



Scaling up Responsible Land Governance

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LAND AND CONFLICTS IN SOUTH SUDAN: TAKING THE LAND QUESTION SERIOUSLY IN THE PEACE BUILDING PROCESS

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Abstract

Access to, and control over land and natural resources remain among main causes of conflicts in South Sudan. This paper aims at discussing the roots of land related conflicts in South Sudan while analysing their nature and providing lessons learned from past experiences.

Land can be an important push factor for economic development and at the same time can trigger conflicts: tenure and land-use conflicts have the potential to undermine both peace and food security, creating grounds for abuses, speculations and exploitation of natural resources to the detriment of indigenous communities. It builds on the idea that especially in complex emergencies land has to be taken in high consideration from the onset of the humanitarian assistance. It also aims at providing concrete solutions to support the peace process in South Sudan and to bring another perspective to the global discussion on land and conflicts and protection of vulnerable populations.

Key Words: Land and Conflict, South Sudan, Peacebuilding, Land governance, Indigenous Communities

1 Introduction

South Sudan, the world's newest nation, has been at war since its independence. Tribal clashes, conflict with the Government of Sudan for the control of oilfields at the (not-well defined) border and the struggle of power between the Vice President and the President of South Sudan, that eventually resulted in a civil war bringing more poverty to the already high food insecurity country, have sadly accompanied the history of South Sudan since its beginning.

Access to land and use of natural resources are still causes of conflicts in South Sudan. Highly food insecure, the Republic of South Sudan (RSS) has huge agricultural potential and is blessed by the existence of several natural resources, which, if managed properly, could end hunger and lead the country to a rapid development and sustainable economic growth, thereby putting an end to conflicts and insecurity.

Nevertheless, tenure insecurity, the lack of a fair, transparent and accountable land administration system, lack of a coherent legal and institutional framework, rapid urban expansion, return, resettlement and displacement, disputes over boundaries delimitation, conflicts between agriculturalists and pastoralists, between communities and government authorities, land grabbing and abuse of power, large scale land investments and lack of communication are only some of the challenges triggering conflicts and land-related conflicts in South Sudan. The power struggle within the SPLM which generated the conflict between the SPLM and the SPLM In Opposition (SPLM-IO) was also and especially a conflict for the control of land and for the management of natural resources.

This paper aims at discussing the roots of land related conflicts in South Sudan, analyzing their nature. It also provides examples of lessons learned from past experiences of conflict mitigation/conflict resolution strategies, which have been successfully implemented in the country during the past years.

The underlying idea of the paper is that land can be an important push factor for economic and social development and at the same time can be a trigger of conflicts: tenure and land-use conflicts have the potential to undermine both peace and food security, creating favorable grounds for abuses, speculations and exploitation of natural resources to the detriment of indigenous communities. It builds on the idea that especially in complex emergencies land has to be taken in high consideration from the onset of the humanitarian assistance: if not taken seriously, access to land and natural resources can generate conflicts which will undermine the future peace and stability of the country and its economic development, as the case of South

Sudan. If taken seriously, the land question can help the solution of conflicts and attainment of peace, bringing incentives for investors and smallholders thereby contributing to a sustainable economic growth

and social development.

Furthermore, this paper aims at providing concrete solutions to land actors and stakeholders in order to support the peace process in South Sudan and to bring a perspective from the fields as contribution to the global discussion on land and conflicts as well as protection of vulnerable populations including indigenous communities.

2 Background and context

South Sudan became independent on 9 July 2011. It has an estimated population of approximately 8.26 million people in 2008 and an area of 644,329 km².

The population of the country was estimated at 10 million in 2010 reflecting an annual growth rate of 2.4% fueled in large measure by an influx of returnees in the run up to independence¹.

The country is largely rural with an estimated 83% of the population living in rural areas and depending for their livelihoods on agriculture as crop producers and livestock keepers. Poverty is widespread, although its distribution is uneven across the country and between states. An estimated 51% of the population is said to live below the poverty line².

South Sudan is divided administratively into ten States, 79 counties 513 payams and 2,565 bomas³. The States are semi-autonomous entities with their own State assemblies, and are headed by Governors. The counties are headed by appointed commissioners, and are responsible for the overall development of their respective territories. While there is a certain capacity to plan and implement activities and county level, such capacity is almost inexistent at payam and boma level.

South Sudan's economy is characterised by high dependence on a depleting oil resource, currently limited domestic production and a high reliance on imports.

The agriculture sector, which has a great potential, is underdeveloped as consequence of insecurity generated by the existence of continuous conflicts throughout the country, by the absence of security of

¹ CAMP Situation Analysis, December 2013

²National Bureau of Statistics. 2012. *National Baseline Household Survey 2009*. Juba: NBS

³ At the time of the preparation of the this paper, following the peace agreement between the SPLM-IO and the GoRSS, the President of the RSS decided to implement his decision of November 2015, which was approved by the Parliament in December 2015, to dissolve the 10 states of South Sudan and create 28 states with their respective governors and administration. This new setting remains very uncertain.

tenure, and by the focus of attention of investments and discussion related to the country development on the oil production.

Land in South Sudan has deep cultural and social dimensions and it is regarded as place of belonging for communities and individuals. Land is also one of the factors of production (South Sudan Development Plan), a key factor for agricultural development (Comprehensive Agriculture Master Plan). Access to and use of land and natural resources have been one of the main causes of the fight between the Government of Sudan (GoS) and the Southern Sudan Liberation Movement/Army (SPLM/A). Customary law, which has regulated the use of land in South Sudan for centuries⁴ is an expression of the strong link between communities and their land.

All attempts that, from the Anglo Egyptian regime onwards, have been made to regulate the use of land through statutory systems, failed. Up to now, with very few exception of registered and gazetted land in urban centers, all land in South Sudan is administered under customary law.

The land question was part of the negotiations leading to the signing of the CPA. The Wealth Sharing Protocol did not address issues regarding the ownership of land and natural resources, neither defined the role of each government in terms of land administration and management. It provided for the establishment of two Land Commissions, one at the national level and the other in Southern Sudan. The Protocol also acknowledged the reality of two different legal systems over land in Sudan, with customary land law applying in the South and mandated the Southern Sudan Land Commission the functions to make recommendations to appropriate levels of government about land reform policies and recognition of customary land rights and/or law (Article 2(7)).

2.1 Tenure types

The Transitional Constitution of South Sudan (TCSS) and the Land Act 2009 provide for three land tenure systems in South Sudan, namely: public, community, and private. Public land is owned by the government in freehold. Private land is owned by individuals in freehold (full-fledged ownership), or leasehold (for a specified duration of time). Community land is owned in common by the community and regulated by the community chief/leader/king according to the customary law of the community. The Land Act does not state how freehold rights are acquired. It stipulates that leaseholds can be obtained for customary and freehold land and can be granted for up to 99 years (S. 18 and S.19).

⁴ “Dinka customary rules regulating personal property have so far developed to cover the same legal sectors as recognized in Common Law and also include general principles regulating the transfer of title to personal property (Fadlalla 2009 p.51)

Communal land can be acquired through allocation, inheritance, gift, and purchase (or exchange of cows or other livestock). Access and use of communal land is regulated by customary provisions and administered by traditional leaders. Although customary procedures vary from tribe to tribe, land ownership is largely uniform and access to land is seen as a ‘social right’. Land is considered a common property and permanently assigned to families and their descendants. Members of the community have the right to use the land for their livelihood, farming or cattle rearing. The community retains control of land and resources meant for common use such as water holes and cattle camps. Customary provisions restrict women’s access to land independently of their husbands or male relatives, which has important implication for widows or divorced women. The community can allow other groups (e.g. IDPs, refugees) to settle on its land. Traditional authorities may allocate lifetime tenure rights to customary land. For the allocation of a non-residential parcel exceeding 250 feddans (about 105 hectares), traditional authorities must notify local government and secure their approval in advance as stipulated by S. 27(2) of the Land Act, 2009.

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2.2 Legal Framework

The legal framework on land in South Sudan is a pluralist system composed of customary and statutory law as well as ad hoc practice. Until the entry into force of the CPA, land legislation was based on the Anglo-Egyptian and Sudan-imposed models and on the principle of state ownership of land. During the Interim Period, in order to address concerns related to the application of such legislation as well as to give legal force to the provisions contained in the CPA and in the Interim Constitution of Southern Sudan (ICSS) of 2006, three important laws were enacted in 2009: the Land Act, the Local Government Act, and the Investment Promotion Act.

The Land Act recognizes the importance of customary rights over land. Section 7 assigns to “[c]ustomary land rights [...] equal force and effect in law with freehold or leasehold rights”. It also reinforces the rights of traditional authorities “within a specific community” to “allocate customary land rights for residential, agricultural, forestry, and grazing purposes” (S. 15(1)) based on community consultation. It sets broad parameters for defining community land⁵ and includes provisions for its registration. The Land

⁵ According to S. 11(2), community land includes:

Act, in S. 10(1), defines public land as the land “owned collectively by all people of Southern Sudan and held in trust by the appropriate level of government” and reaffirms the government’s principle of ownership and management of natural resources (S. 6(6)), recognising, in S. 6(7), the right of “communities and persons enjoying rights in land”.

The act also includes provisions for the exercise of “eminent domain” for purposes of public interests (Chapter XII), establishing basic principles for expropriation procedures (S. 74) and compensation (S. 75) for affected communities or individuals.

The Land Act has not been implemented due to a lack of awareness and understanding of its provision among state, local and traditional authorities and to the absence of a clear ministerial mandate on the implementation of the provisions of the act. Its general nature required the development of subsidiary laws and regulations to ensure implementation of its provisions. In spite of the effort in drafting secondary legislation, this has never been adopted, due to the lack of clarity about the national government institution responsible for land-related issues.

The 2011 TCSS reaffirms the principles enshrined in the Land Act, recognising customary land rights, calling for their incorporation in the legal framework⁶. It also states that public land shall include “all land [...] not otherwise classified as community or private” (Art. 170(3)), bringing a new element to the debate around land ownership. The debate is still open and is to be transferred in the constitutional development process, which should resume when the Government of National Unity (GNU) is established as a consequence of the peace agreement signed between the SPLM in opposition (IO) and the GRSS.

The NLP’s objective is to create security of tenure at all levels and for all individuals without discrimination in order to bring peace, stability and sustainable economic growth. The draft NLP⁷ aims at ensuring security of tenure at all levels and for all individuals without discrimination in order to bring peace, stability and sustainable economic growth through creation of a land governance system based on principles of transparency,

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- (a) Land lawfully registered in the name of group representatives under section 57 of this Act or any other law for the time being in force;
 - (b) Land lawfully held, managed or used by specific community as community forests, cultivation, grazing areas, shrines and any other purposes recognized by Law;
 - (c) Land lawfully transferred to a specific community by any process of law; and
 - (d) Any other land declared to be community land by law.

⁶ Article 170(8) states that “All levels of government shall institute a process to progressively develop and amend the relevant laws to incorporate customary rights and practices, and local heritage”.

⁷ The draft NLP was developed by the SSLC pursuant to the CPA of 2005. It was the result of an extensive consultative process initiated in 2006 by the SSLC. It involved consultations in all ten states and three validation workshops in Juba. A total of 1,000 people participated in the consultative process (22.5% females, 77.5% males). A research work carried out by the Nile Institute on customary land tenure and jurisdiction of different levels of government, informal settlements and conflicts was also used to develop the draft NLP.

accountability and efficiency. It guarantees equal protection to all citizens and other qualified rights holders, strengthening women's access to land and providing guidance on good land-use planning practices⁸.

It promotes the efficient and transparent operation of land markets, subject to public oversight and regulation, in urban and rural areas. It encourages the sustainable management of land-based resources used in common and the orderly growth of towns and urban areas, through development of town planning laws and strengthening capacity of the staff dedicated to such exercise. It also recognizes the important role of independent civil society organizations and groups in representing citizens with land-related grievances and in educating citizens about how to better secure their land and property rights.

Endorsing the three types of tenure systems defined in the Land Act 2009, public, community and private, the NLP provides that "citizens will enjoy high levels of security of tenure over their parcels and holdings, regardless of the tenure system under which it is held."

It proposes the promulgation of a Community Land Act to define community land to and provide guidance and standards for the exercise of community land rights. It highlights the role of customary authorities in the land administration system, promoting the importance of preserving the experience and institutional memory of traditional authorities, recommending the integration of members of traditional authorities in CLA and PLC.

It also brings clarity among the role and functions of different institutions with reference to land issues, highlighting the role of the MLHPP to provide policy guidance, standards and oversight for efficient land administration and management in South Sudan and advocating for adequate financial resources, suitable logistical support and a sufficient number of trained human resources to carry out its function. It also emphasizes the leading role of the SSLC in supporting conflict mediation and in respect of claims related to land restitution process concerning displaced populations. It recognizes the importance of the State Legislative Assemblies; State Ministries and the Judiciary, in the creation of an effective land governance system.

In indicating the path for future legislative development, the NLP gives directions to fill the legislation gaps hampering the development of an effective land governance system in South Sudan.

⁸ In April 2013, the draft NLP was approved by the Council of Ministers with amendments to transfer the functions of land to the Ministry of Housing and Physical Planning. This was further reinforced on 23 July 2013 when, in order to rationalize national ministries' mandate and functions, the Council of Ministers renamed the ministry as Ministry of Lands, Housing and Physical Planning (MLHPP).

The adoption of the Draft NLP by the NLA represents an important step towards the enhancement of the land governance system in South Sudan. Without its approval the significant legislative development, which is required in order to implement its statements is put at halt and so the land reform, leading to more abuses and corruption as well as violation of the rights of the most vulnerable individuals.

2.3 Institutional Framework

Responsibility for land governance is distributed across a range of institutions at all levels of government. While the Land Act gives to State Ministries of Physical Infrastructures (MOPI), within each State Government, the responsibility to manage and administer the land within their jurisdiction (S. 41(4)), it does not assign to any specific national institution, functions of land administration and management at national level. This contributed to increase confusion about roles and responsibilities on land issues among government institutions and caused delays in the process for the adoption of the draft NLP.

Until recently the only institution having a clear mandate to deal with land related issues was the South(ern) Sudan Land Commission (SSLC). It was established by the CPA as an independent institution mandated to enforce land law; resolve land disputes; assess compensation claims arising from government acquisition of land; study and record land-use practices in areas where natural resource development occurs. The SSLC has been the main actor in the drafting of the Land Act 2009 and in the development of the draft NLP and

Other national institutions such as the Ministry of Agriculture, Forestry, Cooperatives and Rural Development (MAFCRD), the Ministry of Wildlife, Conservation and Tourism, and the Ministry of Transport Roads and Bridges did not cover the entire land administration and management portfolio, but dealt with limited issues pertaining to their mandate.

The lack of a national ministry responsible for land related issues, as well as the lack of clarity among different government institutions about their land mandate and functions, has, for long time, jeopardized the development of land governance in South Sudan. The issue has been addressed in the draft National Land Policy (NPL), which assigns to the Ministry of Lands, Housing and Physical Planning (MLHPP) responsibility to provide policy guidance for an efficient land administration and management in South Sudan. Unfortunately lack of human and financial resources and poor capacity of staff represent an obstacle to the development of a land governance system in South Sudan. At the same time the unclear

status of the NLP, which is still under review at the Parliament since May 2014, and now become part of the peace agreement, contributed to hinder the development of land governance.

Land administration is based on the principles of decentralization, participation and transparency (S. 41(2) of Land Act) according to which each state should manage and administer the land within its jurisdiction. The main decision-making power lies at State level. Departments of Land and Town Planning and the Surveying Department in the MOPIs are responsible for: state-level land administration; town planning; regulation of land tenure, usage and exercise of rights in land; land survey and registration; and coordination of different levels of land administration and management (S. 43). They are also responsible for maintaining the land registry in coordination with the MLHPP (S. 54 (2)).

At local level, responsibility on land administration and management lies with County Land Authorities (CLA) and Payam Land Councils (PLC), both established by the Land Act. (respectively S. 44 and S. 48).

Currently, housing, **land and property disputes** in South Sudan can be addressed in two different ways – either via the courts, through statutory laws or via the boma or payam (headed by village chiefs), through customary laws.

Elders or chiefs of communities/traditional leaders solve conflicts over land followed by boma sub-chiefs, payam chiefs, and county-level paramount chiefs. Disputes that cannot be handled at the family level are dealt with by elders or chiefs, and so on. At each successive level more chiefs are consulted and contribute to the decision-making process. (Mennen 2012). Traditional leaders also regulate land and resource conflicts centred on agricultural use. Conflicts between tribes have traditionally been settled through chief councils.

According to the Land Act, when resolving disputes over land, priority should be given to alternative dispute resolution and traditional dispute resolution mechanisms (S. 91 91)) using mediation (S. 92) or arbitration (S. 94).

3 Land and conflicts in South Sudan

3.1 The role of “land” in the fight between Government of Sudan and Southern Sudan Liberation Movement/Army

Access to and use of land and natural resources has been one of the main causes of the fight between the Government of Sudan (GoS) and the Southern Sudan Liberation Movement/Army (SPLM/A). Customary law has regulated the use of land in South Sudan for centuries⁹ and is an expression of the strong link between communities and their land. Each ethnic group applies its own customary land laws within its own geographic setting.

There have been several attempts in the history of Sudan to regulate the use of land through statutory systems, nevertheless all failed and the land continued being administered under customary law. Such attempts date back to the Anglo-Egyptian regime, which introduced the principle that unregistered land is assumed to be owned by the government unless the contrary was proven. The Land Ordinance of 1906 made all land in Sudan property of the government. In practice the Ordinance only applied to the major towns in the North of the territory. Outside these areas land remained in the ownership and control of communities through their customary laws and practices (USAID 2010, p.12). In line with the objective to strengthen the system of registration of land titles while maintaining the power to withdraw customary usufruct rights (Komey 2010, p. 58) the government enacted the Land Settlement and Registration Ordinance of 1925, which required that any one claiming title to any land should submit a claim for settlement and registration¹⁰ (Odhiambo 2009; Komey 2010 p. 58). These laws were “introduced with the aim of confiscating large areas of land for commercial farming (notably cotton production) and regulating who was able to reside in towns (in order to guarantee the security of the colonial regime)” (Rahhal & Salam 2006). Such laws did not have a significant impact on the land system in Southern Sudan, which remained under the control of communities through their customary practices.

The Prescription and Limitation Ordinance of 1928 provided that anyone who had occupied a piece of land uninterrupted for a period of 10 or more years became entitled to the land by prescription and limitation (S. 3(1)), except if the land belonged to the government, in which case the period of occupation should have been of minimum 20 years (S. 3(2)). The Ordinance also prescribed that “unclaimed and ownerless property” was considered to be property of the government unless and until the contrary was proved (S. 16). During the same period were also enacted sectorial laws to govern agriculture, mining and

⁹ “Dinka customary rules regulating personal property have so far developed to cover the same legal sectors as recognized in Common Law and also include general principles regulating the transfer of title to personal property (Fadlalla 2009 p.51)

¹⁰ This only applied to the land on both sides of the Nile from Khartoum to the Sudanese-Egyptian border and urban centres. In “Land Tenure Issues in Southern Sudan, Key Findings and Recommendations for Southern Sudan Land Policy”, USAID, 2010 p.12

quarrying. Even these were limited in their reach, applying only to specific land on which the government established agricultural, mining and quarrying projects.

The Unregistered Land Act of 1970, introduced an important principle according to which all land not registered prior to the enactment of the Act should be considered as property of the government and registered as such. The effect of this law, if it were to be enforced to the letter, would have been the total dispossession of the communities since rural land areas in South Sudan were almost completely unregistered. The law was opposed and challenged by most communities in Southern Sudan.

Access to land and control of natural resources was one of the core issues behind the conflict between the SPLM/A and the GoS. The GoS did not recognise customary land rights and used statutory legislation to expropriate land from communities in favour of the elite or investors, bypassing customary land rights.

It was under the Nimeiri regime (1969-1985) that attempts to legalise the grabbing of communal land by the GoS for investment purposes and economic gain affected the communities in the South. The Unregistered Land Act of 1970 while enabled the GoS to confiscate land in the Nuba Mountains, Darfur and Upper Nile it was used in the South to initiate the construction of the Jonglei Canal in the Sudd wetlands to divert water and provide land for oil exploration. Such unilateral decisions to exploit the natural resources of the South without any regard for local communities contributed to the outbreak of the second civil war in Sudan in 1983.

The fight for the control of the land was exacerbated by the introduction of the *Sharia* law informed by the principle that all land in Sudan belongs to Allah and the Islamic State, as the representative of Allah on earth, is empowered to dispose of land owned by non-Muslims. However, the Khartoum government has never been able to fully implement its land laws in Southern Sudan, and communities have continued to apply their customary laws relating to land and land rights. (Odhiambo, 2009)

The South(ern) Sudanese considered land at the heart of their struggle for a New Sudan while the GoS wanted free use of land and resources located in the South. The land question was part of the negotiations leading to the signing of the CPA. The Wealth Sharing Protocol did not address issues regarding the ownership of land and natural resources, neither defined the role of each government in terms of land administration and management. It provided for the establishment of two Land Commissions, one at the national level and the other in Southern Sudan. The Protocol also acknowledged the reality of two different legal systems over land in Sudan, with customary land law applying in the South and mandated the Southern Sudan Land Commission the functions to make recommendations to appropriate levels of government about land reform policies and recognition of customary land rights and/or law (Article 2(7)).

3.2 Land and conflict in the independent South Sudan

Shortly after its independence, South Sudan it assisted to a revamp of conflicts and violence. In December 2011 tribal clashes intensified in Pibor (Jonglei State) between the White Army of the Luo Nuer and the Murle for the control of Pibor land considered to be owned by the Murle, in March 2012 conflict in Heglig, Unity and South Kordofan between the Government of Sudan and the Government of South Sudan. Nevertheless the most dreadful has been the struggle of power between the president and the vice president which eventually resulted in a civil war that caused atrocities which led to death of numerous people, displacement with consequent increase of food insecurity and poverty.

These conflicts are all conflicts for access or control of resources.

South Sudan civil war: land in the current Peace Agreement between SPLM-IO and Government of South Sudan

In late August 2015, the Salva Kiir, president of RSS signed a peace agreement previously signed by his opponent, Riek Machar called the "Compromise Peace Agreement" mediated by "IGAD +" (which includes the eight regional nations as well as the United Nations, the African Union, China, the EU, USA, UK and Norway). The agreement which makes Riek Machar the vice-president again has several provisions on wealth sharing and in particular on land management and land policy.

According to Chapter I Article 14 of the Peace Agreement, the SSLC is one of the institutions to be reconstituted at national level within a month from the signature of the agreement. The SSLC, which had a prominent role during the CPA period and developed land related legislation as well as the land policy, saw a reduction of its functions after assignment of land administration and management responsibility to the MLHPP. It is not clear yet how and if the SSLC will operate in this new setting, which will be its mandate and role.

In Chapter III article 1 states that GRSS and the SPLM/A-IO shall ensure “the establishment of mechanisms for registration and appropriate identification and/or documentation of affected populations [particularly IDPs and refugees] including their children, spouses, property, land and other possessions, which might have been lost during the conflict”.

With reference to the Land Policy it states, in Chapter III, Article 4.2, that the Government of National Unity (GoNU) shall:

- Within twelve (12) months of the Transition Period, initiate an in-depth national debate to review the current national land policy and the Land Act, 2008, in order to achieve consensus over land tenure, use, management and address issues of land grabbing, other malpractices involving land, carry out necessary reforms, undertake mapping, and to maximize economic utilization of land in South Sudan;
- Within eighteen (18) months of the Transition Period, establish an independent Registrar of Lands at all levels of government;
- Empower Commissions at different levels of Government to develop and interpret legislation regarding land issues and to reflect customary laws and practices, local heritage and institutional trends;
- Assist in the mediation of conflicts arising from land.

Main Land - Related Issues in South Sudan

Access to land and resources are still among main causes for land-related conflicts in South Sudan. Many of these conflicts are about **access to land** for grazing and for settlements. The livestock production requires that pastoralists move their herds in search of water and grazing land, whose availability varies from place to place seasonally. The expansion of permanent settlements and cultivation in some areas is affecting the free movement of livestock, resulting in conflicts between farmers and pastoralists. The former complain about destruction of their crops by the movement of cattle through cultivated areas, while pastoralists complain about farmers expanding into areas traditionally used for grazing or transit. **Access to water points** among communities is another cause of conflict and it is directly related to the scarcity of such resources especially in rural areas.

Commercialization of land is another cause of conflicts. In some cases long term lease over community land are issued to privileged groups or investors without the consent or knowledge of the interested community. This is also linked to **land grabbing** by officials of the government or of the army, military personnel or powerful citizens in both in urban and rural areas. Land grabbed is either used for private purposes or allocated to private investors for commercialization purposes (Pantuliano 2007, p. 7; UNHABITAT/SSLC 2010 p. 6).

Conflict between government authorities and communities or individuals are also common due to the allocation, occupation or expropriation of land for public interest without regard to the rights of land holders, and without a clear procedure. There have also been considerable disputes over **county boundaries delimitation** between count authorities and the communities. Establishment of counties boundaries has often been arbitrary and resulted in some instances in separation of communities from the same lineage or area (UNHABITAT/SSLC 2010 p. 6). Such disputes are widespread, contributing to insecurity and, in some instances, result in delayed investment and development.

With the expansion of urban areas, in part also due to the return of those who were displaced during the civil war, there is a growing need of **land allocation in peri-urban areas** in order to allow urban expansion. This phenomenon meets the reluctance of rural communities dreading urban encroachment into rural areas without proper consultation.

Returnees coming back to South Sudan after the civil war often find their **land occupied**, and sometimes the occupants also have legitimate land titles since there have been **multiple allocation** of various plots carried out by different regimes (UNHABITAT/SSLC p. 5) or because the new occupant legally acquired the land by those who were looking after the land behalf of the returnees and who sold the land without consent of the original owner.

The **widespread insecurity of tenure** represents a disincentive for smallholders, leads to abuses, corruption and misappropriation of communal land, generated by large-scale land deals.

Land use conflicts (i) between pastoralist and agriculturalist communities; (ii) encroachment of urban and peri-urban areas on rural land; (iii) between government authorities and communities/individuals as consequence of the interest of government to control and manage rural land for personal/investment purposes.

The **absence of a coherent legal framework** to provide equal protection to all tenure systems contributes to the lack of protection of land rights and jeopardizes the development of standardized approaches to tenure formalization.

Lack of clarity about roles and responsibilities and poor capacity of land administration and management institutions increases confusion and difficulties in establishing an effective land governance system.

Inaccuracy of land registration process leads to corruption and abuses and of the malfunctioning of such institutions which create loss of trust by individuals in the land administration and management institutions.

Weak dispute resolution system with unclear division of roles between customary and statutory authorities hampers protection of rights to land of the most vulnerable and can lead to conflicts and abuses. According to a recent study land disputes comprise as much as 80% to 90% of civil cases in the formal.

Lack of awareness among communities about their land rights increases their vulnerability.

Women's access to land remains one of the major challenges of land governance in South Sudan. A key obstacle for women to exercise independent rights to land is represented by their restricted ability to own land independently of their husbands or male relatives, Widows' head of household and women returnees find themselves in a situation of extreme vulnerability having to take care of their children without having a place where to settle with their family. Addressing the land and property needs of women is a key land governance priority.

The expectation of **restitution of land and property** for returnees who lost those rights as a consequence of the civil war together with expectation for compensation for land and property appropriated by government for public infrastructure and private companies for investment are still high. As high are the expectations of returnees, IDPs to have access and use of land. This expectation will increase when the peace deal between the SPLM-IO and the GRSS will be implemented.

All these issues, if not addressed properly, have the potential to escalate at a broader level jeopardising the peace and stability of the country.

4 Conclusions

The world's newest nation is facing significant challenges. Conflicts and instability, power struggles and inter-tribal fights, famine and lack of development are jeopardizing the attainment of peace and prosperity in South Sudan. More than two decades of civil war and of continuous rivalries among individuals and groups of the society brought the country in a situation of extreme poverty. The crisis and wave of

violence, death and terror which is affecting South Sudan since December 2013 raises concerns about the future of this country.

South Sudan is a complex emergency where the needs of a country in development coexist with more pressing humanitarian needs. The latter are at the moment addressed through international support. Nevertheless the current situation raises several questions: Should South Sudan stop concentrate all its efforts towards the achievement of the peace in the country and the solution of the humanitarian crisis while postponing the achievement of fundamental development and legislative milestones? For how long can South Sudan rely on international assistance to meet the basic needs of more than one third of its population? Is it realistic to think about development of land governance system given the current situation? If land is one of the root causes of conflicts in South Sudan, why international community, including donors, do not try to address such issue in the aftermath of the conflict instead of linking it with the development stage?

Building institutions and structures to support and rule the country in peace for many future years without leaving behind its people; lie foundations for a sustainable development which will reinforce and support the peacebuilding process represent the biggest challenges for South Sudan. South Sudan is called to build its institutions and structures based on principles of good governance, transparency, accountability and inclusivity.

The poor land governance system is increasingly becoming trigger of conflicts: lack of a coherent legal framework on land and widespread insecurity of tenure impact the access to land for economic and development purposes. Equitable access to and use of land together with security of tenure are pivotal to the achievement of peace and economic development and to avoid abuses and escalation of conflicts. The land reform cannot wait anymore.

It is fundamental to adopt a participatory approach and to make sure that all levels of government as well as relevant civil society organizations and development partners are consulted in the policy and legislative development processes. At the same time it is crucial that the constitutional development process takes into account progresses and outcomes of the land governance sector.

Land is a crucial element in the peace agreement and it is important to put in place all actions which will support its fair, transparent and accountable management. There are crucial activities which have to be implemented in the very near future in order make rapid steps to address land and conflict in South Sudan: approval of the Land Policy; improve clarity around tenure system and access to land; information management system; development of strategies for reintegration of IDPs and for the use of land for

sustainable economic development; assessment on land governance organization structure at all level of government including human resources and capacity building needs in order to identify gaps and ensure effective assistance avoiding duplications in donors' fund; coordination of donors' activities related to land in order to avoid duplication and ensure aid effectiveness. Work with communities and seek their participation in land demarcation and recording and raise their awareness on land rights

Most importantly a financial commitment of the Government of South Sudan towards land governance is required: faster steps have to be made towards the land governance development in order to support the peace and nation building process and it is the government that has the principal responsibility to guarantee and protect the rights of its citizens and to grant a prosperous and peaceful future.

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