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Land Administration Challenges in the Post-conflict South Sudan: the experience of the USAID South Sudan Rural Land Governance Project (2011-2014)

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1.0 Introduction

South Sudan is a country coming from a conflict, having attained political independence as recently as July 2011. The protracted civil war that lasted for more than twenty years created malfunctioning land administration systems. Thus, decades of civil war destroyed many of South Sudan's essential institutions of governance, and not least the customary and statutory systems that allocated land rights and ensured that land holders could use their land to secure livelihoods. Effectively, South Sudan inherited little in terms of a functioning land administration system/bureaucracy from preceding governments. Statutory institutions in the emerging new institutional landscape are a blend of old institutions from the pre-Comprehensive Peace Agreement (CPA) of 2005 and the new from the post-CPA political dispensation. Included in the set of old institutions are Ministries and Departments operating at the national and state levels. The set of new institutions is comprised of the South Sudan Land Commission, state-level Land Commissions and various authorities/committees operating at the state and county levels. Many of the new institutions are still evolving, while some are yet to be established. There are also new proposals, with the Draft National Land Policy recommending the creation of a new Ministry of Lands.

Both old and new institutions are operating under difficult situations. Legal and policy frameworks and instruments for land administration are largely non-existent. Mandates are poorly defined, with new institutions struggling to translate their respective mandates into programs of action. Understaffing is a major constraint, while the few staff available are both inexperienced and lack skills in planning and land administration. The resultant effect is a system of land administration that is unclear of land rights applicable in the country, has inconsistent planning and land administration procedures, and is characterised by underperforming government institutions. In the face of such challenges, interventions in the land sector continue to happen in South Sudan, albeit with serious implementation challenges. One such intervention is USAID's Sudan Rural Land Governance (SRLG) project whose overarching goal is to establish and ensure that 'a well-tested and proven set of systems and processes for transparent land administration are in place and ready for replication, continued adaptation, and scaling up.' The intervention has several components, including building the capacity of state and county-level land authorities through site-specific actions to secure land tenure and improve land use planning in two selected counties. Such site specific actions include the development of a land inventory in the Yambio Payam (an administrative unit immediately below the county) of Western Equatoria and the development of a land use plan in Bor County of Jonglei State.

This paper gives an account of the experiences, in the background of the prevailing institutional and legal complexities, of SRLG in implementing actions in land use planning and land administration. It talks about innovative partnerships with the South Sudan Land Commission, simplified land registration practices and bottom-up land use planning actions. The paper is developed based on project materials generated from field experiences. The project started in 2011, and is scheduled to end in 2014. The paper starts with a brief overview of the character of the state in the wider context and implications for development and land administration in particular. An overview of the land administration situation in South Sudan is presented next. This is followed by a discussion on the complexities of existing frameworks for land administration. Following this is a presentation of SRLG interventions in land use planning and land administration. The paper concludes with a discussion on innovations by SRLG which have made things 'happen' in a challenging environment.

2.0 The State and Land Administration Complexities in the wider context

As can be expected, countries emerging from conflict situations are characterised by the lack of peace and stability in the country-side, while the developmental role of the state is naturally constrained for various reasons. The penetration of society by the state in its efforts to bring development through policy changes and piloting development projects often remains weak. Schomerus and Allen (2010) argue that violence and conflicts could only be contained by strong and reliable state structures, 'yet these do not exist or where they do, might be perpetrators of violence themselves.' In an analysis of how some developmental states managed to achieve remarkable developmental records, Leftwich (1994:378) points to the centrality of a strong state which was able to 'concentrate very considerable and unchallenged political power at the top in these states, thus usually enhancing political stability and continuity in policy.' Further, it notes that "These states have been dominated by purposeful and developmental elites, which have also been relatively un-corrupt....While these elites have regularly experienced internal differences, they all appear to have been united by a determined national developmental objective, always fuelled by varying combinations of political, ideological and nationalist considerations, as well as internal and security threats." As stated by Leftwich, what drives this logic is a group of disciplined elites who can craft the right political strategies and guide its implementation. South Sudan is a country where the state appears to be stumbling in controlling teething problems relating to, inter alia, a legal void in land administration, underperforming institutions, boundary problems at county and community levels, cattle raiding, natural resource conflicts, child abductions and general lawlessness. In light of this, the relevant question to ask is; does a strong state of the character described by Leftwich exist in South Sudan?

2.1 The State, Politics of Patronage and Development

Chabal and Jean-Pascal (2003) argue that African states have remained deeply engaged in the 'economy of affection' where social relations of kinship, ethnicity and patronage dominate. Bernstein (2003: 3) further argues that "the objectives of the economy of affection are geared to 'basic survival' in typically risky environments and to 'social maintenance' of the primordial relations of kin and ethnicity. The latter generate 'social' accumulation of prestige and power, of the resources needed to build, maintain and expand followings through patronage, rather than the 'economic' accumulation required for productive investment and development... the patronage politics characteristic of the economy of affection and 'social' accumulation permeate state formation and functioning. Government is a key site of this politics of patronage, which mobilizes followings on an ethnic and/or regional basis (generating inter-ethnic competition and conflict), hence cannot provide the universalizing and impersonal instrumentalism required to undertake a national project of economic accumulation." Whereas land administration systems in South Sudan are still in their infancy, evidence to date is suggestive of a trajectory that caused multiple crises elsewhere in sub-Saharan Africa. Could it be that the multiple crises articulated by Chabal and Jean-Pascal are being reproduced in South Sudan? Unexplained reasons stalled the approval of the Draft National Land Policy for more than two years. Could it be that the process has been trapped in the politics of affection which is characteristic of many parts of sub-Saharan Africa?

2.2 The Politics of Boundaries and Implications for Land Administration

Ordinarily, boundaries are multi-functional, and constitute an indispensable tool used in defining administrative units. By their nature, boundaries are legal instruments that demarcate pieces of land. They are used in both statutory and customary law, although their recognition is not always shared. Whilst boundaries are important for land administration and land management, they can also be very

disruptive to the functionality of society, particularly in countries emerging from a conflict. Experience from elsewhere, including Ghana (Lentz 2001) and Cameroon (Mbah 2010) demonstrates some of the disruptive characteristics of boundaries. Whereas the creation of boundaries can be motivated by good intentions that are centred on participation and democratisation principles, boundaries become disruptive when, for instance, the rationale is superseded by political expediency and ethnic interests. In Ghana, attempts to create new districts coincided with the delineation of ethnic boundaries, resulting in the disruption of existing arrangements for sharing farming land and other land based resources (Lentz 2001). Experience has also shown that the creation of new boundaries create further claims and counterclaims, many with their roots in the pre and post-colonial periods. Many of these are difficult to solve. Another drawback is that the process of demarcating boundaries is prone to the influence of local power relationships. Writing about the role of administrators in solving boundary disputes in Cameroon, Mukong (1997: 29) notes that they are ‘implemented piecemeal, ... their decisions are not based on facts but...on the bargaining power of the belligerents. Even when a judicious decision is taken by one administrator, his successor may scrap it away...’ Could it be that the disruptive tendencies of boundaries is being reproduced in South Sudan?

In South Sudan, contested boundaries are an issue at various levels of government. In many situations, the creation of local government administrative units, especially counties and payams, has not been followed by a proclamation of boundaries for the new administrative areas. Evidence from the USAID Sudan Property Rights Program (2010) demonstrates the role of politics in creating new counties, with senior Local Government officials making reference to the existence of over 200 applications for new counties in the country. UN-HABITAT (2010) makes reference to numerous applications by communities for new counties in Western Equatoria State, and describes these as ‘counterfeit’ counties. The work of Schomerus and Allen¹ (2010: 9) argues that “decentralisation, while theoretically the best way to govern South Sudan, has in reality often become an instrument to entrench ‘tribal’ lines over competition for resources, manifesting itself in a proliferation of new counties.”

A widely held view by officials and informed community members alike is that the resolution of boundary problems in South Sudan must be premised on the boundaries created by the British that existed at Sudan’s independence on 1 January 1956. However, Schomerus and Allen (2010: 111) argue that ‘the corresponding map present in the British Library archives has no boundaries located lower than provincial level but rather only shows the demarcation between north and south.’ Even the CPA Agreement makes reference to the 1956 map in connection with the resolution of boundaries between the North and South, but makes no suggestion on the use of old maps to solving the internally based territorial disputes (ibid). In fact, Schomerus and Allen (2010: 47) make the case that “... all known information seems to point to the fact that before 1956 the vast majority of internal Sudanese boundaries were never marked on the ground or defined by administrative text.” Given this background, what options exist to resolve the country’s land administration dilemma. As discussed in latter sections of this paper, SRLG has made some important innovations in response to some of these challenges.

The foregoing discussion provides the broad context for understanding land administration challenges in South Sudan. By and large, the developmental role of the state remains at the embryonic stage. State failure to penetrate society and provide services, including land administration is a cause of concern. State efforts towards the development of appropriate legal and institutional frameworks for

¹ Fieldwork for the study was undertaken in the states of Eastern Equatoria, Upper Nile and Greater Bahr el-Ghazal

land administration interventions remain painfully slow and somehow unconvincing. The next section discusses in detail the planning and land administration complexities that confront the country.

3.0 Complexities of existing institutional and legal frameworks for land use planning and land administration in South Sudan

It is important to state upfront that South Sudan, unlike other countries in sub-Saharan Africa, inherited little or no functioning land administration system /bureaucracy from preceding governments. There was little land administration infrastructure in the garrison towns, whilst rural areas were governed by the weakened customary authorities. Suffice to mention that this historical legacy sets the context of understanding state capacity shortcomings in land administration that this paper alludes to. SRLG's interventions are also located in this particular context.

There are controversies and challenges facing the operational legal frameworks governing land administration and land-use planning in the post-conflict South Sudan. There is a general understanding that the Land Act of 2009 repealed old legislation (i.e. laws used and inherited from the Government of Sudan) dealing with land use planning, land registration and other aspects of land administration. The supposedly repealed legislation includes the Land Resettlement and Registration Act, 1925; Disposal of Town Lands Scheme Act 1947 and the Urban Planning and Land Disposal Act of 1994. Section 2 of the Land Act is the repealing proviso. It states that "Upon the effective date of this Act, 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." There are opposing interpretations of this legal provision, with some analysts arguing that all old land laws were repealed while others are of the view contrary to this assertion.

The validity of any of these assertions can only be decided by the courts of South Sudan. For this to happen, the case must be brought before the court of law. What remains unclear is which institution has the mandate and motivation to bring the case to the court of law? Could that institution be the South Sudan Land Commission, the Ministry of Justice or the Ministry of Housing and Physical Planning? Legal experts are of the view that international practices require that any law repealing another piece of legislation should explicitly state what law or part thereof is being repealed. In this regard, the Land Act fails to match best practice examples. Yet, politically it is 'inconceivable' that the country be seen as borrowing legislation from the Government of Sudan as the former adversary. At the same time, the current legal framework as defined by the Land Act 2009 fails to provide the much needed clarity and predictability in guiding land administration in the country.

There are also institutional and legal incoherencies and confusion on the status quo of land administration in the country. Discussion with some senior officials in the National Department of Land Registration revealed that after 2005, the Government of South Sudan (GOSS) instructed them to continue applying the Land Settlement and Registration Ordinance 1925 pending the development of land registration law for South Sudan. The 1925 Act gives powers for land registration to the Judiciary, whereas the Land Act 2009 shifts these to the Ministry of Housing and Physical Infrastructure. If the 1925 Act was indeed repealed by the Land Act 2009, this raises questions about the legality of land titles that are being issued in some states of South Sudan.

In rural contexts, the key statutory institutions with land administration functions include the South Sudan Land Commission (SSLC) and County Land Authorities. As already mentioned, these

institutions were created following the signing of the CPA in 2005. The South Sudan Land Commission came into being following the Presidential Decree No.52/2006. The basis for its establishment is enshrined in the CPA signed between the Government of Sudan and the Sudan People's Liberation Movement. The legal framework that provided for its establishment is outlined in the Interim Constitution of Southern Sudan 2005. The SSLC became a legal entity as from June 27th 2006, with autonomous powers and a clearly defined mandate. Thus, it was set-up as an independent body, with a broad mandate that covers three main areas namely arbitration of land claims and assessment of appropriate compensation where applicable, coordination of GOSS land policies and undertaking studies on land use practices in areas where natural resource exploitation is taking place. It is prescribed in the Interim Constitution that the SSLC should be representative of all levels of government in South Sudan.

At its peak, SSLC had only two technical staff, from a possible complement of ten (USAID Sudan Property Rights Program 2010). Although the two technical staff members were hired at the Director level, they were degraded following a review of appointments by the Public Service Commission. The possibility of filling in the vacant posts in the immediate future remains remote given that the Public Service Commission has frozen the filling of such posts owing to budget constraints. Past attempts at filling-in the posts were not successful for reasons associated with lack of qualified staff to occupy the positions. Thus, while at different times interviews were held for the posts and candidates recommended to take up these, the Public Service Commission rejected their candidature. This was on account that the candidates did not meet the regulations of the Public Service Commission to enter government service at the Director level. In fact, applicants were largely fresh graduates from the University, and these could only enter government at lower levels (ibid).

The Chairperson of SSLC is appointed by the President of the, and as an institution, SSLC is accountable to the President (through the Minister of Presidential Affairs). Practically, SSLC is detached from most of the state land institutions at the national and state level. The technical linkage and point of interface between the SSLC and key land institutions like the Ministry of Housing and Physical Planning (national level) and the Ministry of Physical Infrastructure (state level) is largely non-existing.

Section 44 of the Land Act 2009 provides for the establishment of County Land Authorities which in essence are an extension of Local Government Councils. Among other responsibilities, County Land Authorities are responsible for land allocation and registration. There is inconsistency though with Section 91 of the Local Government Act which stipulates that "every Local Government Council shall establish a land committee or authorities..." The 'assumption' is that this converges into one institution, the County Land Authority. Land use and planning provisions in the Local Government Act are limited to the responsibilities of state and local government. The Local Government Act confers local government councils with responsibility for town and rural planning and concurrent powers with the state over urban development and planning. The Act also requires that states in consultation with Local Government Councils produce Land Use Master Plans. It is clear that the current legal framework provides local government with almost exclusive responsibility for land use planning and management but provides no legislative guidance for doing so. In real terms, County Land Authorities have not yet been established, while the South Sudan Land Commission remains incapacitated to effectively discharge its functions. In essence, there is a vacuum in terms of the institutional and legal frameworks for land use planning and land administration in rural contexts. Against this background, the Sudan Rural Land Governance Project responds to the challenges through creative pilot interventions which are expected to inform and guide national and state level processes that seek to address the land administration and land use planning logjam.

4.0 South Sudan Rural Land Governance Project: responding to the institutional and legal complexities

Initially, the Sudan Land and Property Rights Programme, the predecessor to the Sudan Rural Land Governance Program worked with the newly created South Sudan Land Commission to develop the Draft National Land Policy. Through the provision of technical and financial support, SPRP provided guidance and leadership to SSLC to develop the Draft National Land Policy. The current South Sudan Rural Land Governance Project was put in place as a response to issues and challenges emerging from the preceding project.

4.1 Building the Capacity of Land Administration: working with the South Sudan Land Commission

The constraints and other operational challenges faced by the South Sudan Land Commission have already been alluded to. SRLG has assisted in building the capacity of the organization in various ways. These include, among other things, secondment of staff to participate in SRLG land administration functions, technical assistance in the development of the organization's strategic plan, partnering in the development of the Draft National Land Policy and assisting in the review of the Land Act 2009.

Among other things, the predecessor to the Sudan Rural Land Governance Program, facilitated the review of SSLC internal processes and procedures as a way of identifying its capacity constraints. In this regard, SPRP reviewed SSLC's filing system, actioning of correspondences, holding of staff meetings, development of work-plans, writing monthly reports etc. The organization's function as a land information repository centre was also reviewed. Through the review, it was established that documentation of information on the development of the Land Act and the Draft Land Policy was largely incomplete, confirming lack of efforts towards building the institutional memory of the organization. Important documentation, including the Land Act 2009, was not readily available from the organization or any government ministry, but instead was being distributed by NGOs. Appropriate recommendations were made to rectify the identified challenges. As a follow-up, SSLC was assisted to develop the organization's Strategic Plan. This was particularly important in crystallizing the organization's mandate into clear programs of action.

With the support of USAID, the South Sudan Land Commission (SSLC) initiated the process of land policy development in 2006. An elaborate participatory process resulted in consultation workshops being held between June 2009 & March 2010 in all the ten states of South Sudan. Participants included state line ministries working on land, county commissioners, traditional authorities, women and youth groups, NGOs, faith based organizations etc. The Draft National Land Policy was presented to the Ministry of Justice in February 2011. It took a year before it was realised that it was submitted to the 'wrong place,' only to be resubmitted to the Office of the President in February 2012. Even after that, the process remained sluggish, with signs of movement starting to show in early 2013. Important recommendations embedded in the Draft Land Policy include the development of appropriate legislation on planning and land administration, establishing a firm foundation for developing secure property rights and establishing and capacitating land administration institutions. The approval of the policy is not only long overdue, but is costing the country in terms of lost development opportunities. Based on informal discussions, it can only be speculated that the policy, as already argued, has been trapped in the 'politics of affection.'

4.2 Institutional Development: operationalization of County Land Authorities

Given the absence of operative state level land laws in both Jonglei and Western Equatoria, the project supported both state governments in drafting regulations for operationalizing state and county land authorities. County Land Authorities (CLAs) are institutions that are conceived to bridge customary and statutory land management. Among other functions, they are expected to facilitate access to land by investors and better manage resource conflicts at county and community levels. In Jonglei State the drafting process culminated in a public consultation workshop that provided stakeholders with a forum to vet procedures, organization, and structure of a CLA for Bor County. A similar consultative workshop was held in Yambio, Western Equatoria State to review guidelines for the establishment of a CLA for Yambio County and to propose a program of action for piloting the CLA.

The implementation of new structures is always challenging, especially in a context where provisions of national legislation concerning land authorities at county level are yet to be harmonized. To ensure that the CLAs can be effective, SRLG is building permanent office space at the county level, and providing office furniture and equipment. SRLG will step up the capacity building process for the land administration authorities by rolling out the training programs on various topics ranging from management planning, budgeting, and ethics to land policy, legal reform, land use planning and land administration.

In addition to the operationalization of CLAs, SRLG has provided space for the formation of the State Working Groups in the pilot States of Western Equatoria and Jonglei. Although the State Working Groups have no legal standing, the amalgamation of line-ministries working on land has proved to be important in galvanizing state support in SRLG's land use planning and land administration activities. As part of the strategy of developing the capacities of members of the State Working Group, SRLG regularly provides training in planning and land administration. Such interventions are intended to enhance the capacities of sector ministries 'in legal reform and land administration based on responsibilities prescribed by the Land Act 2009 and Local Government Act 2009.'

4.3 Bottom-up Land Use Planning

Among other things, SRLG is tasked to develop a land use plan for the Bahr el Jebel floodplain area, commonly referred to as the Sudd. Derived from the Arabic term 'sadd', meaning 'block,' the Sudd (barrier) represent one of the largest wetland areas in the world and is located along the White Nile in South Sudan. The main deliverable for SRLG is a completed land use map and agreed rules governing access and use of the Sudd. The entire Bor County constitute the project area, a region where there is intense competition over access to shared grazing, water points and fishing resources. The Sudd is an important natural ecosystem that sustains fishing and pastoral-based livelihoods, high livestock numbers, and diverse wildlife. In part due to insecurity, this area has remained under wilderness, and it is clear that peace and security will foster changes in the livelihood approaches. Overlapping claims to ownership of land by ethnic communities from Bor, Terekeka, Pibor and Awerial counties are common. Missing is a framework for the shared use of common property resources such that communities from Awerial, Bor and Terekeka have a history of fighting over the Sudd. The focus of SRLG's land use planning interventions is on developing planning systems to help resolve land use conflicts and establish a more secure environment for investment and economic development. The development and adoption of techniques and protocols for sharing natural resources, and anticipating and mitigating the occurrence of land use disputes is expected to reduce the perennial inter-ethnic

tensions that have constrained the development of efficient and sustainable livestock production systems.

In the absence of clear legal, policy and institutional frameworks to guide land use planning, SRLG's interventions has used bottom-up approaches to identify and articulate land use problems, proffer solutions and work towards implementation of identified solutions. Working with communities and their leadership, SRLG interventions have identified and sought solutions for planning problems in relation to lack of planning standards to guide development and infrastructure provision in rural contexts, cattle movements, conflicts and contestations over ownership of pastures, closure of cattle routes as a result of the expansion of Bor town, unregulated charcoal burning activities and conflicts over fishing places on the Sudd of Bor County.

Current planning practices in Bor and the wider context of South Sudan show little evidence of the application of planning standards. Noticeable in this regard is the planning of public utilities and other infrastructure without taking into consideration of the land requirements of such facilities. For instance, many of the schools in Bor County and elsewhere do not provide for sporting grounds. Further, built up infrastructure (homesteads, schools etc.) are constructed with no observation of building lines, a clear indication of the lack of development control functions. The problem is even more pronounced in Juba, the capital city, than elsewhere in the country.

In the same vein, settlements in both rural and urban situations are located too close to the Nile River, causing water pollution. There are cases where pit latrines are within 10 meters from the river. In addition to exposing human settlements to possible flooding hazards, this is strong evidence that already the Nile River is being polluted in both rural and urban situations. Accordingly, there are challenges and constraints faced by SRLG in its efforts to produce the land use plan for Bor County. In recognition of this growing problem, SRLG has produced Planning Standards for endorsement by the State Working Group and line ministries responsible for land use planning and land administration. The process towards the development of the Bor County land use plan is now guided by the said planning standards. The Draft Planning Standards are ready for presentation to the State Working Group; the expectation being that this will be adopted for use in Bor County. In the final analysis, the expectation is that such planning standards can be modified into a legal instrument at the state level, possibly converting these into "Regulations on Planning Standards."

Evident in both rural and urban contexts of South Sudan is the lack of separation of urban and rural land uses. This is typified by the sharing of physical spaces between human and livestock, a classical example being the sharing of road infrastructure by traffic and livestock. As an illustration, in Bor County, land use conflicts of this nature are discernible in Bor town and in Anyid and Kolnyang Payams along the Juba-Bor highway. In Bor town, many households still keep livestock in town, while households located far afield have claims on cattle routes which have been occupied by Bor town. The location of human settlements in some areas is such that cattle have to share use of the road with vehicles when moving to and from grazing areas. This creates conflict between traffic and livestock movement, a situation that can only get worse as the road get busier.

SRLG is proposing two possible planning responses to this problem, while communities themselves have put forward a third option. In the rural contexts, and where appropriate, SRLG is proposing that cattle tracks be created along the major roads. This will separate the two forms of conflicting land uses. In practice, this also requires the widening of the road servitudes to meet the required planning standards for roads and cattle tracks. The second response reinforces the provisions of the first. It is about putting in place land use regulations that clearly define and separate between urban and rural

land uses. The same regulations will outline distinctly the character, situations and conditions that allow for the sharing of land and other infrastructure by rural and urban land uses. Required to support such planning instruments is behaviour change by cattle herders that will see them use cattle tracks and road shoulders. However, these proposals do not seem to be very palatable with the communities who instead recommended that the road be relocated to the outskirts of human settlements. The final decision on what option to pursue rests with the State Government of Jonglei.

Field-work has confirmed the existence of settlements of fishing communities on some sections of the Sudd. For instance, Akuak Boma (the lowest administrative unit) in Baidit Payam is a firmly established settlement on the Sudd. The settlements on the Sudd can be categorised into permanent and seasonal. In permanent settlements, fishing communities reside in those areas through-out the year. Residents are on such settlements as complete families comprising children and adults. Permanent buildings have been established on the crammed open ground, while some houses are in essence located in water. Many of the households have planted fruit trees, with the size of trees confirming that such settlements have been in existence for decades. Seasonal settlements are occupied during the dry season when some fishing communities migrate from inland to the Sudd. Such settlements are characterised by abandoned huts (in the wet season), and established fruit trees. Worth noting is that the migration in the dry season of pastoralist groups to the Sudd represents another variant of the type of seasonal settlements that exist.

The situation arising from the state of settlements of fishing communities in various sections of the Sudd raises multiple land use planning complexities. Planning for service provision – transport, health facilities and education etc. – is almost impossible given the kind of terrain that characterise the Sudd. Children barely access education facilities, while transport service connecting to Bor Town is largely non-existent. A pressing situation confronting fishing settlements is the management of wastes on such squash environments. Apparently, it seems as if all household waste is dumped into the flowing waters of the Nile. Inevitably, pollution of fresh water sources of the Nile has been going on for a while and is continuing. In the dry season when dry ground is available at a slightly higher scale, the Sudd can be used for burials.

4.4 Development of a Land Inventory in Yambio Payam

The pilot land inventory activity targets Yambio County in the Western Equatoria State. This county is located in an area of high agricultural potential (the green belt) that is dominated by a system of mixed cropping of maize, millet, groundnuts, yams, and pineapple and fruit trees. The farms were organized into homesteads during the British colonial era. Whereas tenure security for households in Yambio Payam is not threatened as borders between farms are well-defined; smallholders are in need of an enabling framework and a land registration instrument to enhance smallholders' access to land, credit, and input markets for increased and sustainable agricultural development. In addition, land registration is seen by households as important for facilitating the growth in large-scale commercial agricultural investment in Western Equatoria. Anecdotal data has revealed that at the national level, between 2007 and 2010, some 2.64 million hectares of land have been allocated or were in the process of being allocated to private interests (Deng 2011). In Western Equatoria, 213,480 hectares have been allocated, of which 186,300 hectares are for agriculture and 27,180 hectares for forests. In Yambio County, 24,860 hectares have been allocated. The favorable rainfall conditions and the fertility of the soils in this state could attract large private investments. Smallholders need a framework that would help them obtain fair and just compensation should their land be acquired by big investors and hence SRLG's land inventory intervention.

South Sudan inherited no functioning system of land registration in rural areas from the pre-CPA period. To this end, SRLG is piloting a simplified form of land registration through the development

of a land inventory for Yambio Payam. To reiterate, the Land Act of 2009 provides no land survey and land registration procedures and regulations. As such, the pilot land inventory reverts to the use of procedures of the Land Settlement and Registration Act, 1925; which, as argued, is a ‘repealed’ legislation. The land inventory is a register of land parcels showing owner of the land, parcel dimensions and size, existing rights and parcel boundaries. There are two important steps involved in developing the land inventory. The first is the formation of boundary committees made up of respected and trusted villagers, government officials from Payam and County Administration, and representatives of women and youths. The second step involves the boundary committee, SRLG field team and neighbours walking the boundary of every parcel and recording Global Positioning (GPS) readings. The boundary committee is expected to verify and adjudicate rights pertaining to each parcel of land, capturing owner, land use and other attributes. It is anticipated that during boundary demarcation disagreements may arise over boundaries or claims to land. Such disputes will initially be adjudicated by the boundary committee. If unresolved, the disputes will be referred to the appropriate traditional authority or to other alternative dispute resolution mechanisms. Kept at the County Office, the land inventory will be integrated with those used in the regular land administration system and linked to the register in the Ministry of Physical Infrastructure. Any changes to the records will require approval by both the County Land Authority and the Ministry before they can be effected.

5.0 Discussion on innovations and lessons for Planning and Land Administration

The central argument in this paper is that the new South Sudan has mal-functioning planning and land administration systems. There are structural weaknesses in the institutions, laws, policies and supporting documentation in the form of maps. The little that exists on planning and land administration procedures is poorly understood by the skeleton staff manning line ministries. Thus for instance, there is largely no documentation on current practices relating to planning and land registration. In the face of this, interventions in planning and land administration have to find creative methods of dealing with the situation on the ground. Whilst state institutions are thinly staffed, SSLC and state ministries have been able to second their staff to the Sudan Rural Land Governance Project for ‘in-house’ training on land administration issues. Realising that little existed at the national, state and county levels, SRLG’s pilot interventions started working from the bottom (community) upwards. It is in the process of finalising legal briefs on land use planning, land conflicts, and land and investment. These outputs will feed into national and state level responses to the country’s land use planning and land administration challenges. Further, appropriate planning and land administration instruments, particularly regulations on planning standards, land uses and land registration will be developed based on the experiences of the pilot interventions.

Upon realising the absence of planning and land administration legislation and tools, SRLG had to be innovative in the execution of its interventions. Initially, SRLG sought to understand current practices in the area of land-use planning and land administration at the state level and below. SRLG convened a workshop under the theme: ‘Changing Paradigms for rural/urban land-use planning.’ The Workshop brought together top government officials from Ministries of Physical Infrastructure at national and state levels. All ten States of South Sudan were represented mostly at the Director General level. In response to the question on what legislative framework guided their land use planning and land administration work, individual states indicated that they reverted to old legislation to support their functions as and when necessary. A similar approach was then adopted in the execution of the land inventory interventions. In land use planning, the strategy is that the completed land use map will be given a legal status through the issuing of a Decree by the Governor of the State of Jonglei at the appropriate time.

A common problem faced by both land use planning and land inventory interventions is the non-availability of maps in the country. The few maps that exist often have contested boundary

demarcations at the county and payam levels, with few showing the boma (equivalent of village) administrative units. In response to that, the land inventory intervention did an archival search for historic maps that were produced long back during the colonial period that ended in 1956. Such maps represent the only known comprehensive land surveys done for the area but were not available locally. The perception within government ministries was that these maps had either been lost, destroyed or stored in Sudan's capital Khartoum, where they could not be accessed by the South Sudanese Government. A visit to the Map & Imagery Library (MIL) at the University of California, Santa Barbara revealed through archival searches that a series of maps at a scale of 1:250,000 covering some sections of southern Sudan, dating from 1930–51, existed. These maps were photographed with a standard digital camera and were posted to South Sudan.

The rural land plot demarcations, understood to be the original plot demarcation for colonial cotton farming in Yambio, are the only known evidence of a cadastre type system for the area. As such, the historic maps are particularly important for the SRLG land inventory interventions. The relevance and application of the maps was confirmed in a participatory mapping exercise within Bodo Boma where community members walked through property boundaries, taking GPS readings using an (iPad). The tracked boundaries revealed strong spatial correlation with the demarcations on the historic maps, confirming the authenticity of the maps. The historic maps are therefore a primary source of information for reconstructing the land inventory for Yambio Payam and hence their use in conjunction with modern survey tools.

Whilst the digitized land demarcations show a significant correlation to what is visible on the satellite images (Spot and Google Earth), challenges remain. For instance, due to advances in survey techniques since 1952 there are some mismatches that cannot be resolved with a direct conversion of the data. This calls for a very flexible approach when using the data, using it as an indication of the location of the lines and not an exact. However, combined with community mapping data and what is visible on the satellite image, a satisfactory result is anticipated. Another additional problem with the historic maps are that they only cover $\frac{3}{4}$ of the Yambio Payam, with no data for Boda Boma. Instead, community mapping in these areas is expected to fill-in the gap.

In land use planning, SRLG produced its own base maps. The few maps that exist are not available at the right scale, while many have boundary demarcations that communities dispute. The use of such maps could escalate the conflicts. Whilst the payam remains the planning unit, SRLG base maps avoid the use of line boundaries where they are contested, showing instead 'shaded blocks.' In response to the lack of literature to guide land use planning, SRLG compensated for this by emphasizing the use of Indigenous Knowledge System (IKS) in informing the planning process, particularly the zoning of land uses. Local communities possess special knowledge on 'physical/planning spaces' with pastures of high nutritional value and fishing places managed through traditional methods. In the same manner, communities have expert knowledge on the location of cattle routes and cattle camps they have used over the years. Some of these are at the centre of conflicts between neighbouring communities. Accordingly, the role of communities and the application of IKS has entrenched public participation in land use planning.

There are challenges anticipated in the land use planning intervention as well. For instance, the application of planning standards and other planning tools like buffer zones will inevitably result in the displacement of a significant number of households. With insecurity being a major problem in Jonglein State as a whole, settlements tend to be concentrated along major roads and the White Nile. A strict application of planning standards (for instance road servitudes), buffer zones along the river and general development control in rural contexts is expected to be an unpopular option with

communities. Further, any relocation of fishing communities who have lived on the Sudd for decades is likely going to face political and social resistance. SRLG has put up proposals for dealing with the problem, including freezing of new settlements and proposals for rules that regulate the disposal of human wastes, including the banning of burials on the Sudd.

In order to improve on effectiveness and the facilitation of replications, relevant interventions in planning and land administration may need to put emphasis on piloting demonstration models. For instance, the country needs a reference point on what constitutes a properly planned settlement. In the same vein, pastoral communities need exposure to planned grazing arrangements. Clearly, the site specific actions of SRLG activities in Yambio (land registration) and Bor (land use planning) are good examples of demonstration models in the relevant fields. The main challenge is to scale up such interventions to a level where each of the ten states can be having its own pilot project to learn from.

The discussion in this paper has shown that there are challenges relating to land use planning and land administration in South Sudan. These are located in a particular context where the state is constrained by, among other issues, a legal void in land use planning and land administration frameworks, weak institutions and inexperienced staff in planning and land administration. Experiences from SRLG interventions reveal that many of these challenges are a reflection of the shortcomings of the state at the higher level. For instance, there are visible traces on the use of social relations of kinship, ethnicity and patronage (Chabal, P and Jean-Pascal 2003) to determine government operations. That the Draft National Land Policy was kept '*in limbo*' for more than two years is clear evidence on the lack of application of impersonal relations in decision making. Yet, the approval of the policy would pave the way for, inter alia, concerted efforts towards addressing land use planning and land administration challenges that the country faces. For instance, there are proposals for enacting new legislation on Town and Country Planning, Land Surveying, Land Registration, Land Information and Communal Land; all of which will constitute the pillar of planning and land administration law for the country. Whilst the major conflict with the Government of Sudan has subsided, internal rivalry and contradictions remains a challenge (Schomerus and Allen; 2010). The lack of cohesiveness in the operation of respective government agencies working on land issues and the lack of urgency in decision making are a cause of concern. Visible is the lack of cohesive working relationships between the South Sudan Land Commission and the Ministry of Housing and Physical Infrastructure. The existence of a strong state required for the development of post conflict states (Leftwich 1994) is not evident. However, recent evidence is showing some movement towards the approval of the Draft National Land Policy. For instance, the draft policy has passed through two important stages in less than two weeks, something that could not be achieved in a period of two years.

6.0 Concluding Remarks

Among other interventions, the Sudan Rural Land Governance Project is making 'remarkable' progress in building the country's land use planning and land administration infrastructure. However, the bottom line is, these remain pilot interventions. It is upto national and state governments of South Sudan, with the support of international agencies, to build on the momentum and experiences of such interventions. The country urgently requires adequate legal and institutional frameworks for land use planning and land administration. The approval of the Draft National Land Policy remains overdue and it is the responsibility of the state to prioritise its approval. Outputs of the Sudan Rural Land Governance Project in the form of a pilot land inventory, land use plan and various forms of documentation constitute important building blocks for the development of an appropriate legal and institutional framework for land use planning and administration.

7.0 References

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