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Land Tenure Reforms for Food Security in South Sudan

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Executive Summary

Fundamental to reconciliation, food security, and economic reform, access to and control over land following conflict can present significant challenges to a peace process. The importance of land to peacebuilding and food security is especially relevant in South Sudan, where decades of civil war has triggered large-scale displacements, exacerbated multiple famines, and led to the complete breakdown of socio-political and economic institutions. Given considerable returns and a period of relative stability, this briefing paper demonstrates the different challenges that land access, use, and management systems present to food security throughout the country. Although on-going food insecurity is driven by a number of interdependent factors, interventions in agricultural production and dispute resolution at the policy and project levels have largely ignored the fundamental challenges posed by overlapping customary and statutory land tenure systems.

Although the roots of civil war in South Sudan can be traced to decades of uneven development, resource exploitation, and the militarization of ethnic identities, land has emerged as (and remains) a key source of contention. In a country where eighty percent of the population relies on subsistence production, widespread disputes over land holdings and significant contradictions in rural reform policies need to be addressed in order to stabilize agricultural production and increase food security.

Given the importance of land tenure to the food security of rural subsistence-based households, this briefing paper identifies key obstacles to (and opportunities for) interventions in land reform. Specifically, there is a pressing need for the Government of South Sudan, donors such as CIDA, and ground-level service providers to prioritize comprehensive and sustainable tenure reforms (at the policy and project levels) alongside on-going farmer training and dispute resolution programs.

i. Policy goals

Given CIDA's on-going commitments to the food and livelihood security of rural subsistence-based populations in South Sudan, this briefing paper demonstrates that current and future projects could be significantly improved by including comprehensive support for land tenure reforms at both the policy and program levels. The goal is not to prioritize land reform over agricultural production, but to recognize that the two are inherently linked, and cannot be separated at the policy/project or national/household level.

ii. Significance of the issue being addressed

Fundamental to reconciliation, food security, and economic reform, access to and control over land following conflict can present significant challenges to a peace process. The importance of land to peacebuilding and food security is especially relevant in South Sudan, where decades of civil war has triggered large-scale displacements, exacerbated multiple famines, and led to the complete breakdown of socio-political and economic institutions. Although on-going food insecurity is driven by a number of interdependent factors, interventions in agricultural production and dispute resolution at the policy and project levels have largely ignored the fundamental challenges posed by overlapping customary and statutory land tenure systems. In a country where eighty percent of the population relies on subsistence production, widespread disputes over land holdings, as well as unclear and contradictory statutory policies, need to be addressed in order to stabilize agricultural production and increase food security.

iii. Canada's interest in the issue

Sustainable economic growth and food security comprise two of the three priority themes that guide the Government of Canada's international development work. Within the framework of its aid effectiveness agenda, CIDA has demonstrated an impressive ability to prioritize food and livelihood security in key regions of South Sudan. However, despite impressive commitments to increasing agricultural production, strengthening local institutions, and reducing poverty, current projects targeting the food and livelihood security of rural subsistence-based households ignore the challenges and opportunities presented by widespread disputes over land holdings, large-scale land acquisitions, and contradictions in customary and statutory land law. Specifically, this briefing paper demonstrates that dramatically altered power relations, a severe lack of institutional capacity, conflicting policies, and increasing disputes over holdings significantly reduce land tenure security, and must be addressed in order to stabilize and eventually increase the food and livelihood security of the most vulnerable populations.

iv. Policy recommendations

Given the importance of land access, use, and management systems to livelihood security, food security, and macro-economic growth in South Sudan, there is a pressing need for the Government, donors, NGOs, and community-based organizations to prioritize large-scale sustainable reforms based on local level dispute resolution, as well as the clarification and widespread application of statutory land policies. Initial priorities should include:

- i) Village-level dispute resolution committees that are independent of the local Government and represent the demographic makeup of the given community.
- ii) Widespread awareness and education campaigns that outline the basic land rights introduced in the Land Act, Local Government Act, and Transitional Constitution.
- iii) A clear hierarchy of customary and statutory authorities responsible for managing holdings.
- iv) The rapid development and implementation of comprehensive Land and Agricultural Policies that provide a foundation for basic rights and future reforms.
- v) Land and agricultural policies that prioritize household-production and subsistence in the short-term above large-scale mechanized farming and rapid economic growth.

I. Introduction

Land and land tenure are essential components of post-conflict development. Fundamental to reconciliation, stability, food security, and economic reform, access to and control over land following conflict can present significant challenges to a peace process (Unruh 2003; Pritchard 2013). The importance of land and land tenure to peacebuilding and livelihood security is especially relevant in South Sudan, where decades of civil war has triggered large-scale displacements, exacerbated multiple famines, and led to the complete breakdown of socio-political and economic institutions. Although the 2005 Comprehensive Peace Agreement (CPA) and 2011 Independence precipitated large-scale returns and a period of relative peace, this briefing paper demonstrates that land access, use, and management systems remain a significant obstacle to (as well as opportunity to address) food security throughout the country. Despite widespread agreement on South Sudan's vast potential for agricultural growth, and impressive commitments from international donors targeting food security (i.e. CIDA, WFP and FAO), the overwhelming majority of rural subsistence-based households in South Sudan remain food insecure.¹ Approximately forty percent of the overall population was moderately to severely food insecure in 2012 (Robinson et al. 2013), with rural subsistence-based areas significantly more vulnerable than urban and peri-urban households.²

While on-going food and livelihood insecurity are driven by a number of interdependent factors (i.e. lack of market and transportation infrastructures, violence linked to cattle

¹ For the purpose of this brief I understand food security as existing “when all people, at all times have physical, social, and economic access to sufficient, safe, and nutritious food which meets their dietary needs and food preferences for an active and healthy life. Household food security is the application of this concept to the family level, with individual households as the focus of concern” (FAO 2003:29). As such, food security is an essential component of livelihood security, which exists when all people at all times have adequate and sustainable access to the physical security, natural resources, and income required to meet their basic needs, as well as those of future generations. Although this paper focuses on food security, it necessarily follows that land tenure reforms are essential to livelihood security in South Sudan.

² Food insecurity is also prevalent amongst the growing urban and peri-urban populations of South Sudan. However, as 80% of the population depends on subsistence production (FAO 2010), and rural households comprise the largest and least food secure segment of the population, this briefing paper focuses exclusively on rural subsistence-based households.

raiding, official and unofficial taxes, large-scale returns, inflation, climate, etc.), interventions in agricultural production and household nutrition (by governments, CIDA, and multi-lateral donors) have largely ignored the fundamental challenges that disputes over land access, use, and management systems pose to household food and livelihood security.³ Although farmer field-schools and distribution of agricultural inputs can be effective means of increasing food and livelihood security, any potential improvements necessarily require secure access to land.

Where access to resources exists as the most basic component of livelihood security, and the principle form of natural capital for subsistence-based households, land tenure security is essential to agricultural production (c.f. Atwood 1990; Place and Hazell 1993), food security (c.f. Maxwell and Wiebe 1998; Toulmin and Quan 2000), and economic growth (c.f. Cousins and Hornby 2006).⁴ Despite the obvious links between land and the food security of rural subsistence-based populations, the overwhelming majority of policy and project interventions targeting agricultural and pastoral production currently ignore the challenges presented by widespread disputes over holdings, large-scale land acquisitions, and contradictions in statutory legislation. Given the importance of land access, use, and management to the food security of rural subsistence-based populations, this policy brief identifies the key obstacles to (and opportunities for) tenure reforms that need to be addressed by donors and non-governmental organizations (NGOs) working to increase agricultural and pastoral production. Specifically, I demonstrate that dramatically altered power relations, a severe lack of institutional capacity, conflicting statutory policies, and increasing disputes over holdings significantly reduce land tenure security, and must be addressed in order to stabilize and eventually increase the food security of the most vulnerable populations. Specifically, CIDA's on-going commitments to the food and livelihood security of rural subsistence-based populations in South Sudan could be significantly improved by including comprehensive support for land tenure reforms – at both the policy and program levels – alongside farmer education and training in dispute resolution. The goal here is not to prioritize land reform over agricultural production, but to recognize that the two are inherently linked, and cannot be separated at the policy/project or national/household level.

³ A comprehensive overview of the links between land tenure, agricultural production, food security, and livelihood security is beyond the scope of this paper, and has been provided in significant detail by a wide range of authors. For a detailed overview of the links between land tenure and agriculture, see Atwood (1990) and Place and Hazell (1993). For land tenure and food security see Maxwell and Wiebe (1998), Toulmin and Quan (2000), and ECS (2004).

⁴ For the purpose of this paper, I define land tenure systems as expressions of the socio-political and economic relations that regulate access to and control over resources. Tenure systems are not simply representations of human environment interactions, but manifestations of interpersonal and institutional relations that legitimize individual and group use as well as occupation of resources. Tenure regimes are not static entities, but are social contracts that express political choices about access, distribution of power, authority, and local understandings of citizenship (Pritchard 2013).

The first section of this paper provides a brief overview of the current status of food security in South Sudan. The second section introduces the current challenges facing land access, use, and management systems as related to tenure and food security. Finally, the third section concludes with a series of policy recommendations that target interventions in land tenure reforms with the goal of improving the livelihood and food security of rural subsistence-based populations.

II. Food Security in South Sudan

Although the overall outlook for food security in South Sudan improved in 2012, the situation remains critical. Despite increases in net cereal production (up ten percent in 2012 over the average of the past five years) approximately forty percent of the population remains moderately to severely food insecure (Robinson et al. 2013).⁵ Unfortunately, while overall production is slowly heading in the right direction, increases in food security are generally concentrated in the Southern region of the country. Significant variations in bio-climatic regions, access to transportation and market infrastructures, and exposure to internal and international conflicts continue to impede the production and delivery of food to the most vulnerable regions (i.e. Abyei, Warrap, Jonglei, and Unity states) (FAO 2013).⁶

Although 2012 saw general improvements across the country, the largest increases in production occurred in the 'green-belt' regions of the Equatoria states (Western, Central and Eastern Equatoria). These states benefit from bio-climatic factors that favour agriculture, have access to the most developed transportation and market infrastructures in the country, and their geographic locations along the borders with Uganda and Kenya provide greater access to the massive food imports crossing into South Sudan on a daily basis. Unfortunately, the geo-political and bio-climatic factors that have promoted improvements in food security in the Equatorias do not extend to the Central and Northern areas of the country, which have traditionally been (and remain) the most insecure. Long distances, poor (or no) infrastructure, and physical insecurity combine with both official and unofficial taxes to significantly reduce the amount of food and other products transported north of Juba. The food and livelihood security of rural subsistence-based populations in the Northern and Central regions of South Sudan are also undermined by:

- i) Droughts and floods that significantly increase the risk of seasonal food shortages.

⁵ The percentage of the population that remains moderately to severely food insecure is down 7% from 2011 (47% - 40%). This improvement is most likely due to the fact that widespread flooding made 2011 an especially difficult year for crops, rather than any significant policy changes or improvements in production.

⁶ Despite recent improvements and relative benefits compared to the rest of the country, access to the transportation infrastructure required to transport crops within the Southern part of the country is still very low. There is only one paved highway (from Juba to the border town of Nimule), the overwhelming majority of roads are of incredibly poor quality, and a large percentage of rural communities are completely cut off from ground transportation during the rainy seasons.

- ii) Violence linked to cattle-raiding and historically rooted disputes between communities at the boma, payam and county levels.⁷
- iii) Extremely poor roads and regular fuel shortages that discourage regular transportation and restrict movement between communities.
- iv) Border closures between Sudan and South Sudan that cut the South off from what has traditionally been an essential supply route for food and other goods (Robinson et al. 2013).⁸
- v) Refugees from conflict in Sudan. Conflict in the Sudanese states of Southern Kordofan and Blue Nile continue to drive tens of thousands of households across the border into the Northern region of South Sudan. Even when located and supported in refugee camps, new arrivals place significant pressure on the food and livelihood security of already vulnerable populations.

In response to the significant number of challenges to the food security of rural subsistence-based populations, the Government of South Sudan (GoSS) and international donors have renewed their commitments to increasing agricultural production throughout the country. On the one hand, the WFP and FAO continue to provide emergency food and nutritional assistance to the most vulnerable households, while donors such as CIDA support farmer training and dispute resolution programs at key locations (i.e. Jonglei, Unity, Warrap and Upper Nile states). On the other hand, the cash strapped GoSS views increased agricultural production (through the intensification of subsistence farming and development of large-scale mechanized production) as the main way to reduce import related expenditures and diversify the economy away from its overwhelming reliance on oil.⁹ The importance of agriculture to food security and economic reform has led the Government of South Sudan to repeatedly state that they will increase funds to the farming and pastoral sectors. Unfortunately, the funds dedicated to the Ministry of Agriculture remain incredibly low (12 % of total expenditure

⁷ The administrative zones of South Sudan are organized according to states, counties, payams, and bomas.

⁸ Historically rooted disputes over access to water resources, seasonal migration routes, and oil have led to widespread border closures and has severely reduced the flow of goods from Sudan into South Sudan. However, according to the FAO (2013), the recent signing of the Implementation Matrix in March 2013 not only led to the resumption of oil production and export, but also the decision to open ten cross-border points between the two countries.

⁹ According to the GoSS (2011:xiii) "oil provides 98% of public sector revenue and almost all foreign exchange earnings, thus making the South Sudanese economy extremely vulnerable to changes in oil prices and production levels." Furthermore, "given South Sudan's current abundant fertile land, water resources, its youthful labour situation but highly constrained skills, productivity and investment levels, the greatest potential for initial new growth is likely to be from the small-scale private, predominantly family, agricultural and livestock sectors" (GoSS 2011:68).

in 2013), and the entire balance is rarely delivered.¹⁰ As a result, the overwhelming majority of funds that reach the Ministry of Agriculture barely cover staff salaries, and little to no money remains for extension programs, vehicle costs, tools, or other inputs.

Finally, despite repeated commitments to improving agricultural production and food security, the GoSS and international donors have thus far (as of September 2013) not begun to plan, research, or draft a national Agricultural Policy. Rather, the agricultural goals outlined by the Government have no legal backing, and remain hollow commitments that simply introduce how key institutions and actors would like to see rural areas develop in the future. Although the lack of progress on a national Agricultural Policy can be attributed to a number of interdependent factors (i.e. lack of funds and a backlog of policies in Parliament due to a slow and contentious approval process), key informants in the national and state Ministries of Agriculture note that the main impediment is the lack of a Land Policy. While the GoSS approved an initial Land Act in 2009, the Land Policy required to guide re-settlement and widespread reforms to customary and statutory practices has (thus far) not been approved by Parliament.¹¹ Land use, access, and management, therefore, present significant impediments to the development and application of comprehensive agricultural reforms, and in doing so, remain key obstacles to improvements in the livelihood and food security of rural subsistence-based populations.

III. Land Tenure Reform

Although the roots of civil war in Sudan and South Sudan can be traced to decades of uneven development, resource exploitation, and the militarization of ethnic identities, land has emerged as (and remains) a source of contention within and between communities.¹² Historically, land has played a key role in mobilizing combatants, and has often been used to justify violence at both the local and state levels (Johnson 2003; Pantuliano 2009). Beyond the ways that specific narratives surrounding land use and access were mobilized to drive conflict within and between groups in post-colonial, post-CPA, and post-independence Southern and South Sudan, tenure systems present fundamental challenges to economic reform, food security, and overall stability. Specifically, the Government of South Sudan is currently faced with the task of resettling millions of people into a countryside characterized by overlapping and competing claims rooted in decades of conflict and competition between recently politicized and militarized groups of pastoralists and agriculturalists.

¹⁰ Following H.E. President Salva Kiir's decision to consolidate Government Ministries on July 23rd, 2013, the Ministry of Agriculture has been re-organized into the Ministry of Agriculture, Forestry, Tourism, Animal Resources, Fisheries, Cooperatives and Rural Development.

¹¹ The draft Land Policy was first submitted to Parliament in February 2012, and (at the time of writing in September 2013) has yet to be approved. According to sources in Parliament and the South Sudan Land Commission, it has taken over 19 months to approve the Land Policy due to several factors including, but not limited to: a significant backlog of key government policies and a drawn out reform and approval process, as well as continuing debates over the GoSS's interpretation of 'the land belongs to the people', large-scale land acquisitions, and the integration of customary and statutory laws.

¹² Here, 'communities' refers to both ethnic groups and geographic locations.

Given the importance of land to food security and economic development, the Government of South Sudan has embarked on a series of rural reform policies aimed at peacefully returning and resettling displaced populations, while empowering the agricultural and pastoral sectors. Most importantly, over the past four years the GoSS has implemented a new Transitional Constitution (2011), Land Act (2009), Local Government Act (2009), and Investment Promotion Act (2009) that not only acknowledge the significance of tenure reform to stability and development, but also recognize the importance of incorporating customary laws and practices into policies designed to increase household production.¹³

On the one hand, recognizing and protecting customary land rights has emerged as a key theme and lesson learned from rural reform strategies throughout the African continent (cf. Platteau 1996; Delville 1999; IIED 2006). On the other hand, the GoSS's willingness to recognize and incorporate customary tenure systems into statutory policies is a direct result of the unique socio-political, economic, institutional, and cultural contexts of post-war South Sudan.

First, despite repeated attempts by colonial and post-colonial authorities to formalize land tenure systems throughout Southern Sudan, statutory legislation has rarely been applied outside of the former garrison towns of Juba, Wau, and Malakal (De Wit 2008).¹⁴ As such, the overwhelming majority of land in South Sudan is (and always has been) held and protected under the (de-facto) customary laws of different occupying groups.¹⁵

Second, given decades of large-scale land acquisitions and unequal resource exploitation by the Government of Sudan (GoS), the maxim of 'land belongs to the community' emerged as a rallying cry for Southern resistance during the second civil war, and a collective expression of goals for future reform. Specifically, the concept of 'land belongs to the community' emerged in response to long-term frustrations with the GoS expropriating Southern resources for the benefit of a Northern political and economic elite. The SPLA/M (Sudan People's Liberation Army / Movement) then began to recognize and restore customary rights throughout Southern Sudan as a means to mobilize ideological and material support from local communities (USAID 2010).

¹³ While the draft Land Policy is currently being debated and amended by Parliament, this paper deals exclusively with those articles that have already been approved by the Government of South Sudan. Although the Land Policy will represent an important addition to current legislation, preliminary drafts demonstrate that it will draw heavily on the Land Act, while on-going debates suggest that it will be some time before the policy is approved.

¹⁴ 'Southern Sudan' refers to the geographic region of Sudan prior to independence. 'South Sudan' refers to the Republic of South Sudan, which gained independence on July 9th, 2011.

¹⁵ Customary land tenure systems, laws, and institutions are neither customary nor traditional, but constantly evolve in relation to statutory law. Despite the inherent shortcomings of this label, I use the term 'custom' throughout the course of this briefing paper as this is how the Government and people of South Sudan label these often highly formalized 'informal' institutions.

Third, the link between customary land tenure systems and rural reforms cannot be separated from the practical reality that, following decades of civil war, the newly established GoSS is struggling to maintain stability and drive growth despite a severe lack of financial and institutional capacity. In a country tasked with re-building – or in some cases creating – socio-political and economic institutions while striving to secure contested boundaries, stem violence amongst various militias, increase agricultural production, and drive economic growth, devolving land use and management to local institutions emerges as the most practical, if not only option to realize change in the short and medium-term periods.

In light of the overwhelming number of obstacles land access, use, and management systems present to rural development, the GoSS has embarked on an exciting, yet challenging attempt to reform customary and statutory tenure systems throughout the country. Specifically, according to the Transitional Constitution, “all land in South Sudan is owned by the people of South Sudan and its usage shall be regulated by the government in accordance with the provisions of this Constitution and the law” (GoSS 2011:62).¹⁶ Furthermore, under the 2009 Land Act, the state is responsible for recognizing and protecting customary practices that are consistent with the Constitution and other laws of South Sudan (GoSS 2009).

- Article 3: Rights in land under customary tenure shall be assured security of occupancy irrespective of whether or not their interest is held individually or in association with others (GoSS 2009:12).
- Article 5: Customary land shall be demarcated and registered in accordance with the provisions of this Act and any other law (GoSS 2009:12).
- Article 6: Customary land rights including those held in common shall have equal force and effect in law with freehold or leasehold rights acquired through statutory allocation, registration or transaction (GoSS 2009:13).

Although the Land Act, Local Government Act, and Interim Constitution demonstrate a resounding commitment to (and reliance on) customary land rights and institutions, the theoretical and practical frameworks of large-scale land reform in South Sudan are currently being undermined by a significant lack of detail. Specifically, unclear and often contradictory policies have combined with rumours, a lack of transparency, and fear of government-led expropriations to decrease tenure security amongst rural subsistence-based populations. For example, the Land Act fails to define ‘custom.’ As a result, this piece of legislation does not specify which customary practices will be incorporated into statutory law, or how the accompanying rights will be registered and protected. At the same time, rural reform policies do not specify the responsibilities of land administrators at the various levels of government, outline procedures for resettling

¹⁶ This represents a significant shift away from the Unregistered Land Act of 1970 (passed by the Government of Sudan). Under the Unregistered Land Act, all lands not registered with the Government in 1970 automatically became the property of the state.

refugees, or introduce strategies for mediating and resolving disputes over holdings (GoSS 2011b).

First, in a country with over fifty different ethnic groups, each with a different form of customary law (Danne 2004), the GoSS does not specify which land tenure systems will be protected by the state. Indeed, the GoSS's understanding of 'custom' has not progressed beyond the preliminary statement that 'land belongs to the community.' Despite its historical link to unequal resource access preceding the second civil war, this statement can easily be used to justify policies ranging from state-led redistribution, to mandatory privatization (De Wit 2008). Furthermore, although Section 5 of the Land Act states that "customary land shall be demarcated and registered" (GoSS 2009:8), the Government has not provided any information on how or when this will occur. This lack of clarity, as well as the resulting confusion among key policy makers and administrators (as well as the few private citizens that have access to legislation) threatens to significantly undermine tenure security at the household level and increase opportunities for elite resource capture.

Second, although the Transitional Constitution, Local Government Act, Land Act, and Investment Promotions Act demonstrate the GoSS's desire to protect customary rights, these policies devolve the authority required to allocate and protect holdings to multiple ministries and customary authorities. Unsurprisingly, where land exists as the main form of natural capital and a key component of short, medium, and long-term development, confusion over the rights to resolve disputes and manage land has precipitated conflicts within and between local, state, and national administrators. Given the vast (and largely untapped) potential of South Sudan's resources (i.e. water, minerals, agricultural, timber), several ministries at the national and state levels are competing for the right to design and implement tenure reforms (i.e. who gets to maintain the land registry) (USAID 2010).¹⁷ Most importantly, state, county, and payam-level authorities draw on different laws and acts (i.e. Local Government Act, Investment Promotion Act, Transitional Constitution) to challenge specific requirements and procedures outlined in the Land Act. In other words, although Government policies provide an important starting point for large-scale re-settlement and land tenure reform, competition between key actors and policies, as well as the overall lack of clarity in the articles themselves, have begun to negatively impact tenure security. Competition over the definition and application of policies within and between customary and statutory institutional hierarchies has resulted in a de-facto (statutory) legal vacuum, as different administrators and ministries compete for control over the right to register and protect holdings.

¹⁷ According to USAID (2010:v), "though the Interim Constitutions and new laws have introduced a new regime in land administration, the exercise of concurrent powers, the usurpation of powers by other institutions, and the quest for concentration of powers in single institution (*sic*) have caused a clash in exercise of jurisdiction by institutions at Government of Southern Sudan (GoSS) and the state and local government levels."

Moving beyond specific shortcomings of statutory legislation, land reform throughout South Sudan is complicated by large-scale returns. Although the number of IDPs and refugees returning to South Sudan has declined significantly over the past 12 months, cities and communities are still struggling to re-settle and re-locate previous waves of arrivals. Despite Government support for the customary laws traditionally responsible for situating returnees and new arrivals, decades of conflict and migration have severely altered, or completely destroyed, local systems of authority and control (Danne 2004). Unsurprisingly, the lack of clear authority over land distribution and use has precipitated significant increases in the illegal sale of holdings (De Wit 2008; USAID 2010), the emergence of false or competing chiefs (Leonardi et al. 2010), widespread use (or the threat) of force to expropriate holdings, large-scale land acquisitions by private companies (Deng 2011), as well as an increasing number of border disputes within and between states (UNDP 2012) and ethnic groups (Arnold & Alden 2007).¹⁸ When situated within the context of a highly militarized and politicized rural population emerging from decades of civil war, restoring the property rights lost during overlapping conflicts, and resolving the land-based grievances that contributed to the emergence and maintenance of war in the first place are fundamental components of projects targeting food security.

IV. Conclusion

Given the importance of land access, use, and management systems to livelihood security, food security, and macro-economic growth in South Sudan, there is a pressing need for the Government, donors, NGOs, and community-based organizations to prioritize large-scale sustainable reforms based on local level dispute resolution, as well as the clarification and widespread application of statutory land policies. The Canadian International Development Agency has demonstrated an impressive ability to prioritize and target improvements in food and livelihood security in key regions of the country (i.e. Jonglei, Unity, Upper Nile, and Warrap states). In response to CIDA's ongoing commitments to the food and livelihood security of rural subsistence-based populations in South Sudan, this briefing paper demonstrates that current and future projects could be significantly improved by including comprehensive support for land tenure reforms – at both the policy and program levels – alongside farmer education and training in dispute resolution. The following recommendations introduce several opportunities for targeted land tenure reforms, with the goal of improving the food security of rural subsistence-based populations.

V. Recommendations

- 1) International donors and NGOs need to have a greater appreciation for the impacts that land access, use, and management systems have on food and livelihood security. Policies and projects at the national and sub-state levels need

¹⁸ Border disputes between states or counties within and across state lines are common in areas rich in natural resources (i.e. land, water, and minerals), as well as in areas surrounding the rapidly expanding urban centres.

to account for the ways that land tenure systems impact agricultural production, pastoral production, and physical security. Donors targeting increases in food security need to not only expand support to those organizations working directly with communities and administrators to resolve tenure disputes (i.e. Norwegian Refugee Committee, Norwegian People's Aid, South Sudan Law Society), but also work with the GoSS to improve and apply statutory legislation.

- 2) There is a pressing need for the GoSS to approve and begin to implement the national Land Policy. The widespread lack of awareness of the rights established by the Land Act and Transitional Constitution, significant shortcomings in the articles therein, and several direct contradictions between the different statutory laws guiding rural reforms have led to a de-facto (statutory) legal vacuum that is undermining tenure security and increasing the risk of elite resource capture. International donors need to work closely with the GoSS to improve the policy development, reform, and approval processes, with a focus on increasing transparency and the speed with which laws are developed, tested, reviewed, and approved. Although it is important to 'get the laws right', it is also essential that the Government provide a legislative foundation to guide the return, resettlement, and development processes.¹⁹
- 3) International donors should work closely with the South Sudan Land Commission and GoSS to ensure that the forthcoming Land Policy clarifies and improves upon the shortcomings of the 2009 Land Act. Specifically:
 - a) The Land Policy needs to provide a clear and inclusive definition of 'customary land rights' that accounts for overlapping and competing notions of 'custom', and specifies how local practices relate to the rights outlined in the Transitional Constitution.
 - b) The Land Policy needs to delineate a clear hierarchy of the customary and statutory institutions responsible for distributing and managing land rights, as well as the specific mechanisms for moving between the two interdependent judicial systems. There is a pressing need to amend the Local Government Act, Investment Promotion Act, and Land Act to ensure that these (and all forthcoming) policies devolve authority over the allocation and management of statutory land rights to a single institution.
 - c) The Land Policy should specify the exact process (and timeline) by which customary and statutory rights will be demarcated and registered. If registration is mandatory, the process must be accessible to both urban and

¹⁹ While it is important to take the time to test and refine legislation, there is little sense in trying to perfect policies that require nation-wide implementation in order to identify necessary amendments (such as land tenure reforms). Here, the goal is to provide a solid legal foundation for land tenure reforms that establishes basic rights and the methods of protecting those rights in the short-term, but that can easily be expanded to include those articles that take longer to test and approve.

rural populations, with an explicit focus on the most vulnerable groups. Demarcation and registration need to be simple, affordable for the poorest households, well publicized, and increase (rather than reduce) tenure security in the short, medium, and long-term periods.

- d) The GoSS and international donors need to realize that registration (of customary and statutory rights) cannot be separated from the resolution of land-related disputes. Decades of conflict and forced migration have dramatically altered local systems of authority and control, facilitated the illegal sale of holdings, and led to the widespread use (or threat) of force to expropriate land. The prevalence of land-related conflicts highlights the need to prioritize dispute resolution from the county down to the boma and sub-boma levels. Potential interventions include local peace committees that work alongside boma chiefs to resolve disputes. Peace committees should be independent of the Government administration and represent the demographic makeup (ethnicity, age, gender) of the given community. Basic training in mediation and dispute resolution, as well as the rights introduced by the Land Act, Land Policy (when passed), and Transitional Constitution will not only reduce the number of disputes at the local level, but also dramatically decrease the number of land-related cases forwarded to the county and state level judiciaries that are currently unable to process them in a timely manner.
- 4) The widespread lack of awareness of the rights, laws, and policies introduced by the Land Act, Local Government Act, and Transitional Constitution have fuelled rumours and precipitated fears of Government-led expropriation. The overwhelming lack of awareness of basic rights demonstrates the need for large-scale and sustained campaigns that educate rural populations about their land rights and the roles of different statutory and customary officials.
- 5) Given the importance of agricultural production to food security and economic reform, the GoSS needs to dedicate (and deliver) a larger percentage of the national budget to extension services and state-level ministries of Agriculture. Initial investments in agriculture should prioritize household production and food security above large-scale mechanized farming and export-oriented agriculture.
- 6) Dramatic differences in access to food and other products due to variations in climate, exposure to conflict, and access to market and transportation infrastructures demonstrate the need for donors to facilitate food imports for the most vulnerable communities. Improvements in transportation and market infrastructures, as well as reductions in official and unofficial taxes will significantly increase the amount of food (from South Sudan and surrounding countries) that reaches the most at-risk and hard to access areas of the country.

- 7) Despite on-going debates over the draft Land Policy, international donors and NGOs need to begin working with the GoSS on a national Agricultural Policy. A comprehensive draft Agricultural Policy will require significant time to prepare before being submitted to Parliament for revision and approval. Given the importance of agriculture to South Sudan's plans for economic reform in the short, medium, and long-term periods, the GoSS needs a legislative foundation to guide improvements in food security and rural reforms as soon as possible.
- 8) All policies and acts that focus on agricultural and pastoral production should be based on widespread consultation with affected communities. Donors need to support a comprehensive research program that partners relevant non-governmental and community-based organizations with independent experts from South Sudan's main policy research and advisory institutions.

VI. Acknowledgements

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VI. Further Reading

International Institute for the Environment and Development (IIED). 2006. Innovation in Securing Land Rights in Africa: Lessons from experience. In IIED Briefing Paper 2006. London, UK.

This paper provides a brief overview of current trends in land tenure reform throughout the African continent. After outlining innovative policies and the main sources of tenure insecurity, the paper demonstrates the importance of informal land law, pro-poor development, the protection of women's land rights, and the need to link new land policies with a wide range of socio-political and economic reforms.

Leonardi, C., L.N. Moro, M. Santschi & D. H. Isser. 2010. Local Justice in Southern Sudan. United States Institute of Peace and the Rift Valley Institute. Washington, DC.

This report provides an impressive summary of how formal and informal justice systems are evolving through the (re)negotiation and (re)expression of rights within and between actors and regions in South Sudan. Although the report does not focus exclusively on land rights, it provides a detailed overview of customary courts and law in South Sudan, and demonstrates how divergent conceptions of justice are debated, contested, and expressed following large-scale migrations and protracted conflict.

Toulmin, C. and J. Quan. 2000. Evolving Land Rights, Policy and Tenure in Africa – Introduction to.' In C. Toulmin and J. Quan (Eds.) Evolving Land Rights, Policy and Tenure in Africa. IIED. London, UK:1-30.

This edited volume provides a comprehensive overview of the key themes of land tenure security and policy reform throughout the African continent. The different chapters provide critical reviews of existing programmes and potential approaches to harmonize formal and informal laws, register customary holdings, and improve women's access to land.

United States Agency for International Development (USAID). 2010. Jurisdiction of GOSS, State, county, and Customary Authorities Over Land Administration, Planning and Allocation: Juba County, Central Equatoria State. Washington, DC. December 2010.

Prepared by ARD-Tetra Tech on behalf of USAID, this report introduces and evaluates the institutional and legal frameworks that guide the development and implementation

of land policies in South Sudan, with a specific focus Juba County. The study concludes with a series of policy recommendations designed to improve the development and implementation of a national land administration program.

Unruh, J. D. 2003. Land tenure and legal pluralism in the peace process. *Peace & Change*, 28:352-377.

In this article, the author highlights the importance of land tenure reforms and plural legal orders to peace processes. This article argues that competition, confusion, and the significance of land to livelihood security following conflict not only causes multiple normative orders to emerge, but demonstrates how these plural orders can undermine a peace process.

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