC are small informal settlements on vacant, commercial leasehold land close to Juba town center and Konyo Konyo Market. They represent Mundari³⁰ IDPs who came to Juba in the 1980s and 1990s as a result of conflict. They settled in the area, having sought permission from nearby Bari. In 2009, their tukuls (traditional style of huts) were demolished as a result of the State Order mentioned above. However, many residents have remained in the area, rebuilding their shelters.

Squatters interviewed in Tong Ping came after the signing of the CPA and have squatted on residential leasehold plots. The people interviewed were from Bar El Ghazal, Lakes State, and Juba. Some squatters have agreed with the owners that they can stay the rent-free. Others pay rent of around SDG100 per month. On another plot, squatters moved onto their plot during the war and the owner has never returned.

4.2.3 Informal Settlements on the Periphery of Juba

³⁰ The Mundari are a pastoralist tribe whose traditional lands are located within Central Equatoria state about 75 kilometers north of Juba.

Lologo

This is a large spread-out informal settlement on the edge of Juba, near the Nile. Lologo North and Centre is within Kator Payam (an urban payam), whereas Lologo South is in Rajaf Payam (a rural payam). Part of Lologo South has demarcated plots by the community and another part is given over to an Ethiopian refugee camp. The remainder is customary held land. At the end of the first civil war, the area was virtually uninhabited, except by a few Bari farmers. The area was heavily settled in the 1970s. Settlers included soldiers and their families who were stationed at what is now the Joint Integrated Unit (JIU). In addition there is an area which is predominantly Lopit people who came to Juba from Eastern Equatoria in the 1960s as a result of famine and who subsequently moved to Lologo. There is also an area predominantly of Dinka who have lived in Juba since the 1960s and who had cattle camps nearby. A large number of Equatorian tribes have settled over the years for a variety of reasons, including for employment and availability of land relatively close to Juba.

In 1992, a large number of people left the area due to the heavy fighting around Juba. Some returned soon after hostilities ended, whilst others remained in the town until the signing of the CPA. Community leaders and members have stated the population has increased dramatically since the signing of the CPA.

Hai Mesikin

This is a scattered informal settlement near the Yei Road and close to the recently built SAB Miller brewery about 10 kilometers from Juba town center and in Rajaf Payam. The area was uninhabited during the war, although people living within Juba cultivated there. The land was under customary tenure but is now state-owned land to be allocated as first class plots. Initially the community leader, who farmed part of the area during the war, sought permission from the Bari to settle in the area. There are now also foreign migrants, particularly Ugandans, and people who moved to the area as a result of the demolitions within Juba Town.

Gudele West/Hai Battery

This is part of a large, expanding informal settlement on the edge of Juba on the road to Rokon about 10 kilometers from Juba town center and close to the site of the planned Liberty City. Like Hai Mesikin, the area was uninhabited during the war; although people cultivated the land and have moved there since the CPA. The area was also under customary ownership but is to be demarcated. Many people, particularly those living near the main road, are returnees from Khartoum who came in around 2007–2008. Others towards Jebel Kujur/Korok³¹ are IDPs to Juba who were displaced as a result of forced evictions from the town in 2009. Other people include Bari traditionally from the area and people who have migrated to Juba since the signing of the CPA.

4.3 LAYOUT OF INFORMAL SETTLEMENTS

4.3.1 Roads

The informal settlements had no apparent planned streets and all lacked proper roads and drainage. Some were also on marginal land, such as river banks (e.g., Dressers Lane), and areas prone to flooding (e.g., Gabat, St. Mary's). Residents, particularly in Gabat and St. Mary's, complained of how flooding destroys shelters, affects movement, causes illness, and damages possessions. In all the areas, the lack of proper roads were linked by residents with high rates of crime and the inability of the police to patrol the areas, either on foot or by vehicle.

³¹ A large hill on the outskirts of Juba where there is both artisanal and commercial quarrying.

4.3.2 Shelter

Housing is not arranged in blocks. Traditional compounds and housing (tukuls) are the dominant feature in most areas. The number of tukuls on a family plot varies depending on the number of people in the household, what the family can afford, and whether or not the household is renting out tukuls. Main problems with living in a tukul were stated as being inadequate protection against damp/flooding and the risk of theft. The cost of building a tukul is estimated at around SDG 1,200 (about US\$500). Poorer households or households under the fear of eviction tend to live in shacks, for example in St. Mary's/MTC. Other households had well-built mud/brick houses with iron sheeting roofs on foundations which are reported to cost around US\$1,000 or more. This was particularly the case in Gudele near the main road and for a few houses of longer-term residents in Lologo North.

Most households have clearly defined plots with boundaries either marked by fences, poles, or plants, depending on what the household could afford. Many of respondents stressed the importance of fencing due to the high rates of crime. Within Juba town, plots are smaller, reflecting the higher population density and lack of room for expansion. In Gudele West, community leaders are trying to ensure that plots are 20m x 20m to reflect current standards and so facilitate demarcation when it occurs.

4.3.4 Sanitation

Sanitation levels in all the areas were extremely poor and a significant portion of households indicated that they did not have a basic pit latrine. Many households have constructed shallow pit latrines on plot perimeters that tend to overflow during heavy rain onto public pathways, a clear public health hazard. Women in Hai Nyakama and Lologo indicated that the lack of latrines makes them particularly vulnerable as they need to enter into isolated overgrown areas at night to defecate. A number of women have been subjected to forms of gender-based violence.

4.3.5 Basic services

Access to basic services in all the areas is minimal. In particular, communities complained of inadequate water supplies. There are few boreholes or communal standpipes and most households obtain water from water carriers who obtain untreated water from the Nile. Where boreholes are present, they are often broken. In Lologo, community leaders and several women complained that the lack of boreholes brought about fighting between women; on a number of occasions, this has escalated into fighting along tribal lines.

None of the settlements had electricity supplies, although some residents were noted to have generators. People rely on energy sources such as charcoal, kerosene, and candles.

Residents on the edge of Juba complained of the travel costs to the main market, schools, and other amenities in Juba town. The lack of a clinic in these areas was commonly raised as a concern.

4.4 LAND TENURE CATEGORIES AND PERCEPTIONS OF SECURITY OF TENURE

As noted above, the informal settlements studied are on publicly-owned, leasehold land, and land that was initially under customary tenure but which is now government land due for demarcation. Land may be acquired or occupied with or without the permission of the owner, i.e., the state, leaseholders, or customary owners.

The perception of tenure security amongst residents of informal settlements varies. To a certain extent, this is indicated by investment in shelter, although some respondents stated that they would further develop their plots if they could afford to do so. For example, in MTC and St. Mary's, people will not rebuild tukuls because of the likelihood of further demolitions. On the other hand, in Gudele West, residents have invested significantly in shelter. This reflects that fact that, whilst having extremely limited actual land rights in terms of the current Land Act (2009), many residents do not feel that they are acting illegally and consider themselves secure in their land rights. Many respondents' perceptions of land rights is based on the idea that "the land belongs to the people."

Besides the government demolition exercise, attempts have been made to displace informal settlement residents by private individuals. In Hai Mesikin, there have been ongoing disputes with people who claim to be leaseholders to the land. The community is disputing one claim in the courts on the basis that the person claiming to be the leaseholder does not have the necessary documents. In the meantime, they are refusing to move and are negotiating with the Bari Paramount Chief for plots in another area in Rajaf Payam which they will pay for.

Table 1: Land tenure categories and tenure security

	Gabat	Lologo	MTC/St. Mary's	Hai Nyakama	Gudele West/Hai Battery	Hai Mesikin (Dorupi)
Tenure category	Public land.	Public land (north & center); customary land (south).	Private leasehold land.	Mainly private leasehold (Juba University).	State land acquired from Bari community in 2009 & community registered land.	Public owned land acquired from Bari community in 2009–currently being allocated.
Formal stage	No demarcation.	Part was demarcated in 1970s, but never allotted. Communities have demarcated and allocated plots in Lologo South, but people now squatting on the roads in the grid.	Private commercial plots, some vacant.	N/A	Near Liberty City boundary unclear but some is community registered land & some CES land for government depts. Plans exist, but land still to be demarcated and allotted.	Leaseholds granted by MPI for first-class commercial plots (Dorupi). Demarcation in process.
Level of legitimacy according to owner or state government/land disputes	State government says that compensation will be provided in the event of development of the land. Near airport, likely to be for commercial purposes. Not listed in State Order.	State government says people will be resettled or provided with plots in the event of demarcation of the land. Not listed in State Order.	Listed in State Order. Demolitions of tukuls occurred in 2009. Owner of one area of land has given them permission to remain until he needs the land.	Listed in State Order.	Initial settlers in 2005 sought permission from Bari chiefs. Negotiating with Bari plots for residents.	On-going dispute between residents and individuals who say that have been allocated land by the state government but who do not have papers—case is in court. Ongoing negotiation with Bari community for alternative land.
Types of shelter	Mainly tukuls.	Mainly tukuls.	Poor quality sacking/material shacks.	Mainly tukuls or iron shacks.	Tukuls and brick/mud houses with sheeting roofs, foundation.	Mainly tukuls.

In Gudele West, the community leaders report ongoing negotiations with Bari chiefs in order to obtain plots in community registered land. Bari chiefs stated that they have negotiated the demarcation of plots for their own communities (around 1/3) with the State government in return for land being given to the State to accommodate the expansion of Juba. However, although Bari chiefs confirmed that community plots will be allocated to some existing residents, it is not clear how the allocations will occur across the Bari and informal settlement communities.

4.5 LAND ACCESS AND REASONS FOR LIVING IN INFORMAL SETTLEMENTS

4.5.1 Land Access

Processes of land access within and across the settlements also differ. In Gabat for example, an established informal settlement, common mechanisms of land access are through inheritance and subdivision of plots amongst relatives. In Lologo, on the edge of Juba, mechanisms of land access vary from inheritance and subdivision to squatting on empty land and informal rental. Some households report to have settled near friends or relatives who allowed them an empty area. In addition, there are many reports of “land-grabbing” by force, particularly by soldiers who have settled in the area since 2005.

The settlements that have formed since 2005 on the periphery of Juba have spilled onto land which until recently was held under customary tenure. Informal arrangements appear to range from quite complex negotiations with customary landowners to squatting without permission. In Gudele West for example, community leaders report how they initially agreed with Bari chiefs to settle in the area. Some households in this area have squatted without the permission of community leaders or the Bari owners of the land. In Hai Mesikin, which is a relatively small area, any household settling in the area obtains permission from the community leader.

Figure 1: Main forms of land access in study settlements

- Inheritance (through male relatives) (e.g., Gabat, Lologo, customary held land in Gudele West);
- Subdivision of family plots to children (e.g., Gabat, Lologo);
- Through tribal affiliation (all locations);
- Squatting with or without permission of households nearby (all locations);
- Allocation by community leader (e.g., Gabat, Hai Mesikin);
- Informal purchase (Lologo, Gudele West);
- By force (e.g., Lologo);
- Informal rental (all locations); and
- Permission from traditional authority (Gudele West, Hai Mesikin).

Additionally, there are reports of informal land sales. This is particularly the case in peri-urban areas, such as Gudele West. Several respondents reported buying land from land brokers or community leaders. In some cases, it is reported that they have in turn obtained the land or permission to sell the land from members of the Bari community. Amounts paid vary significantly, from around SDG200–2,500. Importantly, these sales of land are occurring without secure title. It was not possible in the time available to seek out and interview any land brokers.

Across all the settlements, there are tenants who rent tukuls or complete plots, generally through verbal agreement. Rents charged for a tukul range from around SDG50–90 per month, depending on the amount of space and the location. To rent a whole plots costs around SDG200 per month. There were a large

number of foreign migrant workers living in some informal settlements, particularly in Hai Mesikin and Hai Nyakama, the majority of whom rented.

Squatters on private leasehold land have made various arrangements with the leaseholders. In St. Mary's and MTC they are allowed to live rent-free, but have been told they will have to move when the land is to be developed, unless the government evicts them first. Leaseholders of vacant plots of land in Tong Ping have also allowed households to occupy land on a temporary basis rent-free.

4.5.2 Reasons for Living in Informal Settlements

There are a number of reasons why people living in informal settlements choose to remain despite their insecure living conditions (see Figure 2). For example, in Gabat most people were born in the area of have lived there for many years. In contrast, in St. Mary's and MTC, IDPs are unable to return home because of continuing insecurity and cattle raiding in their places of origin. In addition, they lack the resources to reestablish rural livelihoods. In more recently formed informal settlements, people reported that they preferred an urban existence and the opportunities it offered in terms of education and employment. Returnees commonly expressed that they had no ties to their home areas, had lived in urban areas previously, and did not want to return to a rural existence.

Figure 2: Common reasons for living in Juba

- Place of birth;
- Marriage (in the case of women);
- Access to education for children;
- Opportunities for employment;
- Opportunities for own education;
- Current employment;
- Access to hospital and better medical facilities;
- No ties to home area;
- Prefer living in a town/do not want to be a farmer;
- No care provision in place of origin (in the case of some older respondents);
- Stationed in Juba (soldiers and their families); and
- Insecurity in place of origin.

Almost all respondents reported that they would prefer to live on a formal plot. A few people had formal third-class plots (particularly in Gabat), but were renting these out or had not developed them. A number of men explained that they had a third-class plot, but also had obtained a plot in the area for their second wife or other wives. Very few people interviewed had attempted to obtain a formal plot either from the government or through rental, rejecting the idea on the basis of lack of availability and/or cost and time involved to progress an application.

Figure 3: Main reasons for living in informal settlements

- Born/grown up in the area;
- Lived in the area for many years;
- Access to livelihoods/close to place of work;
- Marriage (in the case of women);
- Social ties—family/friends;
- Formal plots to rent or lease are too expensive;
- Lack of availability of formal plots to apply for;
- Forcibly displaced from within Juba to peri-urban settlements;
- Have a formal plot, but renting it out;
- Have a formal plot, but haven't developed it yet; and
- Have a formal plot, but need a home for other wife/wives.

4.6 LAND DISPUTES WITHIN SETTLEMENTS

The level and nature of land disputes varied across the settlements. In Gabat, which is well-established and has strong community leadership, land disputes are said to be relatively infrequent and generally can be resolved at the community level. Where disputes do arise, they are often among families, often about the subdivision or inheritance of land, or between neighbors over plot boundaries.

One respondent in the study (a returnee from Khartoum) was living in an informal settlement because he had been unable to reclaim his formal leasehold plot in the town.

In areas where there is a large military presence, such as Lologo North and Hai Nyakama, civilian residents complained of land-grabbing by force by soldiers. In addition, in two cases, respondents had rented out tukuls to soldiers and their families. However, after several months they stopped paying rent and have refused to move, claiming the land as theirs.³² In both these areas, tensions over land appear to be developed along ethnic lines and Dinka settlers in particular are blamed. Community leaders state that while Dinka who have lived in settlements for many years follow community procedures, those that have arrived recently cause problems over land. In the instances of land-grabbing outlined by respondents in this study, Dinka soldiers were always blamed.

On the other hand, soldiers denied that “land-grabbing” on a large scale occurs and it is carried out by only a few. Many soldiers appear to feel very let down regarding the provision of land for them and their families in Juba. Soldiers state that many have not been home throughout the conflict and that those stationed in Juba now have the opportunity to be with their families. There are complaints that they are forced to be squatters as the government is not providing them with adequate accommodation.

Women appear particularly vulnerable in terms of land access. One female household head reported having had her land grabbed by a soldier. She spoke of the fact that the absence of her husband to fight back or negotiate with community leaders, who she said often require payment to act on one's behalf, meant that she had been unable to remain on her land. Another woman respondent explained that she and her daughter were displaced from their home when her husband died. As her husband had no male heir, his brother had taken ownership. As a result, she is renting a tukul which she finds expensive and she cannot afford to send her daughter to school.

³² It was not possible to interview the tenants.

4.7 SOCIO-ECONOMIC PROFILES OF RESIDENTS OF INFORMAL SETTLEMENTS

4.7.1 Social Organization

The participatory mapping exercises and the interviews conducted in each settlement indicate that the layout of settlements is to a large extent based on time of arrival, social networks, kinship groups, and/or livelihood activities as well as topography. In particular, it was found that households may settle in groups according to tribe or area of origin. A clear example is that of the squatters in St. Mary's and MTC, virtually all of whom are Mundaris. In Lologo, there are clear distinctions between people from different tribes, including areas primarily of Lopits, Nuer, and Dinka who arrived at different times. In addition, the area near the JIU is now inhabited mainly by soldiers and their families. Hai Nyakama also has clear military and civilian sections. In Gudele West, many people living towards the main road are returnees from Khartoum, many of whom are employed in the formal sector.

Often where households settle depends on or determines their livelihood activities. Those operating home-based enterprises, such as making merissa, providing laundry services, or having a market stall, locate themselves in accessible locations that can attract more customers. Women in Gudele West, who had been beer sellers and who had been forcibly evicted from Juba in 2009, complained of how they were unable to reestablish their livelihood because they were unable to settle near the main road where they would get their customers. Instead, they are carrying out stone-crushing and live near Jeble Kujur.

4.7.2 Employment and Livelihoods

Interviews across the settlements indicate a great variability of types of employment. Education standards also vary; some people interviewed had university degrees, others had no formal education. Although some residents of informal settlements may work in the formal sector, the majority are likely to work in the informal sector across a number of activities (see Table 5).

Table 5: Common forms of employment/sources of income

Formal jobs/sources of income	Informal jobs
State government civil service roles	Domestic help
NGOs and UN agencies	Market stall
Soldiers in SPLA	Merissa making and selling
Police Service—policemen/women	Hotel worker
Prisons Service—wardens	Artisanal quarrying/stone-crushing
Commercial sector—drivers, guards	Charcoal making & selling
State pension	Odd jobs at market
	Doing laundry
	Bread making
	Soft drinks seller
	Grass collecting

Income levels also vary but are generally low, given the costs of basic requirements (see Table 6). For example, soldiers, policemen, and prison wardens earn around SDG350 per month. Drivers and guards in the commercial sector earn around SDG400–500 per month. State pensions are low (under SDG100 per month). In the informal sector, income is generally much less and very irregular. Most people carry out a variety of activities. Those working in Konyo Konyo doing odd jobs, for example, reported earning about SDG5 per day; some workers are not paid in cash, instead they receive leftover food. Hotel workers earn about SDG15 per day. Earnings from market stalls, bread-making, etc., are around SDG20 per day upwards.

The issue of a growing number of commercial sex workers was raised as a concern in Hai Nyakama and Lologo and is attributed to extreme poverty and the need for money. Women coming from rural areas and other countries said they earned enough money in Juba to send their children to school back home. Women working as commercial sex workers live in particularly insecure situations. In one area, women said they were paying around SDP10 a night rental for a place to stay and have some protection.

Table 6: Basic food and supply costs

Item	Cost (SDG)
1kg meat	12
1 liter cooking oil	4
1kg maize	4
Chicken	50
4 tomatoes	2
200 liters Nile River water	5
Small plastic bag of charcoal	1
Goat	180
Sheep	200

4.7.3 Rural-Urban Linkages

Many respondents maintain links with their rural areas of origin and visit for family occasions. In addition, many have land rights in rural areas where members of the extended family stay or where urban based members of the extended family frequently visit. The reasons for continuing urban-rural linkages appear to be complex. Some respondents pointed at the potential role that a rural home can play as a safety net, particularly in relation to the provision of food and care as one gets old. Some households sent money to their relatives living in rural areas and a large number of respondents also cared for children of rurally based relatives in order that they could attend school in Juba. Few respondents reported receiving remittances. Several of the returned refugees and returnees from Khartoum have relatives who have remained in the place of displacement, in order that they can obtain a better quality of education. Some also own land in their place of displacement.

4.7.4 Social Problems

All areas suffer severe social problems including crime, alcoholism, and community conflict, particularly around boreholes. The issue of drunken soldiers and youth gangs was commonly raised. Community leaders and women felt that young female youth were particularly at risk. Young people talked of a severe lack of opportunities. In Gabat, there was reported to be tensions between resident and returnee youth.

4.7.5 Foreign Migrant Workers

There are a growing number of foreign migrant workers, particularly from Uganda, in areas with large markets, such as Hai Nyakama and Lologo. Many bring produce into Sudan from Uganda to sell. All said that Juba offered them better income opportunities than Uganda. There is some tension between resident communities and foreign migrant workers, who are regarded as coming in and taking jobs.

4.7.6 Community Organization

Levels of community organization also vary. Most have some form of youth and women's groups and borehole committees. In Gabat, there was also a group supporting community security. In Lologo, community leaders stated that their level of authority has been undermined in recent years by the presence

of soldiers and returnees who do not understand or want to follow the procedures. On the other hand, Gabat and Hai Mesikin appear to have very strong community organization. Community leaders perform “checks” on people moving into the areas. Community structures in Gudele West also appeared well-established, but the size and number of people settling in the area means that it is difficult for community leaders to maintain oversight of the community. The residents in St. Mary’s/MTC operate more informally.

In Hai Nyakama and Lologo, soldiers’ committees and civilian committees did not interact.

Demarcation committees

Residents in Gabat, Lologo, Hai Mesikin, and Gudele West have formed “Demarcation Committees” in order to appeal through the relevant payams to the state government and MPI for demarcation of their communities and formal leaseholds. There is general acceptance within communities that households should contribute towards the costs of the demarcation of formal leasehold plots. The Committees have formed their own registers to varying extents, listing households residing in the areas. The rules for registration vary across the communities and were difficult to verify. In some cases, different accounts were given of the rules. Some community leaders state that they have registered all residents in their areas, whereas in other areas some leaders said they have not registered people who have arrived since 2005, as there are already too many people. All community leaders reported that female-headed households would be treated the same as other households. The amount for registering varied from around SDG20–50.

Despite the presence of Demarcation Committees and registers, it is difficult to ascertain whether or not communities will have priority in being allocated land should/when demarcation occurs. Moreover, communities appeared to have little understanding of the procedures for demarcation and that, given standard plot sizes and the grid layout, many households will be displaced.

In addition, communities report paying the Survey Department of the MPI for road demarcation. Amounts reported vary from SDG10,000–40,000. In one area, community leaders say they have collected SDG300,000 (SDG150 per household) to pay the Survey Department (evidenced by paper work and receipts—it was not possible to verify these facts with the Survey Department). It is not clear whether those paying for road demarcation will in the long term benefit, a particular issue as the amount paid is significant for many low-income households. Also it is not clear on what procedures these payments are based.

4.8 SUMMARY OF FINDINGS

A large number of urban residents in and around Juba have occupied land through informal mechanisms. As a result, informal settlements have emerged within the town and on its periphery on different categories of land (public, private leasehold, and customary). Different forms of informal land access have existed since before the second civil war and have continued to the present. Since the signing of the CPA, the pressure on land through the arrival of large numbers of people has also seen some of these structures eroded, with people squatting without permission or taking land by force. However, on the whole, it is reported that there are relatively few land conflicts and most of these are resolved locally, the main exception being where military actors are involved.

While having limited actual rights in terms of the Land Act, many informal settlement residents consider themselves secure in their land rights, although they have a very low understanding of the formal legal and land management context. Investment in shelter represents a substantial investment, especially in relation to poverty levels. Uncertain land tenure in informal settlements that have already experienced demolition contributes to the insecurity of many households, making them reluctant to invest in improving their housing and the areas in which they live.

The study demonstrates the complexity of informal settlements and their communities and points to general high levels of structural poverty. This includes limited access to basic services, high rates of crime, poor sanitation, and a large proportion of informal income-generating activities. Spatial arrangements can greatly facilitate social support networks and access to livelihoods. At the same time, the concentration of certain groups can raise the potential for exclusion of some groups or even community conflict over resources, such as access to water.

Many people point to the advantages of living in Juba, as it provides access to better livelihood opportunities and employment. Although many households are evidently materially very poor and have difficulties meeting their basic needs, some households have members who are in formal employment and who have been able to invest in more permanent shelter. In addition, many households have to be seen within the context of rural-urban linkages and as parts of extended families with a stake in the town.

Importantly, communities also have varying degrees of organization relating to land administration. Some maintain registers of households living in the areas and define their own eligibility criteria for inclusion. Residents are willing to pay to be included on these registers in the hope that they will be eligible for allocation of a demarcated plot.

So far little attention has been paid to making land available for those moving to Juba, particularly lower-income groups. The fact that forced evictions are a common phenomenon in and around Juba remains a critical concern. Moreover, very little attention is being paid to making land available for resettlement programs for displaced or evicted households. One major bottleneck is the availability of land on the edge of Juba. Where leasehold plots are made available, non-transparent allocation procedures favor those in formal employment, to the detriment of low-income groups.

4.9 CONCLUSION

Tenure legalization policies need to take account of the different categories of land (public, private, customary) on which informal settlements have formed. Therefore, various approaches will be required to address informal settlements. However, it must also be recognized that existing informal settlements contain many vulnerable groups that rely on fragile livelihoods and social networks in order to survive, and who rely on different ways to access land. The economic impact of removing shelter places demands on residents, many of whom have a limited ability to cope with these demands. Tenure upgrading and legalization policies need to be sensitive to community needs and social organization. Understanding the livelihood activities of informal settlement residents is particularly important so that livelihoods can be strengthened where possible and the negative impacts of upgrading on people's livelihoods can be minimized (Payne, 2002).

In practice, for many, informal access is the only available means for acquiring land. Forced eviction or demarcation of existing informal settlements can lead to a subsequent increase in informal settlements on the edge of town, which the government's policy regarding informal settlements seeks to avoid, in theory. There is a considerable gap between existing institutional arrangements and those necessary for proper provision of land to people, particularly lower-income groups. This points to not only an increase in land values and a potential reluctance to supply land to lower-income groups, but also to the fact that attitudes to land are deeply rooted in politics and in cultural values. There are broader tensions over land between traditional Bari leaders, the state, and regional government. This suggests that strategies for improving urban land management across towns in Sudan will need to be sensitive to political and cultural contexts. Although institutional capacity building will be important, there also needs to be a change of mindset and an understanding that informal settlements are likely to mark the way urban areas in Southern Sudan will continue to grow.

5.0 CONCLUSIONS AND KEY RECOMMENDATIONS

5.1 INTRODUCTION

This report argues against current practice in Juba with regard to informal settlements and providing formal title through the leasehold system, the costs of entry preclude access to formal land by lower income groups. Instead, land policymakers need to accept the continuing presence of informal settlements and examine how best to regularize existing informal settlements, as well as limit the formation of further informal settlements. Drawing on Section 1.5, experience from other countries in Sub-Saharan Africa demonstrates that land tenure formalization programs are more likely to succeed where approaches are based on current norms and resources. The Land Policy needs to support a diverse range of options to succeed.

It is important to emphasize the challenges that will be involved in implementing any policies relating to informal settlements in Juba. The nascent GOSS is still developing its structures and the upcoming referendum and potential separation of Southern Sudan from the North is creating further uncertainty. Current attitudes towards informal settlements, increasing land values, and broader tensions over land mean that regularization approaches are likely to be resisted by some segments of the population. Moreover, given the relatively recent emergence from civil war, administrative capacities of urban authorities are likely to be inadequate to address informal settlements. They will need significant support to acquire this capacity in the longer term. It is therefore likely that there will be a lengthy transitional period, perhaps of many years, before the necessary legislation is put in place, data is gathered, and capacity to support implementation is present across all 10 states.

Although the recommendations below refer to the town of Juba, they will have relevance for other towns in Southern Sudan.

5.2 LAND LEGISLATION REFORM

It is recommended that the Land Policy require enactment of legislation that provides for the incorporation into the Law of the principles mapped out in the Habitat Agenda. In particular:

5.2.1 Protection against Forced Evictions Should be the Overriding Priority

The government should place moratoria on mass evictions and demolitions until a legal framework providing effective remedies that balance the state's right of eminent domain and the protection of individual property rights has been developed. Relevant authorities should be instructed that evictions can only be carried out on the basis of a court order after adequate consultation with those who may be affected and after prior arrangements have been made regarding resettlement and compensation, in accordance with the Land Act 2009. Rural and municipal authorities should be trained in the Land Act 2009, the Interim Constitution, and international standards regarding eviction.

5.2.2 Taking Advantage of Adverse Possession to Provide Security of Tenure to Households in Some Existing Informal Settlements

Provisional tenure should be granted to existing residents of informal settlements while other options are explored through the Land Policy. The law will need to distinguish between informal settlement residents and land-grabbers.

Although not a tool on its own, consideration should be given to the application of the doctrine of adverse possession being extended to current occupation on state land or *de facto* privately owned land. The application of this doctrine must ensure that certain groups are not excluded, particularly women, female-headed households, returnees, and IDPs. It must also take into account that there may be cases where individuals have occupied property belonging to a person displaced as a result of the war. Adverse possession claims should not be dealt with until land dispute claims have been settled (UN-Habitat, 2007).

Given that some land has been settled in Juba through force, legislation should incorporate a requirement that occupation has been through peaceful means. The rule should also outline where adverse possession is not applicable. This may be, for example, where settlements are on hazardous land or land required for public purposes.

To minimize rapid urbanization, the law should prescribe an end date after which recognition of informal property rights may no longer be considered.

5.2.3 Laws to Support the Potential for Community Ownership, Group Titling, and Incremental Tenure Policies in Urban Areas

Collective titles or incremental tenure policies are likely to be more appropriate in situations such as Juba. They minimize the risk of market-based evictions and simplify and make more affordable formal land tenure in the long term. Additionally, intermediate rather than full surveys may only be necessary, easing requirements on MPI Survey Departments.

5.2.4 Informal Tenancies

Urban tenancy rights are poorly defined and consideration should be given to having these codified in law. Legal residential tenancy rights should reflect the informality of many such agreements but provide a process for community resolution of disputes.

5.2.5 Establishment of Community-Based Committees in Informal Settlements

The law should provide for the establishment of community based committees to support the process of implementing group titling and incremental tenure upgrading projects. These should have prior approval by a relevant urban authority. As is the case with Compensation Committees, the law should outline the composition as well as the responsibility and authority of these committees.

5.2.6 Designation of Informal Settlements as “Special Zones”

Legalization of informal settlements using group titling can be supported by the development of “special zones” within master plans, allowing more flexible rules in such areas.

5.2.7 Flexible Building Standards

Regulations should recognize more flexible building standards and materials, allowing for cheaper local materials that can still satisfy health and safety requirements for informal settlements.

5.3 LAND MANAGEMENT

The current system of urban land management needs to be reviewed to support the provision of tenure security to informal settlement residents. This could include:

5.3.1 Recognition by the Land Registry of Data Collected by Authorized Community-Based Committees and the Relevant Urban Authority

Communities may already maintain registers of rights on land with defined eligibility criteria. Where the use of adverse possession is the desired option, it is proposed that authorized community representative committees gather information and assess the legitimacy of informal residents' claims to land. This will provide prima facie proof of legitimate occupation of land.

5.3.2 Updating Land Management Techniques

Measures should include the revision of the current planning system and existing urban master plans with informal settlements isolated as "special zones" where flexible land tenure rules and construction requirements (in particular allowing land to be developed in phases) are allowed.

5.3.3 Developing Underutilized Private Land

A number of informal settlements in Juba are noted to be on underutilized private leasehold land. Areas to consider might be the development for residential purposes of vacant or underutilized leasehold urban land, development of which could be achieved either through agreements with leaseholders or by expropriation. Additionally, taxes on private leasehold land left idle can be an important tool as it may help to discourage land speculation and to ensure a supply of land for housing through subleasing. This also helps keep subleased land prices down, which in turn may make land more affordable. This would need to take into account of the rights of returnees.³³

5.3.4 Clarification of the Urban Land Management Roles of Different Levels of Government

More broadly, the land management process also needs to be clarified, taking into consideration the Local Government Act 2009.

5.3.5 Outlining Procedures to Allow for the Expansion of Towns and to Establish Town/Municipal Boundaries

The shortage of appropriate land released for development/settlement purposes limits the ability of urban authorities to provide new land for residential purposes. To support the expansion of towns and prevent the formation of new informal settlements, the process how land is to be acquired from customary landowners on the peripheries of towns needs to be addressed. An approach is also needed to gazette

³³ "A person may be entitled to restitution of a right in land if he or she lost her or his right after an involuntary displacement as a result of the civil war starting from 16May 1983". (Chapter XXXI) Claims must be made within three years of the 2009 commencement of the Land Act (by 16 February 2012).

towns and establish boundaries, particularly between rural and urban areas and between payams, through working with traditional authorities and government to establish mechanisms.

5.4 RESETTLEMENT OPTIONS

Resettlement may be a necessity when informal settlements are intrinsically risky and unsafe, or when areas are necessary for creating public facilities and infrastructure. Although the Land Act provides for resettlement and guarantees residence for every Southern Sudanese in any part of Southern Sudan, the issue of alternative land is not straightforward, as it may undermine the livelihoods of lower income groups. In addition, resettlement to a different community often results in a situation where land is only provided on a temporary basis as “newcomers” do not belong to that community. Solutions should be discussed with both affected and receiving communities.

5.5 IMPROVING LAND RIGHTS OF WOMEN

Women in informal settlements may be prone to property grabbing after the death of a spouse, or may be discriminated against with regard to accessing land. Given the post-conflict context,³⁴ consideration should be given to affirmative action policies, such as land allocation to female-headed households. The recognition of women’s equal right to land should be combined with a prohibition of discriminating against women in their access to land. Joint registration of land co-ownership or co-occupancy should also be supported.

5.6 MILITARY ACTORS

The study suggests that land rights are particularly problematic in areas where high numbers of military personnel and their families are living. Civilian and military community organizations do not interact and claims to land by soldiers are leading to conflict with informal settlement communities. Additionally, it is expected that a large number of demobilized soldiers will also settle in urban areas (Brethfeld, 2010). Improved communication and coordination between civilian and military groups should be supported at the community level, and also between local government and the SPLA. Allocation of temporary land use rights for military actors stationed in or near urban areas should be considered.

5.7 GOVERNANCE

Improved governance of urban land management is required through better access to information, more effective inclusion and participation by communities in decisions affecting them, more accountability from government, and more capacity in the community to support new initiatives. At the state government level, there should be greater transparency with regard to land allocation procedures.

5.8 DECENTRALIZATION

Best practice points to the fact that decentralization of the delivery of land to community management structures is key in improving local governance and increasing local ownership of programs. Further decentralization below the payam level to allow for community management structures, land dispute mechanisms, and land delivery activities in informal settlements should be considered.

³⁴ It is estimated around 45–50 percent of returnee households are female-headed (NISPS, 2010).

5.9 FINANCING

While communities may be able to contribute to the costs of tenure upgrading, such programs are expensive and ways need to be found to provide accessible finance. Lending procedures of commercial banks are usually not adapted to the needs of the urban lower-income groups. Other lending procedures, such as microcredit organizations, may support such projects.

At the level of supporting urban authorities, sources of financing could range from local taxes to transfer of national resources, involvement of the private sector, international financial organizations, and donors.

5.10 ENSURING EFFECTIVE CAPACITY BUILDING PROGRAMS

Existing institutional planning capacity necessary to manage informal settlements adequately is presently at a very low level. Medium- to long-term capacity building programs are required to support urban authorities and local communities in efforts to achieve good governance through decentralized systems of administration. At the community-level, assistance is also required to explain existing systems as well as new systems.

5.11 DEVELOPMENT OF A REGIONAL IMPLEMENTATION FRAMEWORK

A practical aspect of incorporation of the Habitat Agenda will be implementing pilot projects on land tenure regularization. This should include:

- Carrying out land audits, obtaining necessary baseline data, and distinguishing between settlements that might be possible to regularize and those that are in environmentally hazardous areas or sites that might be needed for a public purpose;
- Ensuring necessary legislation is in place;
- Identifying pilot areas;
- Ensuring an incremental approach to implementation where small achievements will build confidence and address potential reservations regarding regularization policies; and
- Developing budgets and identifying sources of funding.

5.12 SUPPORT OF DATA GATHERING AND FURTHER RESEARCH ON INFORMAL SETTLEMENTS

There is a general lack of information concerning the scale and nature of informal settlements across Southern Sudan. There is a need for further research on the diversity of informal settlement types and land administration functions performed unofficially in informal settlements. Quantitative information is also required regarding informal land markets and rental supply in order to develop a more systematic understanding of the dynamics driving this market.

5.13 COORDINATION ACROSS SECTORS

Policies to address informal settlements need to be placed within the wider policy context. For example, GOSS is reviewing urban planning approaches and a housing policy that seeks to provide affordable houses to lower income groups.³⁵ Other policies might include those aimed at rural development,

³⁵ Outlined in a press briefing on 17 August 2010 by the Ministry of Housing and Physical Planning.

promoting job generation, microcredit, migration, demobilization, disarmament and reintegration, gender and social welfare policies, and regional and international cooperation.

5.14 CONCLUSION

While the study was exploratory in nature, the findings point to the complexity and variability of informal settlements in and around Juba and the vulnerability of many of the people living in them. The development of the Land Policy in Southern Sudan represents an opportunity to develop approaches that recognize the potential of residents of informal settlements to contribute to the development of the towns and regions in which they live.

The weak legal, administrative, and technical capacity of government in urban land management reinforces the need for a Land Policy that focuses on the inclusion of informal settlement communities. The study points to the likely limitations of institutional capacity building of urban authorities for urban development in the short term. Attitudes towards informal settlements need to change and it takes time to build trust between different stakeholders. Given the institutional reality, the government needs to focus on building links with communities. Given the low human resources capacity, this will require investment in institution building, as well as transparent and accountable forms of governance. These need to permit recognition of the wide set of stakeholders in urban and peri-urban land.

Different approaches will be required to address the various situations across Southern Sudan's urban areas. These must be transparent and decentralized to the level where decision making can be most effective. Additionally, in a post-conflict context, it is essential that new sources of conflict are not created. Therefore, the Land Policy should support the integration of residents of informal settlements into urban areas as a whole. Although informal settlements will most probably remain a dominant feature of urban areas in Southern Sudan, as the capacity of urban authorities becomes stronger (and if legal land becomes more accessible and affordable), so the prevalence of informal settlements may be reduced.

APPENDIX I: SUMMARY OF RESEARCH METHODS

Research Issue	Variable	Data collection tool	Sources of Data
I. Examining how current planning proposes to deal with informal settlements.			
Planning responses.	<ul style="list-style-type: none"> Attitudes towards informal settlements; Land allocation and delivery; Levels of land acquisition from peri-urban communities over time; Current policy and urban planning; Nature of evictions and compensation; and State and regional government capacity. 	<ul style="list-style-type: none"> Key informant interviews; (KII) and Literature review. 	<ul style="list-style-type: none"> Informants at GOSS and state levels (Ministry of Physical Infrastructure); Traditional authorities; Community leaders and knowledgeable residents; and Donor reports.
2. Understanding the pattern and differing characteristics of informal settlements in and around Juba.			
Layout and organization of informal settlements.	<ul style="list-style-type: none"> Plot sizes; Plot structures and shelter types; Nature of land disputes; Settlement social and organizational infrastructure; Shelter costs; Land costs and rental costs; Nature of land rights; Perception of tenure security; Attitudes towards demarcation; and Relationships with authorities. 	<ul style="list-style-type: none"> KII; Literature review; Settlement-level survey and participatory mapping exercise; Transect walks; Focus group discussions; and Observation. 	<ul style="list-style-type: none"> Informants at GOSS and state levels (Ministry of Physical Infrastructure); Community leaders and knowledgeable residents; Particular identity groups (e.g., female-headed households /returnees/IDPs/military) Donor reports.

Research Issue	Variable	Data collection tool	Sources of Data
Factors relating to the growth and location of informal settlements.	<ul style="list-style-type: none"> • Settlement size; • Location and type of land occupied; • Growth of informal settlements over time; • Demographic information over time; and • Policy and legislation over time. 	<ul style="list-style-type: none"> • KII; • Literature review; • Satellite images; and • Focus group discussions. 	<ul style="list-style-type: none"> • Informants at GOSS and state levels (Ministry of Physical Infrastructure); • Historical literature on Sudan; • Donor reports; and • Settlement residents.
3. Investigating the socio-economic characteristics of those living in informal settlements in Juba.			
Socio-economic characteristics of informal settlement residents.	<ul style="list-style-type: none"> • Ethnicity; • Gender; • Occupation; • Social problems; and • Income level. 	<ul style="list-style-type: none"> • KII; • Literature review; • Transect walks; • Focus groups discussion • Observation. 	<ul style="list-style-type: none"> • Community leaders and knowledgeable residents; • Particular identity groups (e.g., female-headed households/returnees/IDPs/military); and • Donor reports.

REFERENCES

- Aina, T. A. (1989). Many routes enter the market place —housing sub-markets for the urban poor in Metropolitan Lagos, Nigeria. *Environment and Urbanization*, 1(2), 38-49.
- Beall, J., and Fox, S. (2007). *Urban Poverty in the 21st Century. Towards an Inclusive and Sustainable World*. London: Oxfam.
- Brethfeld, J. (2010). *Unrealistic expectations: current challenges to reintegration in Southern Sudan*. Geneva: Small Arms Survey.
- CitiesAlliance. (1999). *Cities Alliance for cities without slums. Action plan for moving slum upgrading to scale*. Washington: Cities Alliance.
- Collins, R. O. (2002). *The Nile*. New Haven & London: Yale University Press.
- Davis, M. (2006). *Planet of Slums*. London: Verso.
- De Soto, H. (2000). *The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere Else*. New York: Basic Books.
- Deininger, K. (2003). *Land policies for growth and poverty reduction*. Washington: World Bank and Oxford University Press.
- Deng, D., Simon, D., and James, O. (2010). Urban Land Conflict in Eastern Equatoria. *Juba Briefing July 2010*.
- Durand-Lasserve, A. (2006a). Informal settlements and the millennium development goals: global policy debates on property and ownership and security of tenure. *Global Urban Development*, 2(1), 1-15.
- Durand-Lasserve, A. (2006b). Market-driven evictions and displacements: Implications for the perpetuation of informal settlements in developing cities. In M. Huchzermeyer & A. Karam (Eds.), *Informal Settlements. A perpetual challenge?* Cape Town: UCT Press.
- El-Bushra, E.-S. (1967). The Factors Affecting Settlement Distribution in the Sudan. *Geografiska Annaler. Series B, Human Geography*, 49(1), 10-24.
- Hansen, K. T., and Vaa, M. (Eds.). (2004). *Reconsidering Informality. Perspectives from Urban Africa*. Uppsala: Nordiska Afrikainstitutet.
- Jenkins, P. (2006). Informal settlements: Infernal and Eternal? The role of research in advocacy and Informal Urban Settlements in Angola. In M. H. a. A. Karam (Ed.), *Informal Settlements. A perpetual challenge?* (pp. 84-100). Cape Town: UCT Press.
- Jones, G., and Ward, P. (1994). *Methodology for Land and Housing Market Analysis*. Cambridge, MA: Lincoln Institute of Land Policy.
- Junne, G., Poerink, E., and Verkoren, W. (2004). *Countering Urban Segregation in Post-Conflict Areas*. Paper presented at the Countering Urban Segregation: On the reasons behind and struggles against current urban segregation, Vrije Universiteit Amsterdam, 14th-15th October 2004.

- Kombe, W. J., and Kreibich, V. (2000). Reconciling informal and formal land management:: an agenda for improving tenure security and urban governance in poor countries. *Habitat International*, 24(2), 231-240.
- Mabogunje, A. (1990). Urban planning and the post-colonial state in Africa: a research overview. *African Studies Review*, 33(2), 121–203.
- Maxwell, D. (1996). Highest and best use? : Access to urban land for semi-subsistence food production. *Land Use Policy*, 13(3), 181-195.
- Mehta, D. (2006). Urbanisation of Poverty *Habitat Debate*, 6(4).
- Moser, C. (1998). The asset vulnerability framework: reassessing urban poverty reduction strategies. *World Development*, 26(2), 1-19.
- NISPDS. (2010). *Scoping Paper: Land Tenure and Property Rights in Southern Sudan*. Juba: Nile Institute of Strategic Policy and Development Studies.
- Oystein, R. (2009). *Land, Security and Peace Building in the Southern Sudan*. Oslo: International Peace Research Institute.
- Pantuliano, S. (2007). The Land Question: Sudan's Peace Nemesis, *Briefing Paper prepared for the Social Science Research Council*. London: Overseas Development Institute.
- Pantuliano, S. (2009). Going Home: Land, return and reintegration in Southern Sudan and the Three Areas. In S. Pantuliano (Ed.), *Unchartered Territory. Land, Conflict and Humanitarian Action* (pp. 153-170). Rugby: Practical Action Publishing.
- Pantuliano, S., Buchanan-Smith, M., Murphy, P., and Mosel, I. (2008). The Long Road Home. Opportunities and obstacles to the reintegration of IDPs and refugees returning to Southern Sudan and the Three Areas. Report of Phase II. Conflict, Urbanisation and Land., *HPG Commissioned Paper*. London: Overseas Development Institute.
- Pareto, V. E. (2008). Southern Sudan Urban Development Strategy: <http://ssrn.com/abstract=1285243>.
- Payne, G. (2002). Introduction. In G. Payne (Ed.), *Land, Rights and Innovation. Improving Tenure Security for the Urban Poor*. (pp. 3-22). London: ITDG Publishing.
- Post, J. (1996). The politics of urban planning in the Sudan. *Habitat International*, 20(1), 121-137.
- Rakodi, C. (2006). State–society relations in land delivery processes in fi ve African cities An editorial introduction. *International Development Planning Review*, 28(2), 127-136.
- SmallArmsSurvey. (2008). Neither 'joint' nor 'integrated'. The Joint Integrated Units and the future of the CPA. *Sudan Issue Brief. March 2008*.
- UN-Habitat. (2003a). *The challenge of slums. Global report on human settlements 2003*. London & Sterling, VA: Earthscan.
- UN-Habitat. (2003b). *Handbook on best practices, security of tenure and access to land. Implementation of the Habitat Agenda*. Nairobi: UN-Habitat.
- UN-Habitat. (2007). *From emergency to reconstruction. A Post-Conflict Land Administration and Peace-building Handbook. Series 1: Countries with Land Records*. Nairobi: UN-Habitat.
- UN-Habitat. (2009). *Land and slum upgrading*. Nairobi: UN Habitat.
- UN Demolition Taskforce Meeting 5th May 2009*, (2009).

- UNEP. (2007). *Sudan. post-conflict environmental assessment*. Nairobi: United Nations Environment Program.
- Unruh, J. D. (2007). Debates. *City: analysis of urban trends, culture, theory, policy, action*, 11, 115-120.
- USAID. (2005). *Juba Assessment Townplanning and Administration Report September - October 2005*: USAID.
- USAID. (2007a). *Juba, Wau and Malakal. Community Planning for Resettlement. Prepared by Creative Associates International*.
- USAID. (2007b). *Southern Sudan environmental threats and opportunities assessment. Biodiversity and tropical forests assessment*. Washington: International Resources Group.
- USAID. (2009a). *Expanding Agriculture and Food Security Activities in Southern Sudan. Assessment Report for Economic Growth Team. June 2009*: USAID.
- USAID. (2009b). *Government of Southern Sudan Functional Capacity Prioritization Strategy*: USAID.

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CUSTOMARY TENURE AND TRADITIONAL AUTHORITY IN SOUTHERN SUDAN: CASE STUDY OF JUBA COUNTY

DECEMBER 2010

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DISCLAIMER

The author's views expressed in this publication do not necessarily reflect the views of the United States Agency for International Development or the United States Government.

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ABBREVIATIONS

CES	Central Equatoria State
CPA	Comprehensive Peace Agreement
GOSS	Government of Southern Sudan
ICSS	Interim Constitution of Southern Sudan
MoHPI	Ministry of Housing and Physical Infrastructure
MOLACD	Ministry of Legal Affairs and Constitutional Development
NISPDS	Nile Institute for Strategic Policy and Development Studies
RDC	Regional Development Cooperation
SPLA	Sudan Peoples' Liberation Army

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Wani Mathias Jumi

Team Leader

EXECUTIVE SUMMARY

Juba town undeniably is experiencing urbanization process created by the demand for rural lands described as customary land. An increasing occurrence of unplanned transformation of customary land into urban land has brought changes to the customary land tenure system practiced in Juba County.

This report presents the results of research on customary land tenure to the Nile Institute for Strategic Policy and Development Studies (NISPDS). The research was carried out to find out policy recommendations for the Government of Southern Sudan (GOSS) and other stakeholders to develop land policy and regulations to operationalize the Land Act (2009) and other laws for regulating land. The report further presents policy recommendations that would address the problems facing customary land tenure systems and the role of traditional authority in communities in Southern Sudan, in particular, those around Juba town.

The research confirmed illegal sale of customary land in Juba County. It reveals that Rajaf Payam and Northern Bari Payam are the most affected payams, because the town is growing in those directions. The chiefs are prominently featured as the perpetrators of illegal sale of customary land.

Customary land tenure system in Juba County is changing, especially in the payams near the town, as they face pressure to meet urban demands for land for settlement. The monetary value of customary land in these payams is high because of the demand for land. This transformation of customary land into urban land has brought problems and conflicts with respect to issues such as ownership and disputes over boundaries.

In the past, traditional mechanisms were used to resolve land disputes of customary nature; today, land has gained both economic and political prominence and politicians are using it to complicate the matter for their own interests. The research also reveals that most land disputes involving the Bari people and other tribes reported to the Government of Central Equatoria State (CES) have not been resolved yet. Examples of such border disputes are: dispute between Northern Bari Payam and Dolo Payam over Ku'da Lo'dimi, the dispute between Rajaf Payam and the Lulu'bo of Lokiliri Payam over Nesitu, and the dispute between the Bari and Mundari tribe over Manggalla. All these border issues have been referred to the government because chiefs have failed to resolve them.

The research also points out the urgency for the Governments of CES to address the issue of criteria and procedure that the state uses when allocating land to its citizens.

The issue of customary land tenure and traditional authority in Southern Sudan affects government at all levels because of the diverse customs and the dual role of traditional authorities as servants of the government as well as heads the traditional institutions.

The research found that the concept of "land belongs to the people" has created conflict between communities and their traditional leaders. Communities perceive these traditional leaders as both their representative but also government servants, especially when the government demands land from them. Consequently, they fear chiefs may compromise their position to the detriment of the community by being soft in negotiating land deals with the government.

Communities are also bitter about the lack of transparency in consultation process between the government and their leaders when the former wants land from the community. They further revealed that in many occasions government has not honored its obligations or promises made under agreements

reached with the communities. Frequent reshuffling of staff in cabinet or ministerial positions impedes the community's efforts to follow up on government promises.

Communities fear for their customary lands because of lack of transparency in the Ministry of Housing and Physical Infrastructure (MoHPI), resulting in depriving poor citizens from accessing land for residence. To them, this creates unnecessary demand on customary land by citizens in Juba. Land policy, therefore, should ensure a transparent, fair, and equitable allocation of land to all citizens.

The communities are totally opposed to land grabbing as means of land acquisition. Land policy should discourage land grabbing, and fraudulent misrepresentations in the name of institutions. There should be clear steps and regulations to follow in the process of acquiring land.

I.0 INTRODUCTION

I.1 CONTEXT OF STUDY

Southern Sudan is made up of over 200 ethnic groups with different ways of living. At basic level, it has varied ethnic groups whose livelihoods depend upon crop-agriculture, pastoralism, and mixed crop and livestock agriculture. These different types of living come with different customs and cultures that are reflected by different customary land tenure and traditional authority systems. For instance, in rural settings, individual ownership of land is more prominent among the crop-agriculturalists than among pastoralists. Among the pastoralists and mixed crop farmers, grazing grounds are communally owned rather than individually owned. However, for all at the macro-level, land tends to belong to clans and ethnic groups. The land cleansing rituals are done by clan family members assigned the rights ancestrally.

The case study was conducted in Juba County. Juba County was chosen for the study because it is the seat of GOSS, where much land transactions have featured prominently in the post conflict period. The County is also growing fast, as it continues to receive influxes of returnees and foreign investors, creating a high demand for land for settlement, agriculture, or other business-related activities.

Customary law is adapted, changed, and repealed according to the social, cultural, political, and economic circumstances of those who live with these rules. However, in Southern Sudan, customary laws are as legally recognized as is the role of the traditional leaders with regard to customary matters and community land.

Customary land tenure of Southern Sudan was formally recognized during the British Colonial Administration. The British administration accepted customary rules over land, though the title to land was vested in the government. The Native Administration was delegated to arbitrate between different groups. Though the Land Ordinance of 1906 significantly gave the traditional chiefs customary ownership of the community lands and its administration on behalf of the Anglo-Egyptian Government, the colonial system of natural resource management was abolished after independence and tribal leaders were replaced by predominantly northern administrators. New land laws were developed based on a principle introduced by the British that unregistered land is assumed to be owned by the government. The origin of this principle is the Land Settlement and Registration Ordinance of 1925. However it was Unregistered Land Act of 1970 that set the community against the Khartoum Government, as it had serious implications for customary land rights. This law aimed at total dispossession of the communities of their lands if these were not registered with the Central Lands Registry in Khartoum. The 1970 Land Act was very destructive as far as the land administration was concerned. Through it, many of the communities in the Nuba Mountains and the Funj lost their communal lands, as they were not registered and were deemed to be government property.

As far as Southern Sudan is concerned, land management under customary authority became increasingly vulnerable during the war as the communities were always on the run, disrupting communities and undermining traditional authority's functions. The vulnerability of customary tenure was further worsened with the influx of returnees; the growth of towns; and encroachment by internally displaced persons, local investors, and foreign investors who needed land for various purposes in the post-conflict period.

Critics of customary land tenure systems regard customary land ownership and practices as a source of poverty and underdevelopment because it does not support long-term investments. These assertions, however, have never been systematically investigated.

Despite these complexities, challenges, and criticisms facing traditional authority in managing customary land, land ownership under this tenure system has survived all the criticisms to the extent that communal land ownership and practices cannot just be removed by a stroke of the pen.

Customary land tenure system in Southern Sudan has for a very long time presented itself as a complex system because it varies from one community to another. A variety of tribes in the region have different customary land management practices, thus presenting a challenge in creating best harmonious land practices. The diversity has made it difficult for government to come up with a framework to guide current practices and preventing harmful customary land practices. Traditional authorities are also trying to balance customs and traditional practices related to land with internal and external pressures changing these practices.

Land ownership is directly linked with land use. Where ownership of land is not clear, it will be difficult to put land in use because security of tenure is not guaranteed. The study investigated land ownership under customary systems, use rights, use with respect to large scale farming practices and whether there are customary impediments to use of customary land for investment purposes.

With the new legal system in Southern Sudan, traditional authority is part of the governing organization within the local government. According to Section 24 of the Local Government Act (2009), the local government has capacity to manage land. A traditional authority at the Boma level represents the community in the County and Payam Councils.

With regard to their traditional roles, paramount chiefs, chiefs, or sub-chiefs are autonomous of the county or town council and their positions as such are determined by election, as provided in Section 117 of the Local Government Act.

Whether there is a conflict created by shifting from land management under customary system to that under statutory system is unknown. This was one reason why the research was undertaken so that it would come up with concrete findings from the traditional authority.

One of the biggest challenges with customary law is that it is usually unwritten, unmodified, and varies from one ethnic group to another. Further, customary law is patrilineal and favors men with regard to the right to access land. For this reason, customary inheritance law is currently criticized for favoring male heirs. Article 18 of the Interim Constitution of Southern Sudan (ICSS) has provided for equality of all persons before the law and the right of every person to own property without discrimination. Research was needed to verify whether these constitutional provisions and other laws relating to land ownership were exercised.

There were allegations of land grabbing within Juba County and reports of unscrupulous individuals and businessmen allegedly scheming with traditional leaders to appropriate land without the knowledge of the communities. If these allegations are true, they pose a serious threat to customary land owners because of the current demand and high value of land in Juba County; hence, another reason for this research.

Despite these complexities, land ownership under this tenure system has survived all the criticisms to the extent that, communal land ownership and practices cannot just be removed by a stroke of a pen. How traditional authority is managing the pressure mounted on customary land is an issue that has not been determined yet. Research was therefore necessary to reveal the management mechanisms and the efficiency of the instruments used in managing land under customary system.

I.2 SUMMARY OF RESEARCH ISSUES

As far as African customary law is concerned, there is no any laid down definition, as customary law is the unwritten body of laws which consists of the customs and usages traditionally observed among the indigenous African peoples and forms part of the culture of the people. According to Sindane, customary

law varies from one community to another; it is flexible and liable to constant and imperceptible change. Not only it is diverse and volatile, it is never static, as held in the Ugandan case of *Mifumi (U) Ltd & 12 others v Attorney General, Kenneth Kakuru* (Constitutional Petition No.12 Of 2007). According to Section 39 of the 2009 Land Act, evidence of the customary practices have to be proved to establish the existence of such customary practices. As the living law of the people, customary law is adapted, changed, and repealed according to the social, cultural, political, and economic circumstances of those who live with these rules.

Prime lands were sold to Arab business people and cronies of the government, displacing entire communities from their ancestral lands. The people became aggrieved; when the Sudan Peoples' Liberation Army (SPLA) war broke out in 1983, the people of these areas were eager to join the SPLA in defense and reclamation of their communal land. Since 1983, the South could not be peacefully governed by the Khartoum regimes and since most parts of Southern Sudan had been under the SPLA control and minimally managed directly from Khartoum, most of the statutory laws enacted from the Parliament in Khartoum never affected the rights of the rural communities in Southern Sudan from owning and managing community lands through their traditional leaders. This customary land tenure received prominence when the SPLA proclaimed during the peace negotiations that land shall belong to the community.

The Wealth Sharing Protocol also acknowledged the reality of two different legal systems over land in Sudan, with customary land law applying in Southern Sudan. It is for the above reason that under the ICSS, Article 180 protects the land communally held. Article 180(4) of the ICSS provides that all land traditionally and historically held or used by local communities or their members shall be defined, held, managed, and protected by law in Southern Sudan. Section 8 of the 2009 Land Act has given equal protection to land held by the community. According to Section 8(5) and (6) of the Land Act, customary land demarcated and registered in accordance with the provisions of the Land Act and any other law and customary land rights, including those held in common, shall have equal force and effect in law with freehold or leasehold rights acquired through statutory allocation, registration, or transaction.

What constitutes community land is defined in Section 12 of the Land Act, 2009, as land held by the community or declared to be community land and it includes community forests, cultivation, grazing areas, shrines and any other purposes recognized by law as buttressed in Section 11 of the Land Act. According to Section 11 of the Land Act, read together with Section 12 and the First Schedule of the Local Government Act (2009), communal land shall be determined and demarcated based on ethnicity, residence, or interest and whether the land is registered in the name of the community, lawfully held, managed, or used by the community, lawfully transferred to the community, or declared to be a community land by law. According to Section 39 of the Land Act, evidence shall be tendered in support of such community claims.

Public land, as defined in Section 4 of the Land Act, is any land owned or held by GOSS, state, or local government. Subterranean resources are defined by the same section, such as oil or minerals extracted from the land. The notion of private ownership is minimally referred to, since all land falls under customary land by virtue of the prevalence of customary practices, governing all land matters in Southern Sudan. According to Section 12 of the Land Act, private ownership of land is allowed in the nature of freehold or leasehold land. Further, another area where private ownership is provided for is in Section 58 of the Land Act, an individual member of the community may request the land held by the community to be partitioned for purposes of registering it in his/her name. "Community land," is also defined as ownable land, and may include pastures, forests, shrines, or other collective land assets held by communities, as provided in Sections 4 and 15 of the Land Act.

By virtue of Sections 44, 48, and 50 of the Land Act, traditional authorities are part of the local government. County or payam authorities represent the same government as provided in Section 13 of the Local Government Act. Article 175(1) of ICSS legislations of the states shall provide for the role of

traditional authority as an institution at local government level, on matters affecting local communities. Furthermore, according to Article 175(2) of the ICSS, legislations at Southern Sudan and state levels shall provide for the establishment, composition, functions, and duties of the Councils of Traditional Authority Leaders.

These constitutional provisions are provided in Chapter III of the 2009 Local Government Act, which provides for the decentralized system of local government. According to Section 14 of the Local Government Act, a local Government Council shall be decentralized into administrative tiers and shall have devolved authority into which the Traditional Authority of the Council shall be incorporated. As provided in Sections 12 and 13 of the Local Government Act, local governance is about devolution of powers and decentralization of powers or decision making authority to the lowest levels of government which is very close to the people. According to Section 12(1) of the Act, one objective of local government shall be to promote self-governance and enhance the participation of people and communities in maintaining law and order and promoting democratic, transparent, and accountable local government; establish the local government as close as possible to the people. And according to Section 112 of the Local Government Act, the traditional authority is semi-autonomous within the local government level and has traditional role at the Boma level as provided in Section 16 of the Local Government Act. With these clarifications, we now proceed to state the objectives of the study.

2.0 RESEARCH OBJECTIVES

The objectives of the study were:

- 1) To investigate the alleged prevalence of illegal sale of customary land and allocation by traditional authorities in Juba County. This included an analysis of those involved in illegal sale of customary land, the factors giving rise to illegal sale of land, and the areas affected by this practice.
- 2) To identify challenges facing traditional authorities in land management and to devise recommendations for better ways of land management and control. This included establishing the nature of challenges facing traditional authorities, and analyzing and recommending better land management and control mechanisms.
- 3) To find out acquisition of land under the customary land tenure by citizens and investors. An analysis of allocation of customary land was made, the procedure used, and the nature of documents given as evidence of ownership.

3.0 RESEARCH METHODOLOGY

This is a social study category of research and it was mainly qualitative rather than quantitative. It used survey methods and the techniques include open-ended data collection tools that were to guide the discussion with the key informants.

3.1 KEY INFORMANTS

The research was carried out mainly through key informant interviews; data was collected from chiefs, advocates in private practice, legal advisors in government institutions, Counsel Generals at the Ministry of Legal Affairs and Constitutional Development, legal counsel, surveyors, land officers at MoHPI, Directors from the State Secretariat Central Equatoria, and Payam and Boma Directors.

The key informant interviews focused on confirming or nullifying allegations of illegal sale of customary land, perpetrators of illegal sale of the land, mechanisms that can be put in place to curb down illegal sale if confirmed as true, identifying challenges facing traditional authority in customary land management, the understanding of roles of traditional authority in land management and allocation, traditional instruments used in land management, and acquisition of land under customary tenure.

3.2 DATA COLLECTION

Data was collected using a carefully selected team of research assistants recruited by the law firm to ensure proficiency in the local languages and obtain the right information.

3.3.1 Primary Data Collection

Primary data collection was secured through the use of key informant interviews by administering open-ended questionnaires.

Chiefs, Payam Directors, lawyers in private practice, and Directors at the Commissioner's office were asked questions that would confirm or refute allegations of illegal sale of customary land in Juba County. The issues discussed centered on establishing factors contributing to illegal sale of customary land where they were confirmed and the mechanisms that would be put in place to curb the practice, define the roles of traditional authority in managing customary land, lay out procedures used to acquire customary land for settlement or investment, and identify the challenges facing traditional authority.

3.3.2 Secondary Data Collection

Documents obtained included a fourth-class sample land document establishing ownership obtained from Rajaf Payam and a letter by a concerned community member written to the Citizen newspaper complaining of illegal allocation of customary land by a chief to a government minister without proper consultation. Copies of a directive from the Director of Courts Administration to president of Equatoria Circuit pertaining to land disputes and a draft sample lease agreement between a chief from Rajaf Payam and a foreign investor were reviewed and analyzed.

3.3.3 Limitation of Data Collection

The targeted key informants within sampled institutions did not live to their scheduled promise to give answer to the interviews. Many of them switched off the telephones and/or were not available in their respective offices.

The research was looked at with suspicion. Despite explaining the purpose of the research and for whom we were carrying out the study, the key informants believed the research was an investigation likely to cost them their jobs, especially the key informants who were involved in land management at every level of government. Many key informants needed approval from supervisors to be able to attend to the interviews, even though they were the relevant authorities in those offices.

The use of English, Arabic, and local languages affected translation. Rain in the months of July and August affected the schedules with the key informants. Focus group discussions were never held because the groups did not turn up for the discussions. Uncoordinated public holidays also affected the research and the schedules made with key informants. Changing from Lokiliri Payam, which was initially sampled for the research, to Northern Bari Payam was also a problem.

3.3.4 How the Challenges Were Overcome

The team had to meet with the supervisors and obtain permissions to interview the key informants. The purpose of the research was explained and how it would benefit the institutions of the Government of Southern Sudan and the communities. The research team was able to obtain the contacts of the Deputy Director Northern Bari Payam and the paramount chief whom we later scheduled and met. They agreed for our visit and we gathered the information sought

4.0 THE STUDY AREA

4.1. BACKGROUND INFORMATION

The population of Juba County is not accurately determined. Gray literature estimates it at 750,000–800,000, but others say above 1,000,000 (one million) people. The census results were rejected by GOSS.

Early remembered history of the Bari shows that the centers of power in Bari land were Sindiru in the far south of Bari land and Ilibari and Bilinyang to the north. The oral tradition of the Bari people began to emerge in the early fifteenth and mid-sixteenth centuries.

The basis of the Bari society was the clan system. The clans are now dispersed, though several clans can be found in any village. In the village they maintain their clan's corporate existence and their original distribution is still historically traceable. According to Beaton (1975), he found 143 clans varying in size, from 792 adult males to 1. Of the 143 clans, 98 consist of less than 20 men. The clans are either divided or undivided. The undivided clan is the Galla. Subdivisions are often numerous; for example, the Bekat are divided into Bekat Limat, (the great rain clan), Bekat Leparan, Bekat Lobur, Bekat Lokwe, Bekat Malasuk, Bekat Manabur, Bekat, Nyayenki, Bekat Room, Bekat Rongat, Dung, Mingi, Nyori, Biajin, Sera, Lee, Pelenyang, Guba Tulu, Sura, Panyigilo, and 'Bunuk, Bilo. The Bekat clan has been unique when compared to other Bari clans, in that it has meticulously kept the activities of its ancestors (the rain-making chiefs) through oral tradition.

The clan still remains the main feature of the Bari social life. The clan is the owner of the land and still retains its corporate existence and sense of corporate responsibility. The clan is an enlarged family, affording its members comfort in trouble and help in distress.

The lives of the Bari people were organized around cattle:

During the wet season the Bari cattle were driven inland to places where the grass was good. At one time, the Bari villages on the west bank of the Nile between Rajaf and the River Luri used to take their herds all the way to the river Ko'da. There, a Kurumi (a large cattle enclosure) was built of posts of ebony wood (poyot) thorns. The Teton (young men) of eighteen to thirty five years of age remained with the cattle while the married men, women and children stayed at home, and the young girls journeyed backwards and forwards carrying milk. The warriors herded cattle by day and danced and sang songs by night. Their food during the time was for the most part milk, blood drawn from the necks of the cow and mixed with milk and a little dura (Bureng, 81).

Shindiru, the home of their rain-makers, is the cradle of their race; rainmakers play an important role for their ability to invoke rain, their history stretching back to 'Yo'yok. According to G.V. Bureng (2007) in "Some Aspects of Bari History," 'Yo'Yok was believed to have reigned from 1565–1585. He was succeeded by his son Lomijikotet, who was born a rain king with a rain-stone tightly clenched in each hand. Lokoro succeeded his father Lomijikotet from 1605–1625 and was then succeeded by his son Kuwuba about 1625–1625. After Kuwuba, Pintong reigned from 1645–1665.

The clan lands have definite and well-known limits. If a clan has to expand, it may purchase more land from a neighboring clan. The price was usually a bull, and the vendors had to forfeit all rights. A specific case is recorded by Mr. Richardson (S.N.R xvi. 2) regarding the sale of what is now the site of Juba Town. Originally the property of Nyori clan, it was sold by them to Logunu of the Bekat Monabur clan from across the river.

The Earth Chief (Monyekak)

The earth chief or “monyekak” (also known as monye kurok) is the functionary whose duty is to allocate the clan land and ensure its fertility. The earth chief predates the rain chief. He blessed the land and its people with the Lori (a special teathed and pointed iron spear). He interceded to God on behalf of the people whenever there was a calamity in the land. The earth chief authorized war and performed cleansing rituals after war. He named all the big trees, all forests, and bodies of water.

The earth chiefs are essentially associated with the clan and are therefore numerous. They are not, as a rule, significant outside their own community. The monyekak is not the clan head in such matters as rendering labor to a chief or government or the collection of tax. The monyekak arbitrates in any disputes which arise and it is to him that a stranger would apply for land to cultivate.

4.2 FINDINGS

4.2.1 Allocation of Land and Illegal Sale of Customary Land

Respondents from the four payams confirmed that illegal sale of customary land is taking place in Juba County, particularly in Northern Bari Payam and Rajaf Payam. Munuki and Kator Payams do not have issues of illegal sale of land because the payams have melted into urban space. They no longer have customary land and their land is divided into individual residential plots.

Chiefs allocate customary land categorized as fourth-class, which is designated permanently to private use of individual members of the community. The research confirmed that the chief, with the consent of the community, can apply to the Commissioner through the Payam Administrator that they want a piece of customary land within their community to be allocated to the members. Once approved, community members pay fees that will provide for services of the surveyors, the bulldozers, and the titles for the plots. There is no written guideline for this process, but it developed out of usage that the chief or community writes to the Payam Director, indicating the desire to allocate some community land to their members.

It is within these allocations that fraud and illegal sale of land take place. The research found that chiefs connive with staff in the Survey Department of the State Ministry of Housing and Physical Infrastructure to ensure more plots are left for them so they can sell later to individuals at high prices. Chiefs, surveyors, and land officers are the beneficiaries of these illegalities. One respondent from Northern Bari Payam said, “Chiefs are the ones selling land illegally and fraudulently. They are corrupt and most of them now have their brokers who deal directly with staff from the Survey office and the Ministry of Housing. They are frequently seen in the Ministry of Housing and Physical Infrastructure; the same chiefs are also visited by people from the Ministry of Housing and Survey.”

The research revealed that there was informal land allocation for a community in Rombur (Northern Bari Payam), conducted by the chief as community to community solution to land problems in his area. The community is now selling out this land to other people at high prices.

Respondents from the MoHPI and GoSS confirmed that indeed there is illegal sale of customary land practiced in Juba County. Similarly, the staff from MoHPI, Central Equatoria State, confirmed that there are several malpractices with respect to land transactions within Juba County, specifically in Rajaf and Northern Bari Payams.

4.2.2 Main Reasons for Illegal Sale of Customary Land

The research established that illegal land sales are attributed to the growing weakness in fundamental customary norms of land holding. Community trust doctrine that vests land administration on the chiefs, who in turn may abuse it. One lawyer from private law practice stated that: “The chiefs are difficult to challenge because they are powerful and get support of the elite who are senior government officials. They have vehicles and are more linked to government business than the land issues facing their communities.”

It is evident that some chiefs have become politically strong and are much involved in politics to the detriment of their communities. They are much interested in government and do not balance their roles in the community. A lawyer in private practice said “I am a neighbor of a chief and you can see individual Government Ministers visiting the chief as if he is a witchdoctor. In less than a month after the Minister’s visit you hear the chief has come under fire from the community, for giving land to a Minister.”

Another element that accounts for illegal sale in the same line of weak traditional institution is the irregular emergence of clan heads, false chiefs, and individual members of the community, all claiming chieftaincy. They allocate land illegally. In July 2010 in Northern Bari Payam, the Paramount Chief and the Payam Administrator had to arrest one individual who was claiming to be a chief. With a fake stamp, he had allocated 600 plots and collected money without the knowledge of the community. These false chiefs or headmen have been cited as perpetrators of illegal sale of land. The payam confiscated the stamp and all fraudulent documents.

The study also confirmed that in Northern Bari Payam, some chiefs do not consult with the community in matters of customary land allocation. In 2007, it was reported that a chief and some of his followers from Rombur allocated land to a community of Dinka from Bahr-el Ghazal, a process the two parties named “people to people solution to land problems.” The process was not consultative enough as required under the local customs, as most of the community members were not involved. The chief and his group entered into a locally signed agreement, alienating this piece of land from the community and passing the right of ownership to another group surreptitiously.

The study further revealed that the “people to people solution to land problems” benefited the chief and his clan because they received money. This brought condemnation of the chief by the whole community for deciding to illegally sell community land under the guise of resolving shelter problems with the community in need.

The research also found that other non-Bari tribes have taken the weakness in the customary institution and the rule of law to hold out and sell land. It was established that a Zande chief who was a soldier was arrested early 2010 and brought to the police but was later released on bail. He had sold 4,000 plots at mountain korok (popularly known as Jebel Kujur) at the rate of 500–1,000 Sudanese Pounds (SDG). He demarcated the land in blocks and later into housing plots, causing confusion within the people of Somba.

High demand for land in Juba County has created rivalry in the communities, resulting in disputes among chiefs and clans. False chiefs have also emerged, creating division in communities. For example, in Northern Bari Payam, a false chief had emerged among the people of Rombur. Supported by a section of the community, he illegally sold 600 plots. Later the false chief was arrested by the Paramount Chief and the Payam Administration for the illegal sale of customary land. The supporters of the false chief argued that he supported women’s human rights by allocating plots for women who have for long been deprived of land ownership under the customs of their communities. This kind of rivalry between genuine chiefs and false chiefs is creating problems to the traditional authority in managing community land sustainably.

The research further confirmed that the fight that broke out between the Bari and the Mundari in 2009 affected Northern Bari Payam and led to illegal sale of land. The communities that were displaced from

their villages in Northern Bari had to flee to the secure areas in other payams, causing problems. Individuals, chiefs, and clan heads turned to sell community land illegally to make a living.

The research established that the extension of immunity to chiefs under Section 118 (1), (2), and (3) of the 2009 Local Government Act against criminal prosecution is a window in the law that encourages illegal sale of land by the chiefs. The research found that the other provisions of the Act that allow for prosecution of chiefs who commit criminal offences, such as illegal sale of customary land, requires a complicated procedure to lift the chief's immunity before he or she can be arrested and prosecuted. A respondent from Rajaf Payam said: "The Governor cannot lift the immunity of a chief who has sold land illegally because chiefs are part of the Local government and the state gets community land through them. You cannot bite the hand that feeds you."

The slow implementation of the popular development paradigm of John Garang of "taking towns to the people" by the government at appropriate levels featured prominently in all the payams as responsible for illegal sale of customary land.

The increase in population of Juba is exerting a lot of pressure on the land for settlement, business, and agriculture. The research pointed out that with the high demand for land, chiefs and individuals cannot resist the temptations of making money from business people to access customary land that is owned by the community.

4.2.3 Perpetrators of Illegal Sale of Customary Land

In areas where there are informal settlements, the chiefs collect money from the people who occupy such land; and later when the community approaches government to demarcate the area, the land had already been demarcated and people obtained their titles.

4.2.4 Mechanisms to Curb Down Illegal Sale of Customary Land

The respondents agreed that illegal sale of customary land must be stopped. That is, illegal sale of customary land by chiefs, individuals, false chiefs, or clan heads is a criminal act that cannot go unpunished. The Directorate of Public Prosecution is to take illegal land sales seriously and to prosecute the culprits.

The Local Government Act of 2009, Laws of Southern Sudan, should be amended to relieve chiefs from serving concurrently as government servants and traditional leaders. To the respondents, relieving the chiefs from government duties would reaffirm their real status of traditional authority to serve the community, particularly when the community's interest differs from that of the statutory authorities.

Traditional leaders should be elected according to the traditional systems that make it easy to replace chiefs for any wrong doing that affects the interest of the community. The term of office and the formal elections provided under the Local Government Act of 2009 is viewed as a stumbling block to the interest of the community. Local government should improve physical presence of traditional authorities in the community.

4.2.5 Investors and New Forms of Land Rights for Allocation under Customary Lands

The changes that have affected customary land tenure in Juba County, especially in the nearby payams, have led to alienation of customary land. The pressure on land and the economic value attached to it has brought customary leases in land.

The procedure for acquisition of customary land for investment depends on what level of government an investor approaches, as government currently depends on the traditional authority for land. The research established that there are no laid down procedures for customary land acquisition. The chiefs stated that the process is informal depending on which authority is consulted first. This process has developed over the last five years since the introduction of the Comprehensive Peace Agreement (CPA) in response to the absence of statutory law and land policy on this issue. As a result, chiefs are playing a prominent role in land allocation, even for investment. For example, in Rajaf Payam, the chief entered into a lease agreement with foreign or national investors for the grant of land for business purposes at the village level.

Investors who come directly to the chiefs are at times sent to the Payam Administration for ascertainment of their genuine status with respect to the investment plans. If the Administration finds the investor genuine and the activities to be carried out beneficial to the community, they are then referred to the community under the jurisdiction of the chief. Depending on the recommendation of the Payam Administrator, the chief calls for a meeting with the village development committee and the investor. If the community agrees with the investor, then a lawyer is often involved to draw up a lease agreement for the parties. This is the only formal document the chiefs receive on behalf of the community.

The research revealed that chiefs are aware of the provision of Section 27 (2) of the Land Act of 2009 which states that they should not recommend customary land in a lease exceeding 250 feddans without consultation with the county land authority. However, many chiefs are illiterate; as a result, when the surveyors come to do measurements, the chiefs do not really know whether the land area under the survey is the same as what they have agreed to distribute as plots.

4.2.6 Fourth-Class Land Allocation and New Demands on Land Administration

The research established that citizens acquire customary land for private ownership when a community gives land to the government for residential plots. People will have to follow certain official procedures from MoHPI.

However, communities can also apply through the Payam Administration that they want land allocated privately to the community members. The Administration then forwards the application to the commissioner, who in turn, will have MoHPI send surveyors so that they can develop the map of the area to be allocated. After this, a given payam can process land titles for those members. However, the plot document which shows that such plots are categorized as fourth-class also has a provision in Section 4 that the payam reserves the right to withdraw and confiscate the plot if not built within one year. This provision has raised concerns, such as to how the payam could have rights to confiscate land that is not theirs in the first place? Secondly, respondents asked that if the land is confiscated by the payam, to whom shall the land revert?

The payam should not be allowed to overstep its powers in land that the community has agreed to allocate for its members. The community should be allowed to devise its own ways of enforcing the purpose for which the land was actually allocated. A community also should be allowed to develop a mechanism for withdrawing land from its individual members.

People may also individually acquire customary leasehold depending on the agreement with the chief and the village development committee. The respondents stated that this is very rare.

4.2.7 Limitations of Traditional Leaders in Land Administration

Boundary issues

The research established that chiefs are having internal boundary disputes. Demands for land and resources have brought a lot of awareness on the value of land. Construction of roads and houses has created demand for the exploitation of murrum and sand for these activities. In Northern Bari Payam, there is border dispute between the people of Molobor under the sub-chief of Luri, and Bori under the sub-chief of Jebel Lado. The boundary dispute was sparked by the discovery of murrum in Bori. Eyat and ABMC companies are exploiting the murrum for a fee which the people of Bori have been collecting. The people of Molobor are also claiming ownership of the land and the right to benefit from the money collected from the resource exploitation.

The research confirmed that border disputes are rampant wherever natural resources are exploited, or where the said land is to be distributed for commercial or residential purposes. In the areas that resources are not exploited, there are no disputes. Money is the factor driving border disputes, especially in the payams where resources such as murrum and sand are exploited. The chief respondents accepted difficulties in resolving these kinds of disputes, which in most cases are referred to the Payam Director.

The interview established that Northern Bari Payam has a border dispute with Dolo Payam. MTN Company has put its antenna at a place called Ku'da Lo'dimi and the Nyangwara people from Dolo Payam are collecting rent. However, the people of Juba Na Bari Payam are also claiming that the land where the antenna is situated is within their territory.

The research further established that the contested area in Ku'da Lo'dimi had sign posts placed by the people of Dolo Payam, to show the boundary. One respondent, who was a chief sitting in the Council of traditional leaders headquarters in Kator Payam stated, "Locals from Northern Bari Payam removed the sign posts the same day, resulting in dispute amongst the two Payams. This land dispute has been reported to the Commissioner of Juba County, who informed the chiefs that they have to wait until a decision is taken."

Respondents from Rajaf Payam pointed out that there is a dispute between the Rajaf Payam and Lokiliri Payam over a place named Nesitu, at the junction of Torit and Nimule Road. According to the chiefs from Rajaf Payam, the issue is politically motivated because Nesitu is land for the Kolye people from Rajaf. In 1972, the people of Kolye fought with Nyongki at the mouth of Luporo stream. The two communities later agreed to solve the problem amicably, on condition that all parties shall come to the venue unarmed. A date was scheduled for the dispute resolution. On the scheduled date, Kolye came unarmed while Nyongki had tied their arrows and bows on their legs and when they reached at a close range, they took Kolye by surprise, as they were attacked and killed. Nesitu was then abandoned because of this loss.

High demand for land in Juba County has made chiefs very important, because of their role in the administration of customary land. This in turn has resulted in disputes between chiefs and clans. False chiefs have also emerged, creating division in communities.

Dispute Resolution

Section 100 (4) of the Local Government Act (2009) Laws of Southern Sudan, provides that the "B" Court shall have the competence of deciding, inter alia, on customary land disputes. The research found that the chiefs perform the function of mediators in land disputes, between clans, families, and individuals within their jurisdiction. Informal mechanisms of dispute resolution in matters of inheritance have been reported in all the payams and the institutions of government the research team visited. Succession rights are always presided over by the head of the family in the presence of all family members and clan members who shall resolve succession disputes.

By the time of the research, the Deputy Director of the Northern Bari Payam had already scheduled a joint meeting with the Bori and Molobor communities for 27 July 2010, to settle the boundary dispute mentioned previously, using traditional conflict resolution mechanisms. The research found that chiefs prefer resolution of internal border disputes between two parties using traditional mechanisms other than the formal court system. If consensus is not reached, the issue would be referred to the commissioner for study and possible decision and resolution.

The chief is the focal person for the community when it comes to land matters. He demarcates and shows boundaries of land between clan and clan, and family and family.

Land Grabbing

In Rajaf Payam, land grabbing is taking place in an area called Khor Wolyang. The findings are that this area was demarcated as fourth-class for the community. Individuals from different ethnic groups, especially from the army have since settled on other peoples' plots. Five people, whose legal plots were settled on, were beaten early this year by the settlers when they arrived at the site. When the Payam Administration intervened by taking military police to solve the problem, the negotiations failed; the problem is pending in the Office of the Commissioner.

In Northern Bari Payam, soldiers have settled on peoples' plots. The research established that force and use of guns to threaten communities with land and other owners of undeveloped plots is rising. One of the factors attributed to land grabbing, is corruption in the Ministry of Housing, Department of Survey, Central Equatoria State. One respondent from MoHPI said: "Those who grabbed land had applied for land at the Ministry of Housing and Physical Infrastructure, Central Equatoria State, but because of corruption in that office, they did not get land, as a result, they grab any land to settle."

Also, there was evidence of mismanagement of the plots allocated at Durupi, where most of the needy people who applied did not receive a single plot.

Land grabbing is also encouraged by the corruption carried out between the Survey Department and the MoHPI. The research established that during demarcation exercises, the surveyors in connivance with some officers of the MoHPI do not usually allot plots that fall on strategic locations. These cases are said to be rampant in the plots allocated in Munuki, Gudele, and shop plots allocated in Gumbo within Rajaf Payam. They reserve these plots for themselves; later on, they sell them at high prices. These corrupt practices are seen by the communities and chiefs as serious impediments to the community's and government's effort to provide land for settlement. This has deprived poor people, who would have received these plots had their applications been considered at the normal value of plots fixed by the Ministry. When such things occur, people are tempted to squat and grab customary land.

Land acquisition and land allocation in Juba County

The research found that demand for land has grown in Juba County since the signing of the CPA in 2005, and its value continues to grow day by day. The research has also shown that there are many civil cases in court arising from individuals building on other peoples' plots. The market value of a first-class plot measuring 30x40 square meters in areas such as Jebel Kujur and Juba Na Bari now stands between SGD60,000–70,000.

Government institutions have been used by individuals in those institutions to reach communities to acquire land for personal interest masked in the interest of the public. The research established that the communities find it challenging to reclaim its land under such fraudulent transactions without mobilization and organizing members to meet with the state authorities to intervene. However, in attempting to realize such restitution, much of their time is consumed in moving to the concerned authorities of the state, who are very busy most of the time, or out of the country.

In Rajaf Payam, the research established that individual government officials who head institutions contact Payam Officials for land from the community through recommendations from the Commissioner for public use. Payam Administrators facilitated dialogue and consultation with the community. In verifying this, it was revealed that a police officer came to Rajaf Payam requesting some land to construct a police station at Lologgu to be able to respond to issues of law and order to the benefit the community. The payam facilitated consultation with the Community of Tokiman, who eventually gave land for the institution. Later, the officer built a small police post on the land and built lodges on the other three plots, which even went beyond the area provided for them, encroaching into the land of Regional Development Cooperation (RDC). The officer and two others came with a recommendation from the commissioner that their names be entered into the ledger book as owners of the three plots. RDC came to the office with their land title registered since 1975, claiming ownership of the part of the land taken.

It was also established that a customs official went to Rajaf Payam, requesting for land to be given by the community for the customs office in Gumbo. The customs officer was allocated 100x100 m sq lot. He later expanded the land area on his own to measure 500x1,000 m sq. When he came to register the land, he wanted it to be registered in his name. When the community of Mugoro heard of this, they removed the pegs and chased him away. The payam denied registration of the land and search certificate when contacted by the officer.

The study established that the communities have been very cooperative and willing to give land for public purposes, where all procedure was followed and the interests of the community taken into consideration. However, the research has also found that the communities are not happy with the way land has been handled by the government officials, after it has been given in the public interest. The issue of corruption in the Ministry of Land, Central Equatoria State, has featured very prominently, as the community regards the Ministry as not helping them in resolving issues of land for housing plots.

Enforcement of agreements between community and the government

The research identified difficulties faced by the communities in enforcing agreements whether oral or written, reached with the government in exchange for their land. From Tokiman community of Rajaf Payam, government had received a two kilometer square parcel of land at a place called Durupi in 2009. The government in turn agreed to build a health center for the community, using 20 percent of the fees charged on applications for the plots, and said that some plots from the allocation would also be given to the community. However, the community only received 13 plots, no money was given to them, nor was the health center built. Consequently, the community is becoming impatient and they have used the bottom-top procedure to ask for their interest, but all efforts have proved fruitless. Being community's focal persons, chiefs are sometimes blamed for failure of the respective governments to implement and honor their obligations. They are in most cases falsely accused of receiving money from the government to jeopardize community interests.

In Garbu, across Juba Bridge on the road to Bor, the research established that the community of Garbu gave GOSS land to build medical stores. In return, GOSS would establish a health center for the community. So far the government has not responded to the community and no explanation is given for the delay. The research also showed that such arrangements are based on the community's trust that government is for the people and will always honor its commitment, despite the fact that no mechanism was agreed to provide for remedy to the community upon breach by the government. Consequently, the chiefs are under pressure from the community to explain why government is not responding to its obligations under the arrangement. This has an impact on maintaining a smooth relationship between the government and community, and hence, in the long run may affect community's willingness to give more land to the government for public interest.

The legacy of protracted conflicts in the face of land claims by communities

Before the dawn of peace, land was held by the government and the practice of managing it had problems. The research found that communities were weakened by the war to the extent that their social fabrics were broken.

Allocation of lands by the previous regime did not go well with the people, because the government needed no consultation to get land. For instance, in 1994, Blocks 1, 2, and 3, Gudele were allocated as housing plots to the people by the government, despite the fact that this was a rural area. As a result, this did not go well with the local community. The provision in Section 7 of the Land Act, 2009, states that that land belongs to the people of Southern Sudan, especially customary land which belongs to the community. Last year, the local community went to Blocks 1, 2, and 3, Gudele, removed the pegs and retook the plots from those who already had titles to them. Those who wanted to build on the plots were chased away by the community.

The former Minister of Housing and Physical Infrastructure, Central Equatoria, had to intervene so that a genuine solution could be found for the problem. He visited the area in 2009 and wrote to the community, seeking alternative land to be allocated to the owners of these plots, who had already paid the fees to the government. The community has not responded yet and the Minister is no longer in office, following the recent elections.

This trend of events has a direct bearing on land administration, whether the land is customarily owned or managed by the government. The study findings indicated that land is a very sensitive issue in Juba County, and the communities are living in great fear of losing out their ancestral land because of policy gaps in land management.

The research established that codifying customary laws with respect to customary land tenure throughout the Southern Sudan would eliminate problems encountered by the unwritten customs.

5.0 POLICY RECOMMENDATIONS

1. Policy makers should ensure that land policy reflects social choice of the communities, and such a policy must take into account the interests of all stakeholders.
2. Customary land rights recognition is in its critical stage in Juba County, especially in payams adjacent to edge of the town. Land policy should therefore provide clear guidelines for acquiring customary land for public or private use. The policy should also direct the sustainable utilization of customary land without driving the communities out of their ancestral lands. This implies that all actors concerned with land administration should be involved in the policy formulation process.
3. Land policy must address mechanisms of land management at the level of rural communities and offer protection to customary land, which is recognized by the Interim Constitution of Southern Sudan.
4. Land policy should ensure a transparent, fair, and equitable allocation of land to all citizens so as to discourage bad practices such as land grabbing and fraudulent misrepresentations in the name of institutions to acquire land. The policy should also direct the regulatory framework, where possible, and advocate criminalizing these practices to deter perpetrators.
5. Government policy should encourage reconciliation among the conflicting communities and use traditional mechanisms to resolve customary land disputes through seminars, conferences, and trainings at the level of communities.
 - a. The policy should clearly define and direct what land disputes should be dealt with by traditional authority and what land disputes should be handled at what level of government.
6. Customary land tenure still occupies a strong position in communities because of the values people attach to it in Juba County and throughout Southern Sudan. Policies and objectives of land administration should be clear in protecting customary land practices in conformity with the constitutional provisions and other relevant laws.
7. There is need to restructure the Ministry of Housing and Physical Infrastructure to remove those corrupt officials who thwart the interests of the state and Southern Sudan.
8. Statutory laws and institutions should be more proactive in managing the process of alienating customary land into public land, while ensuring security of customary tenure.
9. The study recommends better policy coordination and consultation between statutory institutions and traditional authority when dealing with customary land. It is important to disseminate the policy to the grassroots and regular use of the traditional institutions dealing with land.
10. Land policy should be subjected to control and limit land size to minimize future conflicts arising from concentration of large pieces of land in the hands of very few rich people.
11. Land policy should support government efforts to take towns to the villages and render basic services. In essence, this enhances good governance through decentralization.

12. Government policy should provide mechanisms for addressing issues such as delays in government's commitment to compensate communities for the land given for the public interest. The policy should also clearly spell out the respective government institutions that would link the communities with other government institutions. This will minimize bureaucracy, abuse of process, and delays, providing for easy follow-up of claims.
13. The terms of the agreement reached between communities and any level of government should be in writing. This agreement shall be the point of reference to bind the two parties where there is a breach.

6.0 CONCLUSION

This study was carried out during a time when Southern Sudan was—and still is—experiencing so many hurdles since the 2005 signing of the CPA. The issue of land still remains a crucial issue in Southern Sudan, especially when people do not have the laws that Southern Sudan Legislative Assembly has enacted, or even if they have, the laws have not been disseminated to them. The public misconception that “land belongs to the people” as a right that is stated in law has widespread effects. The lack of clarity on this concept has resulted into communities reclaiming even government land that was allocated to citizens before the CPA. In Blocks 1, 2, 3, and 4, Gudele, the community is exploiting this concept according to their understanding and has gone overboard by re-vesting these blocks in the community. The legal owners holding their land titles are now left in the cold with the government having no land to compensate them.

The problem of illegal sale of customary land, fraud, corruption, and the challenges facing traditional authority are matters of great concern. There is a need to strengthen traditional institutions by offering trainings to chiefs on the importance of land and its management and allocation.

REFERENCES

1. Bureng G. V. Nyombe: Some Aspects of Bari History, University of Nairobi Press, 2007.
2. A Tribal Survey of Mongalla Province, Negro Univ. Press New York, 1937.

ANNEXES

1. A lease agreement from Kolye Community, Rajaf Payam between a chief and foreign National
2. Document of title of fourth-class plot issued by Rajaf Payam
3. Payam Business Permit from Northern Bari Payam
4. Letter to the editor of Citizen News Paper, Thursday, August 26, 2010, Volume 5, Issue 236 by Legge Jamus, Deputy Chairperson of Eastern Mundari Community.
5. Questionnaire of interview questions for key informants

ANNEX I: A LEASE AGREEMENT FROM KOLYE COMMUNITY, RAJAF PAYAM BETWEEN A CHIEF AND FOREIGN NATIONAL

LEASE AGREEMENT

Between

Kolye community (Land Owner, 1st Party)

And

Mr. Ashok Kapoor (Tennant, 2nd Party)

This Lease agreement was conducted in Juba Date, 5th June, 2010, between **Kolye Community** (here in) after known and referred to as Land owner, First Party to this Agreement, and **Mr. Ashok Kapoor** (her in) after known and referred to as the tenant, second party. The two parties in Juba reached a lease agreement with the following **terms and condition**;

1. The first party is the owner of land in Rajaf East, Kolye area at road side with size of 216 meter by 179 meter, in Rajaf East payam, Rajaf County. Will rent to 2nd party for maximum of 10 years but the lease is subject to renewal every two years with new agreement.
2. The 1st party rent out the above described land for period of 10 years with effect from June 15, 2010 up to June 15, 2020, with amount of five hundred Sudanese pounds (500 SDG) monthly.
3. The 2nd party will pay sum lam of fifteen thousand Sudanese pound (15000SDG) at the beginning of the project to 1st party and continue with the monthly rent
4. The 2nd party (tenant) will use this land for poultry purposes as his own project
5. The 2nd party must ensure that only the technician for project are brought from outside but the locals citizen of Kolye and Rajaf should be given the priority for the labor work .
6. The 2nd party will build Health care facility to Kolye community in their area
7. The 2nd party will have to pay land rates and the bill charges to authorities concerned
8. Upon the above terms and conditions the two parties agreed and signed here in below and authorized their respective witnesses to witness.

Signatures of the Parties

First party _____

Chief Philip Jada
On behalf of Kolye Community
Tel: 0129035694, Rajaf- Juba, Sudan

Second party _____

Ashok Kapoor
P / P. No C006859, Kenya

Witnessed By;

1. From Side of the Land owner
Mr. Patrick Lado _____

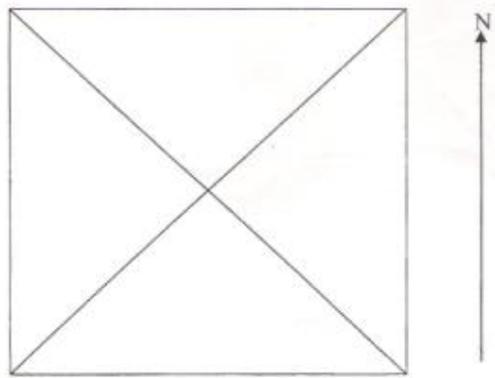
2. From side of the second party
Mr. Rex Makau _____

**ANNEX 2: DOCUMENT OF TITLE OF FOURTH-CLASS PLOT ISSUED BY
RAJAF PAYAM**

RAJAF PAYAM.

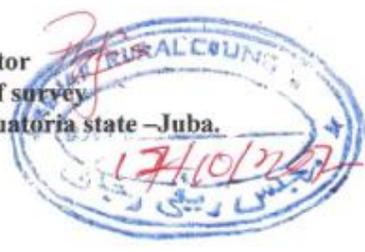
Plot No: 354 block No: 5

Square meters: property Of: ,



This is to certify that the dimensions shown on the above mentioned croquis are correct and true for the side plot and the sum of 5 SDG being cost of croquis has being collected date: 17/10/2007.

For / Director
Engineer of survey
Central equatoria state -Juba.



DIRECTOR'S OFFICE
REJAF PAYAM
JUBA COUNTY

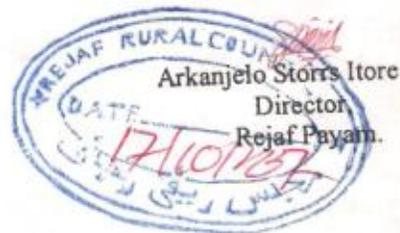
No. RP/JC/38.A.1.

Date: 17/10/2007

The Director,
Department of Survey.
CES/Juba.

Subject: Allotment of Plot No. _____ Block _____ Woliang 4th
Class Residential Area - Juba County/CES

1. Director Rejaf payam, hereby allocate Plot No. 354 block
"F" fourth (4th) class residential area Woliang to
Mr./Mrs./Miss _____ de Rejaf payam
approval letter No. RP/JC/38.A.1 dated 17/10/2007
2. Please hand to the allottee the above plot upon paying the survey fees.
3. The allottee is expected to develop the afro plot within one year from the date from the date of allotment:
4. Rejaf Payam reserve the right to withdraw and confiscate the above plot if not developed within the specified period.



CC: Commissioner - Juba County.
CC: Allottee Mr./Mrs./Miss _____

ANNEX 3: PAYAM BUSINESS PERMIT FROM NORTHERN BARI PAYAM

Director's office
Northern Bari Payam
Juba county

No. NBP/JC/20.K.1

Date: ____/____/200__

TEMPORARY PERMIT

This is to certify that the administration of Northern Bari Payam has given an approval to Mr. / Mrs. _____ the bearer of this permit, to run his/her business of _____ in _____ for a renewable period of _____

Sign: _____
Director
Northern Bari Payam

ANNEX 4: LETTER TO THE EDITOR OF CITIZEN NEWS PAPER, THURSDAY, AUGUST 26, 2010, VOLUME 5, ISSUE 236 BY LEGGE JAMUS, DEPUTY CHAIRPERSON OF EASTERN MUNDARI COMMUNITY



Thursday, August 26, 2010 Vol. 5, Issue 236

Local

Letters to the Editor

Letters
Your letters will be published when they are short and straight to the point. The editor deserves the right to edit your letters to avoid profanity. For any comment on our stories and latest developments, send us your views at letterstocitizen@yahoo.com

Gier Chaung and Chief Santino Lomurie' agreement on agricultural land is not recognized

The agreement was about agricultural land that was made early this year locally by the Goss Minister of Internal Affairs Gier Chaung and the chief in the village of Yeki Boma. This agreement was wrongly made, not even recognized by the Eastern Mundari community. Yeki Boma is under Mangalla payam, Tererkeka County; how did Gier got connected to the chief without respecting his status? As a minister in GOSS he would followed the administrative channel than promising primary school to chief in order to get the land or do he mean there is no other government in the middle only GOSS and if so why that there is state Government and county authority. However, this people were taken by surprise when Gier climbed down from GOSS and come direct to the local chief leaving the state government and county authorities, even payam, and this shows the right of the people is not respected by our leaders.

He would first meet the state authority than the state authority should have first consulted the County up to the community label. This shows administration vacuum in person and skill. How did he undermine all these and used the cheapest way of convincing the chief? I personally as the deputy chairperson of eastern Mundari community, I thought the Minister was going to think of security situation since the Diaka, Mundari fighting last year and the attack of Mangalla payam by the SPLA on 13/5/2010 which resulted into the killing of four (4) innocent people from Ngok clan, including pregnant woman called Kaku and the village that was burned to ashes (Dingokorber village). There is nothing that has been done on this. Up to now people are in fear and this will result in to serious hunger next year due to lack of security in the area. Yet people are demanding land for agriculture through chief, how did he look for agriculture land when there is no security and people are dying? Therefore, he did not go and join movement because of my village and let us think on how Sudan is going to be but not acquiring land unnecessarily.

By: Legge Jamus

ANNEX 5: QUESTIONNAIRE OF INTERVIEW QUESTIONS FOR KEY INFORMANTS

1. What customs regulate land access and allocation in your locality?
2. What is the status of customary land?
 - a) Describe the ownership of customary land (grazing land, arable fields, rivers) (e.g., who exactly owns it, what is the decision making structure?)
 - b) What land problems exist in your area and how are you managing the situation?
 - c) What land problems have you not been able to handle and to whom have you referred them?
 - d) Who allocates customary land?
 - e) How do you acquire customary land for settlement?
 - f) How do you acquire customary land for business?
 - g) Are other persons outside the community or clan permitted to acquire customary land? Yes or no?
 - h) If no, why?
 - i) If yes how?
 - j) How do other persons outside the community or clan acquire customary land?
 - k) Apart from customary land, do you know other land tenure (system or type of land management)?
 - l) What is the importance of customary land practice?
3. There are allegations of illegal sale of customary land, what do say about it?
 - a) Please explain your answer.
 - b) Cite specific examples that involve the sale of customary land in the community (when, what size of land, to whom, who is currently using the land, how did the community react, etc.)
 - c) In your view, what motivates individuals to sell land?
 - d) Describe how the sale of customary land conducted?
 - e) Do you think the illegal sale of customary land should be stopped? Yes or No? Why?
 - f) What is the mechanism that may be put in place to curb the process?
4. What are the roles of traditional authorities in land administration and allocation?
 - a) How do the traditional authorities administer and allocate land (e.g., who exactly does allocation, conflict management, how is enforcement done etc.)?
 - b) What is your opinion or view about the current practice of administering and allocating land by the traditional authorities?
 - c) Is there need for improvement of the current practice of land administration and allocation by the traditional authorities? Yes or No? If yes, Mention them.
 - d) What type of documentation on land do you keep? Explain your answer?
5. Apart from customary laws, do you know any other laws governing land administration and allocation?
6. What are the conflicts between the customary laws and the statutory laws governing land administration and allocation?
7. Do you think that traditional authorities have a role to play in land administration in urban areas? Explain your answer?
8. If yes to the above, what exact functions do you think traditional authorities can do in urban areas?
9. How do you think customary land tenure systems can accommodate better women's land and property rights?

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CONFLICT OVER RESOURCES AMONG RURAL COMMUNITIES IN SOUTHERN SUDAN:

A CASE STUDY OF LAKE GIRINDI, MVOLO COUNTY,
WESTERN EQUATORIA STATE (WES)

DECEMBER 2010

This publication was produced for review by the United States Agency for International Development. It was prepared by Tetra Tech ARD.

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DISCLAIMER

The author's views expressed in this publication do not necessarily reflect the views of the United States Agency for International Development or the United States Government.

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ACRONYMS AND ABBREVIATIONS

AK 47	Assault rifle
CPA	Comprehensive Peace Agreement
ECS	Episcopal Church of the Sudan
FGD	Focus Group Discussion
GM3	Automatic rifle
GOSS	Government of Southern Sudan
IDPs	Internal Displaced Persons
HIV/AIDS	Human Immunodeficiency Virus/Acquired Immunodeficiency Syndrome
MOH	Ministry of Health South Sudan
MP	Members of Parliament in the South Sudan
NPA	Norwegian People's Aid
NGO	Nongovernmental organizations
SSCCSE	South Sudan Center for Census and Statistical Evaluation
SSRRC	South Sudan Relief and Rehabilitation Commission
SPLA	Sudan People's Liberation Army
SPLM	Sudan People's Liberation Movement
UNICEF	United Nations Children's Fund
WES	Western Equatoria State
WFP	World Food Programme

EXECUTIVE SUMMARY

Mvolo County of Western Equatoria State (WES) was selected for the study of land use conflict in rural areas of Southern Sudan, because it is a hotly contested area between the Juru farmers of Mvolo County and the Dinka pastoralists of Lakes State, particularly those from Yirol East County. The conflict usually occurs during the dry season when the grazing grasses and water for cattle and humans have become scarce in the pastoralist area; in the same season in Mvolo County, grasses are luxurious and water is available along the Mvolo River and Lake Bahr el Girindi. These attract the Dinka pastoralists; as a result, they drive their animals there to access these resources.

Thus, the prime motive for the seasonal migration of the pastoralists from Yirol East County to Mvolo County, their immediate neighbor to the south, is to secure grazing areas and drinking water for their cattle along the Mvolo River and Lake Girindi. While in Mvolo, the pastoralists also allow their cattle to graze on Juru farms, thus leading to the seasonal Dinka-Juru conflict. Cattle theft also sparks conflict within Dinka community itself.

This study aims to contribute to the ongoing efforts to formulate better policies and guidelines for managing resource-based conflicts and land issues in Mvolo County, and other parts of South Sudan, where similar conflict exists. Focus group discussions (FGD), interviews, and field observations were methods used. These targeted the county administrators, including the commissioners of the two Counties (Mvolo and Yirol East); chiefs; elders; nongovernmental organizations (NGOs); and members of women's associations. The results of the research showed that historically, amicable relationships had existed between the Juru and Dinka communities. The Dinka of Yirol East County confessed that they are cousins with the Juru Community. For example, the mother of the current Commissioner of Mvolo County is a Dinka. They further revealed that the current conflict actually began in 2006, and it was started by a small group of criminals, which has now spoiled relationships between the entire Juru community and Dinka pastoralist community.

According to the Juru communities, the usual causes of the conflict are attributed to cattle rustling, destruction of Juru beehives and fishing nets, destruction of crops and houses, and raping of women, all by the Dinka. On the other hand, the Dinka group believes that as majority, they have a right to occupy the land of the minority which is not utilized by cattle. However, what has exacerbated the conflict in the area, are weak policies and institutions. Although several attempts have been made by government authorities, chiefs, and elders to resolve the conflicts, all have been without effect. The only solution appears that it will ultimately be the two sides alone to solve the problem.

I.0 INTRODUCTION AND BACKGROUND TO THE STUDY

The conflict in South Sudan has severely affected its people, resulting in over two million deaths and more than four million people displaced between 1983 and 2005. Southern Sudan has a population of around six to eight million who are predominantly rural and live on subsistence economy.

While some Southern Sudanese practice indigenous traditional beliefs, Christian missionaries have converted most into Christianity and a small percentage are converted to Islam. The South also contains many tribal groups and many more languages than are used in the north. The Dinka, whose population is estimated at more than one million, is the largest of the many black African tribes in Sudan. The Shilluk and the Nuer are among the other large Nilotic tribes. The Azande, Moru, Baka, Mundo, and Balanda Viri are Sudanic tribes in the west; and the Bari, Acholi, Toposa, Madi, and Lotuhu live in the extreme south and southeast, extending into Uganda. This region has been negatively affected by 21 years' of conflict, and since the independence period (1956–2005), resulting in serious neglect, lack of infrastructural development, and major destruction.

Some people seem to misunderstand the core reason for the war of liberation in the Southern Sudan. According to the Rumbek Peace Initiative of 15 November 2008, the war of liberation was believed by all the marginalized people of South Sudan to be justified under the fundamental accolades of equal citizenry, equal opportunities, secularism, freedom, democracy, and progress. However, the cost of waging such a protracted liberation war is very high and acute, and it has touched almost everyone in this part of the country. Consequently, the indigenous Southern Sudanese cultural values and norms have been replaced by militancy and mindlessness, looting and the destruction of properties, and even killing of fellow Southerners.

I.1 AN OVERVIEW OF NATURAL RESOURCE CONFLICTS IN SOUTH SUDAN

The ethnic conflicts that have unfolded among many tribes in the South Sudan in the past few years are not a new thing. This means no state is immune to the conflict. The recent raidings can be attributed to scarcity of natural resources—for example relative shortages of food, disparity in access to water or grazing lands during the dry season—and ultimately the breakdown of traditional rules. Thus disputes over access to and control over natural resources has a major role in these conflicts. Throughout South Sudan, tensions continue at community levels, intensified by the approach of the dry season, when access to grazing land, water, and other essential resources become scarce. As a result, communities are brought into conflict with one another as they struggle to make ends meet in terms of access to such resources.

The widespread use of small arms serves to fuel and complicate the strained situation. Cattle rustling can also cause deadly conflicts. For example, Eastern Equatoria State is the most volatile state in the South Sudan with regard to cattle rustling. It was an epicenter for the First Sudanese Civil War (1955–1972) and again during the Second Sudanese Civil War (1983–2005). Cattle rustling, armed robbery, revenges, and banditry are endemic in the area. The Nuer (Lou, Laak, and Gawaar) and Dinka in Jonglei State are used

to fighting over natural resources, despite the fact they are sedentary pastoralists and have many things in common. Their seasonal migration patterns occur only during the dry season, from November to April. These months represent the critical period in the dry season, where pastoralists come into conflicts with each other over access to drinking water and green pastures for their cattle as well as access to fishing ponds and wildlife hunting. It is also worth noting that swamps, ponds, and lakes, which are traditionally owned by certain communities, as reflected in the naming of these watersheds and territories, are now the sources of the conflicts.

In Southern Sudan, it is naturally expected that whoever moves to another's territory abides by traditional customary laws or rules set by the local people who own the territory. Such customary rules regulate activities like fishing, hunting, or cultivation. In the context of such traditions, access to some rivers may require performance of spiritual blessings/rituals by spiritual leaders before the available resources are exploited. If any of these local rules or norms is violated, it may cause conflict. The older generations of Nuer and Dinka Bor know the significance of such symbols and meanings attached to those customs, but the current young generations of these groups seem to defy those important customary rules and ignorantly mix them with their youthful pride and power of the gun. Hence the frequency of conflicts.

1.2 SIDE EFFECTS OF 21 YEARS' OF CIVIL WAR

In WES, there are conflicts between Moru and Mundari Bora over Lake Reri of East Mundri County, and between the Juru and Dinka at Mvolo County (the present subject of study). There are also conflicts between Dinka Atuat and Agar all in Lakes State and so forth. One could therefore say South Sudan has been full of such trouble spots and conflicts in recent years.

During this period of conflict, the Moru in WES accused the Dinka Bor displaced camp communities of damaging their forests, croplands, and water points as well as showing a lack of respect for local traditions and authorities. Starting in 1999, numerous attempts were made to facilitate internally displaced person (IDP) return through organization of rallies; peace meetings; needs assessments, including organization of "go-and-see" visits for IDPs; provision of trucks for transportation; and improving some services in Bor—but without success. Equatoria on the whole offered good grazing and other economic opportunities for IDPs, and this, coupled with lack of safe passage and inadequate services in Bor, provided little incentive to return.

In 2004, the situation worsened in WES, and law and order broke down in the Mundri and Maridi areas, as conflict between host communities and IDPs spiraled out of control. The Sudan Peoples' Liberation Movement (SPLM) leadership took action, without considering all the practical effects. All IDPs and cattle in Mundri and Maridi were ordered to immediately return to Bor County. PACT, an international organization with a successful track record in peace building in Sudan, was asked to assist. The intervention was to be a pilot to generate approaches and lessons for the SPLM leadership and the many other Bor IDPs scattered throughout Equatoria, to ensure a broader and successful return process.

It is undeniable that resources and land could be triggering some of the conflicts, as has been witnessed on numerous occasions in Jonglei. However, beyond this, tensions between communities are aggravated by pervasive tribalism and perceptions of state bias, the absence of roads and infrastructure, widespread food insecurity, and limited access to justice.

In 2009, it was reported that 2,500 people were killed and more than 350,000 were displaced in the South Sudan; in January 2010, 700 people were killed and 152,000 were displaced. These conflicts plunge people into precarious positions (International Crisis Group, 2009). Furthermore, the native authorities and local chiefs who were once customarily entrusted with the responsibilities of managing and protection of these resources are now losing their capacity to control land and natural resources. This is because of the youth, who take pride in the power of the gun and disrespect the chiefs and elders of the communities in the South Sudan. The rule appears to be that people will respect and fear you if you have a gun.

As indicated in the preceding analysis, no part of Southern Sudan is free of conflict; most areas are affected by conflicts over resources that usually diminish as the rainy season approaches. This means that they are temporary conflicts which can be easily contained if the Government of Southern Sudan (GOSS) is serious and comes up with plans of environmental conservation, rangeland improvement, and good cattle breeding programs.

Conflicts may also escalate due to discriminatory practices within a given community. Women, along with other socially-marginalized groups, may be the victim of such conflicts. Often women lack secure land rights, property, and other natural resources, both under customary and state tenure systems. The risk this poses to household food security is exacerbated in situations of armed conflict, where widows and orphans are among the highest numbers of displaced people. Recreating stable communities is more difficult, if women do not have tenure security and are not recognized as producers in their own right.

There is also growing concern for widows whose spouses have died of Human Immunodeficiency Virus/Acquired Immunodeficiency Syndrome (HIV/AIDS) in contexts where women cannot inherit lands, even those they are actively working. In some South Sudan communities, women have been regarded generally as property, making their land and property rights more insecure in the post-conflict Southern Sudan.

The foregoing discussions present the context within which to understand the conflict between the Juru of Mvolo County and the Dinka Agar and Dinka Atuat of Yirol East County. The conflict in Mvolo County started mainly after the signing of the CPA around 2006, when many killings took place, especially during the dry season with easy movement of cattle. The influx of Dinka pastoralists, whose herds are thought to spread diseases, pose serious problems to the Mvolo community, as they compete for limited grazing resources during the dry season along the Juru River and the lake Bahr el Girindi.

Consequently, the ongoing conflict around Lake Bahr el Girindi is a resource-based conflict. Lake Girindi is a natural water source and it is located at a distance of about 43 miles off the Mvolo-Yirol Road, east of Mvolo County headquarters of WES. The Lake has become a contested area in the post-CPA era and every year many people are killed and displaced from the area.

The Juru communities of Mvolo County regard the Lake as a source of fisheries, which they exploit during the dry season. They claim complete ownership of the Lake, especially those in Juru villages near the Lake Bahr el Girindi. The Dinka of Yirol East County and that East of Rumbek County (Aliab, Agar, and Ataut) also present a similar claim to the Lake in spite of the fact that it lies in WES. During the dry season, the Dinka groups face acute water problems, for both humans and animals; as a result, they resort to use of force in order to access water and grazing lands in Mvolo County. The brutality of the Dinka has increased, as they acquired some guns during the 21 years of war fought by the People's Liberation Army/Movement (SPLA/M) in Southern Sudan. The Dinka acquired guns to protect their cattle, but instead have used them to increase the population of their livestock through cattle rustling.

The Juru farmers, on the other hand, have no guns and are not used to violence and the habit of cattle rustling. Hence, the pastoralists are stronger and braver than the Juru farmers, and daring in the conflict zone. Thus, the problem has become endemic and difficult to settle.

2.0 RESEARCH OBJECTIVES

As noted earlier, the overall goal of this study is to contribute to the ongoing effort to formulate better policies and guidelines for managing resource based-conflicts, with a view of contributing to the reduction of such conflicts among pastoralists and between pastoralists and farmers in the South Sudan. Thus, the specific objectives of the study were to:

1. Investigate the causes and extent of conflicts at Lake Bahr el Girindi, Mvolo County, Western Equatoria State, between the Dinka and the Juru communities of Yirol County during the dry season. Following the signing of the CPA in 2005, specifically since 2006, pastoralists from East Yirol County and other parts of Lakes State have been converging into Mvolo County along the Mvolo River and Lake Bahr el Girindi in the dry season in search of water and pasture. The result has been the destruction of the farm crops and other properties of the Juru, leading to conflicts and death.
2. Investigate the institutional and policy responses to the conflict at Mvolo County between the Juru communities and the Dinka pastoralists over water and grazing land at Lake Bahr el Girindi. In particular, the objective sought to investigate the efforts that have been undertaken by the government at the county, state, and GOSS levels to address the conflict between the different communities in the area.
3. Identify and suggest policies for conflict resolution and peace building between the communities. This included an investigation of the views and perception of stakeholders on the possible options of addressing the conflict.

3.0 RESEARCH METHODS AND STUDY AREA

3.1 RESEARCH METHODS

The study used primary and secondary methods of data collection. Focus group discussions (FGD) were used to assess the nature and extent of the conflict in the area. This involved meetings with groups of elders and chiefs to solicit their views on the conflict. Direct observations of the results of the conflict in terms of displaced persons, destruction of homes, and other signs of the conflict were also made. Key informant interviews were also solicited with local Members of Parliament (MP) at state and GOSS levels, the County Commissioners of Mvolo and East Yirol County, and NGO staff working in the area. Institutional and policy responses to the conflict was sought from the MPs and the local authorities, such as the County Commissioners and other security organizations, present in the area or in the capitals of Western Equatoria and Lakes States.

Views of traditional leaders, elders, and MPs were also solicited towards policy suggestions for solutions to the conflict. As concerned leaders, these groups have given thought as to how best to put an end to this conflict. Primary data was supported by secondary data. Secondary data reviewed included workshop reports and published literature on natural resources conflicts in Southern Sudan and elsewhere.

3.1.1 Primary Data Collection

The inquiry was conducted at the villages near the lake Bahr el Girindi and the County Head office at Mvolo. Similar exercises were also carried out in some parts of Lakes State, including Yirol Counties bordering Mvolo County. A combination of data collection methods was used, unstructured interview questions were presented to randomly selected individuals, including chiefs, elders, and other groups in the study area. Key informant interviews and FGD were also carried out. Observations were similarly made to strengthen the findings of the research.

The approach for data collection is summarized in Table 3.1, The number of people interviewed were: 9 chiefs in Mvolo (all men), 10 women, 9 county officials, 5 South Sudan Relief and Rehabilitation Commission (SSRRC) staff, 6 Norwegian People's Aid (NPA) staff, 12 youth, 5 health workers, and the Commissioner. Thus, about 57 people were met and interviewed in Mvolo County.

While at Yirol, the research team spoke to 7 Chiefs, including the female town chief, 8 members of youth, and 5 members of Women's Association, and 5 elders of Yirol East town. The Commissioner was unfortunately away, reportedly attending to a case of cattle that had been stolen from Yirol County by Nuers from Unity State. A total of 25 people were interviewed.

In Rumbek town, the study team met the Secretary General of the Lakes Government; the Minister of Physical Infrastructure; and 11 elders, including 5 chiefs; and the High Court Justice, Pau Pot. Thus, a total of 101 people participated in the focus group discussions.

Table 3.1 Research Strategies for Data Collection

Issue	Variables	Data collection tools	Source of data
Nature and extent of the conflict	<ul style="list-style-type: none"> Sizes of the community Perception of the causes of conflict Incidences of violent conflict Trends of death 	<ul style="list-style-type: none"> Focus Group Discussions (FGD) Review of literature Direct observation 	<ul style="list-style-type: none"> Victims of conflict Traditional leaders, elders, chiefs
Institutional and policy response to conflict	<ul style="list-style-type: none"> Perception of authorities about the conflict Skills of officials in the counties Action taken to address the conflict and their effectiveness 	<ul style="list-style-type: none"> Key informant interviews with MPs, county officials, etc. MPs Review of official documents, such as minutes of meetings and other discussions, concerning the conflict 	<ul style="list-style-type: none"> Commissioner's offices Traditional administrators Elders, chiefs, etc.
Policy suggestions on conflict resolution	<ul style="list-style-type: none"> Views on how conflicts over natural resources can be addressed 	<ul style="list-style-type: none"> Key informant interviews with all stakeholders Literature review Focus group discussions 	<ul style="list-style-type: none"> Traditional Leaders, Elders, and Chiefs Members of Parliament

3.1.2 Secondary Data

Secondary data were extracted from conference documents, journals, and internet resources, which were used to strengthen the study.

3.2 STUDY AREA

This research was carried out in Mvolo County of WES. Mvolo is about 185 miles west of Juba town, the capital of South Sudan. The county has a population of about 48,000 people according to the population census of April 2009. This area is occupied by the Juru community, members of which are crop agriculturists. They rear some small ruminants (goats and sheep) and chickens. The Juru people also make beehives for honey production. Fishing in the Juru River and Lake Bahr el Girindi is performed by the group as sources of food and income. According to the indigenous people around the lake, there used to be hippos and crocodiles in the lake during the 1950s–1960s, but today the lake is being overexploited. As result, it is shrinking in size and depth. During the dry season, the lake is completely covered with green grasses under which fish and other organisms such as crabs, snakes, tortoises, and African lungfish live. The grasses in the lake are burnt yearly in October–November as they dry up, thus giving chances to new lavish shoots of grass to come up as forage for cattle, goats, and sheep.

This area is, however, currently heavily contested by the Juru farmers and Dinka pastoralists, especially during the dry season, where the pastoralists bring their cattle to access water and rich grazing areas around Mvolo River and Lake Bahr el Girindi area.

According to the Executive Director of Mvolo County, the letter of the establishment of the county is not yet out, so it is difficult to define the extent of the area of the county.

Table 3.2: Mvolo B-Court Chiefs during British Rule of the Sudan:

Mvolo Chiefs (originally five in number)	Wulu Chiefs (originally five in number)
Dokolo Amu	Logu Dorogo
Korayi Kirijoko	Tiwu Mading
Ali Madragi	Atere Ngbagi
Kozolbi Kondo	Malafo Makoye
Angu	Ndia Agari

Source: pers. Comm., Hon. Paul Tier

The Juru chiefs are divided into two, those in Wulu (Logu Dorogo, Tiwu Madin, Atere Ngbagi, Malafo Makoye, and Ndia Agari) falling under Lakes State and others like Dokolo Amu, Korayi Kirijoko, Ali Madragi, Kozolbi Kondo, and Angu, all under Equatoria Province currently known as the Greater Equatoria State. There have been controversies on the decision on where Mvolo County should be, either under Greater Equatoria State or Bahr el Ghazal State. According to the Commissioner of Mvolo County, all these chiefs belong to the Mongalla Province, currently part of Greater Equatoria State, since 1920–1930. At some stage, the inspector put the five chiefs of Wulu under Bahr el Ghazal Province, leaving the remaining five in Mvolo under Mongalla/Equatoria Province. Officials considered Wulu to be nearer to Rumbek. Nevertheless, the Juru in Wulu are also Juru Belli and they have the same language, tradition, and culture with the Mvolo group. However, in 2001, Wulu was brought under Mvolo, in leadership council meeting at Rumbek. The Late Dr. John Garang had put it under Equatoria. But Commander Nhial Deng, by then the Governor of Bahr el Ghazal, persuaded the leadership Council that Wulu and Mvolo should be under Bahr el Ghazal. However, the late Samuel Abu John, then Governor of Equatoria, insisted that it should be under Equatoria. With this conflicting view, Dr. Garang decided to place both Wulu and Mvolo under presidency until after peace.

After the signing of the CPA, the late Dr. Garang advised that people should go back to the border of 1956. In line with this approach, he returned Wulu to Bahr el Ghazal province/Lakes State and Mvolo to Equatoria Province/Eastern Equatoria State. Now the people of Wulu speak Dinka, in addition to Juru, while the people of Mvolo speak Moru language—two different entities.

Mvolo County currently has 15 chiefs and seven payams with a population of about 48,000 persons (Population census, 2009). Unfortunately, according to the Executive Director of the County, there is currently no mandate for them to establish the boundaries of the county.

According to the chiefs and elders of Mvolo County, wherever the Dinka pastoralists came and settled in Juru land to graze their cattle, they would rename the places, rivers, lakes, trees, etc. in their own language. For example, “Kereukoyi,” which is in Juru language and in Juru land, has been renamed “Mopurdit,” which means “a land of white sand” in Dinka language. Although the Juru ancestral graves are there as landmarks, the Dinka of Yirol East County want to grab the land.

Today Mopurdit/Kereukoyi has one of the best hospitals, but the Juru cannot go to the hospital for fear of being killed by their neighbors. Similarly, Cholau has been renamed Yek by the same Dinka group. According to the Juru people, the renaming of Juru places by the Dinka is superficial and will disappear once correct boundaries are established. Furthermore, the Juru of Mvolo do not speak the Dinka language, and are unwilling to use these names.

Table 3.3: Payams and Chiefs of Mvolo County

S/No	Name	Title	Payam
1	Zachariak Nyonyo Kozo	Paramount Chief	Mvolo County
2	Wilson Majak Awu	Executive Chief	Mvolo County
3	Simon Alipaya Yepete	Town Chief	Mvolo County
4	Agoi Mayol Kondo	Executive Chief	Mvolo County
5	Dobil Licho Abot	Chief	Bahr el Girindi
6	Dobil Arune Dakada (has died)	Chief	Bahr el Girindi
7	Philip Korayi Lopjochu	Executive Chief	Kokori
8	Michael Machak Dakada	Chief	Kokori
9	Eliaba Goli Kozo	Executive Chief	Bogori
10	Benneth Juma Adaam	Chief	Bogori
11	Noah Ayoli Chack	Executive Chief	Yeri
12	Michael Titinwa William	Executive Chief	Dari
13	Thomas Sebit Noah	Chief	Dari
14	William Domuku Korayinga	Executive Chief	Lessi
15	Alexander Doderi Diri	Chief	Lessi

Source: pers. comm., Executive Director Mvolo County, July 2010.

As can be seen from Table 3.3, today Mvolo County has 15 chiefs. They are ranked as Executive Chiefs and Town Chiefs. The overall authority is in the hands of the Paramount Chief, who is the head of all the chiefs in the county.

4.0 MAIN FINDINGS

4.1 NATURE AND EXTENT OF CONFLICTS IN MVOLO COUNTY

The Mvolo area has a long history of inter-tribal conflict between the agriculturalist Juru Belo tribe and the pastoralist Dinka Agar tribe of Rumbek and Yirol West Counties.

It appears that the culture of war and violence is still fresh in the minds of the young generations; as a result, they take pride in violence, and revenges, and cattle rustling. During the dry season, the Dinka Agar from Lakes State and the Dinka of West Yirol County bring their cattle down to areas of pastures and water around the Mvolo River, Lake Bahr el Girindi and other seasonal streams north of Mvolo County of Western Equatoria State. On reaching these luxuries pasture and water sources, disputes arise between these tribes and the host community, as cattle begin to destroy the crops, beehives, fishing nets, and so forth.

The first incident of this kind happened on 29–30 December 2006 with clashes at Woko and Mokondi in Wulu County, Lakes State; and Kombi and Lam of Mvolo County, WES (interview with chiefs at Mvolo, 2010). During this period, five people were killed, while the rest of the population was displaced, including people from nearby villages to centers such as Mvolo, Leiybol, and Wowo. Woko Payam and Kokori Payam (Kombi, Lam, Kulu, Dulo, and Kokori Bomas) were completely destroyed and deserted.

However, during the 21 years' of war, there was no conflict between the two communities. According to the current Commissioner of Mvolo County, the relative peace then might be attributed to the fact that during the war, people were only concerned with their own physical security.

The second phase of conflict occurred on 7 February 2007, in Bogori Payam, in which three men were killed. Again people from this payam fled, leaving the Bomas of Bogori, Kperikudu, and Gira completely destroyed and deserted. Most people left for Mvolo center, while a small number went to Yeri, Kozi Payam. Both clashes triggered immediate movement of the people. Tukuls and beehives were destroyed, food and assets burned and looted. After this, the situation calmed down, but several sporadic incidents continued to make the area insecure. The sequence of fighting followed as narrated below:

- A displaced family of five from Mokundi was killed near the border with Lakes State.
- A bus carrying Dinka Agar people was ambushed, in which two people—the driver from Kenya and a baby—were killed.
- A man was shot dead outside Woko as he was trying to go back to the village to collect food.
- There have been several episodes of looting and robberies, all related to the tribal conflicts (Southern Sudan Relief and Rehabilitation Commission [SSRRC] Mvolo County, 2010).

Normally these conflicts happened due to some individuals who want to rustle cattle and property using illegal arms. For Juru-Agar conflict, it mainly occurs along the Mvolo River and is characterized by the following:

- Destruction of crops—the Dinka usually come to Juru land before the harvest and drive their cattle into the farms of Juru community. The cattle will eat the food crops of Juru people, leaving the people to starve.

- Theft—the Dinka are known to remove the beehives of the Juru people, eat the honey, and destroy the hives.
- Destruction of fishing nets—the Dinka also remove the nets of the Juru from the fishing ground or in the river, taking the fish and the nets for their own use.
- Disregard of traditional authorities.
- Harassment of women and youths of Mvolo County.
- Overgrazing of fallow land.
- Contamination of streams by cattle.

Most of the cattle in the contested areas are owned by generals in the South Sudan army (interviews with the chiefs and elders, July 2010). It is the generals who supply these cowboys 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 area. Everyone wants to protect himself from his neighbor and take revenge.

The result is the breakdown of law and order and traditional systems at Mvolo and Yirol Counties. The youth no longer respect the chiefs, elders, or even the government orders. The conflict has also been fuelled by the fact that violent behavior and revenge taking is culture of war, well-established in young men during the 21 years' of protracted war between the South and the North. The youth in the two counties (Mvolo and Yirol) were taught violence, revenge, killing, and cattle rustling in the 21 years' of conflict. As a result, it is difficult to eliminate these habits which they have learned over a long period of time.

Table 4.1: Extent and Form of Conflict in Mvolo County

Payam	Conflict Parties	Form of Conflict	Magnitude/intensity
Kokori	Dinka-Juru Conflict	Destruction of food crops by cattle, beehives, fish stealing, etc.	Intense at any time in the year (dry and wet season)
Bogori	Dinka-Juru	Cattle destroying food crops, destruction of bee hives belonging to Juru people, stealing of goats/sheep, etc.	Intense all the year round (dry and wet season)
Bahr el Girindi	Dinka-Juru	Cattle stealing by some Juru youth	Low intensity during the dry season
Lessi	Dinka Nyamosa	Destruction of crops by animals	Low during the dry season
Dari	Dinka-Wira	Cattle destroying food crops	Low intensity
Mvolo Center	None	No conflict	Very low, maybe once in a year
Yeri	None	No conflict	Very low, maybe once in a year

Source: Interviews with the community and the chiefs, July 2010

As indicated in Table 3.4, areas like Kokori and Bogori are dangerous areas because fighting used to take place there year-round. Furthermore, the two areas are located at the borders with the Dinka pastoralists; as a result, they are attacked from time to time throughout the year. The number of displacees and killings in Mvolo County are as indicated in Table 3.5, below:

Table 4.2: Number of Displaced People and Killed in Four Payams From 2006–2010.

Year	Payam	Number of people killed	Number of individuals displaced
2006	Bogori	48 in Bogori and Kokori	7,021
	Bahr el Girindi		4,333
	Kokori		7,672
	Yeri		4,578
Total		48	23,604
2008	NO KILLING AND DISPLACEMENT		
2007	Bogori	3	3,500
	Kokori	8	4,166
Total		11	7,666
2009	Bogori		5,657
	Kokori	2	11,313 (See Table 3.6, below)
Total		2	16,970
2010	Bogori		6,302
	Kokori	3	10,122
Total		3	16,424
OVERALL TOTAL		64	64,664

Source: GOSS SSRRC and UNICEF Mvolo County, 2010

The numbers of displacements are more at Bogori and Kokori because of the intensity of fights in those areas; one can easily see that the rate of killings are also very high in those areas between 2006–2010.

Table 4.3: Estimated Number of Displaced by the Conflict in Mvolo County, 2009.

Origin	Area of Displacement				Total
	Wowo	Lei Bolo	Mvolo	Yeri	
Bogori Payam			3,000	250	3,250
Kokori Payam	3,500	1,300	1,800		6,600
Woko Payam			1,200		1,200
Total	3,500	1,300	6,000	250	11,050

Source: GOSS SSRRC and UNICEF, Mvolo County, 2010

The fighting between the Dinka pastoralist and the Juru farmers was very intense in Bogori, Kokori, and Woko Payams, with large amounts of displacement in 2009, as indicated in Table 3.6. This means Bogori and Kokori are conflict-prone areas in Mvolo County. These are the border payams with East Yirol County. The borders are not stable because the Dinka Pastoralists can encroach into the area at any time. For example, the fighting which took place on 16–20 June 2010 left many people displaced from Kokori Payam with the payam office destroyed, followed by looting of the shops in the payam.

The nature of the conflict in Mvolo County between Juru community and the Dinka pastoralists of Lakes State and the East Yirol County is a resources-based conflict. It is competition over scarce resources (grazing areas and water) during the dry season. These resources are found in Mvolo Country in areas like Lake Bahr el Girindi and the Mvolo River. It is in these places where frequent clashes take place. Although the two communities have some social links through inter-marriage, this has not been respected by either side to the conflict. Nevertheless, they are trying to settle these problems once and for all. Yet they need support from GOSS to put an end to this unrest.

The Dinka justified their actions as follows: that they used to take their cattle to Juru area because there are not enough pasture lands and water for their cattle in their own areas. Although the two communities coexisted in peace for centuries, it was only after the signing of the CPA that the conflict flared up. This was caused by small groups of boys or youth.

According to the chiefs in Yirol East County, some of these actions are being undertaken by some groups of criminals to tarnish the image of Dinka and spoil the relationship of Dinka with Juru. In addition, not all the Dinka are involved in this conflict, only very few individuals. Furthermore, in many places the conflict takes place only during the dry season, a very short period of time. Yet in Kokori and Bogori of Mvolo County, the problems seem to last all year round.

The chiefs, youth, and women's groups in Yirol East told us that the former Commissioner of Mvolo County used to come to Yirol East to discuss matters concerning their areas with his counterpart; this indicates good bilateral relationship between the administrations of the two counties.

4.2 GRAZING PROBLEMS AND THE SITUATION OF PASTORALISTS IN THE DRY SEASON

Key informant interviews with the chiefs, youth, elders, and the women's group at Yirol town indicated problems of water and grazing for cattle at the Yirol East County during the dry season. Although the area of Yirol is marshy/swampy with a lot of water and flood during the rainy season, it is the opposite during the dry season. There are no alternative land and water sources except in those found in Mvolo areas, where there are plenty of water sources and grasses along the Mvolo River and the Lake Bahr el Girindi.

In addition, large herd sizes forced pastoralists to look for alternative pasture in Mvolo County. The pastoralists said they have too many herds of cattle; as a result, they are obliged to rescue their cattle in Mvolo areas. Respondents argued that it will be unfair to leave their cattle to die while neighboring communities have plenty of grasses and water. Pastoralists feel that there is a need to share these resources. For them cattle is a lifeline, without which they cannot survive. It was considered undesirable to allow cattle to die, as their lives as pastoralists are anchored on cattle and its products. Thus the survival of cattle for the pastoralists is considered a matter of life and death.

4.3 RAINY SEASON AT YIROL EAST COUNTY

Yirol can be flooded during the rainy season, with too many flies, leeches, liver flukes, snails, and other insects that bite both cattle and humans. Too much water will bring foot-rot to the cattle and other diseases as well. This threatens the life of cattle and the pastoralists' economy. As a result, they will have to take their cattle to the higher lands at Mvolo County to avoid the flies and other insects that may bite cattle and the humans. This made the pastoralist move with their cattle to avoid problems of cattle loss.

For the pastoralists, the land at Mvolo County is not being sufficiently exploited because people there do not have cattle. According to the chiefs of Yirol East County, the death of cattle means the loss of dignity, pride, security, livelihood, and health. Nevertheless, sometimes criminal-minded individuals in these communities take the advantage of the fragile situation to make away with cattle. This is regarded as stealing among the pastoralists and the farmers. According to the Dinka pastoralists, most of the time such crimes are committed by male farmers and the youth in the two communities (Dinka and Juru).

4.4 THE PURPOSE OF KEEPING CATTLE

Interviews with chiefs, elders, and youth at Yirol confirmed that the purpose of keeping cattle is to meet cultural needs such as marriages, rituals, and prestige. There is little attention given to nutrition, income, land fertility, and conservation. There is lack of information about animal production for economic

purposes, markets for the products, and breeding of quality animals. The result is fierce competition for pasture and water among the pastoralists, especially during the dry season, leading to tribal clashes. This can be attributed to lack of food reserves for dry season. The abundance of grasses during the rainy season is not efficiently exploited as hay or made for use in the dry season. Such cultural practices have resulted in overstocking of animals with animals circulating between families through marriages. There is no outlet to the markets. The huge number of livestock has resulted in tribal conflicts and overgrazing of lands. Unfortunately, there is no policy to guide or encourage livestock keepers to produce animals for market purposes. The institutions on the ground at the two counties are weak and not strong and robust. As a result, there is lack of awareness and sensitization of livestock keepers on the economic importance of livestock as a source of food, and income to meet basic needs.

As South Sudan is still emerging from conflict, policies and institutions of the government are still at fledgling stages, without proper roots on the ground. Links between a given community and the central government is still rudimentary. The limited manpower has made things worse for the governments at the different levels.

The current levels of conflict that occur at Mvolo County are clearly intolerable for farmers, herders, and the environment. The need for local communities to resort to such violence is indicative of a lack of policies, or that existing policies are not working to the benefit of these communities as a whole.

1. A weak institutional system in the county made the situation very unbecoming to the community, consequently there is no proper protection of the community and the land.
2. There has been little or no progress from the state/local authorities to ensure security for the IDPs to return. The displaced population in Mbara and Yeri locations are reluctant to return and demanding security measures to be put in place by the government authorities to ensure their protection. Reportedly, some Joint Integrated Units soldiers were deployed but remained in the town centers where security is not the key concern.
3. People are still living in the town centers with minimal support from organizations and the host communities. Attempts have been made to reconcile the Dinka Agar/Atuat and Juru and to prevent potential conflict in the future; however, noticeable success is yet to be achieved.

4.5 INSTITUTIONAL AND POLICY RESPONSES TO THE CONFLICT

The institutions on the ground are not effective. The judge in the Mvolo County ran away during the conflict in June 2010, the churches are inert and not dynamic, and the chiefs are powerless in the face of the youth with guns.

During disarmament, the chiefs are the focal points and they are asked by the soldiers of disarmament to identify who has guns in the area. However, without protection, chiefs fear to identify those carrying guns in their villages unless they are obliged to do so. If the chiefs point out any of his/her people, this can be very dangerous, as without such protection they may be killed by their own people once the soldiers leave. Once someone was pinpointed by the chief to be disarmed that chief will become his/her permanent enemy. This is the fear among the chiefs. This means if a chief has no proper protection it will be very difficult for him/her to disclose that somebody has a gun. Some of these situations are exacerbated by weak or non-existent institutions in the counties.

One respondent in Yirol observed that sometimes the judges and the policemen will release their criminal relatives from the prison and later report that the captive has escaped from the prison. As already mentioned, there is no judge in Mvolo County; he fled when the fighting broke out between the Dinka and Juru community in June 2010. This left a big vacuum in the area. This indicates lack of capacity at

GOSS level to handle such issues. It also proves that our hypothesis that GOSS is incapacitated and lacks trained manpower.

In addition, most of the people in rural areas are illiterate; as a result, the policies and constitutions are just in the books and nobody understands them. This means that there is a lack of trained cadre in most payams of Mvolo County. Furthermore, land conflicts are proving to be more difficult to solve because traditional instruments of reconciliation, such as compromise and consensus, are failing. With the advent of guns, local institutions have largely lost their authority over some local contested resources, because the local leaders fear being killed.

Consequently, there seems to be no local mechanism to settle the conflict between the Dinka and Juru communities, especially the Dinka Atuat bordering the Yirol West County and those of Agar of Rumbek East County. There is lack of traditional laws by the Dinka pastoralists and the Juru farmers and guns have aggravated the situation in the area. Those who have firearms take the law in their hands and consequently there is no respect for the traditional administrations.

4.6 PEACE CONFERENCES

Efforts to minimize the conflict have involved holding of peace conferences. In 2007 a conference was held at Yambio, WES, with the people of Yirol West County, Rumbek East, and Mvolo County. It was resolved that no cattle should cross to Mvolo County from Yirol West and Lakes State (see Annex II). Unfortunately, this resolution was not implemented.

Again the President of GOSS, Salva Kiir Mayardit, called all the South Sudan chiefs for a conference in Bentiu. The same issue was raised and discussed, but nothing has been done about it to date.

On 1–3 June, the Episcopal Church of the Sudan (ECS) organized a peace conference at Rumbek, under the chairmanship of the Archbishop of the ECS. In the same month, conflict flared at Kokori Payam of Mvolo County. With these chains of conferences without solution to the problems, there seems to be some hidden agendas behind these acts. This prompted the Deputy Director of SSRRC Mvolo County to conclude that unless it is the plan of God to stop the conflict, no man can do it.

5.0 POLICY DISCUSSIONS AND RECOMMENDATIONS

Presently, South Sudan is still emerging from years of conflict, and the fledgling GOSS is trying to extend her power base in the ten states of South Sudan. The local authorities and the community leaders, together with the farmers and the pastoralists, should agree on routes for the livestock to follow in the contested areas during the dry season. With the regulation of cattle movements, the destruction of farmer's crops, beehives, and fishing nets could be eliminated. In addition, those who violate such joint agreements can be easily punished. Further, the borders can be easily patrolled by SPLA or police forces to reduce the incidence of the conflict in the area. With the existence of weak institutions, the vulnerable groups cannot be protected, and the pastoralists will take the advantage of this weakness of the institutions.

As noted earlier, the conflict at Mvolo County occurs mainly during the dry season, when fodder and water for cattle become scarce in the pastoralist area of Yirol. Such conflicts could easily be minimized, if GOSS could encourage farmers elsewhere—even in Mvolo—to produce hay or animal feed during the dry season.

It is possible to avert some of the conflicts if the administrative links between the two counties (Mvolo and Yirol) were strong. Also, the SPLA and the police forces at Mvolo County have no vehicles for rapid deployment to abate any unrest in the county. This is another big weakness in the institution which makes things worse in the county.

Therefore, it is imperative to strengthen the capacity of governance and rule of law for institutions to provide human security and access to justice, with particular respect to gender, while protecting human rights in the conflict zones. It is also important to improve human resource capacity, backed up by an adequate legal framework and institutional operational capacity. It will be essential to ensure that confidence building and reconciliation are given due attention in the design and implementation of the rule of law. This will eventually promote transformation processes from a conflict-prone society to a peaceful society.

There is a need for an environment that is conducive to creating peace and facilitating the return and reintegration processes for displaced persons and refugees, including reintegration of former combatants. This is to be followed by a long-term capacity building in areas such as rule of law, good governance, and culture of peace. In addition, army generals (SPLA) that own cattle in the area and are part of the conflict should be informed that they are doing harm to their own country by arming those who raise their cattle to commit crimes.

Disarmament should be done by chiefs, because each chief knows who among his/her people has guns. However, chiefs may need some protection; otherwise they will be victimized if they identify those with guns in their area.

Farmers and pastoralists should agree on the routes of livestock and regulate the movements of cattle. Alternatively, the military could be used to patrol the border between Mvolo County and pastoralist areas; unfortunately, the SPLA forces at Mvolo County have no vehicles for movement.

In the final analysis, peace can only be built and sustained between the two tribes if capacity building programs address both institutional and attitudinal reform. As in any other post-conflict situation where societies are shattered and deeply affected by a protracted civil war, confidence building must be a cross-

cutting priority that underpins humanitarian, developmental, and political action. Without an attitudinal change towards justice and equality, all other efforts will be undermined. The social contract between the state and its citizens is restored and sustained by the human component of that society (Biel, 2004). While a formal peace agreement can kick-start the process of peace building, the effects of armed conflict often require a long process of behavioral adjustment between the two tribes (Dinka and Juru). New and progressive methods of advocacy and training will be required in the area of peace building, culture of peace, and non-violence.

Field-based experiences prove that legal and structural reform alone is not sufficient in promoting respect for human rights in post-conflict situations. Rather, efforts must also be made to assist these fighting tribes to acquire a deeper comprehension of universal human rights and the ethical standards inherent in the South Sudanese culture. Programs must be aimed at cultivating positive attitudes and healthy belief systems in South Sudanese culture, which can replace negative attitudes that reinforce a violent culture. These warring tribes (Dinka and Juru) must be supported and given the tools to unearth their own powers to have a positive impact on their environment and other communities who have similar problems in parts of South Sudan. Only then can we truly build the capacity of national stakeholders to integrate human rights and core values of culture of non-violence and culture of peace in their own sphere of power, day-to-day life, and responsibilities.

The institutions must seek to develop culturally relevant interventions for precarious day-to-day living conditions for the pastoralists and their families. In order for the institutions to design a program which can benefit the pastoralist communities, there is a need to prioritize the needs of different communities, building on what they already have, taking into account the culture and realities of everyday life. The role of institutions should be to bring about changes that will improve the quality of life of individuals and their families. Many families in the South Sudan are in crisis, caused by economic, social, political, and environmental issues in the country. The crises need to be addressed by the relevant institutions in the region.

There is also a need to take into account the cultural values, capabilities, and the needs of particular communities to improve their lives and minimize conflicts between them.

According to the Commissioner and the Executive Director of Mvolo County, the solution of the problem lies with the Dinka, from Salva Kiir Mayardit, President of Southern Sudan, downwards. If they cannot solve the problem, nobody can solve it. They went further to say that too many peace conferences have been held but their resolutions are not implemented: Rumbek conference of 1–3 June 2010, and Rumbek Peace Initiative, held on 15 November 2008. All recommendations emanated from these conferences remained on paper without implementation.

According to officials, the Dinka have guns while Juru don't. This means that the power is in the hands of Dinka and Juru are powerless and cannot make any change in this area of conflict. Small arms prevalence among civil populations is a serious problem engulfing the whole of Lakes State and Yirol County. Acquisition and possession of arms is normally regulated by law and therefore, the lack of such laws made it difficult to deal with problems of guns already in the hands of civilians. According to the Rumbek Peace Initiative, there are about 8,000 light weapons (mostly GM3 and AK 47 rifles, and hand grenades) are in the hands of Rumbek people alone, including children less than 15 years old. This is a very serious threat for the future of the South Sudan.

5.1 POLICY RECOMMENDATIONS

Land-use planning, such as the use of participatory community mapping or negotiated territorial development, will make the people aware about the importance of their territory and how to protect it. If somebody knows his/her rights, he/she will defend it and/or protect it. If the police are patrolling the borders, the criminals and those who cross from one area to another to cause problems will refrain.

Improving the ability of mediators and strengthening the negotiating position of the chiefs, elders, and county and payam administrators will help to identify the root cause of land-related conflict, through stakeholder analysis or conflict mapping. To avoid clashes between the warring tribes or prevent crossing of one community into land of another community without permission, a buffer zone should be created and patrolled by the army or a police unit.

Also, community-based policy forums are needed to assess the needs of resource users and for determining whether or how existing systems (including customary systems) are adapting to enforce or change to suit modern interests of current generations.

It is recommended that those who kill intentionally must be brought to justice immediately. Those that are covered by generals in the army, chiefs, or parents must be brought to face justice, too; GOSS should make it as policy that arbitrary killings will not be tolerated.

There is a need to regulate the grazing lands by the local government/county administration. This means that crossing from one county to another without permission may not be allowed. Public awareness campaigns on land rights should be conducted at Mvolo and the neighboring counties (like Yirol and the Lakes State) by civil society through seminars, trainings, and workshops. These will be done to cultivate the culture of peace in the hearts of these people to change their minds and ideas to avoid taking revenge, unnecessary killing, and cattle rustling.

GOSS should encourage zero grazing through the use of hays/silages, minimize the movement of cattle and thereby abate conflicts. This is because the forage can be manufactured and brought to cattle in the stables. The two communities should sit down and discuss the modalities to stop the conflict.

Illegal dealers in firearms and ammunitions should be tracked down, disarmed, and punished. GOSS should make it a law that the soldiers moving outside the military barracks should not be allowed to carry guns with them.

Cynical renaming of places must be banned. Once you are in an area, it is important to follow the tradition and the ideas of the people in the area, just as the saying goes, “when in Rome do as the Romans do.” This principle is important because it is not fair to impose your culture on others.

Registration of rural land is of paramount importance to secure land rights of locals at Mvolo County. The land at Mvolo should be surveyed, and plots should be given out at cost to the people in the area. This would be another source of revenue to the county and allocate some areas for investment, since the idea of investment is not there in Mvolo County.

The county administration should monitor land disputes originating from cattle rustling, theft, and grazing conflict so that it does not explode into a full-scale conflict.

There is a need for legislation on firearms in order to define and legalize punishment for illegal possession of arms or killings by guns. GOSS should make orientations to the generals in the army about the culture of peace and non-violence for importance of stability for the development of this country. Although some people feel too big to attend workshops and seminars, it should be an order from the top leaders to make them understand and cooperate.

The administration links between the counties should be strengthened to abate the conflict in these areas. There should be visits and meetings between the two commissioners for bilateral relationships to avoid and punish the culprits of crimes.

Workshops should be organized for the county administrators, commissioners, chiefs, elders, and the youth to plant in them the culture of peace and non-violence, and respect for human rights and traditional authorities in the area. Education is another important tool to change the attitude of these people.

Land policy and laws should be strengthened and all sectors should be involved in land conservation and environmental protection. Not only that but greening of the community and reduction of waste in these areas. Because the deserts are moving towards South Sudan from the North, unnecessary charcoal making, cutting down of trees and branches as cattle fodder, and mechanized farming should be regulated.

6.0 CONCLUDING REMARKS

There can be no solution to the intractable conflict between pastoralists (Dinka) and the crop farmers (Juru Community of Mvolo County) as long as the problem of range land and water are not sufficiently addressed by GOSS. The role of GOSS in this onerous task is to attempt at striking a delicate balance among competing land users of Juru and Dinka communities, without destroying the precarious equilibrium in the pastoralists enterprise.

Another key role of GOSS is to reinforce land reform and protect demarcated borders. It should be within government scope to ensure better stocking rates of animals through improved herd quality. The pastoralists must be made to appreciate the value of improved stock rather than keeping large herds for prestige. In addition, the traditional cattle breeders should be made to partake in collective land conservation as a sound range management practice to avoid the tragedy of commons.

REFERENCES

1. Ademosun, A. Livestock Production in Nigeria: Our Commissions and Omissions, Inaugural Lecture series. University of Ife Press. February 29, 1976.
2. Bako, S and S. Ingawa. Animal Traction in Nigeria: A Review paper presented to third Regional Workshop on animal traction for Agricultural Development in West Africa. Sely, Senegal, July 7–12, 1988.
3. Biel, M. The Civil War in the Southern Sudan. Jena, Germany, 2002.
4. Episcopal Church of Sudan. Rumbek Peace Initiative Report. 2009, P.8
5. Episcopal Church of Sudan. Rumbek Peace Conference, June 1–3, 2010.
6. Government of Southern Sudan Relief and Rehabilitation Commission. *Report on Displacement at Mvolo County, June, 2010*. A joint report of the SSRRC, UNICEF, GOSS Ministry of Health, and World Food Program.
7. International Crisis Group. Jonglei's Tribal Conflicts: Countering Insecurity in South Sudan. Africa Report N°154–23, December 2009. Accessed online 21 January 2011 at <http://www.crisisgroup.org/~media/Files/africa/horn-of-africa/sudan/Jongleis%20Tribal%20Conflicts%20Countering%20Insecurity%20in%20South%20Sudan.ashx>
8. International Fund for Agricultural Development, 2006. Downloaded from the internet at <http://www.ifad.org/events/op/2006/iccadd.htm>
9. Iro, I. Grazing Reserve Development: A Panacea to the Intractable strife between farmers and herders. Crisis Group International, 2009. Accessed online 21 January 2011 at
10. Kiroinde, L. Technical Tools for solving Land use conflict: Daily News Online Bulang Dar es Salam, Tanzania, 2001.
11. Lautze, S. Saving Lives and Livelihoods: The fundamentals of a Livelihood strategy. Feinstein International Famine Centre, Medford, MA: Tufts University, 1997.

ANNEX I: LIST OF THE PEOPLE INTERVIEWED DURING THE RESEARCH

Hon. Paul Tier-the current Commissioner of Mvolo County

H.E. Wilson Abraham- the Former Commissioner of Mvolo County

H.E Marial Malok Acek- Minister of Physical Infrastructure Lakes State Rumbek

Mr. Albino Clement-Executive Director of Mvolo County

Mr. Akech Macheke –Secretary General Lakes State Government, Rumbek

Mr. Barbara Lino Dokpere- Secretary Mvolo Women Association (MWA)

Mr. Cyrus Monday-Personnel Manager of Mvolo County

Mr. Degbanda Dobil Dotiki-Sudan Inland Development (SID) Mvolo

Mr. Isaac Manyeri-Norwegian People’s Aid- (NPA) Yirol

Mr. Zachariah Nyonyo- Paramount Chief of Mvolo County

Mr. Wilson Majak Awu- Executive chief Mvolo County

Mr. Simon Alipayo Yepete-Town Chief Mvolo County

Mr. Dobil Licho Abot- Chief Bahr el Grindi - Mvolo County

Justice: Paul Pot- Chief Justice of High Court Lakes State, Rumbek

Mr. Philip Korayi Lopjochu- Executive chief Kokori Payam

Ms. Mary Ayum Dhieu- Town Chief Yirol

Mr. Joseph Mabior Kulang –Paramount Yirol

Mr. James Simon Dakada Degbanda- Health Officer Mvolo

Mr. Maker Aboung- Coordinator, Norwegian People’s Aid (NPA) Mvolo County.

Ms. Helen Mawa Dalil- Relief Coordinator NPA Mvolo

Mr. Charles Yoasa Abraham- Carpenter Mvolo County

Ms. Sadia Dokpere Khamis- Nurse Mvolo Health Center

Ms. Charity Abau-Fire Brigade Mvolo County

ANNEX 2: STATEMENT FROM RUMBEEK PEACE CONFERENCE

Rumbek Peace Conference

Statement from the People of Western Equatoria and Greater Bahr al Ghazal Peace Conference in Rumbek

Hosted by the Episcopal Church of Sudan

June 1–3, 2010

*And the Peace which passes understanding will guide your hearts and your minds in Christ Jesus.
(Philippians 4:7)*

We are deeply grieved that violent conflicts among the southern peoples continue to tear apart our communities and threaten our future. These five years of peace have been spoiled by the suffering and disunity of our people. We know that development cannot come to us until there is true peace, and we are concerned for our future. We have gathered together in Rumbek, the Episcopal Church of Sudan, the government, the chiefs, and the people of Western Equatoria and Greater Bahr al Ghazal, because of our deep desire to find a way to move forward in peace. Let us unite ourselves, and move forward hand in hand.

The Churches in Sudan have been vital to the peace process, both during and following the war. We are called by Christ to be peacemakers, “Blessed are the peacemakers for they shall be called Children of God,” (Matthew 5:9). The Church does not belong to one tribe or one clan, the Church is universal, and will continue in its role as a light to the people, pointing the way to peace.

As we approach the referendum, six months from now, we are concerned that the Church be involved to be sure there is integrity in the process, so that all southerners are able to exercise their right to choose their future.

We were privileged to have the Governor of Lakes State, H.E. Engineer Chol Tong Mayay, open our conference. In his address, he praised the role that the Church has played in peace building. He said that he would depend on the Church’s assistance in developing mechanisms for peace, and he promised to implement the recommendations of this conference.

The participants of this conference include clergy, bishops, and laity of the Church, along with chiefs, and government representatives from Western Equatoria and Greater Bahr al Ghazal. We heard lectures on peace and conflict resolution and received reports from the Governors, Archbishop, and bishops. We then engaged in group discussions to identify the issues facing our regions, and to propose recommendations for dealing with these issues.

Issues identified

1. Cattle raiding and theft.
2. Killing of people and revenge killing.
3. Conflict about grazing areas, and over grazing.
4. Conflicts and arms movement resulting from partial disarmament.
5. Criminals are not being arrested, which often promotes retaliation from victims.
6. Corruption of the prison system and police: payment to get out of prison, substitution of other people to serve sentences, prosecution is not done in a timely manner.
7. Raping of girls, eloping, and adultery.
8. Border issues between tribes.
9. Conflict over water points.
10. Lack of understanding of democracy, and questions about the integrity of the process.
11. Conflict between cattle keepers and farmers.
12. Nepotism in employment practices.
13. High bride prices.
14. Displacement of people, destruction of property and churches.
15. Idleness of youth in rural and urban areas.
16. The LRA atrocities in southern Sudan.

Recommendations from this Conference

For Disarmament:

1. Disarmament needs to be complete and simultaneous across all states.
2. Chiefs have to cooperate with the government in collecting guns, and tell their community to give up their guns.

On Crime:

1. There needs to be compensation by the perpetrator where there has been loss of life or property or livestock.
2. GOSS and State governments should deal severely with cattle thieves.
3. GOSS and state governments should deal severely with people within the government who give guns to their relatives to encourage cattle raiding and insecurity.
4. Chiefs should work with government authorities to identify the people who are taking cattle in their area.

5. Chiefs should be in control of the grazing of cattle in their area.
6. Criminals need to be put in prison in the state in which they commit the crime, and there should be reform of the prison system to prevent unauthorized release.

On the Conflict between Greater Bahr al Ghazal Cattle Keepers and Western Equatoria Farmers:

1. People who take cattle to Western Equatoria State (WES):
 - a. Should be known by their own local authorities before they leave their home area, and receive a document to travel with (specifying number of cows, and identification of people).
 - b. Should be identified and reported to the chiefs and local government where they are in WES, including who are they, where are they from.
 - c. Should be confined to a certain area for grazing, acceptable to those in WES and their home area. Grazing should be seasonal.
 - d. Should not be allowed to carry guns, only traditional weapons.
 - e. Should have respect for the local people and their property.
 - f. Should have to pay a tax on their cattle for market when entering WES and other states.
 - g. Should take responsibility when their cattle destroy crops. In the event of damage, they should not be arrogant or violent.
2. Cattle for trade should not be left unattended to destroy crops.
3. A market should be created at the border of WES for selling cattle. And only cattle being sold should be allowed to enter the area.

For the Government:

1. Border control (states, north/south, foreign borders) should be implemented to stop the importation of weapons and ammunition.
2. Good network link (meeting twice a year) between all chiefs and different communities and states.
3. Employment opportunities should be developed in urban and rural areas, especially for young people.
4. Cooperation between the state governors in different states should be promoted.
5. Government should be involved in developing grazing protocols.
6. There needs to be water point development along rivers.
7. Appointments to government positions should be based on merit not nepotism.
8. Let there be respect and justice in the communities, and all levels of the government.
9. Government needs to work with the Church on the issues of peace and education.
10. When the government creates a commission for the referendum, church leaders should be included to ensure the integrity of the process.

11. The government should ensure security of Western and Central Equatoria and Western Bahr al Ghazal from the LRA.
12. The government needs to empower the chiefs and pay their salary.

For the Communities:

1. Bride prices should be reduced.
2. The number of cows must be regulated by the ministry of agriculture to manage over grazing.
3. People have to cooperate in keeping cattle in grazing areas.
4. We need to encourage inter-marriage between tribes.
5. Encourage respect of other people's culture.
6. Tribalism and discrimination should be avoided.
7. The laws of GOSS should be obeyed.
8. Discourage people from revenge, killing, and raiding cattle.
9. Create awareness about the benefits of education, literacy, and health.
10. We acknowledge that we have wounds in our hearts, but let us be united as southerners to face the challenges ahead.

For the Episcopal Church of the Sudan:

1. We need to encourage civic education.
2. Church has to initiate evangelism to the cattle keepers.
3. Cooperate with the government on issues of peace, education, and health.
4. Church should host peace conferences in all the regions.
5. Church should preach unity and forgiveness in the community.
6. The Church should play a key role during the referendum process.
7. The bishops in Western Equatoria State and Greater Bahr al Ghazal should follow up to monitor the implementation of these recommendations, from today.

Peace is the responsibility of every citizen side by side with the government and the Church. We are deeply concerned with these issues, and we are resolved to commit ourselves to participate fully in these mechanisms for peace. Therefore we are appealing to the government (GOSS and the states) to implement these recommendations.

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SYNTHESIS PAPER

DECEMBER 2010

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ABBREVIATIONS

CPA	Comprehensive Peace Agreement
GOSS	Government of Southern Sudan
ICSS	Interim Constitution of Southern Sudan
IDPs	Internally displaced persons
JIU	Joint Integrated Unit
LTPR	Land tenure and property rights
NGO	Nongovernmental organization
NISPDS	Nile Institute for Strategic Policy and Development Studies
SPRP	Sudan Property Rights Program
SSLC	Southern Sudan Land Commission
USAID	United States Agency for International Development

I.0 INTRODUCTION

The current program of research commissioned by the Nile Institute for Strategic Policy and Development Studies (NISPDS) has come to an end. Four out of the five research projects that were started in May 2010 were successfully completed and the findings presented to a dissemination workshop on September 28, 2010. One study was not satisfactorily completed.

The launching of the research program has been through a collaborative effort between the Nile Institute and the Sudan Property Rights Program (SPRP), a United States Agency for International Development (USAID)/Tetra Tech ARD program established to assist the Southern Sudan Land Commission (SSLC) in the development of policy and legal framework on land issues. It was on the initiative of the Chairman of the Land Commission that the cooperation on research between NISPDS and SPRP was established.

The initial step in the process was a three-day joint workshop between the staff of SPRP, SSLC, and a team of senior members/researchers of NISPDS, drawn from the three oldest universities of Southern Sudan—Juba, Bahr el Ghazal, and Upper Nile. The workshop which was held in the Nile Bridge Hotel was facilitated by Dr Michael Roth, a senior member of Tetra Tech ARD and ably assisted by Mr. Peter Giampaoli, the current Chief of Party of the SPRP in Juba. The workshop provided the road map for the collaborative research program between the NISPDS and the SPRP for the production of research-based hard evidence to underpin development of land policy and appropriate legal framework by the Southern Sudan Land Commission.

The background and justification for the collaborative work was the fact that the issue of land had suddenly become a political “hot potato” in the post-conflict period in Southern Sudan. The approach of the SPRP and the SSLC to the development of policy and legal framework was through the organization of a series of consultation workshops in each of the ten Southern Sudan states in order to gauge the attitude of a representative sample of the population who attended the meetings regarding land tenure and property rights (LTPR) amongst Southern Sudanese. However, useful as the consultative meetings were, the Chairman of the Land Commission felt that there was also a research need to clarify some of the issues relating to LTPR through research to inform the process of land policy development.

To pursue the research aspect, the SPRP therefore subcontracted NISPDS, a national think tank, to research into specific areas of land tenure and property rights issues that would contribute to the development of evidence-based land policies and laws. To undertake the research and ensure fairness in the selection of research teams, the NISPDS established a Research Standing Committee whose main functions were twofold: 1) develop criteria and guidelines for selecting relevant research topics and proposals, and 2) review and approve research proposals. Since the subject of land tenure and property rights is a new area of study in Southern Sudan, and the whole of the Sudan for that matter, and as none of the existing universities offered the subject, it was necessary to develop a Scoping Paper to provide some basic comprehension of the subject. This was essentially a review of the existing literature on land tenure and property rights in the Sudan, and Southern Sudan in particular, to identify what has been done and what needs to be done on the subject under study. With the dearth of expertise on the subject, the senior staff of NISPDS took the plunge and developed the Scoping Paper.

THEMATIC AREAS OF STUDY

Since the aim of undertaking the researches studies was to provide the SSLC with evidence on which to base the development of functional land policies and laws, the Scoping Paper was structured on the basis of seven thematic areas.

Thus the first theme focused on the traditional land tenure systems in Southern Sudan as the predominant system of land administration and management in the rural areas of Southern Sudan.

The second theme examined the jurisdiction of the Government of Southern Sudan (GOSS), state, county, and customary authorities over land administration, planning, and allocation.

The third theme dealt with the issues of the resettlement of returnees (internally displaced persons [IDPs] and refugees) as the most urgent and crucial issue for the GOSS, nongovernmental organizations (NGOs), and United Nations agencies that require attention, as it was concerned with the wellbeing of these returning population groups.

The fourth theme examined the issue of restitution of appropriated lands and property rights of individuals or communities by government and other entities. The issue of providing redress for wrongs done or actions inflicted by the circumstances of war is required to be corrected or compensation offered for promoting peaceful coexistence of communities.

The fifth theme was concerned with women's access to land and property rights as a new and urgent matter to be addressed in the context of human rights. This is a new and controversial concern in Southern Sudan, as women were traditionally considered as appendages to the men folk in terms of owning property, including land.

The sixth theme focused on conflicts over access to natural resources between pastoralists versus crop farmers. The proliferation of these conflicts in recent years has been of serious concern to both GOSS and the international community, especially as Southern Sudan moved closer to the end of the interim period as stipulated in the Comprehensive Peace Agreement (CPA).

The seventh and final theme looked at conditions under which local and foreign investors can gain access to land for investment purposes in the context of maintenance of peace and stability through the provision of favorable conditions for investment and creating jobs for local communities.

Finally, conclusions were drawn, recommended research topics identified, and hypotheses and questions presented.

Based on the above themes, the Standing Research Committee selected seven research topics for study and through NISPDS, placed invitations in newspapers and electronic media inviting researchers to bid for research funds. NISPDS was entrusted with the responsibility of undertaking the initial selections but had to submit all applications to the Research Standing Committee for final selection. It was through this process that the four research projects listed below were accepted and the respective research teams were awarded contracts to undertake the studies.

1. Customary Tenure and Traditional Authority in Southern Sudan: the Case of Juba County, Central Equatoria State (Researcher: Wani Mathias, Lomoro & Co Advocates);
2. The Jurisdiction of GOSS, State, County, and Customary Authorities over Land Administration, Planning, and Allocation (Researcher: Lomoro Robert, Lomoro & Co Advocates);
3. Urban Management and Informal Settlements in Southern Sudan: the Case of Juba Town (Researcher: Gabriella McMichael); and
4. Conflict over Natural Resources: the Case of Bahr Girindi, Mvolo County, Western Equatoria State (WES) (Researcher: Andrew L. Athiba).

The study period lasted about four months, within which period four of the topics (1–4) were completed satisfactorily within the time limits.

FINDINGS

The study of land is a novel area in the academic tradition of Southern Sudan. Thus the level of understanding fundamental concepts, terminologies, and methodologies was limited. There were problems with finding competent researchers. This explains why some research topics identified by the Scoping Paper were not addressed by the subsequent research. Consequently, these studies have barely touched the surface in their findings. Nevertheless, the initial findings in this virgin landscape are presented in the next sections.

2.0 TOPICS AND MAIN RESEARCH FINDINGS

TOPIC I: CUSTOMARY TENURE AND TRADITIONAL AUTHORITY IN SOUTHERN SUDAN

(Researcher: Wani Mathias, Lomoro & Co Advocates)

Main research findings

- The research confirmed illegal sale of customary land in Juba County. It reveals that Rajaf Payam and Northern Bari Payam are the most affected payams because the town is growing in their direction. The chiefs prominently feature as the perpetrators of illegal sale of customary land.
- Customary land tenure system in Juba County is changing, especially in the payams near the town as it tends to meet urban demands. Customary lands in these payams have become an individualized economic source as opposed to being a community resource in terms of livelihood through subsistence cultivation. This transformation of customary land into urban land has brought problems and conflicts related to ownership and disputes over boundaries between tribal sections/clans.
- Traditional authorities are used to solving land disputes of customary nature; today land has gained both economic and political prominence, and the politicians are using land to complicate disputes. The research reveals that most land disputes that involved the Bari people and other tribes have not been resolved since they were reported to the government of Central Equatoria, including border disputes between Northern Bari Payam and Dolo Payam over Ku'da Lo'dimi, between Rajaf Payam and the Lulu'bo of Lokiliri Payam over Nestiu, between the Bari and the Mundari over Mangalla.
- The research pointed out the urgency for the governments of Central Equatoria State to address the issue of criteria and procedure used in allocation of land by the state to citizens.
- The issue of customary land tenure and traditional authority in Southern Sudan is an issue that does not only affect the local government, but the entire government of Southern Sudan, because of the diverse customs and the reception of the current roles given to the traditional authority as servants of the government and the traditional institutions.
- The research found that the concept of "land belongs to the people" has brought conflict between communities and traditional authority who are seen to be government servants especially when government has to rely for land from the communities. They see chiefs representing them as government in themselves and would compromise their positions to the detriment of the community in terms of soft negotiations with the government.
- Communities are also bitter about lack of a consultation process, that the government is not transparent when it seeks to take land from communities. The fact that government has not honored most of its obligations under agreements that were made has widened the level of community discontent. Making follow-ups for claims is difficult, especially in situations where ministers are frequently reshuffled. In the absence of robust institutional knowledge, traces of records on existing claims are easily lost.

Recommendations for land policy

- Customary land is in its critical stage in Juba County, especially at the payams in the vicinity of Juba town. For this reason, land policy should provide regulations that make clear guidelines for acquiring customary land for government use or investment.
- Land policy should discourage bad practices such as land grabbing or fraudulent misrepresentations in the name of institutions to acquire land. Furthermore, the policy should direct the regulatory framework, where possible, to criminalize and deter such practices.
- Strengthen traditional authorities to resolve customary land disputes through organization of seminars, conferences, and trainings at the community level.
- Place customary land in and around urban centers like Juba under the administration of a trust that would supervise and support chiefs in executing their administration duties in an accountable and transparent fashion. The trust would oversee the transfer of sections of customary land to the state for national development needs and to private owners for investment purposes. Customary rights would be duly compensated in cash or in land.
- The policy should clearly define and direct how land disputes should be dealt with by traditional authority and what land disputes should be handled at what level of government.
- Government policy should provide mechanisms for addressing issues such as meeting government promises to compensate affected communities for the land taken for public interest. Such a policy should also specify the institution that a community would contact, in case of delay in meeting such promises.
- The terms of agreement reached between communities and any level of government should be in writing. This agreement shall be the point of reference to bind the parties where there is a breach.

TOPIC 2: JURISDICTION OF GOSS, STATE, COUNTY, AND CUSTOMARY AUTHORITIES OVER LAND ADMINISTRATION, PLANNING, AND ALLOCATION

(Researcher: Lomoro Robert, Lomoro & Co Advocates)

Main research findings

- There is usurpation of powers at the three tiers of the governments in Southern Sudan, where some institutions have not understood their mandate. As a result, they are interfering with legitimate functions assigned to other legal institutions:
 - At the GOSS level, the Land Commission has usurped the powers of policy and law formulation, legally assigned to the Ministry of Housing and Physical Planning, rendering the latter redundant. The research found that SSLC is not performing its mandates under Article 181 of Interim Constitution of Southern Sudan (ICSS); Chapter 13 of the Land Act and S.52 of the Land Act, 2009; or as envisaged under the CPA. Based on the Article 2.7 of the Wealth Sharing Protocol of the Comprehensive Peace Agreement, the functions of SSLC are: arbitration between willing contending parties on claims over land and sorting out such claims; assessment of compensation payable to aggrieved persons in land disputes; making recommendations to government on land reform policies and recognition of customary land rights and/or law; and advising different levels of government on how to coordinate policies on GOSS projects. In so acting, SSLC is independent and can relate to

GOSS, state, and local government to the extent of advice and research. These mandates of the SSLC have been replicated under Article 181 ICSS; and Chapter 13 of the Land Act, and S.52 of the Land Act, 2009.

- The GOSS Ministry of Housing and Physical Planning has in turn encroached into roles of implementation of laws, a duty legally assigned to the local government within the state. The GOSS Ministry has been struggling to take control of the land registry from the state, which claims control over land registration and the Land Registry.
- Existing legal framework and practice provides for concurrent powers on various aspects of land administration, with no clear demarcation of responsibilities. This has created tension among the three levels of government, with the current stalemate on land registration being the apex of the problem.
- Unjustified intervention by GOSS in state land administration has created tension between the two levels of government. The clearest example is when the Governor of Central Equatoria State issued an order, *Central Equatoria State Order No. 5/2009*, to evict those who illegally settled on demarcated and allotted plots for the rightful owners to settle. The GOSS President, when petitioned by the residents of Tongpiny and Jebel Dinka who claimed the exercise targeted the Dinka, ordered the reversal of the order until surveyed land was obtained to resettle the inhabitants of these areas.
- The lack of simplified guidelines on land registration, which would clearly describe the functions and linkages between various levels of government, has confused the debate on who is supposed to do what on land registration.
- Concerning land acquisition, issues pertaining to consultation with communities are not clearly defined and the current set-up does not require any form of proof that consultation has taken place.
- The use of old laws which have been repealed by the Land Act of 2009 is contributing to the poor understanding of roles and responsibilities. For instance, the *Land Settlement and Registration Act, 25* which continues to guide land registration, provides for land registration by the state authorities, a situation which is contradicted by the Land Act.
- Politicians and technocrats are inexperienced or lack good understanding of the decentralization model which is based on a federal system of government.
- Article 51 of ICSS states that there shall be the devolution of powers to the lowest governmental institution nearest to the people. This is not correctly understood and applied in land administration.
- The role of traditional leaders in land administration in urban areas is increasingly being questioned. The allocation of fourth-class plots by traditional leaders has not been done transparently, with corruption allegations being made. There is also ambiguity over who is in charge of dispute management in urban and peri-urban areas, with some conflicts reported to traditional leaders while others are reported to state government. Traditional leaders are also not able to handle boundary conflicts.

Recommendations for land policy

- Government institutions, particularly at GOSS level (SSLC and the Ministry of Housing and Physical Planning), should follow their constitutional mandates. A further review of land institutions is needed to assess performance and areas of improvement. Above all, policy makers at levels of GOSS and states should concentrate in creating the necessary laws and policies to help in the administration, planning, and allocation of land in Southern Sudan.

- Develop appropriate tools to improve the performance and governance of land institutions. There must be a clear understanding of the decentralization model applicable in South Sudan, with clear and simplified guidelines on the roles and functions of the three tiers of governments (GOSS, state and local government), particularly in situations where concurrent powers are involved.
- Amend the Local Government Act and the Land Act in a fashion that puts land allocation in the responsibility of one institution.
- Conduct extensive training of land officials, specifying the roles and functions of land officials and their partner institutions in government and identifying how they can coordinate their work better.
- Develop efficient ways to involve community to participate in issues related to land acquisition for public use or interest. Laws and policies should be created to define the process of land acquisition.
- Remove the land registration functions from GOSS and place them with independent land registration offices at the local government level, preferably at the level of the county.

TOPIC 3: INFORMAL SETTLEMENTS AND PROPERTY RIGHTS: THE CASE OF JUBA TOWN

(Researcher: Gabriella McMichael)

Main research findings

Urban land management and administration

- There is weak urban management due to limited human resource capacity in the urban land authority, as well as limited state supply of land for residential purposes, especially for lower-income groups, resulting in the creation of informal settlements.
- Existing institutions of urban land management do not reflect current reality. Land administration systems are centralized, expensive, and time consuming, making them inaccessible to many people.
- Evictions in and around Juba are leading to a subsequent increase in informal settlements on the edge of town, which the state government policy regarding informal settlements in theory seeks to avoid.
- In Juba, attitudes to land are deeply rooted in cultural values. This is compounded by underlying tensions between GOSS and the surrounding Bari traditional authorities, increasing land values and broadening tensions over land.

Land legislation

- The existing legal framework (The Land Act, 2009) is inadequate in addressing the needs of those living in informal settlements.
- Strength of the new legal framework and the Local Government Act (2009) is that it promotes a decentralized structure. Decentralization of urban land administration to the payam level has the potential to provide a means for more innovative approaches to land management in informal settlements.

Pattern and differing characteristics of informal settlements

- Informal settlements have emerged within Juba and on its periphery on different categories of land (state owned, private leasehold, and customary). Different forms of informal land access have existed from before the second civil war and have continued during the war and since the signing of the CPA.
- There are relatively few land conflicts and most of these are centered on land grabbing by military officials.
- Investment in shelter represents a substantial household investment, especially in relation to poverty levels in some communities.
- Communities have varying degrees of organization relating to land administration. Some maintain registers of households living in the areas and define their own eligibility criteria for inclusion. Residents are willing to pay to be included on these registers in the hope that they will be eligible for allocation of a demarcated plot.

Socio-economic characteristics

- Informal settlements are varied and complex; in general, they experience high levels of structural poverty. This includes limited access to basic services, high rates of crime, poor sanitation and a large proportion of informal income generating activities. They contain many vulnerable groups that rely on fragile livelihoods and social networks in order to survive. Rapid formalization of land tenure is likely to lead to unpredictable consequences on the position of the lower income groups.
- Spatial arrangements can greatly facilitate social support networks and access to livelihoods; at the same time, the concentration of certain groups can raise the potential for exclusion of some groups or even community conflict.
- Female-headed households represent particularly vulnerable groups in terms of livelihoods and land access, and may be vulnerable to land grabbing.
- Although many households are very poor, some have members who are in formal employment and have been able to invest in more permanent shelter. In addition, many households have to be seen within the context of rural-urban linkages and as parts of extended families maintaining a stake in the town. In particular, access to education for one's or one's relatives' children are of considerable importance.

Recommendations for land policy

Although the recommendations below refer to the town of Juba, they will have relevance for other towns in Southern Sudan.

Support further development of land legislation that incorporates the principles mapped out in the Habitat Agenda, the overriding priority of which should be protection against forced eviction

This might include:

- Laws to support the potential for community ownership, group titling, and incremental tenure policies in urban areas;
- Supporting the establishment of land administration structures in informal settlements; and

- Allowing the designation of informal settlements as “special zones” and putting in place flexible building standards.

Development of a regional implementation framework

A practical aspect of incorporation of the Habitat Agenda will be implementing pilot projects on land tenure regularization. This should include:

- Carrying out land audits, obtaining necessary baseline data, and distinguishing between settlements that might be possible to regularize and those that are in environmentally hazardous areas or sites that might be needed for a public purpose;
- Ensuring an incremental approach to implementation where small achievements will build confidence and address potential reservations regarding regularization policies; and
- Identifying pilot areas, developing budgets, and identifying other sources of funding to finance the upgrading of informal settlements.

Review the current system of planning of land administration to support provision of tenure security to informal settlement residents

- Updating land management techniques, including the revision of the current planning system and existing urban master plans, with informal settlements isolated as “special zones” where flexible land tenure rules and construction requirements (in particular allowing land to be developed in phases) are allowed;
- Supporting recognition by the Land Registry of data collected by authorized community-based committees and the relevant urban authority; and
- Developing improved procedures to allow for the expansion of towns and to establish town/municipal boundaries.

The land policy should also support

- Developing affirmative action policies with regard to land allocation to female-headed households;
- Improving coordination between civilian and military actors, both at community and local government levels, with regard to the land needs of soldiers and demobilized soldiers;
- Improving governance of urban land management including through decentralized structures to the community level;
- Provision of accessible finance at the informal settlement level; and
- Data gathering and further research on informal settlements.

TOPIC 4: CONFLICT OVER RESOURCES AMONG RURAL COMMUNITIES IN SOUTH SUDAN

(Researcher: Andrew L. Athiba)

Main research findings

The nature and extent of the Dinka-Juru conflict in Mvolo County

- The conflict between Juru farmers and the Agar pastoralist community mainly concentrates along Mvolo River and causes of the conflict are attributed to the following:
 - Destruction of crops: Dinka Agar drive their animals to feed on Juru farm crops, leaving the latter to starve;
 - Loss of livelihood through theft of Juru beehives and destruction of fishing nets;
 - Disregard of traditional authorities;
 - Harassment of women and youth of Mvolo County;
 - Overgrazing of fallow land; and
 - Contamination of streams by cattle.

Grazing problems in pastoralist areas and resulting conflicts

- During the dry season, it is invariably the case that Yirol East County experiences lack of water and pasture for animals. In contrast, Mvolo County is perceived as having plenty of water and vegetation along Mvolo River and Lake Bahr Girindi. Moreover, there is large population of animals in Yirol East that need wider pasture and plenty of water. Furthermore, the Yirol East community perceives resources such as water and grazing land as natural resources that should be shared among communities. As a result, the cattle keepers from Yirol East move their animals to Mvolo during this season of scarcity.
- In the past, the Juru community in Mvolo would allow people from Yirol to access water and grazing land in areas around Lake Girindi and along River Mvolo. Although minor problems used to occur, they were overcome peacefully by leaders of the two communities. Since 2006, however, a group of what is widely known in Yirol as “bad boys” has exacerbated the problem. Thus, current conflicts with Juru community in areas like Kokori and Bogori does not involve the entire Dinka community of Yirol East and could therefore be resolved amicably. What is missing is sufficient intervention of GOSS, supported by the state authorities of Lakes and Western Equatoria, to bring an immediate end to the conflict.

Rainy season at Yirol East County

- Contrary to the dry season, a new set of problems emerge during the rainy season. The land in Yirol East quickly absorbs rainwater and becomes marshy or swampy. Soil inundated with water affects animals, causing a condition known as foot-rot in cattle. Flies, leeches, flukes, and a variety of insects also emerge in large numbers during the rainy season, threatening the health of animals. To avoid these conditions, animals are moved to Mvolo area, where the land is relatively higher, creating conditions for conflict to develop.
- Dinka community in Yirol East County perceives cattle as means of their livelihood, hence, animals must be well-fed and protected by whatever means available. According to them, their people would

all perish if cattle were not there. Based on this fact, Dinka drive their animals to Mvolo County to ensure their survival during part of the rainy season.

The non-consumptive use of cattle as a source of the problem of ever-increasing cattle numbers

- Amongst the Yirol East community, cattle are kept for the various cultural purposes, including marriage, rituals, and prestige. Hence, absence of cattle means loss of dignity, pride, security, health, and family. Nevertheless, the entire community lacks information on animal production for economic purposes (marketing, production of quality breeds and dairy). Instead, there is intense competition among herd owners over water and grazing lands, resulting in both intra- and inter-ethnic conflicts.
- Animal raising for cultural purposes, such as marriage, has resulted in animal overstocking in the area, as animals continued to circulate among families in marriages without market outlets. Huge numbers of livestock in the area has caused overgrazing, leading to ethnic conflicts with neighboring communities, e.g., Juru in Mvolo County.

Proliferation of ammunition in communities

- Most cattle are owned by the generals in the army (SPLA); as a result, it is the very generals that arm those who take care of their animals in conflict areas. This has caused the escalation of the conflict.

Policy and institutional limitations

- Non-existent, weak, or non-/malfunctioning local institutions have contributed to the escalation of conflicts. The armed youths do not respect the chiefs, elders, and government officials. Local institutions have become ineffective, with some officials (e.g., county judges) fleeing the conflict zones while chiefs are powerless in the face of the armed youths. A weak judiciary system has seen officials (judges and policemen) facilitating the release of convicted criminals who are their relatives, creating the basis for renewed conflict to occur.
- There has been little or no progress from the state/local authorities to ensure security for IDP return. Displaced people from Mvara and Yeri are reluctant to return to their homes of origin unless government provides adequate security for their protection. It is worth noting that Joint Integrated Unit (JIU) soldiers deployed in the area have remained in the town centre, where security is not the key concern.

Recommendations for land policy

- Develop and implement appropriate tools for managing pastoral-based conflicts, including the creation of buffer zones and cattle routes, demarcation of boundaries, and enforcing patrols by the police.
- Put in place mechanisms to allow compensation to be claimed and paid for damage to property and livelihood.
- Build capacity of the chiefs, elders, and the county's administrators to mediate conflict in an impartial way and with authority to enforce decisions.
- The State Legislative Assembly should enact appropriate legislation to empower local institutions to deal with conflicts over natural resources. Further, appropriate legal provisions are required to control firearms in communities and payment of compensation to victims of the conflicts.

- Strengthen the capacity of law enforcing agents to provide adequate security and equitable access to justice.
- The construction of *haffirs* (dugout holes) to collect water during the rainy season or the damming of streams to store water for the dry season within East Yirol county are possible solutions to reduce the numbers of Dinka cattle converging on Mvolo River and Lake Girindi. These would help to reduce the numbers of cattle converging at one point and thus lessen tension and conflict.
- The Ministry of SPLA Affairs should adopt stiff measures to control firearms, supplied by army generals, regarding those who herd their cattle in rural areas. Further, the SPLA Higher Command Council should ensure that these measures, once adopted, do not go unenforced.
- The Ministry of SPLA Affairs should initiate capacity building programs in areas like human rights and good governance to raise awareness of those senior military officials who violate rules, thereby causing chaos in communities.
- Although some people feel that they are too important to attend workshops and seminars, it should be an order from the top leaders to make them understand and cooperate.

3.0 CHALLENGES IN THE COURSE OF CONDUCT OF THE RESEARCHES

A wide range of challenges were faced by NISPDS and researchers in the course of organizing and undertaking the research studies. At the outset of the research project, the most immediate challenge confronted by the NISPDS was the shortage of locally based expertise to undertake research on land.

Another major challenge was that land issues are still a new field of study in Southern Sudan. Consequently, only four of the seven research thematic areas identified in the Scoping Paper were researched. Thus the lack of expertise made it difficult for the Institute to assemble the right research teams on the three important remaining themes: women's rights to access land and property, resettlement of returnees (IDPs and refugees) and restitution of property, and the conditions under which local and foreign investors can gain access to land. Furthermore, lack of necessary materials on land issues in Southern Sudan was clearly reflected in the quality of a number of research proposals submitted on some of identified themes. Another major challenge was that throughout Southern Sudan, there is no reliable source of internet that NISPDS officials and research teams alike could access regularly. The use of a small Zain internet device proved to be a weak link to allow a rapid exchange of documents via e-mail.

Finally, the frequent delay in meeting deadlines by researchers has been a real challenge. One attributes this to the long period of lack of the availability of funds to researchers during the war. This is a habit which must be eliminated as soon as possible. The country needs to cultivate the capacity to deliver in time to gain the confidence of NISPDS' research collaborators from elsewhere in Africa and abroad.

CONCLUSION

In spite of all the challenges enumerated above, this has been a wonderful experience for the Nile Institute as an organization and to us as individuals in it. The close and friendly working relationship with the staff of SPRP will be dearly missed. Equally, the experience and academic competence of the senior staff as well as the knowledge gained on land issues through the validation and training workshops have been of enormous value to all of us, researchers included. The hope is that collaboration will continue to allow the building up of local capacity to appropriate levels.

We appreciate the fact that this period of collaboration between NISPDS and the SPRP has brought the Nile Institute as a think tank to the attention of a wider spectrum of Southern Sudanese society. We hope to expand on this foundation and status.

With regard to the Land Commission, our hope is that our relationship will continue to grow as we exert joint efforts in tackling the enormous challenges of organizing land issues in the Southern Sudan. More research work will be required to tackle these, starting with those topics already identified but not studied in this first round of researches.

Similarly, the training of manpower in the different technical aspects of land administration will be required. The Nile Institute is ready to make its humble but tangible contribution in this sphere. Last but

not the least, we wish our researchers who have had the first taste of research work on land issues to continue to participate in the field, as well as other areas of research, when the opportunity presents itself.

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