



Photo Source: WorldVision.Org <https://www.worldvision.org/refugees-news-stories/south-sudan-refugee-crisis-facts>

Access to Justice and Land (AJL)

Prepared for: Professor David Carment

INAF 5203: International Mediation and Conflict Resolution

Prepared by: Natalie LaMarche, Felicia Leone, Jonathan Malcolm, and Erika Richter

April 5, 2018

EXECUTIVE SUMMARY

Land disputes have become a significant driver of conflict at the community level in South Sudan, whose population is largely rural in nature. Given that land is of central importance to South Sudanese people, the Access to Justice and Land (AJL) initiative is a four-year pilot project aimed at addressing conflict caused by land disputes within South Sudan through community-based, ad hoc mobile courts. The immediate goals of this initiative are to build the capacity of local authorities to enforce the rule of law, and reduce grievances between ethnic groups over land and subsequently over access to natural resources. By extension, the project aims to develop greater food security through the establishment of clear property rights, and improving women's access to land rights under the justice system while men are away from communities and engaged in conflict. Possible negative effects of AJL are considered, including the potential to aggravate grievances and violence against women and their participation. Given the volatile security situation in South Sudan, the project has allocated a contingency budget should conditions prove dangerous, part of which includes partnership with UNMISS.

AJL courts will be organized in cooperation with several partners, namely Avocats sans Frontières (ASF), South Sudan Women Lawyers Association, South Sudan Council of Churches, and UN – UNMISS. Canadian lawyers and partners will work to train local authorities and incorporate civil society organizations into the fabric of AJL, in order to foster capacity and local ownership over land dispute resolution mechanisms. The project in total encompasses three phases: 1) the local outreach phase, during which time traditional communal legal practices will be incorporated with standardized legal mechanisms to ensure greater South Sudanese ownership of court proceedings 2) the operational phase, during which time the mobile courts will operate within targeted communities 3) the reporting phase, in which the impact and effectiveness of AJL will be assessed. Monitoring activities will be carried out throughout the implementation of the program through Global Affairs Canada (GAC). AJL was designed to be a sustainable project with long-term potential through capacity building measures: this includes allocating the majority of the available budget to training local paralegals to undertake cases and civil society actors to monitor court processes. AJL will also dedicate efforts to expanding the agency of local community members through sensitization training, in order to foster and entrench an understanding of their rights.

OBJECTIVES

The Project

The Access to Justice and Land (AJL) initiative is a four-year pilot project aimed at addressing insecurity over land disputes in South Sudan through community-based, ad hoc mobile courts. A high proportion of the South Sudanese population live in rural areas, and access to resources such as water and grazing lands has been a significant driver of conflict at the communal level.ⁱ Given that land is of central importance to the people of South Sudan, the mobile court system will be an effective mechanism to enhance traditional land management mechanisms, and address grievances and violence at the communal level to build community cohesion.

The key objectives of this project include:

- Promote settlement of land disputes to reduce conflict
- Foster local ownership over the land dispute process
- Integrate traditional laws with more standardized legal principles
- Reduce food insecurity
- Expand access of land and property rights to women
- Help local communities enforce the rule of law

Stakeholders & Partners

The primary stakeholders are those directly connected to the project: local community members, paralegals, traditional authorities and civil society organizations. These stakeholders are also the immediate beneficiaries. The courts can help to improve access to justice for women. Women's access to land and property rights is fairly limited in South Sudan, as these issues are normally mediated through male relatives. With large numbers of men engaged in conflict, women are de facto heads of household; this initiative will therefore involve a shift with respect to the status of women within communities. Canada is also a stakeholder; this project is in line with Canadian interests in strengthening norms of democracy and the rule of law abroad. The mobile court sessions will be organized in cooperation with several partners, namely *Avocats sans Frontières* (ASF), South Sudan Women Lawyers Association, South Sudan Council of Churches, UN Development Programme (UNDP) and UN Mission in South Sudan (UNMISS).

PRE-PROJECT RISK ASSESSMENT

Pre-Conditions

South Sudan currently poses a significant security threat to any foreign intervention program. The lack of restraint on violence, lack of resources, governance, and of trust in government, all pose risks to engaging in the country. Each of these factors contribute to the escalation of the conflict, and make the country a dangerous place for aid workers, who have been the targets of violence.ⁱⁱ Despite this risk, Canada's Feminist International Assistance Policy outlines its commitment to focusing its work in the world's most fragile countries, and South Sudan is consistently ranked as the most fragile country in the world.ⁱⁱⁱ To successfully complete this project, the Canadian government would need security measures in place to protect its staff and the initiative. Canada would also need to have strong ties with local Civil Society (CSO) networks (See Stakeholders). Most importantly, the project will require the establishment of a partnership with the UNMISS. UNMISS will be providing on the ground knowledge and security for the project.

Location

Eastern Equatoria is one of the most volatile states in South Sudan.^{iv} In a community consultation report, a key cause of insecurity identified was cattle raiding, for which the settlement of disputes was largely violent. Land-grabbing was also identified as an issue in the state.^v The Equatorias also host the largest agriculturalist population in South Sudan.^{vi} This location was chosen due to the frequency of land disputes and the implications of these disputes given the state's reliance on agriculture. In addition, one of the security threats identified by the women's group through this consultation was a lack of protection under the law (including traditional law), which this project also indirectly addresses.^{vii}

Timing

The project is expected to begin being implemented following its approval in the late 2018. While there have been recent clashes in Central Equatoria, there have been few reported instances of violence recently in Eastern Equatoria, making it sufficiently stable environment to establish the mobile courts.

Political Context

The current political context is still tense, as the current party in power, led by Salva Kiir, was accused of ethnic cleansing by the UN in 2016.^{viii} Kiir's term with the transitional government expired in February 2018, and while Kiir has proposed elections, it is unlikely they will take place this year.^{ix}

Opportunities

While the conflict is ongoing and the country remains insecure, recent reports suggest South Sudan is opening to peace talks, as they recently requested Egypt to support the facilitation of peace negotiations.^x Moreover, the strong CSO network in the country provides an excellent access-points for this project, and opportunities for engagement in South Sudan.

Possible Impacts

AJL has the potential to work towards an end to the conflict in South Sudan by addressing the structural issues that have contributed to the conflict in the following ways:

- **Reducing Ethnic Tensions:** The mobile courts would bring diverse ethnic groups together to voice their grievances, which are particularly severe in the Equatorias, and resolve disputes through nonviolent means.^{xi} This process would strengthen interethnic community ties and open up the possibility for future nonviolent conflict resolution. Research from the Central Equatoria region suggests that internal border disputes and an absence of a clear authority has increased the risk of escalation of conflict along ethnic lines. Thus, by addressing and resolving such internal boundary disputes, the mobile courts expect to ease ethnic tensions.^{xii}
- **Reducing Land-Related Violent Disputes:** Land grabbing has fueled ethnic conflict and violence in the Equatoria regions. In addition, the Eastern Equatoria state is particularly affected by cattle raiding.^{xiii} The proposed mobile court system would address such land-related disputes and would seek to derive mutually-agreeable solutions through non-violent means based on traditional practices and established principles of the rule of law.
- **Increasing Food Security:** Food insecurity is particularly pressing in South Sudan, as 40% of the population is starving. The scarcity of food has fueled further insecurity and violence.^{xiv} In the Equatoria regions in particular, where populations are particularly dependent on land for agriculture and grazing, establishing clear property rights and resolving property disputes is an important precursor to improving food security. In a country where 80% of the population relies on subsistence production, disputes over land need to be addressed to stabilize agricultural production and increase food security.^{xv}

- **Empowering Women:** One issue identified through the UNDP's community consultation in Eastern Equatoria was that women are not adequately protected under the law. Moreover, traditional law favours men, and male ownership of land. In particular cattle raiding is intimately linked with men's needs to pay a dowry for a young bride.^{xvi} While maintaining some elements of traditional law, the mobile courts aim to empower women through representation in the process.
- **Promoting Rule of Law:** This mobile court initiative aims to promote the rule of law in community-based dispute resolution. Moreover, by training paralegals through the initiative, the project expects to equip South Sudanese people with the tools and skills to further propagate the rule of law.
- **Possible Negative Externalities:** One potential negative externality is that resolving land disputes through local state administration and traditional authorities could strengthen ethnic affiliation, as traditional authorities have the ability to claim control over the territory on behalf of the 'community'.^{xvii} In order to mitigate this risk, the project will also follow principles of the rule of law, and will consult with traditional authorities as well as community members in the dispute resolution process. There is also a risk that the dispute resolution process may trigger or escalate violence. However, the court system will use the best practices established through other mobile court initiatives to reduce this risk. Another possible negative externality is that women's participation in the courts could lead to further violence against them. The court will work to lessen this risk through partnerships with other civil society organizations and through its extensive monitoring process.
- **Contingencies:** The project has allocated a contingency budget, should violence escalate or conditions change dramatically. Part of the contingency plan includes the partnership with UNMISS. An agreement with UNMISS will be concluded to ensure they will support the contingency plan, involving the removal of the program staff from conflict areas, in the case of extreme violence or a significantly heightened risk.

OPERATIONAL DECISIONS AND MONITORING

Training

Prior to the deployment of the mobile courts, there will be a training period to ensure the effectiveness of the program. A legal standard will be established, involving both internationally recognized principles of the rule of law as well as local customary legal practices, which will be incorporated into the mobile court proceedings. The Department of Justice and Global Affairs Canada (GAC) will engage in consultations to explore the appropriate legal mechanisms that would ensure the greatest effectiveness in the facilitation of the mobile courts.

This will require a collaborative training process in which Canadian lawyers from ASF will work with South Sudanese lawyers and paralegals from the University of Juba to share practices with each other. They will be further supported by the South Sudan Women Lawyers Association to ensure that there is female participation in the process. The University of Juba would also participate in this process as an academic advisor, providing the appropriate training environment necessary to facilitate learning.

Once a legal standard has been established and both Canadian and South Sudanese lawyers have been sufficiently trained, the next phase will involve training and understanding for those who are not legal professionals but will be participating in the proceedings. This would include local authorities, paralegals, civil society organizations, and churches, who would be trained to a degree that would allow them to actively and gainfully participate in court proceedings. This is to ensure that community leadership are sufficiently engaged throughout the mobile court process.

Organizational Coordination

Recognizing the variety of government departments, civil society organizations and community authority figures involved in this process, GAC will act as the facilitator between stakeholders. GAC will facilitate the channels of communication between organizations to ensure that all parties and stakeholders are aware of developments throughout the pilot program's lifecycle. GAC will coordinate project activities to align with Treasury Board standards of monitoring and evaluation. This will include regular data collection, qualitative and quantitative analyses, and regular reporting of court proceedings. These monitoring activities will allow the pilot to produce sufficient evidence that the pilot is working and allow for program managers to adjust the pilot accordingly to further improve its effectiveness.

Once courts are in operation, GAC as well as any other governmental department, will maintain an advisory role throughout the proceedings. This is to ensure that any decisions produced by the courts are the rendered by the community members. In doing so, it allows the community to claim greater ownership of the court proceedings and increase the likelihood of the community to accept the ruling and ensure the decisions are implemented.

Operational Limitations

The pilot must take into consideration that South Sudan is in a state of conflict, posing a risk to those who participate in the program. Certain risk considerations have been taken to ensure the safety of individuals, including the selection process of target locations as well as the program's partnership with the UNMISS, as mentioned in the pre-project risk assessment. This partnership will allow program operatives to evacuate, provided that the selected region is destabilized by a sudden outbreak in conflict. Further, the program has undertaken preemptory research to ensure that the necessary linkages have been made with local communities to ensure that program operators are invited openly and without mistrust. This will provide a greater propensity of local support for program success.

Operational Timeline

Phase 1: Exploratory Phase (*1 Year Pre-Pilot*) [25% of budget]

- Establishment of standard rule of law legal mechanism to use in the mobile courts incorporating traditional local legal practice
- Establishment of linkages with local authorities and civil society organizations
 - Outreach to targeted communities for pilot project
 - Training of Canadian and South Sudanese lawyers and paralegals

Phase 2: Operational Phase (*2 Years*) [60% of budget]

- Training of local authorities in the use of the program
- Conduct of mobile court proceedings in targeted communities
- Ensure that women are involved in the process and have access to justice
- Regular monitoring and reporting on court proceedings and program effectiveness to relevant stakeholders
- Continuous training of local legal professionals

Phase 3: Reporting Phase (*1 Year Post-Pilot*) [10% of budget]

- Cumulative evaluation report of impact and effectiveness of AJL
- Exploration for further expansion and development of AJL for other regions

Contingency Plan [5% of budget]

- Evacuation with UNMISS support

MONITORING AND EVALUATION

GAC's Development Evaluation Division (PCE) will be the organizing body receiving and assessing all information provided during the monitoring and evaluation program. PCE will work alongside GAC colleagues from the program in Juba, ASF, civil society actors engaged in the program, support staff and beneficiaries to facilitate data collection.

During the Program

Monitoring activities will be carried out throughout the implementation of the program. This information will be sent to GAC's PCE to be collected in a database. Reports will be submitted containing basic statistical data, such as number of hearings, cases, parties to the cases, adjournments, days the courts sat, cases resolved. Other information that will be submitted is the number of paralegals trained, sensitization trainings and locations visited. Finally, spending budgets will also be submitted. When possible, court monitoring will be done by civil society actors. Not only is it more cost-effective, it also makes the program more sustainable in the long term.

After the Program

One-year after the termination of the program, an evaluation will be conducted by an independent evaluation team. The evaluation will be designed to ensure accountability and understanding and a final report will be drafted and presented to GAC officials.

The specific objectives of the evaluation are:

- Assess the relevance and performance of GAC's AJL program on improving the drivers of conflict; and
- The effectiveness and efficiency in achieving the anticipated results, and provide best practices for any future engagement.

In terms of the first objective, GAC is interested in learning whether the program had an influence on drivers of conflict, including: land disputes, ethnic tensions, food insecurity, and the absence of the rule of law. As for the second objective, GAC seeks to draw lessons from the program to assess whether the pilot project should be renewed.

Information will be collected through a variety of ways, but will primarily focus on community-level engagement. The independent evaluation team will conduct interviews with actors including ASF staff, UNDP staff, civil society partners, and GAC staff from AJL. Focus group discussions with direct beneficiaries to learn whether the program had a benefit on their case. Other community members will also be interviewed to understand if their perceptions of ethnic divisions have changed. Elders will be consulted to learn whether and how the courts have been maintained in their dispute-settlement system. Finally, locally engaged implementing partners including judges, paralegals, registrars, and lawyers (when relevant) will be interviewed.

Sustainability

By training paralegals, our team is equipping them with the skills necessary to carry out the delivery of legal services after our departure. Civil society actors will also be monitoring the court process, ensuring that they can continue to do so. In addition, judges and decision-makers of the cases will be local actors, meaning that they can draw from their experience to continue moving forward. This also adds legitimacy and ownership to the decisions when delivered, which will increase the likelihood they will be complied with. Finally, sensitization training helps create community-wide understanding of their rights and the formalized dispute-settlement process offered by the court.

-
- ⁱ USAID, "Land Tenure Issues In Southern Sudan: Key Findings and Recommendations for Southern Sudan Land Policy," December 2010, https://www.land-links.org/wp-content/uploads/2016/09/USAID_Land_Tenure_Southern_Sudan_Findings_and_Recommendations.pdf
- ⁱⁱ Humanitarian Outcomes, "Behind the attacks: A look at the perpetrators of violence against aid workers," *Aid Worker Security Report 2017* <https://aidworkersecurity.org/sites/default/files/AWSR2017.pdf>
- ⁱⁱⁱ Government of Canada, "Canada's Feminist International Assistance Policy" (2017) http://international.gc.ca/world-monde/issues_development-enjeux_developpement/priorities-priorites/policy-politique.aspx?lang=eng David Carment, Peter Tikuisis, Yiagadeesen Samy and James Floch, "The CIFP Fragility Index: New Trends and Categorizations, A 2017 Country Indicators for Foreign Policy Report" Norman Paterson School of International Affairs (December 2017).
- ^{iv} United Nations Development Programme. *Community Consultation Report: Eastern Equatoria State: South Sudan*. Juba: South Sudan Bureau for Community Security and Small Arms Control, 2012, p. iv, accessed March 25, 2018 <http://www.undp.org/content/dam/southsudan/library/Documents/CSAC%20Reports/Eastern-%20Equatoria-Consult-May-12.pdf>
- ^v Ibid, p. 5.
- ^{vi} Assessment Capacities Project "Widespread conflict between Dinka and non-Dinka in the Equatorias" *ReliefWeb*, <https://reliefweb.int/report/south-sudan/widespread-conflict-between-dinka-and-non-dinka-equatorias>
- ^{vii} United Nations Development Programme, p. 6.
- ^{viii} United Nations Human Rights Office of the High Commissioner. UN human rights experts says international community has an obligation to prevent ethnic cleansing in South Sudan. Geneva/Juba, 1 December 2016, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20970&LangID=>
- ^{ix} Human Rights Watch, *South Sudan: Events of 2017*, <https://www.hrw.org/world-report/2018/country-chapters/south-sudan>
- ^x Middle East Monitor, "South Sudan calls on Egypt to support peace negotiations with opposition," March 13 2018 <https://www.middleeastmonitor.com/20180313-south-sudan-calls-on-egypt-to-support-peace-negotiations-with-opposition/>
- ^{xi} Assessment Capacities Project, "Widespread conflict between Dinka and non-Dinka in the Equatorias"
- ^{xii} Peter Hakim Justin and Lotje De Vries, (2017) "Governing Unclear Lines: Local Boundaries as a (Re)source of Conflict of South Sudan," *Journal of Borderlands Studies* <https://www.tandfonline.com/doi/full/10.1080/08865655.2017.1294497>
- ^{xiii} United Nations Development Programme, p. 5.
- ^{xiv} Relief Web, *South Sudan Country Profile*, https://reliefweb.int/sites/reliefweb.int/files/resources/s-c-acaps_country_profile_southsudan_august2015.pdf
- ^{xv} Land Governance and Equitable and Sustainable Development *Food Security and Land Governance FactSheet South Sudan*, 2015, p. 7 <http://www.landgovernance.org/assets/20160627-Factsheet-SouthSudan.pdf>
- ^{xvi} UN Environment, *Power, Gender and the Environment*, 7 March 2018, <https://www.unenvironment.org/news-and-stories/story/power-gender-and-environment>
- ^{xvii} Sara De Simone, "Building a Fragmented State: Land Governance and Conflict in South Sudan," *Journal of Peacebuilding and Development*, 10, no. 3 (2015): 60 <https://www.tandfonline.com/doi/pdf/10.1080/15423166.2015.1085812>