

Knowledge Network
Dutch Consortium for Rehabilitation
Research Brief #7

*Livelihoods, Land
Acquisitions and Legal
Pluralism in Maiwut
County, South Sudan*

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This brief is part of a series of research briefs of the DCR consortium. The purpose is to communicate lessons and corresponding recommendations for programme quality improvement. For information on the research methodology please refer to the full report, available upon request.

The following brief description of findings is based on research that took place in Maiwut County, Upper Nile State from the end of February until late April 2013. Based in Pagak, a regional hub and gateway to Ethiopia, the researcher and the DCR/Save the Children International team have gathered data comprising 30 semi-structured interviews, 41 filled out survey questionnaires, and various field-notes and pictures. The research question guiding the data collection was as follows:

How does the coexistence of customary and statutory law in connection to land tenure and management affect the livelihoods of agropastoralists in Maiwut County, Upper Nile State, South Sudan?

The research was conducted with a dual focus. On the one hand, the fieldwork examined the livelihood situation of the respondents, while on the other hand, the research focused on the structural forces shaping these livelihoods in the form of a legal pluralistic system. The motivation for choosing this particular approach is the relatively low availability of literature and research on land titles and the legal pluralistic system of

land administration. Examining the land tenure situation, the problems connected to it and its impact on the livelihood of local agropastoralists, the team worked in three different fieldwork sites in Maiwut County. These research sites differed along with specific criteria such as the official status of the settlement, the ethnic composition, the involvement of the Land and Survey Office (LSO) and the connection to other settlements in the area. The map on the left provides geographical insight on the



Figure 1: UN OCHA Map of Maiwut County

Pictures of the research area



fieldwork sites. Dzinki and Kigile, considered as Boma¹, were located in rather remote parts of the county and were predominantly inhabited by Nuer (Dzinki) and Brun (Kigile). In both settlements traditional authorities and practices shaped land tenure and jurisprudence connected to it. The main livelihood activities the residents undertook were agriculture and pastoralism. The picture differed in the third fieldwork site. In Pagak, a Payam predominantly inhabited by Nuer, both the LSO and traditional authorities administered distribution and management of land. Furthermore, livelihoods differed slightly from the other two sites as residents in Pagak conducted various additional activities to earn a living. In this sense, the former did not just rely on agriculture and pastoralism, but had small businesses or provided services in order to gain additional income.

The approaches on Rural Sustainable Livelihood Activities (RSLA) by Chambers and Conway et al. and Legal Pluralism by Benda-Beckmann, Tamanaha and others were the scientific basis and starting point for the research. Subsequently, the researcher separated and operationalized key-aspects of both approaches considering the aspects of practicality and relevance to the specific issues. Academically, the report not only discusses key-terms and assumptions of both approaches, but also the limits and shortcomings of the RSLA by Chambers and Conway as well as Scoones. Furthermore, the report argues in favour of supplementing the former with the approach on legal pluralism. In settings where a customary system of chieftainship, community elders and traditional rules and practices accompanies state driven jurisdiction and administration, the RSLA, strongly focusing on the individual, lacks the instruments to analyse structures, processes and their impact on livelihoods. Although Scoones tried to integrate such academic instruments, the alterations did not go far enough – at least in the case of analysing the impact of the legal plural system on land tenure and the livelihoods of local agropastoralists. The report therefore argues that both approaches can benefit from each other and together draw a more holistic picture of processes and dependencies in settings like Maiwut County.

In order to prove these assumptions and examine the situation in the county, the author split up the original research question into five sub-questions, focusing on different aspects such as livelihood outcomes, diversification, land tenure and jurisdiction in connection to land. The following findings summarize the answers to these sub-questions.

¹ The notions “Boma” and “Payam” are the official term for “Village” and “Town”.

Finding 1: Livelihood outcomes and sustainability among respondents in Maiwut County are low and 40 per cent remain aid dependent

The interviews and particularly the survey revealed that **agriculture and pastoralism** remain the **main livelihood activities** throughout the three research sites. However, in 40 per cent of the cases in Pagak, respondents claimed not to be able to survive without monetary support or food donations from the government, World Food Program (WFP) and others. Respondents in all three research-sites stated they face periods of hunger throughout the year. The situation grows especially severe in the planting season from May to July. Subsequently, revenues from agriculture remained low and money for reinvestment was lacking, especially in Dzinki and Kigile. To complicate matters, shocks and stresses like natural disasters, illness or the sudden death of a family member posed a big threat to the livelihoods and any savings accumulated. The most common way to respond to such incidences was to sell livestock at nearby markets. However, especially in times of natural disaster, prices declined and profit gained from these transactions barely sufficed. Altogether only 30 per cent of respondents rated their personal feeling of safety at six or higher (the scale ranged from one as the lowest to ten as the highest). Hence, respondents tended to feel at best moderately secure about their livelihood situation. A similar pattern was revealed by asking respondents about their ability to afford school costs for their children, where only 35 per cent claimed to be able to send all of their children to school. Therefore, **only every third livelihood proved to be socially sustainable**. The findings draw a picture similar to UNDP and WFP Reports in 2013 that show the overall situation in South Sudan.

Finding 2: Beginning livelihood-diversification among respondents is only observable in Pagak. In Kigile and Dzinki, respondents relied almost entirely on agriculture and pastoralism

As previously described, respondents in all three research sites were highly **dependent on agriculture and pastoralism**. Main livelihood strategies revolved around these or connected activities. **Seasonal migration**, in order to plant in the rainy as well as the dry season, was practiced by all. In Pagak, respondents described how they **diversify their income portfolio** by pursuing additional activities. The major means to do so were construction work, small businesses like grocery stores or cafés, as well as collecting and working natural materials like wood. Respondents who indicated they pursued these additional activities tended to rate their personal feeling of safety higher than respondents who solely relied on agriculture and livestock husbandry. Hence, at least in Pagak, a trend to livelihood diversification is

Recommendations

- *Intensify farmer group trainings on improved farming techniques and cooperation with the Agricultural Department.*
- *Extend farmer group activities to remote areas – especially the Jekou area.*
- *Combine farmer group activities with livestock husbandry workshops.*
- *Distribute school materials to pupils.*

Recommendations

- *Use VSLA groups to teach basic economic principles and business management.*
- *Intensify vocational training and extend activities to rural parts of Maiwut County.*

observable. However, considering Pagak's special status as an economic hub, it can be assumed this development links to its gateway function. The situation in remote villages like Dzinki and Kigile remains unchanged.

Finding 3: Land acquisition under the statutory and the traditional systems differs significantly but both systems have their structural benefits as well as their shortcomings

By outlining the Land Act and Local Governance Act in 2009, the Government of South Sudan decided to pursue a dual system of land acquisition and administration. The Boma level is supposed to be entirely run by traditional authorities according to customs and practices. The higher levels like payams and counties however are supposed to be administered by state authorities. The statutory system is not yet entirely operational and consequently the two systems are not clearly separated and their competencies are rather blurry.

The **traditional system** of land tenure pursued in Kigile, Dzinki and Pagak granted easy access to the male agropastoralists in the three fieldwork sites and showed a unitary character with minor adaptations across all three sites. Male residents were free to choose land others did not occupy and could extend their farming plot without consultation with chiefs and elders. Accordingly, the only practice regularizing land acquisition concerns laying a claim to a specific plot of land. Once a person claims land, it virtually gets a property character. However, the system is highly exclusive of outsiders, since only sub-clan members and their kin are allowed to own land on their own. In the case where a non-sub-clan member wants to acquire land in the three sites, he or she needs to speak to the elders and the chief. Whether or not the authorities choose to grant access or ownership of land depends entirely on their good will. In this sense, the traditional system can be highly exclusive especially to potential community members with a low social status and poor social capital. Moreover, should the specific person leave the area, the land becomes the community's property and the family cannot claim the land. The system is also highly restrictive for women. According to traditional practices, only men can own land in a property sense. In Dzinki and Pagak women can only access land through their husbands or their fathers and if the husband passes away, the land often goes to his closest male relative.

Land acquisition under the **statutory system** differed entirely and the Land and Survey Office (LSO) as well as the Land Act of 2009 regularized land administration. Pagak was the only research site where this system was in partial operation. However, only small parts have been surveyed and substantial areas are still under traditional administration. In the areas where the LSO was operating – mainly the

Recommendations

- *Form women's clubs to enhance networking and give them a platform to communicate their needs and claims.*
- *Address women's rights in these clubs.*
- *Foster networking between women's clubs and CBO's as well as different groups like VSLAs and farmer groups to promote women's rights and foster equality.*
- *Advocate for the recognition of land titles achieved through the traditional system.*
- *Promote good governance at the LSO.*
- *Train different stakeholders like farmer groups, VSLAs, traditional authorities etc. on the specifications in the Land Act and the upcoming policy.*

inner parts of Pagak – respondents declared to receive land through local LSO officers. In contrast to the traditional system, the state administered land acquisition does not distinguish between sub-clan and non-sub-clan members and allows every South Sudanese citizen to access land through the LSO. However, the LSO only allows foreigners to lease land up to a period of 99 years wherefore ownership is not possible. Furthermore, the LSO follows a paradigm of equity and equality concerning women and South Sudanese citizens. Nevertheless, South Sudanese citizens still have to buy the land from the LSO despite the clear Land Act specification that “all land belongs to the people”. Accordingly, economic capital steers access to land and is exclusive concerning community members with a lack of economic means. In addition, the LSO charged residents to pay for the land they owned under traditional rule. However, since authorities still survey Pagak, LSO officers are not supposed to issue any deeds of ownership. This is a clear abuse of authority and breaches specifications in the Land Act granting recognition of land titles under customary rule.

Finding 4: There is an especially high occurrence of problems related to land in Pagak and Dzinki

The interviews revealed a relatively high occurrence of **land disputes, claims and dispossession of land by the government**. Land disputes usually arose from unclear or blurred demarcation of land plots. In this regard, respondents referred to neighbours purposefully or unintentionally jumping over borders in order to gain additional land for cultivation or housing. Furthermore, although not mentioned by any of the respondents, officials explained the prevalence of disputes between communities rises during natural disasters. Different cases are the so-called land claims. Concerning these, respondents explained that, in particular, returning refugees and internally displaced people often tried to claim land as their original property. Referring to their ancestral rights, these returnees claimed land as previously belonging to their family. According to respondents, this partly led to the loss of land by entire families. Yet, the number of such claims was declining while the team conducted research. A severe case of a land claim dispute was revealed in Dzinki. Here, a marriage between a woman from Dzinki and a man from Uekau led to a claim, and later dispute, that cost Dzinki one fifth of its land. The man claimed land in the name of Uekau after he got divorced. Since the dispute turned violent, traditional authorities referred matters to the county commissioner who subsequently settled the issue. The brief will further explain the case of Dzinki in the following lesson. Finally, respondents declared they are fearful of **dispossession by the government**. This was of particular concern to respondents in Dzinki and Pagak. In Pagak, they feared that

Recommendations

- *Train farmer groups in lasting demarcation of farming plots.*
- *Motivate different stakeholders to work on conflict free solutions for returnees and how to handle influx of displaced people (natural disaster).*
- *Advocate quick and adequate reimbursement of residents by the LSO – Including cost for housing*

the land survey would result in the government putting their farming and housing plots to public use. In these cases, the LSO designates the land for schools, hospitals or roads and demolishes every structure on the land plots. Although the Land Act specifies quick and adequate reimbursement, the case of one respondent indicated otherwise. The respondent lost his plot in late November and had not received a new farming plot by the time of the interview in late April.

Finding 5: Jurisprudence based on the dualism of systems proved to be quick and effective but showed tendencies to partisanship, biased ruling and abuse of official authority

The **system of jurisprudence** in Maiwut county regarding land administration and conflicts proved to be a hybrid of the traditional and statutory system. Community elders and chiefs almost entirely solved conflicts at lower levels of jurisprudence and minor cases such as land disputes and conflict over land between neighbours. Only when these conflicts appeared unsolvable to the traditional authorities were the next levels of jurisdiction, consisting of for example the Payam administration or the head-chief, involved. These responsibilities were observable in all three research sites and conflicts were first negotiated in so-called community courts and traditional tribunals. Whether on the Boma, Payam or County level, courts were held under jurisdiction of the highest authority (Boma: Sub-Chief, Payam: Head-Chief, County: County-Commissioner) and in front of the whole community. Community elders bore witness and counselled the chiefs or commissioner to their best knowledge. The higher the level of jurisdiction, the more authorities took part in these tribunals. However, the final say always remained with the highest authority. In order to judge in a fair and adequate way, authorities heard both parties of the conflict and witnesses from the community. The chairperson passed a judgement based on these testimonials and the consultation with the community elders. According to the respondents, this hybrid system worked quite efficiently and effectively, however they also mentioned **major problems in connection to jurisdiction**, which predominantly occurred in Dzinki and Pagak. Only in Kigile did respondents indicate the traditional system worked well. The most relevant problem respondents mentioned was partisanship, bribery and biased ruling. In Dzinki as well as in Pagak, many respondents described bribery as a common way to influence authority's decisions. Furthermore, although indicated differently by the interviewed authorities, agropastoralists described cases of strongly biased ruling and partisanship. The most significant case was in Dzinki where the former commissioner settled the dispute by establishing a buffer zone on the disputed land strip whereby Dzinki lost one fifth of its land and government demolished all the buildings. According to

Recommendations

- *Seek dialogue with traditional authorities and foster good governance mechanisms.*
- *Provide training for authorities and other stakeholders regarding the basics of the rule of law.*
- *Advocate on higher levels of the county, state and country government regarding principles of the rule of law and good governance.*

residents in Dzinki, the commissioner’s judgement was strongly biased since the former originates from Uekau. Moreover, the neighbouring village did not lose any of its land. Until now a high potential for conflict persists according to interviewees in Dzinki. As well as the problems already outlined, respondents described high fines as a problem. For example, in the case of Dzinki, residents are not allowed to enter the buffer zone and if they do, they can pay up to one cow (since monetary means are lacking). Considering that residents only have seven cows on average, this is a very high fine. In Pagak, fines tended to be a bit lower but residents also paid in the form of livestock or money.

Finding 6: The complex legal pluralistic system and the way it is pursued puts additional stress on the livelihoods of respondents in Maiwut County and threatens their most valuable assets – their natural capital

The dynamics arising from the complex system of **land administration** and **jurisdiction** connected to it, **potentially threatens the livelihood basis of respondents** in the three fieldwork sites. On the one hand, the traditional system grants easy access to land for male sub-clan members and allows them to choose land freely as long as it is unoccupied. On the other hand, this system is highly exclusionary towards women as well as non-sub-clan members and hence undermines their capability of building a sustainable livelihood. In contrast, the statutory system allows easy access to land for all South Sudanese citizens. Nevertheless, a lack of policies, neglecting the specifications in the Land Act and the abuse of power by officials undermines the inclusive character and complicates access to land by all groups. Considering the difficult livelihood situation, the dynamics evolving from the system undermine the ability of respondents to gain access to land for one group or the other. Additionally, these dynamics increase the vulnerability of the most vulnerable groups. However, even bigger threats are present due to land claims, disputes and the dispossession of land by the government. Through partisanship, biased ruling, bribing practices and misuse of power, agropastoralists constantly face the threat of potentially losing their natural capital. These practices are of particular threat to families without economic and social capital since they lack the means to influence decision-making.

Implication of research findings for DCR program implementation - How does this research link to field work?

There are several ways in which this research can link to programs. Firstly, as part of the program, DCR is already working to help families diversify their incomes through teaching new farming skills and starting VLSA in the areas where DCR is operating. This can be seen in the

Recommendations

- *Advocate at higher levels of jurisdiction to explicitly recognize land titles achieved under traditional rule.*
- *Advocate at higher levels of government to speed up the process towards policy guidelines in connection to the Land Act.*
- *Promote good governance.*
- *Advocate on higher levels concerning women’s rights.*

activities planned for 2014. The research proves what was already known regarding the importance of diversification of income in rural areas. Due to the geographical locations of DCR programs, activities remain focussed around agricultural farming with improvement of yields, and diversifying crops while also helping farmers take on new skills around village savings and loans, bee keeping and other skills, so that farmers have several opportunities to improve their income.

Secondly, the research can be used to support advocacy at the national level. This could be to create discussion around land tenure particularly, the ability of women to hold land title and discussions on the best way to address the differences between the local government act and traditional land practices at the local Payam level. At the very least, it will help to highlight the current challenges faced by already vulnerable communities with little ability to provide resources to local leaders for favourable land decisions.

As a next step, the brief will be shared with members and partners in order to start the discussion around how this paper affects other DCR members and if there are opportunities to explore local level advocacy around this issue in other DCR program sites in South Sudan.