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# Improved knowledge on legal, social, and institutional framework conditions on land rights in South Sudan

Study Report

Implemented by

**giz** Deutsche Gesellschaft  
für Internationale  
Zusammenarbeit (GIZ) GmbH

In cooperation with

**VNG**  
International

## Acknowledgement

This study on *Improved knowledge on legal, social, and institutional framework conditions on land rights in South Sudan* was made possible through the dedicated efforts and collaboration of several key organizations and individuals. We especially want to highlight the role of the three experts of VNG International for their work in conducting and completing this study in Juba and Yei River County. Their expertise and commitment have significantly contributed to the quality and impact of this study report.

We are particularly thankful to GIZ (Deutsche Gesellschaft für Internationale Zusammenarbeit) and the German Federal Ministry for Economic Cooperation and Development (BMZ) for their trust and support throughout this project. Their strategic guidance and overall support have been instrumental in the financing, design and execution of this study.

We also wish to acknowledge the invaluable contributions of our local partners and stakeholders in South Sudan, whose insights and cooperation provided crucial context and depth to this research. Their willingness to share experiences and knowledge greatly enriched the understanding of the complex land rights issues in the region. In particular, we would like to thank Yei River County for their openness and hospitality.

Finally, with this study, we hope to positively contribute to the ongoing discourse on the legal, social, and institutional framework conditions on land rights in South Sudan.

Thank you.

Sanne van Amerongen  
Programme Manager South Sudan, VNG International

Juba, September 2024

# Preface



Over the past few months, VNG International has worked with three regional key experts to analyse the existing legal, social and institutional framework conditions in South Sudan, and as well to develop tools and recommendations for a conflict-, gender- and context-sensitive documentation and mapping of land rights. In addition to a desk and literature review, a primary data collection was conducted with key informant interviews and focus group discussions on national and local level with a case study of Yei River County. During the whole process, VNG International was supported and guided by staff of the GIZ South Sudan Governance and Gender Cluster, as well as the Local Government Board of South Sudan (LGB).

The study is part of a measure on *Improved knowledge on legal, social, and institutional framework conditions on land rights in South Sudan*, financed through the GIZ Study- and Expert Fund (SEF) and commissioned by the German Federal Ministry for Economic Cooperation and Development (BMZ). It is anchored in the GIZ Governance projects *Rural Governance in South Sudan* (until June 2024) and *Local Governance and Promotion of Peaceful Coexistence in South Sudan*. The partner counties of the projects are Aweil West, Akobo, Manyo, Mundri East, Terekeka, Twic and Yei River. The implementation partner of the measure is the LGB.

The main objective of the SEF measure is to improve the understanding of relevant actors for a conflict-, gender- and context-sensitive approach to the legal, social and institutional framework on land rights in South Sudan. The TC measure consists of two parts: a study to analyse in depth the legal, social and institutional framework conditions of land rights in South Sudan, and the development of a conflict-, gender- and

context-sensitive process for documenting and mapping land rights. With this study, the first part of the measure is to be finalized. The intended mapping process will be supported by the developed tools, which will be published separately, and conducted at a later date.

The results of this study will be initially shared with the German Embassy, other selected international and national organizations as well as partner structures. They shall on the one hand contribute to the discussion on the legal framework situation of land rights in South Sudan and on the other hand help to identify holistic approaches – especially in the context of the current Land Reform and National Land Policy debate. Because in a country where more than 80 percent of the population is living in rural areas an improved tenure security can lead to more investments in the agricultural sector, improved food security and less land conflicts.

We will be more than pleased to accept any suggestions and contributions intended for the improvement of the study report.

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Juba, September 2024



# Executive summary

Land rights in South Sudan present a complex interplay between ownership, government policies, community dynamics, and resource utilisation. In rural areas, where 83 percent of the population directly derives their livelihood from land and over half lives in poverty, harmonising private, public, and community land ownership poses challenges, especially in agriculture and livestock production, leading to conflicts. The legacy of a prolonged civil war and of historical neglect has weakened land governance structures. Despite introduced reforms, a weak rule of law and resource constraints limit their impact. The implementation of the existing legal framework is inhibited by prevailing negative customary norms and practices particularly on gender equality.

Whereas a comprehensive Land Act (2009) and Local Government Act (2009) exist, the enabling subsidiary legislation is not in place to give force to these instruments. As such, the operationalization of the land administration system largely remains unimplemented. There are also substantive laws that are not in place such as the community land law, the land survey law, valuation laws and the physical planning laws. These are crucial for the overall development of the land sector.

Furthermore, there is a continuing lack of clarity regarding the authority, roles, policies, and procedures at various levels of government and between government and traditional authorities for land administration. Land agencies face challenges of coordination, shortage of funds, material resources, and sufficiently trained staff. Although the premise of the Land Act and the Local Government Act, localized land governance needs to be prioritized to guarantee tenure security to the people of South Sudan as the national-level institutions (policy,

laws, structuring of land administration services) get reformed over time. To achieve this, the creation of local land registries and the training of staff and local land governance structures at Boma, Payam and County level to support the mapping of land rights is needed.

Despite the deficiencies in the current legal framework, the South Sudan's National Land Policy, currently ready for tabling before the Legislative Assembly, raises much hope for comprehensive land reforms. Once passed, the review of the legal framework to operationalize the progressive land policy provisions will be undertaken and hence the need for more systematic capacity building of duty bearers to ensure the envisaged land reforms are effectively and efficiently implemented in a sustainable manner.

Addressing the challenges faced by the Government of South Sudan in land administration, management and dispute resolution requires concerted efforts to invest in infrastructure, enhance technical capacity, promote transparency and accountability, empower communities in land management processes, and embrace gender equality and social inclusion as part and parcel of land services delivery. Additionally, systemic reforms are needed to combat corruption and ensure equitable access to land rights for all citizens, with reference to women, internally displaced persons, returnees, and pastoralists. Only through proactive measures and effective governance can South Sudan overcome these obstacles and achieve sustainable land governance.

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# Acronyms and abbreviations

ARCSS	Agreement on Resolution of Conflict in South Sudan
BLA	Boma Land Administration
CLA	County Land Authority
CPA	Comprehensive Peace Agreement
ESIA	Economic and Social Impact Assessment
FAO	Food and Agriculture Organization
GRSS	Government of the Republic of South Sudan
GoS	Government of Sudan
GoSS	Government of South Sudan
HLP	Housing, Land and Property
ICSS	Interim Constitution of South Sudan
IGAD	Intergovernmental Authority on Development
INC	Interim National Constitution
JICA	Japanese International Cooperation Agency
LGA	Local Government Act
LGAF	Land Governance Assessment Framework
MLHUD	Ministry of Lands, Housing and Urban Development
PLC	Payam Land Council
R-ARCSS	Revitalised Agreement on the Resolution of Conflict in South Sudan
SLC	State Land Commission
SPLA/M	Sudan People's Liberation Army / Movement
SSCSE	South Sudan Centre for Census, Statistics and Evaluation
SSLC	South Sudan Land Commission
SSLS	South Sudan Law Society
TCRSS	Transitional Constitution of the Republic of South Sudan
UN	United Nations



# 1. Introduction

## 1.1 The premise of land rights recognition in South Sudan

The recognition of land rights in South Sudan is a complex issue deeply intertwined with the country's history, social structure, and legal frameworks. South Sudan has a geographical land area of 644,329 square kilometres, but it is sparsely populated with an estimation of 12.44 million people in 2022, with 54 percent of the population under 18 years of age. Land is also a critical resource for political power and control, particularly in a country where access to resources is closely tied to social and political influence. Decades of conflict have led to massive displacement, complicating land rights recognition. Many people have lost access to their ancestral lands, and returning refugees often find their land occupied or disputed. More than 2.2 million people are internally displaced and 1.92 million are returnees (UNOCHA 2023:12). Land in South Sudan is not just an economic asset but also a source of identity,

culture, and social status. It plays a central role in the livelihoods of the majority of the population, who are engaged in agriculture and pastoralism. 99 percent of South Sudan's land area is suitable for agriculture, with 50 percent considered prime agricultural land.

Agriculture remains the main source of income for the vast majority of the population. Approximately 80 percent of the total population lives in rural areas and up to 95 percent of the South Sudanese people rely on farming, herding or fishing as their main source of income. A significant 72 percent of the population is under 30 years old, representing one of the youngest populations in the world. The economy remains excessively reliant on oil, which accounts for nearly all exports, 75 percent of the Gross Domestic Product (GDP) and more than 90 percent of public revenue. Though, due to various factors such as ongoing conflict and economic crisis, humanitarian conditions in South Sudan have sharply deteriorated (UNOCHA 2023:14).

Like any conflict-affected country, South Sudan faces intractable issues relating to land governance and management. The inter-tribal violence and the civil wars have added a whole new set of housing, land and property problems on top of those that were unresolved from the previous 22-year war (1983–2005). Intercommunal conflict among different tribes, particularly pastoralist groups, is rooted in traditional societal practices in South Sudan. However, this conflict is now often carried out with military-style tactics and military grade weapons. The impacts of continued violence are large and continue to obstruct the realization of a durable and sustainable peace in South Sudan (UNOCHA 2023:15). More than 2.2 million people in South Sudan have been displaced by conflict and natural disasters since 2014. Almost half of the internally displaced persons (IDPs) report that they face housing, land or property issues (48 percent). Disputed ownership, meaning multiple land claims, unclear rules and processes on housing and land, as well as lack or loss of housing, land tenancy or ownership documents are the primary concerns the IDPs face in improving their shelter situation (UNOCHA 2023:27).

Issues relating to land grabbing by military personnel, secondary occupation of land by IDPs, transactions involving the land of displaced populations, forced evictions, and widespread destruction of housing, land and property present very real obstacles to returns and investment in both urban and rural areas. The post-independence period has seen increasing instances of land grabbing, often involving powerful elites and military officials, which undermines the rights of local communities. The institutions responsible for land administration are often weak, under-resourced, and lack capacity, making the formal recognition of land rights difficult to implement effectively.

The breakdown of formal justice sector institutions in the country further erodes people's confidence in the durability of the fragile peace that currently exists. South Sudan largely lacks efficient and inde-

pendent judicial institutions committed to upholding the rule of law and safeguarding fundamental human rights. Weak rule of law institutions and economic deterioration have led to increased criminality and the targeting of civilians and humanitarian workers. Every year, 1.75 million people in South Sudan face one or more legal problems, while there is a wide annual justice gap of almost two million unresolved legal problems (UNOCHA 2023:13). If the Government of South Sudan, opposition groups, and development partners are not able to mount a serious response to rule of law, housing, land and property issues, the problems will only become more complex when displaced populations begin returning in earnest. Traditional leaders continue to play a significant role in land allocation and dispute resolution, especially in rural areas. However, the relationship between customary authorities and formal state institutions remains complex and sometimes contentious.

Despite this rich and fertile land, a staggering eight million people or 64 percent of the total population experienced severe food insecurity by the peak of the lean season between April and July in 2023. Continued disruption of livelihoods is due to violence or insecurity, inflation and high food prices, floods and dry spells and household-level stressors (such as death of the bread winner, GBV and morbidity and mortality due to poor hygiene and lack of access to essential basic services) (UNOCHA 2023:19). Rural infrastructure is almost non-existent. Infrastructure and communications remain poorly supported in South Sudan. Of an estimated 17,000 km of the roads across the country, around 350 km outside urban areas are paved. Two-thirds of South Sudan's roads become impassable during the rainy season, cutting people off from markets and basic services (World Bank 2022). Increased private investment in land and proponents of large-scale land acquisitions for mechanized farming in South Sudan could enhance food security to its population, diversify the oil-dependent economy and stimulate rural development.

In South Sudan, the issue of widespread tenure insecurity poses a significant challenge to peace, security, and socio-economic development. This research report aims to provide a comprehensive understanding of the legal, social, and institutional frameworks surrounding land rights in South Sudan, focusing on the principal policy problem of tenure insecurity. The genesis of tenure insecurity in South Sudan can be traced to a complex interplay of historical, political, and economic factors. Decades of civil war, natural calamities, and post-war conflicts over land rights have led to widespread dislocations and weak governance structures.

According to UNOCHA (2023:30), a 2022 inter sectoral needs assessment household survey found out that 75 percent of the returnee households reported food as a priority need, followed by shelter (61 percent) and health care (53 percent). Returnees were found to largely live in *tukuls* (58 percent) and *rakoobas* (25 percent). A significant 72 percent of the households reported to own the house / compound they live in, but only 21 percent of the returnee households have formal documentation to prove occupancy arrangements. Disputes over land ownership (for example, multiple land title claims) was the most common problem related to housing, land and property (HLP) as communities return to their areas of origin.

## 1.2 The legal and policy landscape in South Sudan

The legal landscape concerning land in South Sudan traces back to the British colonial era, evolving through various legislative periods. The transition from British rule to Sudanese governance brought changes in land laws, favouring state ownership of land. The subsequent years witnessed amendments, including the Unregistered Land Act of Sudan 1970 and significant legislative shifts in 2005 and 2009. Presently, the Land Act (2009)

and the Local Government Act (2009) regulate land tenure, defining categories such as public, community, and private land. The ongoing peace processes and agreements, such as the Revitalized Agreement on the Resolution of the Conflict in South Sudan (R-ARCSS) of 2018, include provisions for land reform and the recognition of land rights as part of the broader efforts to stabilize the country and promote development. Furthermore, efforts are being made to develop a comprehensive National Land Policy that addresses the needs of all stakeholders, including marginalized groups such as women, youth, and IDPs.

From 1898 to 1956 (Anglo-Egyptian regime) when the British rule was established in the Sudan, the government established laws on land that favoured state ownership of land. The Sudanese Government put in place land laws that defined unregistered land as state property. The laws further stipulated that (*waste, forest, and unoccupied land shall be deemed to be the property of the government until the contrary is proved*) In 1925, the Anglo-Egyptian regime enacted “Land Settlement and Registration Ordinance”. It was declaring that land in the Sudan is to be disputed and requiring anyone claiming title to any land to submit a claim for settlement and registration.

In 1956 the Sudan gained independence. The Sudanese Government reinforced state ownership of land through the **Unregistered Land Act** in 1970, which declared that all unregistered land of any kind, occupied or unoccupied, belonged to the state and was deemed to be registered in the name of the state. Since rural land areas in the South of Sudan were almost unregistered, the Unregistered Land Act effectively eliminated any legal claims that communities may have had to their ancestral homelands “*land shall be deemed to be the property of the government until the contrary is proved.*” Any Land that was not registered in accordance with the 1925 “Land Settlement and Registration Ordinance” was deemed to belong to the Government of Sudan.

The **Land Act**, that was established in 2009, regulates land tenure and land rights in South Sudan. It recognizes in Section 7 that “*all land in [South] Sudan is owned by the people of [South] Sudan and its usage shall be regulated by the Government*”. The Land Act reaffirms the division of land into three types of tenure structures: public, private, and community. Public land is land owned collectively by all people of South Sudan and held in trust by the appropriate level of government (Section 10). Private land includes registered land and other land declared as private by law (Section 12). Community land is held by communities identified based on ethnicity, residence, or interest (Section 11). Community land rights are inheritable and can be subject to usufruct rights and sharecropper agreements but cannot be permanently alienated. According to rough estimates, 87 percent of the population holds land under community land tenure.<sup>1</sup> The Land Act establishes a dedicated Land Division in every High Court (Section 99).

In 2005 land was a mayor point of discussion in the negotiations between the SPLM and the regime in Khartoum. As a result, the significance of land dispute in conflict as well as its role in preventing conflicts were recognized in the Comprehensive Peace Agreement (CPA).

On the other hand, the **Local Government Act** (2009) defines primary responsibilities of local government and traditional authorities in the regulation and management of land (for more information on the institutional framework, see below). Section 110 of the Local Government Act specifically deals with the rights of women and provides the same protection as the Constitution and the Land Act by reaffirming that “*women shall be accorded full and equal dignity of the person with men*” and that “*women shall have the right to own property and share in the estate of their deceased*

*husbands together with any surviving legal heirs of the deceased.*”

The development of the **National Land Policy** (NLP) since 2014 holds promise for addressing key land challenges. Although after 2015, the momentum in the policy process waned, however with the support of development partners, in 2023 the review and tabling of the NLP in the Council of Ministers was done. The NLP has been approved by the Council of Ministers and now awaits final approval by the transitional parliament. Although the NLP establishes a framework for allocating and protecting collective and individual land rights, contention has emerged on the inclusion of people instead of communities. The policy states: “*land shall belong to the people of South Sudan and shall be regulated by the government.*” This, as explained by the Under Secretary in the National Ministry of Lands, Housing and Urban Development (MLHUD) has elicited debates on whether this definition goes against the popular view that land belongs to communities. Some people mentioned that during the fight against the regime in Khartoum and the CPA negotiations in 2005 the SPLM/A had used the slogan “*land belongs to communities*” others are saying that the slogan “*land belongs to the people*” was used. To clarify interactions between the state, communities and individuals, while ensuring equity will be one of the major functions of the NLP once its approved,

Furthermore, the policy acknowledges that South Sudan’s systems of land administration, both customary and statutory, have been weakened by decades of civil war and the lack of investment in their core capacity and development. There is a continuing lack of clarity regarding the authority, roles, policies, and procedures at various levels of government and between government and traditional authorities for land administration. Land agencies are hampered by a shortage of funds,

1 D. K. Deng, South Sudan Country Report: Findings of the Land Governance Assessment Framework, South Sudan Law Society, 2014; I. R. Jahn, Key Housing Land and Property Issues in Urban Areas of South Sudan, Shelter / NFI Cluster South Sudan, 2017.

material resources, and sufficiently trained staff. There are concerns about corruption and favouritism in the allocation of land exacerbate tenure insecurity. Limited access to land for those without political connections or financial resources perpetuates inequality and undermines trust in government institutions.

During the primary data collection exercise of this study report, stakeholders raised concerns over the limited capacity and poor management of the land administration system in South Sudan. The Ministry expressed optimism that the NLP will be passed by the assembly once it resumes work from recess in June 2024 and set the foundation for review of a number of key land related legislations<sup>2</sup>.

Despite legal provisions recognizing women's equal rights to land, widespread gender bias and discrimination in land governance persist. Women's land rights often remain conditional, leading to dispossession and marginalization, particularly in rural areas. Additionally, rapid urbanization has led to unplanned informal settlements, causing conflicts over land rights with communities claiming customary rights. Government agencies equally struggle to provide serviced land, thereby leaving residents with uncertain tenure and vulnerable to exploitation.

Conflicts between pastoralists and agriculturalists over access to land, pasture, and water exacerbate tenure insecurity. Traditional mediation mechanisms are often inadequate to address violent clashes fuelled by competition for scarce resources. The acquisition of land without regard for existing land rights holders' further compounds tenure insecurity. Some government officials make land allocation decisions without consulting affected communities, perpetuating injustice, and instability. Disagreements between County and Payam officials and residents over boundaries contribute

to tenure insecurity and hinder investment and development. Empowering authorities to mediate disputes fairly is essential to resolving boundary conflicts.

Understanding the multifaceted nature of tenure insecurity is crucial for developing effective policies and interventions to address the underlying challenges. This research report presents insights into the legal, social, and institutional frameworks relating to land rights in South Sudan, and also offers recommendations for promoting peace, security, and sustainable development.

### 1.3 Research methodology for this study

This study was commissioned by BMZ through GIZ as a contribution to developing a better understanding as well as improving knowledge among relevant stakeholders and affected communities on legal, social, and institutional framework conditions on land rights in South Sudan. It was led by VNG International and delved into designing and conducting a mapping exercise on existing legal, social, and institutional frameworks on land rights, from the recommendations of the study, designing tools for a conflict-, gender-, and context-sensitive process for documenting and mapping land rights as well as preparing a catalogue with recommendations for the implementation of development cooperation measures, including cost calculations.

#### Stage 1: Desk and literature review

A comprehensive review of policies, laws, plans, and published / unpublished works related to decentralized land administration and dispute resolution in South Sudan was conducted. The literature review focused on key aspects such as mapping, Fit for Purpose (FFP), Free Prior and

2 Interview with Hon. Louis Kwot Akolith, the Under Secretary in the Ministry of Lands, Housing and Urban Development. April 2024.

Informed Consent (FPIC), gender equality, and legal frameworks. It analysed existing gaps, recommendations, and proposed dispute resolution actions. The secondary data analysis also included national and international studies on land rights mapping, comparing approaches and identifying best practices adaptable to South Sudan.

### Stage 2: Primary data collection

In this stage a stakeholder analysis to identify critical stakeholders was undertaken. Subsequently, 17 Key Informant Interviews (KIIs) and five Focus Group Discussions (FGDs) were conducted. The experts conducted structured interviews with key entities such as the National Legislative Assembly, South Sudan Land Commission, and local authorities, and held group discussions with diverse clusters (including women, men, youth and people with disabilities).

Key Informants with expert knowledge, experience and information were selected to provide diverse perspectives and insights into the legal, social, and institutional frameworks governing land rights in South Sudan. The selection criteria aimed to ensure representation from relevant government bodies, local authorities, civil society organizations, and international agencies. Table 1 in Annex 2 outlines the composition of the Key Informants. In addition to individual interviews with Key Informants, Focus Group Discussions were conducted to capture community perspectives on land rights. FGDs were organized with the following groups:

- **Women Association:** A focus group comprising female members of the community provided insights into gender dynamics, women's land rights, and community-level challenges.
- **Youth Group:** A focus group consisting of young community members discussed youth perspectives on land access, employment opportunities, and social development.

- **Head Chiefs:** A focus group involving traditional leaders and village chiefs offered insights into customary land tenure systems, dispute resolution mechanisms, and community governance structures.

The combination of KIIs and FGDs allowed for triangulation of data and a comprehensive understanding of the complex issues surrounding land rights in South Sudan, incorporating diverse viewpoints from stakeholders at the national, regional, and community levels.

### Stage 3: Validation of the research findings

This study was subjected to a two-step validation process. The first step of the validation was with GIZ staff in South Sudan, while the second step was in Yei River County, where the case study was conducted. The purpose of this process was to confirm that the results of the study are accurate with no errors or biases. Because the research findings are intended to inform the design of projects on land rights, it was important that the that knowledge base of land rights in South Sudan is built on solid, reliable evidence and therefore that the study recommendations can be applied and used in land reforms and pilots in South Sudan. This research opens opportunities for other studies to be conducted in sites not covered by this research, for a more meaningful and impactful roll out of land rights programmes in South Sudan.

## 1.4 Ethical / social considerations and safeguards

### *Mainstreaming safeguards in the project implementation*

Safeguards are essential tools to prevent and mitigate undue harm to people in any project development and implementation process. Safeguards help assess the potential social risks and impacts (positive or negative) associated with the project. In this study, safeguards helped define measures

and processes to effectively manage risks and enhance positive impacts. This is in addition to ensuring that social concerns of different stakeholder groups are adequately addressed. Proper safeguards provided an opportunity for stakeholder engagement, enhancing the quality and ownership of the study in the spirit of Leave No One Behind (LNOB) and Do-No-Harm (DNH).

Social safeguards were applied during data collection. In designing and conducting the mapping exercise on existing legal, social, and institutional frameworks on land rights in South Sudan, safeguards were weaved in through the following strategies:

#### *Legal and institutional framework analysis*

Reviewing the existing legal frameworks relevant to land and natural resource rights contributed to improved understanding of rights explicitly provided for in law for all citizens of South Sudan. Specifically, the review assessed the legal framework for protecting the land rights of women and marginalized groups.

The study integrated vulnerability analysis into the review of existing land laws. This enabled the identification of legal vulnerabilities that may disproportionately affect vulnerable groups, including women, indigenous communities, persons with disability and other marginalized populations. Considering the role of customary law in land governance in South Sudan, the review analysed how customary law interacts with statutory law, the enablers and hindrances for minority and marginalized groups. In mapping out land governance and administration agencies, a lens of differentiated access to land and natural resources for different groups of people was done, with a focus on ensuring that the review enhances access for all.

#### *Community participation and consultation*

This study prioritized community participation and through the research approach, the consultants obtained FPIC of the stakeholders before the

interview and also for the possibility of a subsequent project design. This involved engaging with targeted communities, providing them with all necessary information, and seeking their consent before carrying out the interviews. Full and effective participation of all groups in the targeted communities including the targeted institutions was essential for data collection. This enhanced knowledge and perspectives of communities, including providing an opportunity to validate information collected through literature review. It is hoped that community engagement, consultation and FPIC will be ongoing throughout the other work packages. Community consultations will be informed by vulnerability assessments, ensuring that vulnerable groups have a meaningful voice in the decision-making process, addressing their specific concerns.

#### *Stakeholder engagement*

Stakeholder mapping was done elaborately to map all direct and indirect stakeholders that need to be engaged throughout the project. This included government agencies, civil society organizations, women groups, and local leaders. The purpose was to understand their challenges, what they do and to garner their support in project implementation. Understanding their interlinkages was necessary for a coordinated and inclusive approach to project implementation.

#### *Gender equality and social inclusion*

Gender equality and social inclusion are key elements in ensuring strong project safeguards. In implementing work package one and across all work packages, consideration of the specific needs and roles of women and other marginalized groups in the implementation of the programme was made.

## 1.5

### Structure of the report

This study report is structured into seven chapters. Chapter 1 gives the introduction and context within which the study was conducted and Chapter 2 an overview of land administration in South Sudan. It looks at the legal and policy regime for land rights administration, the institutional arrangements, as well as land registration, particularly the requirement for systematic land registration for first time land registration. Chapter 3 focuses on land-related dispute resolution mechanisms. It considered the formal and informal dispute resolution systems, underscoring the challenges faced in access to land justice in South Sudan. It looks at Alternative Dispute Resolution (ADR) as a viable option to close the access to land justice gap in South Sudan. Chapter 4 discusses land use planning and management, underscoring that although there is no legal framework, for the fast-urbanizing country such as South Sudan, land use planning is critical. The chapter takes a pragmatic approach to propose participatory and inclusive land use planning as a plausible way forward particularly taking into consideration competing land claims such as pastoralists and sedentary farmers. The report also discusses how land use planning could be a solution to land-based conflicts and a mechanism for guaranteeing tenure security. Chapter 5 discusses gender equality and social inclusion, particularly focusing on women's land rights, the rights of the internally displaced populations and returnees, widows and widowers as well single headed households. Chapter 6 delves into the case study on land governance in Yei River County. It considers land administration, access to justice and a capacity assessment of the land institutions in the County. It makes recommendations based on the field findings. Chapter 7 provides the final conclusions and recommendations of this study.



# 2. Land administration

## 2.1 Introduction

Land administration is the process of determining, recording and disseminating information about the relationship between people and land. This section analyses the following aspects as central to a good land administration system: governance, institutions and their accountability, law and policy, recognition of land rights both formal and legitimate, and the existence of a land registration system. The section highlights the gaps and challenges in implementing a land administration system in South Sudan. It underscores the significance of strong systems to guide the land reforms already ushered into the country through the Land Act and the Local Government Act 2009. Subsequently, the chapter makes the case for localized land registration within a decentralized land administration system that gives headway to implementation and triggering the institutionalization of decentralized land administration structures. The study found that South Sudan land

administration is defined around four key administration functions: land tenure, land value, land use and development, and land disputes resolutions.

### *Land tenure*

Land tenure in South Sudan describes the relationship between the land and the people, either as individuals, or groups. It describes who has the right to do what, where, for how long, and under which circumstances and conditions. This relationship can be legally, customarily, or informally be defined and it determines how land rights are managed and allocated. In South Sudan's land administration system, the land tenure functions define access to land and its resources; cadastral mapping and defining of boundaries of land plots; registering and altering properties; documenting sales, leases, and usufruct rights; and the related technical and administrative processes conducted by the dedicated institutions and authorities. This mandate rests with the Ministries responsible for Lands at the state level. The Registry, however, sits with the Judiciary.

### **Land value**

Land valuation in South Sudan includes sum of land assessing cost, properties cost calculation and gathering revenues through land-based taxes. The land valuation is an important factor to govern urban development. Value and price of land is based on the following considerations: location within the city, including proximity to places of urban significance and the conditions of the land plots. An official system for the valuation of private properties does not exist and there are no licensed valuation experts that can be depended on. Property valuation is done by the private market outside of the control of governmental ministries and authorities. However, for the government, there is an institutional method to assess the value of public properties rented to individuals, private companies, NGOs, and UN agencies.

### **Land use and development**

Land use planning and land management processes are underdeveloped or non-existent throughout most of South Sudan. Land use plans in urban areas have reportedly been developed in some locations, but they are not made available for public review. Different institutions develop their own land use plans independently from one another and without consultation. In several cases, political changes in institutions have caused one set of partially implemented land use plans to be exchanged for another. This leads to a great deal of uncertainty in planning and management processes and perpetuates a more general lack of confidence in land governance institutions. The key institutions undertaking this function are the Ministry of Agriculture, the department of Urban Planning, Ministry responsible for Roads and Infrastructure, among others. This function is not well aligned.

### **Land dispute resolution**

Land dispute resolution is effected through the formal court system with the Judiciary as a key formal land dispute resolution platform in South

Sudan. There are customary law Courts as well. For administrative disputes, the South Sudan Land Commission and its decentralized organs are responsible for Alternative Dispute Resolution. The commission arbitrates on land-related disputes between different levels of government: vertical and horizontal. Additionally, the commission listens to individual land dispute cases from any part of the country. The majority of the cases that are addressed by the commission are related to land grabbing and border disputes and are from Juba. The commission's mandate is limited to an advisory opinion to the parties involved. If the parties involved are not satisfied with the advisory opinion, they are free to move to Court.

## **2.2 Land governance in South Sudan**

The protracted civil war and decades of neglect under colonial and post-colonial administrations have undermined land governance in South Sudan. Furthermore, South Sudan's land system is still pegged to the Republic of Sudan land system, with the provisions of its constitution, Land Act and Local Government Act largely unimplemented.

In the post conflict period, the more development-oriented aspects of land, including the development of systems of land administration and land use planning, have received less attention compared to issues relating to food security, land-related conflict, and access to land for displaced populations. Certain reforms have been introduced to the institutional and legislative framework in recent years, but due to weak rule of law and human and financial constraints, they have had a limited impact on prevailing practice. Land has been the common denominator in policy development since the CPA in 2005.

Following its independence from the Republic of Sudan in 2011, the Government of South Sudan defined three policy and operational objectives

regarding land management and governance. The first is the development of a land tenure policy and legal framework. The second is the development of implementing tools. The third deals with monitoring and assessing implementation processes. To date, the Land Act and the Local Government Act have been developed and these two laws drive the implementation of the decentralized land administration framework in South Sudan. The NPA 2023 was also developed, approved by Cabinet, and is awaiting passing by the Legislative Assembly. In July 2024, a dialogue with the Legislative Assembly was convened in Juba as a preparatory process to the tabling of the NPA. Although progress has been made with the development of the NPA, its implementing tools and mechanisms and the M&E processes are yet to be developed.

## 2.3 Legal and policy frameworks governing land in South Sudan

Prior to the signing of the CPA in 2005, the national land laws in Sudan were colonial, some of them as old as the period between 1898 and 1956 when the British rule was established in the Sudan. These laws favoured state ownership of land. In 1970, state ownership of land was reinforced through the Unregistered Land Act, which declared that all unregistered land of any kind, occupied or unoccupied, belonged to the State and was deemed to be registered in the name of the State.

After the regionally autonomous Government of South Sudan was established in 2005 resulting from the implementation of the CPA, there was a level of uncertainty as to whether these Sudanese national laws that South Sudanese considered to be oppressive would continue to be enforced in South Sudan. To address the legal uncertainty the South Sudan Legislative Assembly passed two key

legislations in 2009: the Land Act and the Local Government Act. These two laws are the current laws on land being enforced in South Sudan to regulate land tenure and protect rights in land. Chapter III of the Land Act classifies land as public land, community land, and private land:

### Public land

Public land is land owned collectively by all people of South Sudan and held in trust by the appropriate level of government. Public land includes:

- land lawfully held, used, or occupied by any government ministry, department or agency or local authority, except where such land is occupied under a private lease;
- land transferred to the Government of South Sudan, State Government, or Local Government by way of reversion or surrender;
- land in respect of which no private ownership including customary ownership may be established by any legal process;
- land in respect of which no heir may be identified by any legal process;
- all roads, railways airports, and thoroughfare as specified by law; and
- all rivers, lakes, canals, *haffirs*<sup>3</sup>, wetlands and other areas of water for which no customary or other ownership may be established; or which has been voluntarily surrendered for public benefit as land which has been compulsorily acquired for special protection, benefit, or use of the community; land for investment; or land as agreed by any international treaty.

### Community land

Community land includes all lands traditionally and historically held or used by local communities or their members. Section 11 (2) of the Land Act defines community land to include:

3 *Haffirs* are man-made ground reservoirs in the earth at suitable locations to store water for drinking purposes for both human and livestock uses.

- land lawfully registered in the name of group representatives under Section 57 or any other law for the time being in force;
- land lawfully held, managed or used by specific community as community forests, cultivation, grazing areas, shrines and any other purposes recognized by law;
- land lawfully transferred to a specific community by any process of law; and
- any other land declared to be community land by law.

Community land is held, managed, or used by communities, identified on the basis of ethnicity, residence or interest. Community land can include land registered in the name of a community, land transferred to a specific community, and land held, managed, or used by a community.

### Private land

Section 12 of the Land Act provides that private land includes:

- any registered land held by any person under a freehold tenure; or
- land held by any person under leasehold tenure; or
- any other land that may be declared private land by law.

Any person(s) owning land in South Sudan may lease this right to another person or persons for a fixed period in accordance with the law. A long-term lease shall not be more than 99 years, and a short-term lease is a lease for one year or less and includes a tenancy for a year renewable every year. A holder of a registered lease may in accordance with the terms of the contract of lease sub-lease her or his right for any period that is equal to or less than the remainder of the period of the lease.

With the consensus between members of the community, Traditional Authority may recommend granting a person or company, whether national or foreigner, a right of leasehold in respect of a portion of community land to the appropriate land administration. A land size of not more than 250 feddans<sup>4</sup> shall be granted by the Traditional Authority in consultation with the County Land Authority and the Payam Land Council.

Although the two laws were passed in accordance with the provisions of Article 59 (2) (b) read together with Article 85 (1) of the Interim Constitution of South Sudan, 2005 the South Sudan Legislative Assembly, in the Constitution of the Republic of South Sudan (2011), upheld the provisions of the Land Act and the Local Government Act.

In its Article 3, the Constitution requires that the authority of government at all levels shall derive from it and the states' constitutions, and all laws shall conform to it. The Constitution recognizes the right of women to own property and share in the estates of their deceased husbands together with any surviving legal heir of the deceased (Article 16). The right to own property is further confirmed in Article 28 which states that every person shall have the right to acquire or own property as regulated by law and no private property may be expropriated saves by law in the public interest and in consideration for prompt and fair compensation. In this context it should be understood that land is real property allocated by fixed spatial boundaries. When not surveyed and without fixed spatial boundaries, then that land is not yet formed into property.

The Constitution has a chapter on land ownership, tenure, and natural resources. Under Article 170 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. It classifies the land

4 1 Feddan is a unit of area equal to 1.038 acres

tenure systems in South Sudan shall consist of public land, community land and private land. The rights in land and resources owned, held, or otherwise acquired by the Government shall be exercised through the appropriate or designated level of government which shall recognize customary land rights under customary land law.

Article 172 establishes the Land Commission as an independent commission composed of persons of proven competence, experience, integrity, and impartiality.

**Table 1: Overview of tools governing land in South Sudan**

Policy and legal tools	Functions
Sudan Environment Plan (2006) under the Republic of Sudan	Identifies major factors / threats that affect the natural environment and planning of mitigation measures.
The Land Act (2009)	Defines basic principles, priorities, and institutional arrangements regarding land governance, administration, and management.
The Local Government Act (2009)	Prescribes provisions for transferring powers and resources to sub-national institutions, bodies, and authorities.
The Investment Promotion Act (2009)	Defines procedures for certifying and licensing foreign investors, including land investors.
The Transitional Constitution (2011)	Enacts body of laws that define the different institutions in the state and organizing their relationships. It also includes a Charter of Fundamental Rights.
The Revised National Development Strategy for South Sudan 2021–2024, R-NDS (2021–2024)	Prioritizes activities in the original NDS to support the implementation of the R-ARCSS, reset the country on the sustainable development path and initiate re-engagement with the country’s development partners, and set a roadmap for the development of a four-year medium term NDP.
The National Land Policy (2023) approved by the Council of Ministers and yet to be passed by the Legislative Assembly	Defines the main objectives and results of land governance (including local institutional arrangements) and basic guidelines relating to land investments.

The Land Act reinforces the government’s recognition of customary land tenure in the CPA and the Interim Constitution of South Sudan (ICSS), stating that “*customary land rights including those held in common shall have equal force and effect in law with freehold or leasehold rights.*” The Land Act allows community land to be allocated for investment purposes so long as the investment activity “*reflect[s] an important interest for the community*” and “*contribute[s] economically and socially to the development of the local community.*” The Land Act also requires that state

authorities provide approval for land acquisitions above 250 feddans (105 hectares) and calls states to put in place regulations that prescribe a ceiling on land allocations.

Both the Land Act and the Local Government Act require that the government consult with local communities and take into consideration their views on decisions related to community land. Both laws do not prescribe the form nor procedure for the consultations. Chapter X of the Land Act gives special protection to pastoralists, and in its

Section 67, it states that, “no person shall without permission carry out any activity on the communal grazing land which may prevent or restrict the residents of the traditional communities concerned from exercising their grazing rights.” Section 70 requires project proponents to conduct environmental and social impact assessments (ESIAs) prior to engaging in any activities that might affect the people or the environment. Despite this provision in the Land Act, the ESIA process is not legally established. The Draft Environmental Protection Bill gives some indications on how the legal requirements for the ESIA process are intended to be formulated. The available information found in the draft bill on the steps of the ESIA procedure is limited, but some provisions are made on Screening, the assessment process, the review process and on monitoring.

Although the Land Act provides for land for investment, the Investment Promotion Act explicitly limits foreign investments in agriculture and forestry to renewable terms of 30 and 60 years, respectively. The Land Act further provides for zoning based on comprehensive land use planning at state level and should be done in consultation with the communities concerned. However, it is not clear if this is done in practice.

South Sudan’s underdeveloped legal and institutional framework reflects the difficulties that the country has faced in establishing effective governance and rule of law institutions after decades of war. Although significant legislative reforms have been made since the end of the war in 2005 – including the passing of the 2009 Land Act and the 2009 Local Government Act – the laws remain largely unimplemented. Most land governance institutions operate according to procedures developed in the colonial era and while Sudan was one country and there is a wide divergence between law and practice. Bridging this gap has been one of the most difficult challenges of the postwar period. Institutional arrangements are also undermined by poor coordination among formal institutions

at each level of government (horizontal coordination), between the three levels of government (vertical coordination) and between the formal and customary systems (Deng 2014).

### The challenges of operationalization of the land laws

Given that the Land Act and the Local Government Act are framework laws, for them to take effect, there is need to have in place other key substantive legislations on land administration. These laws have been proposed but not yet passed. These are:

- **The Community Land Act:** This Act intends to clarify the distinction between public and community land, describe the rules and procedures governing the access, use and ownership of community lands, describe applicable standards of women’s rights under customary land tenure, and describe land administration systems for community lands.
- **Town and Country Planning Act:** This Act intends to provide an appropriate framework for preparation and implementation of national, state, and local area land use plans and ensure the planning process is integrated, participatory and meets stakeholder needs.
- **The Land Survey Act:** This Act intends to clarify rules, procedures and institutional roles for land survey and mapping activities. The Act would also provide for the use of modern technology, such as Global Navigation Satellite Systems (GNSS) and Geographical Information Systems (GIS) and streamline survey authentication procedures.
- **The Land Valuation Act:** This Act intends to set standards for land valuation.
- **The Land Registration Act:** This Act intends to describe a land registration process that recognizes and protects all legitimate rights and interests in land in all tenure regimes.

→ **The Land Information Act:** This Act intends to facilitate access to and management of land information.

These laws prescribe the necessary processes for the implementation of a functional land administration system that delivers services to the people. Furthermore, there is need to develop subsidiary legislations to detail procedures, processes, standards and provide guidelines for implementation.

The ambiguities and gaps in the legal framework make it difficult to develop standardized approaches to tenure formalization. Sporadic land formalization is ongoing in many urban areas, particularly those where land registries exist. Where registries do not exist, rudimentary processes are in place to formally register land-

holdings in urban areas. In rural areas, no clear processes for formalization of land rights exists apart from those converting community land to freeholds, or for the states that have created urban land out of community lands, then parcellation and formalization of the urban plots occurs. Apart from these two examples, the registration process has not yet been extended to landholdings in rural areas. Demand for land in urban areas has increased sharply since independence, and the registration process has not kept pace. The cost and inefficiency of the system prevents many people who have lived in Juba for decades from formalizing their rights and pushes newcomers into informality. Corruption and misgovernance further undermine the integrity of the registration process.



### 2.3.1 The implementation and practice of land laws in the ten states and three administrative areas

By the Republican Order issued on February 15, 2020, the Republic of South Sudan now has ten states and three administrative areas and 79 counties. These include Central Equatoria (Juba), Western Equatoria (Yambio), Eastern Equatoria, (Torit), Jonglei (Bor), Unity (Bentiu), Upper Nile (Malakal), Lakes (Rumbek), Warrap (Kuajok), Western Bahr el Ghazal (Wau), and Northern Bahr el Ghazal (Aweil), as well as Abyei Administrative Area, Greater Pibor Administrative Area and Ruweng Administrative Area.

#### a) *The Unity State's legal regime*

In January 2024, VNGI undertook a rapid assessment of the ten states to understand whether

there were any variations in how the land laws were being implemented. The Unity State reported that the state has its own land policy<sup>5</sup> mostly complementary to the Land Act 2009 and Local Government Act 2009. The Unity State's policy acknowledges that land belongs to the community and is managed by the government at all levels. The policy is unique because it provides no community authority on land, state land is entirely managed by the state government. Whereas the Land Act categorizes land into three (community, private and public), the State policy categorized land into:

1. Community land;
2. Private land;
3. Urban land;
4. Grazing land;
5. Agriculture land.

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#### Putative boundaries of South Sudan's ten states and three administrative areas

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Source: Leviavery based on File:SouthSudanStates.svg, CC0, via Wikimedia Commons.

5 Efforts during the interview through the phone with Mr. Paul Gak, Director General for the Ministry of Housing, Land and Public Utilities from Bentiu to have a copy of the state land policy were unsuccessful.

In Unity State, there is a mixture of definitions of land according to ownership and use. However, even if land is owned under private or community, it can be put into uses such as grazing or agriculture. This categorization and definition of land creates opportunities or avenues for conflict.

Section 15 of the Land Act provides that notwithstanding the provisions of Section 26 of this Act, Traditional Authority within a specific community may allocate customary land rights for residential, agricultural, forestry, and grazing purposes. This is in line with Section 7 of the Land Act which provides that land may be acquired, held, and transacted through the following tenure systems – Customary, Freehold and Leasehold. Although there is a mix up in the manner the State categorized the land, it is not in contravention to the provisions of the Land Act.

#### **b) The practice in other states**

In all the nine states except Unity State, there is no separate land policy. All the ten states and three administrative areas are directly implementing the Land Act 2009 and the Local Government Act 2009. States' land administration/ management and registration of land rights follow these laws. However, the procedures and practices for land survey, demarcation, and ownership by individuals, companies, and government follow those inherited from the greater Sudan before independence of South Sudan in 2011. It should be noted that land registries exist in only six of the states where they existed before the independence of South Sudan.

In respect of the provision that “*Land belongs to the community and is managed by the government*”, most of the land demarcation and allotment to individuals, and large companies for investments in the States especially (Central Equatoria, Unity, Western Bahr el Ghazal, Eastern, Upper Nile, Eastern Equatoria and Western Equatoria) are done in consultation with the communities as required by Section 63 of the Land Act.

Community leaders and chiefs are the dominant actors regarding land demarcation and allotment activities to individuals, companies and government in big towns in South Sudan (Juba, Wau, Torit, Kuajok, Nimule, Yambio, Bor, and Malakal). The local government (County, Payam, and Boma) and town councils must negotiate with the communities' leaders and chiefs for the allocation of land to be used for settlement and other development purposes. This means land is not available for any other use without community leaders' and chiefs' approval and if they are bypassed it becomes a cause of conflict. This bypass of communities in land administration and management is interpreted as aiding the legalization of community land grabs.

It is generally acknowledged that most of the land in South Sudan is community land. Section 58 (2) of the Land Act provides that community land may be registered in the name of the following:

- a) a community;
- b) a clan or a family in accordance with the customary practices applicable;
- c) a community association in accordance with the document constituting the association; or
- d) a traditional leader in trust for the community and with the consent of the members of the community.

An individual can only sell or lease land after consultation with and consent from the community. The most common land disputes arise between the communities owning community land and other land users outside of the community (the sprawl of urbanization, farmers, cattle keepers, fishermen etc.).

Although land acquisition processes in the states of Western Bahr el Ghazal, Unity, and Eastern and Central Equatoria, are said to be clearer and include community consultations, there is need to analyse these processes and procedures for better understanding. In practice, upon the successful

community consultations, land departments initiate the survey process of the agreed land. Land lease forms are then given out to the individuals and companies that applied for the land for designated development purposes.

## 2.4 Land rights

The rights to access, use and own land are guided by the Land Act 2009. At the county level, the directorate of land survey and public utilities is responsible for regularizing tenure rights. However, the directorate has limited personnel capacity to carry out its mandate. Furthermore, the directorate is involved in irregularities that have resulted in public mistrust. The situation is compounded by the lack of subsidiary legislation operationalising the provisions of the Land Act and the Local Government Act. Communal land ownership is the most common tenure system which is under authority of local chiefs in the rural areas. Because this tenure system remains largely undocumented, there is a need to have a functional land administration system that secures the interests of communal land holders.

Land rights in urban areas are managed exclusively through leaseholds with the state government. As such, they fall under the jurisdiction of statutory law and customary law does not apply – there is no community land in urban areas. While the legal framework recognizes the rights of people with formally registered leases, there is far less protection for those residing in informal settlements and residential areas in which landholders have not registered their rights through any formal process. Statistics are not available about the number of registered (or formal) landholdings in urban areas compared to the number of unregistered (or informal) landholdings, but it

is estimated that less than 50 percent of the urban population reside on registered land<sup>6</sup>.

By recognizing customary land rights as having equal force in law with freehold and leasehold rights, the Land Act makes a first step towards the formalization of customary land tenure. The Act recognizes customary land rights which have been formally registered, but it also lays out a process for surveying, demarcating, and registering community lands. If followed through, the registration of customary land rights can help to improve tenure security for rural communities as they struggle to cope with new pressures on community lands, such as those associated with urban expansion, increasing land values, the exploitation of natural resources, environmental degradation, and the large-scale acquisition of land for public or private purposes. However, as is the case with most of the changes called for in the Land Act, the survey, demarcation, and registration of community lands has not yet begun and there are no plans in place for how to go about it (LGA 2014).

South Sudan land law accords women equal rights to own land. The 2011 Transitional Constitution states, “*Women shall have the right to own property and share in the estates of their deceased husbands together with any surviving legal heir of the deceased.*” This provision is mirrored in the 2009 Land Act. However, these protections are routinely violated in practice. Although the laws recognize equality, the tools in the land administration process have not been amended to reflect this equality and hence the continued discrimination of women and the perpetual gender inequality in the land administration process. Women’s access to land is severely restricted in both formal and informal systems, though there is some regional variation and women with financial means have been able to obtain registered plots in some urban areas (Deng 2014).

6 Interview with the Under Secretary, MLHUD – May 2024.

Whether seeking to formalize landholdings through the government or community process, most applicants are confronted with several obstacles. The registration procedures are not clear, nor are they being properly communicated to applicants. People can wait for years to get their documents after the land has been surveyed and demarcated. Complaints of discrimination based on gender or ethnicity are commonplace. Information about the official fees to be paid is not made publicly available, amounts can vary widely depending on who is doing the asking, and receipts are often not provided. There is need to simplify land information and make it publicly available (LGAF 2014). From a legal perspective, demarcation and registration are scarcely regulated, and their practical implementation often unfolds through ad hoc procedures that give state officials significant discretionary power, frequently to the detriment of the most vulnerable<sup>7</sup>.

In line with these findings, the Van Vollenhoven Institute 2024 study concluded that the following actions need to be taken.

- *“Study and revise existing legislation on land rights, clearly defining which land rights and their respective obligations exist in the South Sudanese legal framework. For instance, clarify whether individual and collective ownership of land are possible and, if so, give people the documentation that corresponds to such rights, instead of leaseholds.*
- *Clarify the processes through which people and communities acquire rights over land. For instance, clearly establish which rights long-term occupants of land can acquire over it (adverse possession). Such clarification must take into consideration the various waves of displacement in South Sudan, and the benefits*

*and disadvantages of each option. For instance, recognizing adverse possession can solidify the rights of those on the land, but weaken the rights of those displaced<sup>8</sup>.”*

## 2.5 Land institutions in South Sudan

Despite the existence of legal frameworks, customs still largely govern land ownership and use in South Sudan. Responsibilities in land administration and governance rest on an array of public institutions. Three levels of governance exist – national, state, and local. Local government is further subdivided into the County, Payam, and Boma administrations.

**Table 2: Decentralization entities and authorities**

Sub-national institutions	Authorities	Method of designation
State	Governor	Elected
County	Commissioner	Elected
Payam	Administrator	Appointed by the County Commissioner
Boma	Administrator	Appointed by the Payam Administrator

From the primary data collection<sup>9</sup>, the land administration function is divided across several government agencies and institutions. At the national level, there are three key actors, The MLHUD that is responsible for policy and guidance to State governments related to land, urban development, and land registration. The Ministry also has principal responsibility for administering legislation governing town planning, land surveying and land valuation.

7 Van Vollenhoven Institute, Land and Justice pathways in South Sudan 2024, p. 14.

8 Ibid, p. 17.

9 KII: Under Secretary, Ministry of Justice, land in South Sudan has been used across various government agencies such as Ministry of Agriculture and Food Security, Ministry of Livestock and Fisheries, Ministry of Wildlife and Tourism and Ministry of Transport, Road, and Bridges.

The South Sudan National Land Commission is the second institution at the national level. The Land Commission was established in 2006 to develop land laws and policies; conduct research on land matters; arbitrate land disputes; and advise various levels of government on land issues. The Constitution provides that the Land Commission shall be an independent commission (Article 172). The Land Commission's role is reaffirmed in Section 52 of the Land Act.

The Transitional National Legislative Assembly's Standing Specialized Committee on Lands and Physical Infrastructure established in 2017 is the third key institution at the national level. The committee is mandated to monitor and oversee the policies, programmes, and activities of the Land Commission and the MLHD; scrutinise existing legal and regulatory frameworks, in consultation with the relevant Ministries and the Land Commission, draft legislation on various issues, including community land, environmental conservation, and urban development; and oversee implementation of land policies, standards, and regulations and urban planning, management, and development.

At national level, the South Sudan Land Commission (SSLC) is the key public institution for land governance it was created in 2006 by Presidential Decree No. 52/2006, it mandates include; (i) the arbitration of land claims; (ii) the assessment of compensations; (iii) the coordination of the development of Land Policy; and (iv) the implementation of studies on land use practices in areas where natural resources are exploited. The Land Policy Steering Committee was instated under the SSLC to follow up the land policy implementation process and to complete the policy framework and the national institutional landscape. After years of work, the Land Policy mandate was transferred to the MLHUD in 2021, and tasked to complete the NLP development process and table it in the Legislative Assembly for passing. In 2023 the MLHUD, working with the Land Policy Steering Committee,

chaired by the Chairperson of SSLC, successfully received the approval of Cabinet to table the NLP before the Legislative Assembly. Whereas the NLP mandate was transferred to the MLHUD, all the other functions of the SSLC prior stated above remained intact.

State-level institutions and authorities oversee policy and regulation design; the County Commissioner and County authorities coordinate policy and regulations implementation within the County; the Payam Administrator is mandated to follow up public administration actions in various Bomas (village-level territorial units); and the Boma administrator manages public affairs at the village level. Traditional authorities and local chiefs are recognized in the law as important actors in the existing local overall administration and governance system, including land administration and governance matters (GoSS 2009a, 2011a). Section 19 of the Local Government Act provides for the incorporation of the traditional authority systems in the three tiers of local governance with the Boma being the main domain of traditional authority where traditional leaders perform their administration and customary functions. The traditional authorities also perform this function within the Town Councils within the limits of the quarter councils.

Furthermore, the Land Act (2009) provides for land governance institutional arrangements that are top-down with the SSLC being at the central government level, which would be decentralized to the lower levels of the government (States, Counties, Payams, and Bomas). This way, each of the ten states must have a State Land Commission (SLC), each SLC was to be decentralized to a County Land Authority (CLA), each CLA to a Payam Land Council (PLC), and each PLC to a Boma Land Administration (BLA). Apart from establishing Land Commissions in the Administrative Areas, this level of decentralization has to date not been achieved, leaving land governance institutional arrangements not structured at different levels of

governance in the country. Instead, at the lower local levels, the traditional authorities are currently empowered by the Local Government Act (2009) to administer communal land from ascertaining land ownership rights to conflict resolution. Chapter XII of the Local Government Act lays out the mandate and types of Local Authorities as that of administering customary law and justice through the customary law courts. It further mandates the traditional authorities to exercise deconcentrated powers in the performance of their executive functions at the local government levels within their areas of jurisdiction. The efficacy of these provisions is yet to be tested in guaranteeing security of tenure to the different sections of society, particularly considering how vulnerabilities are addressed in the process,

At the state level, the Directorate of Land Survey and Public Utilities in the Ministry of Housing, Physical Planning and Environment performs most of the land governance roles, yet it is challenged with limited human and institutional capacity. State governments have played a more active role in administering land and have been able to use the principles of decentralization and subsidiarity in the Transitional Constitution to assert their rights to control land and natural resources under their jurisdiction – particularly in urban areas.

Traditional authorities also perform roles of land conflict resolution and mediation, as well as local arrangements related to access and control over from a customary perspective. Disputes involving unregistered landholdings are usually dealt with in customary courts or through mediations with community leaders. In addition to the relatively more standardized system of statutory and customary courts, local authorities in certain areas sometimes use ad hoc complaint mechanisms to address different types of land disputes. For instance, traditional chiefs at times form a community committee to resolve disputes where returnees claim family land occupied by someone

else. The committees are composed of elders from the community, appointed by the chiefs, that have adequate history and knowledge of the area and could verify claims of family inheritance to land. Disputants are encouraged to bring witnesses to the committee and customary court that could testify in their favour. The decisions from the committees then inform the chiefs' decision in the customary court. In some urban areas, local authorities known as *sheikh-el-hilla* also play a role in dispute resolution. However, application of customary law to land disputes resolution makes it difficult for women to enjoy their constitutional or statutory rights of equality, the situation is not any different in statutory courts too. The poor coordination among the customary and formal systems further affects the resolution of land conflicts for example a women can receive favourable decisions in customary or statutory courts but her husband or male relatives can resurrect the dispute in another court that does not recognize the initial court's ruling.

Considering the importance of land in the new nation, institutions of land governance appear severely underdeveloped. Land administration systems are not able to address land services demand and people are increasingly being pushed into informality. Although provided for in the Local Government Act and the Land Act, the interface between customary and statutory systems of land tenure is unclear, generating conflict and undermining efforts to establish effective institutions. This is mainly due to the lack of subsidiary legislations such as rules of procedure, guidelines or standards that would clarify the implementation modalities.

Land administration in South Sudan is partially decentralized as most of the lower local level land institutions are not in existence or operational rather, there is a practice of using traditional institutions to fill the void by performing the would-be roles of decentralized land institutions at lower local levels.

Furthermore, land administration faces huge challenges due to poorly defined mandates and administrative procedures, the lack of coordination among bodies with complementary responsibilities, the low technical capacity of personnel and the frequent reshuffles of officers in land institutions. The current unstable political situation in South Sudan further negatively impacts the governance of the land sector.

## 2.6 Land registration and the cadastre

Land registration is usually defined in terms of creating a record of property rights. As used in practice, the term land registration system is often further restricted to the register of private, surface land interests. The definition given here, i.e., where land registration is the official, systematic process of managing land tenure information, has been chosen to encompass a wider range of interests and information. This information can be classified as:

- Information about people – i.e., individuals and groups of individuals who have recognized interests in land.
- Information on the nature of these interests – i.e., the rights, responsibilities, and restrictions in land, including their duration and their effect.
- Information about the land – i.e., the units of land, or land parcels, to which these interests apply, including location, value, resources, and use where appropriate.

The information may be represented in a textual or graphical format and the medium may vary. Even an oral record of the history and status of community tenure might be considered a rudimentary form of land registration if the information is publicly recognized and consistently maintained. Land registration must be official in the sense that

the information may be used as evidence of interests in land, for example in resolving disputes or when land is used as collateral. To be systematic, there must be policies, standards, and procedures in place to collect, validate, maintain, and provide access to the information (Nichols 1993).

Land registration systems provide the means for recognizing formalized property rights, and for regulating the character and transfer of these rights. Registries document certain interests in the land, including information about the nature and spatial extent of these interests and the names of the individuals to whom these interests relate. They also normally record charges and liens, that is rights to retain property against debts as in the case of mortgages, although in some systems these are held in separate registries. In addition, land registries provide documentary evidence that is necessary for resolving property disputes as well as information for a wide variety of public functions (such as land valuation). There are at least three basic types of land registration system: (i) private conveyancing; (ii) registration of deeds; and (iii) registration of title (Dale, MacLaughlin 2000).

South Sudan uses the deed system of land registration. Under a system of registration of deeds, a public repository is provided for registering documents associated with property transactions (deeds, mortgages, plans of survey, etc.). There are three basic elements in deeds registration: the logging of the time of entry of a property document; the indexing of the instrument; and the archiving of the document or a copy thereof. While there are many types of deed registration system, they are all based on three core principles (Nichols 1993):

- **Security:** Registration of a document in a public office provides some measure of security against loss, destruction, or fraud.
- **Evidence:** Registered documents can be used as evidence in support of a claim to a property interest (although they cannot provide an assurance of title).

→ **Notice and priority:** Registration of a document gives public notice that a property transaction has occurred, and, with exceptions, the time of registration provides a priority claim.

Deeds registration provides a means for registering title documents only; it does not register title to a property. Registration is often not compulsory and, as a general rule, many rights are not registered. Reviewing and assessing all the documents required to determine the validity of a claim to

ownership can often be extremely tedious and expensive to undertake, and sometimes open to disputes.

Although the land registration system is not well developed for rural areas, indicative fee structures for first time registration of land for Juba can be used for this purpose. Fees are paid to the surveys department. The table below underscores the fees incurred in the registration process.

**Table 3: First time registration fees**

Steps	Fees	Additional costs
1. Submit application to CES Ministry of Physical infrastructure and get a land lease.	Reported fees ranged from USD 23 to USD 63.	Plots in South Sudan are classified as A, B or C depending on their value. Costs are calculated from an application for a C-class plot through the government distribution scheme. Many people hire intermediaries such as advocates to assist with the process. This cost is additional and can reach USD 250 or more. Informal payments may also be required.
2. Apply for a certificate of registry with the Land Registrar at the Judiciary. Register the land with the Land Registrar at the Judiciary.	Reported fees ranged from USD 8 to USD 13. Stamp duty costs USD 0.25.	
3. Go to the survey department with the certificate of registry and make appointment for surveying the land.	USD 32	

Adapted from LGAF South Sudan 2013.

A term closely associated with land registration is cadastre, defined as a record of interests in land encompassing both the nature and extent of those interests. Cadastral surveying and cadastral documentation are used to track and show the boundary lines of both privately owned real estate and public land. This information is used in the creation of cadastral maps, which may include linework, parcel numbers, land ownership, tax and value assessments, acreage, dimensions, and topographic mapping. Whereas land registration is a process, a cadastre (e.g., juridical, fiscal, or multi-purpose) is a product of this process. Creation of a cadastre is an example of an effective strategy for achieving many objectives of a land registration system. The term cadastre, as it is used in practice,

emphasizes the graphical component of the record, the cadastral map or plan that provides either the spatial index for a land register or the description of the land parcels. Some land registration systems have limited graphical information and many of the opportunities for improving land registration exist in better management of the textual information.

South Sudan still runs a paper-based land administration system. The cadastral plans are kept at the Surveys and Mapping Department, and they are not up to date. There is no electronic database for recording boundaries, checking plans, and providing cadastral information. The Immovable Property<sup>10</sup> Registration Department in the

10 Land that is delineated for registration.

Judiciary and Cadastral/ Mapping Department in the MLHUD do not use the same identification number for properties. There is no digitized information for reference and there are no publicly available official statistics tracking the number of transactions made making it difficult to tell the extent of registration and the percentage of the country mapped. Although some land data is available for Juba, the status of the land records in South Sudan is currently unknown.

There are several fundamental information gaps in the land registries. Land registries vary from location to location in South Sudan. The most developed registries are found in the three regional centres of Juba, Wau, and Malakal. In these three locations, state-level Ministries of Physical Infrastructure and High Courts share joint responsibility over the registration process: the Ministries conduct survey activities and issue land leases, and the Courts register leaseholders. Information in the registry is recorded in handwritten documents and there are no efforts underway to computerize the system. Data regarding the number of documents in the registries is not available. The lack of a registry at the national level, which would maintain information about registered landholdings in the country, makes it impossible to determine the percentage of land registered, which tenure is most registered and the percentage of the population by gender whose land is registered. Without a national registry, it is difficult for the Government to monitor the performance of the system and enforce national regulatory standards.

The type of information recorded in the registry is not in accordance with the provisions of the law. According to the Land Act, the registry should include *“all current encumbrances, charges, restrictions, conditions and other interests whether benefiting or burdening the land to which the certificate of title relates.”* This information is not being recorded in the existing registries. As a result, there is no way to easily identify whether a particular parcel of land is subject to mortgages, loans, liens,

subleases, lawsuits, or other encumbrances. Nor are restrictive covenants, easements, or public land use restrictions recorded. As mentioned previously, South Sudan has not yet developed the registration of titles law which should address the gaps in the land registration system.

There are shortcomings related to the types of maps in the registries, these mostly emerge from the challenges of maintaining the cadastre separate from the registry and having the two in different Government agencies. The registries do not include comprehensive maps of registered landholdings. Sometimes sketches showing the dimensions of individual plots are attached to the land leases. In Juba for example, most of the registered land has not yet been surveyed and demarcated and many registered plots do not even have sketches attached. Community land formalization processes are often done outside of the formal government process without creating maps. When maps are developed, they are typically maintained at the community level with only a small number of people granted access. State authorities have discussed the possibility of developing the individual sketches into a proper cadastral map with geo-reference points and information on plots and owners, but concrete plans for doing so have not yet been agreed upon (LGAF 2014).

## 2.7 Systematic land registration, a requirement for first time land registration in South Sudan

The root of systematic land adjudication and registration in South Sudan are anchored in Article 170 (1) of the Transitional Constitution 2011 of the Republic of South Sudan which provides that *the regulation of land tenure, usage and exercise of rights there on shall be governed by this Constitution and the law.* The Land Act, 2009 is the law that operationalized the constitutional provisions and in its Section 42 (11) it provides that

*the Ministry of Lands, Housing and Urban Development may undertake systematic registration operation upon request of the State or on its own motion.* Furthermore, Section 55 of the Land Act, 2009 provides that:

1. Initial land registration shall be implemented through systematic land registration or / and upon request.
2. The Concerned Ministry in the State may by order declare any area to be a systematic registration area from such date as may be specified in that order and may at any time by a subsequent order vary the limits of any such area.
3. Any systematic registration shall be carried out by MLHUD of the Government of Southern Sudan upon request of the Concerned Ministry in the State or on its own motion.

The Land Act in Section 41 lays the general principles governing land administration and management as:

1. The regulation of land tenure, usage and exercise of rights over land thereon shall be exercised at the appropriate level of Government in Southern Sudan as stipulated by the Constitution.
2. The land administration shall be based on the principles of decentralization, participation and transparency for the benefit of all the people of Southern Sudan.
3. Prior to any decision related to their lands whether in urban or rural area the land administration shall consult with the communities concerned.
4. Without prejudice to the rights of the Government of Southern Sudan on land, each State Government shall be charged with the management and administration of land within its jurisdiction for the benefit of the people of Southern Sudan.

5. Land in Southern Sudan shall be managed in a uniform and coordinated manner in which the State Government assigns the management responsibilities to concerned Ministry at the state level, the County Land Authority and the Payam Land Council.

Section 53 of the Land Act, 2009 further lays down the general principles governing land registration as:

1. Subject to the principles laid down in this Act, the registration and recording of land shall be regulated by law.
2. Land collectively or individually owned in Southern Sudan shall be registered and given a title in accordance with this Act.
3. Land owned by different levels of government in Southern Sudan shall be registered.
4. All land in Southern Sudan not registered before the coming into operation of this the Land Act shall be registered in accordance with the provisions of this Act and regulations.

For purposes of registration, Section 54 of the Land Act provides for the decentralization of the Land Registry in accordance with the principles under Section 41 (5). It states that:

1. The Land Registry shall be established within the MLHUD in the Government of Southern Sudan and shall be decentralized throughout Southern Sudan.
2. At the state level, the Concerned Ministry shall keep the Land registry in coordination with the MLHUD in the Government of Southern Sudan.
3. Registration offices shall be established at each level of land administration in Southern Sudan.

Customary land can only be subjected to systematic land adjudication and registration if it meets the provisions of Section 15 of the Land Act, 2009 which provides for the allocation of Customary Rights to Land. It provides for the following process:

1. The Traditional Authority within a specific community may allocate customary land rights for residential, agricultural, forestry, and grazing purposes.
2. Subject to consultation with other members of the community, the Traditional Authority will determine the size and the boundaries of the portion of land in respect of which the right is allocated in accordance with customary law and practices.
3. Prior to allocation of a customary land right, the Traditional Authority which allocated the land must notify the County Land Authority or the Payam Land Council or any other relevant land administration thereof and furnish the relevant information pertaining to the allocation for records.
4. The procedures described in sub-section (3) above may not prevent the persons transacting from undertaking the registration procedure in the prescribed form for acquiring the piece of land upon agreement between the new holder and the members of the community therein.
5. Any allocation of a piece of land beyond 250 feddans for commercial, agricultural, forestry, ranch, poultry or farming purposes shall be approved by the Concerned Ministry in the State after transmission by the County Land Authority or the Payam Land Council.
6. Pursuant to the provisions of sub-section (5) above, any allocation shall be based on a land ceiling that shall be prescribed by regulations. These have not yet been determined.
7. If the size of the land is over 250 feddans, the Concerned Ministry in the State or its duly

designated representatives shall verify the following:

- a) the purpose for which land is to be used and its compliance with rules and regulations in the state;
- b) compatibility of such an activity with the land use system in the area;
- c) consensus on the allocation between members of the community;
- d) allocation does not exceed such a size that the Minister finds against principles of equity and fairness; and
- e) the social and environmental impact that activity may cause.

The implementation of the above provisions requires a fully functional land administration system. The findings of this study are that land administration systems are weak, not coordinated and therefore incapable of delivering such a process in its current form. This finding is confirmed by the Van Vollenhoven Institute study 2024 which found that “*land administration in South Sudan is marked by a weak legal and institutional framework*”. There is a high degree of legal uncertainty regarding which land rights are recognized by law and the process for that recognition. In practice, arbitrary processes of land demarcation and registration, expropriation, land use regulation and land classification are commonly used, often to the detriment of people residing and farming on the land, and with limited capacity to defend themselves. Land administration by state entities is often a source of land-related grievances and insecurity. The study further found that land demarcation and registration is happening at large scale in urban and peri-urban areas of South Sudan, under the assumption that such processes would solve the existing land disputes and prevent new ones (Braak 2022:99), and often based on the promise that they will bring state services to the demarcated areas. However, without much law to guide its process, nor avenues to protect people’s rights, land demarcation and registration are

marked by a broad discretion from state officials and are a source of much controversy, corruption, and disputes. Furthermore, the study found that in Torit and Wau land registration involved confusing, time-consuming, and expensive steps, depend-

ent on the discretion of state official and with a lot of leeway for various kinds of rent-seeking and abuse<sup>11</sup>. The study drew recommendations to improve the demarcation and registration of land as provided below<sup>12</sup>.

### Recommendations for demarcation and registration

Carefully consider the pros and cons of implementing land demarcation and registration in each area. While land demarcation and registration are often promoted as a tool to address land-related issues, they are in practice also sources of conflict, grievances and abuse. Priority should be given to areas where demarcation and registration can address already existing problems (e.g., high-level of disputes; rapidly developing land market).

- Carefully study land demarcation and registration processes. Improvements such as minimizing the steps to be taken by clients and reducing possibilities for errors and corruption should be considered. For instance, land holders may not continue the registration process after receiving a demarcation token, which can result in conflict and abuse; the process must be done in one go.
- Better demarcation and registration processes require that the public is informed and consulted throughout. There must also be supervision mechanisms and access to legal aid for those affected by the process.
- Demarcation and registration processes should take displaced people into consideration. While this is a difficult and politically loaded topic – beginning with the challenge of determining who should be considered displaced – without meaningful participation from them, land demarcation and registration risk adding another layer of injustice to an already complex scenario of land claims.
- Clarify the role of chiefs in demarcation and registration processes. Their participation can have advantages (e.g., they can mediate between the community and the state), and disadvantages (e.g., risk of rent-seeking and ethnic discrimination). The design of these processes should account for such advantages and disadvantages, and try to maximize the potential of the chiefs, without opening doors for corruption. For instance, making the recognition of land rights dependent on some kind of certification by a chief is very often a source of abuse and grievances.
- Consider the inclusion of community-driven demarcation processes in legislation, with the necessary caution to avoid capture of the process by the chiefs and powerful community members.
- Regulate and make public all fees involved in the demarcation and registration processes. Public radio campaigns and posters in public institutions, can reduce the possibility of illegal fees being charged.
- Donors should consider how best to support the Ministry of Housing, Physical Planning and Environment to improve its demarcation and registration process.

Van Vollenhoven Institute, Land and Justice pathways in South Sudan 2024, p. 16.

11 Van Vollenhoven Institute, p. 13.

12 Van Vollenhoven Institute, p. 16.



# 3. Dispute resolution and conflict management

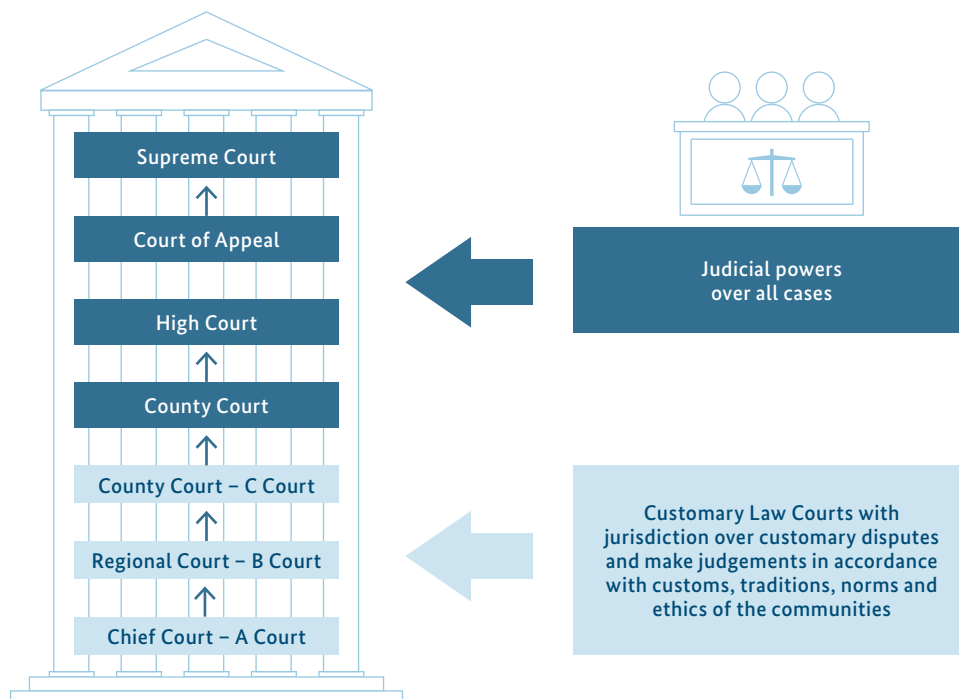
## 3.1 Introduction

This chapter delves into the legal framework governing access to justice and looks at both formal and informal justice systems. The judicial system, although governed by a strong legal regime, is weak in its implementation. Disputes take a long time to resolve, and the justice system still operates a manual-based system of managing cases, making it nearly impossible to know the level of effectiveness and efficiency of the system. Often, people resort to Alternative Dispute Resolution (ADR) mechanisms at the community level to access justice. It is, however, challenging for women to get justice as customary norms and rules are applied in the dispensation of justice. An exploration of ADR systems undertaken by civil society organizations is considered but their sustainability is questionable given that they are donor-funded initiatives.

## 3.2 The justice system in South Sudan

South Sudan has a pluralist legal system that incorporates parallel systems of statutory and customary courts. Article 123 (1) of the Transitional Constitution of the Republic of South Sudan states that judicial power is derived from the people and shall be exercised by the Courts in accordance with the customs, values, norms, and aspirations of the people and in conformity with this Constitution and the law. It vests judicial powers in the Judiciary. In Article 124, the Constitution states that the Judiciary shall be structured as follows: (a) the Supreme Court; (b) Courts of Appeal; (c) High Courts; (d) County Courts; and (e) other Courts or tribunals as deemed necessary to be established in accordance with the provisions of this Constitution and the law.

## The hierarchy of Courts in South Sudan



In accordance with the Constitutional provisions, the 2008 Judiciary Act structured the statutory Courts in a single hierarchy, starting with the Supreme Court at the national level, followed by three Regional Courts of Appeal, and High Courts in the capitals of each of the ten states. It spells out the function of the High Court to include land dispute resolution, registration of awards and litigation related to expropriation for public purposes and compensation. At the local government level, the Judiciary Act envisages County Courts and Payam Courts in all Counties and Payams. County Courts are in-charge of counties and have judges of second and third grade. They receive fresh cases not within the jurisdiction of the High Court. Only a fraction of County Courts has been established and there is not yet a single Payam-level statutory Court in South Sudan. Statutory Courts are only geographically accessible in and around urban areas. In rural areas, where 87 percent of the population resides, customary courts are the main institutions of dispute resolution (LGAF 2013). Section 97 of the Local Government Act provides for four levels of customary law courts:

town bench courts in towns and A, B and C Courts in Counties. It sets the platform for multiple roles of chiefs, as administrative and executive authorities in their villages and as chairpersons of the customary law courts. These courts only hear matters of a customary nature and make decisions in accordance with customs, traditions, norms, and ethics of the communities. Section 98 (3) of the Local Government Act provides for the principles governing the functions of the customary law courts, key among which is the expedience with which justice is delivered, the option to mediate matters, justice to be administered without due regard to technicalities, adequate compensation to be awarded to victims of wrongs, and justice shall be delivered to all in a non-discriminatory manner.

Section 91 of the Land Act, 2009 provides guidance on the resolution of disputes related to land. The Land Act also gives priority to Alternative Dispute Resolution, which includes dispute resolution processes and mechanisms that fall outside the government judicial process and traditional

dispute resolution mechanisms. The Act further states that the customary law and practice of the locality shall apply to resolve disputes related to land. Section 99 provides that for land court proceedings, a Land Division in the High Court in every state consisting of a judge and two assessors shall be established. One of the assessors shall be a representative of the traditional authority and shall possess good knowledge of customary law and practices related to land.

### 3.3 Land disputes and challenges of land dispute resolution

According to the Doing Business 2020 Report for South Sudan, it takes an average of one to two years to resolve a land dispute in the first instance. There are no publicly available statistics on the number of land disputes at the first instance court because there is no streamlined process of registration and tracking of cases. It is estimated though that land disputes comprise as much as 80 to 90 percent of civil cases in the formal system.

The Van Vollenhoven Institute 2024 study found that since the signing of the 2005 Comprehensive Peace Agreement, much effort and money have been invested in developing the South Sudanese Judiciary, but the various waves of conflict have severely damaged the already fragile state institutions involved in the justice sector. The problems are many: first, the number of Statutory Courts is still very low, and in more remote locations of the country there is simply no Statutory Court to turn to. Secondly, accessing the courts entails substantial court fees, particularly in land-related cases, where these fees can reach up to ten percent of the land's value. Additionally, individuals must factor in the expenses associated with hiring a lawyer, as their legal representation can significantly influence the outcome of a case within the adversarial

system of South Sudan. Third, the complexity and delays of court procedures further deter people from using them. Additionally, the combination of long court cases with hefty costs offers opportunities for those with more resources to drag the case in court and force a less wealthy party to give up. These problems make statutory Courts inaccessible to most South Sudanese people.<sup>13</sup>

The South Sudan National Land Commission that was formed in 2006 through a presidential decree No. 52/2006 is one such institution whose mandate is to handle land related disputes through mediation.

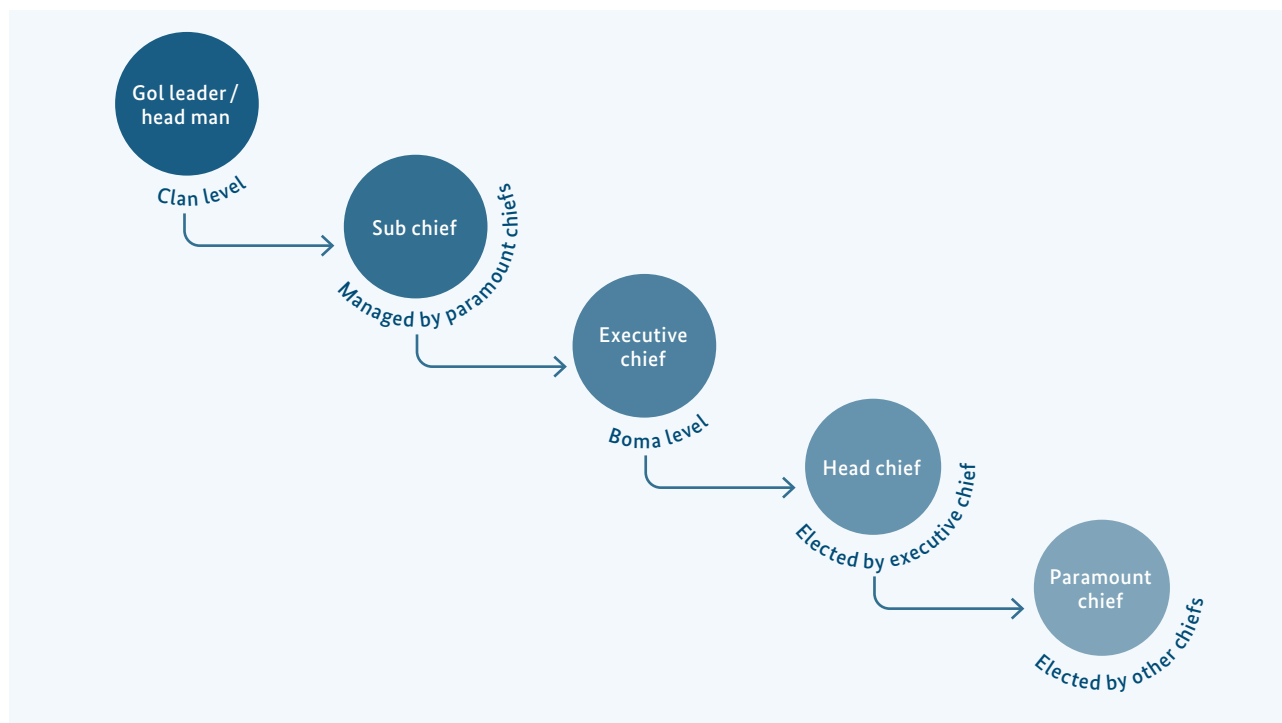
Land disputes involving registered landholdings in urban areas are typically adjudicated in the formal system at the level of the High Court. However, in locations that have experienced large numbers of disputes, high Court judges have channelled land disputes to the County Courts.

Disputes involving unregistered landholdings are usually dealt with by customary courts or through mediations with community leaders. In addition to the relatively more standardized system of statutory and customary courts, local authorities in certain areas sometimes use ad hoc complaint mechanisms to address different types of land disputes. Although the structures as stipulated in the Local Governments Act i.e., County Land Authority and Payam Council, are yet to be established, counties have commissioners who head counties; Chiefs: paramount, head chiefs, executive chiefs and sub-chiefs who play a key role in land dispute resolution.

Even though the Local Government Act states that commissioners will be elected, in some states such as Western Bahr El Ghazal (Wau), the Governor appointed the current Commissioners. Commissioners lead an executive council made up of chief administrators and heads of department. Within

13 Van Vollenhoven Institute, p. 19.

### Incorporation of traditional authorities in local governance including dispute resolution



municipalities, there are *sheikh-el-hilla* who are equivalent to chiefs. It is also common practice to find traditional chiefs forming a community committee to resolve disputes where returnees claim family land occupied by someone else. The committees are composed of elders from the community, appointed by the chiefs, that have adequate history and knowledge of the area and could verify claims of family inheritance to land. Disputants are encouraged to bring witnesses to the committee and customary court that could testify on their behalf as rightful, long-time owners of the land. The decisions from the committees then inform the chiefs' decision in the customary court. In some urban areas the *sheikh-el-hilla* also play a role in dispute resolution.

The resolution of land conflicts using customary law makes it difficult for women to demand or claim their constitutional or statutory rights, even in statutory courts. The poor coordination among the systems further affects the resolution of land conflicts for example, a woman can receive favour-

able decisions in customary or statutory Courts but may find that her husband or male relative can resurrect the dispute in another court that does not recognize the initial court's ruling.

South Sudan operates a paper-based system in its court system. The data on the nature and type of land disputes is not readily available. Typical disputes include allegations of land grabbing by security sector personnel, competing claims over ownership, double allotment of plots to individuals during the formalization process, land acquisitions for the purposes of urban expansion, and various disputes involving groups of IDPs and returnees. Appeals are not handled in a timely manner and judges often will adjudicate appeals based on the lower Court's findings without notifying the disputing parties or giving them an opportunity to present their positions. Enforcement of Court decisions can also present insurmountable obstacles, particularly when decisions are made against individuals who hold military or political power (Deng 2014). In cases where there is a miscarriage

of justice in the lower courts, chances are high that this is carried on in higher courts thereby denying disputants a right to fair hearing and access to land justice.

The problems are exacerbated by gaps between the statutory (more formal) courts and customary (more informal) courts. While the Judiciary has not fully established itself and has limited reach in rural areas, the customary Courts and alternative dispute resolution mechanisms have taken route. Forum Shopping between the multiple overlapping mechanisms of dispute resolution is commonplace. Forum shopping means that because of the existence of multiple justice delivery mechanisms, litigants can choose the best option for them. If that option does not work, they can file a complaint through another justice delivery mechanism. The prevalence of Forum Shopping gives rise to a marketplace for justice especially in the context of South Sudan, a country emerging out of conflict. But it also places defendant parties at a disadvantage, since they can never be fully assured that a final judgment has been issued or whether the case will be resurrected in another forum.

From the Primary data collection<sup>14</sup>, it was reported that in South Sudan, land-related disputes often arise due to conflicting interests and needs related to land tenure, land use, land value, and land development. These issues are exacerbated by fragile institutions, weak land administration systems, political instability, and conflicts such as intercommunal and cattle raiding. This situation leads to uncertainty about land ownership, which in turn hinders investment and has a negative impact on the functioning of the land sector.

South Sudan formal civil legal system mostly draws from the Republic of Sudan and British colonial rule it is comprehensive enough, as it

deals with all disputes among individuals and the public, including those related to land. However, the system has significant weaknesses; it is extremely slow, and cases take a relatively long time before the final rulings are issued, there is low capacity among the personnel as the system is still operated manually. The lack of enforcement of the court decisions has been the main concern for the people<sup>15</sup> seeking justice. Many respondents showed a low level of confidence in the ability of the system to deal with the current situation of land grabbing, exacerbating of land fees and inability of poor families to pay fees and the subsequent loss of their land to land grabbers in Courts due to lack of land documents.

### 3.4 The use of Alternative Dispute Resolution (ADR) systems in South Sudan

The alternative land dispute resolution systems include Payam Land Councils, Boma Land Administration, and customary institutions at the level of tribes and families. Such “*social dispute resolution systems*” rely on the elders of families and tribes, considered the wisest and most experienced people. They take the lead in discussing and deciding on the controversies based on their knowledge. The enforcement of the decisions is reliant on the credibility, influence, and respect of the elders within the society.

In a bid to promote Alternative Dispute Resolution, the Van Vollenhoven Institute 2024 study found that to create legitimate mechanisms to settle land-related disputes, in 2016 civil society organization South Sudan Law Society (SSLS) established several Community Mediation Groups (CMGs) that aimed at mediating land-related conflict inside communities. The objective was

14 Key Informant Interviews in Yei River State, April 2024.

15 FGD: Women Association, Yei, 22<sup>nd</sup> April 2024.

to appoint and train mediators to address local disputes in their geographical area, undertake awareness raising campaigns tailored to the needs of their local communities, liaise with relevant government departments, and refer cases to the lawyers connected to SSLs. The aims of the project were to mitigate the limited number of legal professionals and poor access to dispute-resolution mechanisms; promote community cohesion by bringing community members to work together; and provide a sustainable solution that could live beyond the project cycle. The CMGs were implemented in four locations (Torit, Wau, Yei, and Minle), and a total of 60 CMGs were created. However, in 2020 the project funding ended and since then SSLs has been looking for further funding to restart the work of CMGs. The process of creating a CMG started with a selection of community members willing to be part of these groups; basic literacy, gender diversity and the absence of a criminal record were the criteria for the selection of members. While not specifically required, in most cases the selection process gathered members of diverse ethnic groups. The CMG members then went through a 20-day training process that included topics such as land law, customs, and skills in community engagement, divided into four blocks, which also allowed them to interweave initial activities with the training process. A course manual complemented the training. There were several cases in which the number of female mediators outnumbered the male ones. A key part of this process was the background support given to these groups by SSLs lawyers, first as trainers, mediators and counselors, and taking cases where the mediation had not succeeded to Court (Van Vollenhoven Institute 2024:22). The study further found that the inclusive, community-led, and transparent work of the CMGs seems to have had a positive impact in addressing land disputes inside and outside communities. The CMGs seem to have the ability to fill some of the justice gaps caused by the limitations of jurisdiction of the customary Courts on the one hand, and the difficulty for many people

in accessing statutory Courts on the other. Besides reducing conflict, increasing legal awareness, and promoting cohesion, the pressure of community mediators backed by lawyers can induce the first important steps on the long and arduous road to more access to justice for common citizens (Van Vollenhoven Institute 2024:16). Such initiative requires a sustainability mechanism anchored in communities' systems and structures.



# 4. Land use planning and management

## 4.1 Introduction

Land-use planning is about making decisions on a “*sustainable form of land use in rural and urban areas and the initiation of the appropriate options and measures for their implementation and monitoring.*” The land use plan itself is often a product of both environmental and technical planning processes. In some situations, socio-economic processes that aim to negotiate the interests of different stakeholders constitute part of the land use planning process. Such social processes include, for instance, the creation of social platforms for solving land problems and settling conflicts. Land use planning involves many actions and decisions undertaken to guide the allocation and use of land; to situate or influence different land-based activities in patterns that enable improvements in peoples’ standard of living and the environment. It “*facilitates the allocation of land to the uses that provide the greatest sustainable benefits*” (see Agenda 21, paragraph 10.5).

The product is the development of consensus around a land use plan that is aimed at promoting equitable and efficient land use systems, protection of the environment and solving land-use conflicts. The outcome usually involves “*allocation and zoning of land for specific uses, regulation of the intensity of use, and formulation of legal and administrative instruments that support the plan.*” Although a comprehensive legal framework does not exist, attempts at land use planning have been undertaken in South Sudan. The report analyses the possibility of adopting participatory land use planning as an affordable and people-centred approach to land use planning. This can also be considered as a pathway to tenure security. Without proper planning, urban development will be next to impossible as informal settlements mushroom and expand.

## 4.2

### Legal framework governing land use planning in South Sudan

Chapter XI of the Land Act is dedicated to land use and social and environmental protection. It discusses only the responsibilities of national and state governments in regard to planning. For example, Section 42 (2) provides that the national government has the power to intervene in town and rural planning which is within the jurisdiction of states under Section 43 (5). States are also responsible for land zoning under Section 43 (13).

Similarly, land use and planning provisions in the Local Government Act address only the general responsibilities of state and local government. Schedules I (27) and II (5) of the Local Government Act confer local government councils with responsibility for town and rural planning and concurrent powers with the state over urban development and planning. The Act also requires in Section 88 (1) (b) that States in consultation with Local Government Councils produce Land Use Master Plans. Local Government Councils are then required to prepare policy guidelines for land use rights [Section 91 (3) (d)] and to enact by-laws to regulate land use control and protection [Section 92 (1) (a)].

The current legal framework provides local government with almost exclusive responsibility for land use planning and management but provides no legislative guidance for doing so. Section 61 (2) of the Land Act that references a comprehensive land use plan to delineate land into zones to facilitate investment as required by the Investment Act. Under sub-section (3), the land zoning system is to be adopted in consultation with the community concerned and comply with the existing Land Use Plan. Section 66 (1) provides that the land use planning system referred to in Section 61 is also to be delineated to include pastoral lands to be protected.

The Land Act does not reference the procedures for developing this comprehensive land use plan and there is no evidence that it has been produced. In the absence of legislative guidance, it appears that land administration officials rely on legislation promulgated prior to the CPA. The lack of clear legal frameworks and institutions with adequate capacities to implement land use planning interventions has fostered the development of conflicts between land uses. Easily noticeable is the tension caused by the expansion of urban areas into rural land owned by communities. The grazing demands of pastoralists and arable land needs of sedentary farmers are in perpetual conflict across South Sudan. The fragmentation of communities along political and ethnic lines has fuelled the incidence of conflicts over the utilization of common property resources, especially water, fisheries, and other forestry products (USAID 2013).

Urban planning is equally impacted by the absence of the Town and Country Planning law, leading to mushrooming informal settlements. Urban planning in South Sudan has consisted mainly of rudimentary subdivision layouts usually intended to demarcate plots to be allocated by local authorities. No rigour is applied in the process. As a result, existing field conditions are not considered, and layouts are developed without any proper design of a city in which people want to live. The lack of capacity of urban professionals (planners, municipal engineers, urban designers, architects, etc.) and technical equipment has resulted in the uncontrolled growth of urban settlements, which is exacerbated by waves of returnees and refugees (UN-Habitat 2012).

The Van Vollenhoven Institute 2024 study concludes that although there is no law on land use, it recommends that there is need to:

- Establish clear provisions on land use and stop any practices that do not follow a pre-established legal process.
- Regulate the process of land classification, making it more transparent and inclusive. Avoid provisions that can result in dispossession and further exclusion of poor families (Van Vollenhoven Institute 2024:17).

The law to operationalize these recommendations is the Town and Country Planning Act. Once developed, it is expected to address the fundamental issues pertaining to physical planning in rural and urban areas. These relate to the institutional framework for planning, regional planning for rural development, types of plans, development control, subdivision, and consolidation of rural and urban land, acquisition, and disposal of land by the state and the administrative arrangements for handling planning and land administration disputes. Furthermore, the law will also provide for the subdivision and consolidation of land in urban and rural areas. This captures the process issues of subdividing and consolidating land and quality control of property documents.

If the law is designed this way, since land use planning is all about making decisions on land, then it will be linked to improving or ensuring tenure security. Some of the land use planning decisions include defining land uses, allocation, reallocation of land uses, etc. Having a continuum between land use planning and ascertainment of land rights benefits both people and the environment.

There are four key functions of land use planning that directly link to tenure security:

- Its capacity to identify or determine land areas, parcels, and uses and users.
- Its propensity to enable documentation of land areas, parcels, rights, restrictions, and responsibilities.

- The opportunities it provides for stakeholder involvement, compensation of claims and community participation.
- Its impact on land value, land markets and credit opportunities.

### 4.3 Participatory land use planning. A silver bullet?

In the case of South Sudan, the approach to participatory land use planning for tenure security can provide or work as an intermediate option in the absence of a functioning cadastre and registration system. It can also complement both cadastre and registration.

The principles under which participatory land use planning should be implemented include visioning, people centeredness, public interests, sustainability, continuity, participation, inclusiveness, governance, gender responsiveness and equitability. Others are legality, climate change responsiveness, flexibility, efficiency, feasibility, transparency, acceptability, responsiveness to local realities, pro-poverty. The process must be efficient and affordable.

To effectively implement participatory land use planning, it is important to have a spatial *development framework* as a prerequisite because it helps direct development (in general) towards fit-for-purpose results. It is usually the highest level of spatial planning within a country. Through its lower-level plans (ranging from spatial development plans and local area plans to land use plans) it guides both land use decisions and development frameworks (Todes et al. 2010). A spatial development framework will serve as a statutory development guide for local-level development. It can enable spatial frameworks to link with land use decision-making in ways that support tenure security.

The capacity of participatory land use planning to enable a range of tenure securities will largely depend on the following issues:

- its ability to remedy unclear land borders;
- its position to discourage forceful evictions or avoid expropriation;
- its capacity to use citizens' participation as a tool for resolving land conflicts; and
- its contribution towards keeping or producing records concerning ownerships and rights (including privileges and interests).

Apart from enhancing documentation of land rights (including restrictions, responsibilities, etc.), participatory land use planning can link it to registration and titling. It can cover *“a range of measures that aim to distribute land more equitably,*

*settle people on state-owned land, or recognize and protect customary rights”* (Heinrich Böll Foundation & Institute for Advanced Sustainability Studies 2015:46). It can provide opportunities for promoting gender responsiveness and inequitable principles on land tenure through stakeholder involvements and meetings. Moreover, integrating all stakeholders of land into a meaningful land use planning process may increase people's sense of responsibility, mitigate conflicts and competition over land, and help to achieve sustainable and secure land distribution. When land use planning processes are participatory, inclusive, and recognize the concerns of disadvantaged groups (e.g., women, indigenous, pastoralists and the landless), then tenure security can be attained (Uchendu Eugene Chigbu et al. 2015:10).



## 4.4 Attempts at land use planning in South Sudan

In South Sudan, land use planning processes in both urban and rural areas are still in their very early stages of development. Although the

Ministry of Agriculture, Forestry, Cooperatives and Rural Development has not yet progressed to the point of implementing national land use plans (LGAF 2013) it has conducted several pilot projects on land use planning and mapping in partnership with a number of international organizations. Some of these projects are listed in the table below.

**Table 4: Overview – projects on land use planning and mapping**

Government institution	Development partner	Project description
RSS Ministry of Agriculture, Forestry, Cooperatives and Rural Development	JICA	JICA worked with the Ministry to develop an Agricultural Master Plan for South Sudan (Nakimangole 2013).
RSS Ministry of Agriculture, Forestry, Cooperatives and Rural Development	FAO	From 2006–10, in a project entitled the Sudan Institutional Capacity Programme: Food Security Information for Action (SIFSIA), FAO supported the Government of South Sudan in collecting, analysing and disseminating information on food security in South Sudan. The project covered several issues relevant to land use planning, including information on crop production and rangeland and maps of land cover and usage across South Sudan.
RSS Ministry of Agriculture, Forestry, Cooperatives and Rural Development	NPA, UNEP	NPA's Community Resource Mapping Project (COREMAP) programme generated maps of community resources in specific locations in consultation with people on the ground. In the past, NPA mapped natural resources throughout most of Lakes State. The organization extended its efforts to parts of Central and Eastern Equatoria to complement a pilot community forestry management programme in partnership with UNEP.
State Governments in Western Equatoria and Jonglei, CLAs in Yambio and Bor	ARD	Associates for Rural Development (ARD) worked with state governments in Western Equatoria and Jonglei to develop land governance institutions at the county level, map land-related conflicts. The land use mapping projects, were limited in scope and did not progress to the point of enabling the government to develop and implement official land use plans.

Source: LGAF South Sudan 2014

According to USAID's SRLG Project's experience, "existing planning practices are fostering the development of land use conflicts and lack the application of planning standards. Highly contentious in South Sudan is the planning and management of urban and peri-urban areas. Not only do communities contest and challenge government's eminent domain powers for urban development but claim land administration responsibilities in towns as

well. This is precisely because the law is either non-existent or ambiguous pertaining to the planning and management of towns. Even where the law exists, it is seldom enforced. For instance, evident in both rural and urban contexts is the sharing of road infrastructure by traffic and livestock. In Bor County, land use conflicts of this nature are discernible in Bor town and in Anyid and Kolnyang Payams along the Juba-Bor highway. Inside Bor town, many

*households still keep livestock, while households located far afield have claims on sections of the town previously used as cattle routes. The location of human settlements in Kolnyang and Anyidi Payams is such that during the rain season, cattle must use the same Juba-Bor road when moving to and from grazing areas. This creates conflict between traffic and livestock movement, a situation that can only get worse as the road gets busier. The same can be said of the Juba-Terekeka road in Central Equatoria. In fact, anecdotal data suggests that many other states experience similar problems” (USAID 2013:4).*

According to the LGAF, State and local governments conducted some land use planning activities in urban areas, but their effectiveness was hampered by top-down, non-participatory approaches and a lack of transparency. For example, several different town plans have been created for Juba since 2005. JICA also worked with the Upper Nile State Ministry of Physical Infrastructure to develop a town plan for Malakal (Atekit 2013). These town plans are not available for public review and were not developed with significant input from the public. The town plans have been the subject of occasional reports in local media, but no one outside of a few key personnel in the state-level Ministries of Physical Infrastructure are given access to the plans. Changeovers in administration in the Ministries can make existing town plans obsolete, as new Ministers will sometimes develop their own land use plans rather than working within the bounds of their predecessor’s plans. Although state and local governments oversee most town planning activities, there is also a degree of competition between the national government and state governments over control of the urban planning process (LGAF 2014:46)

Lack of formal planning processes result in large informal settlements with little infrastructure, whether in the form of roads, water, or electricity. The poorly planned urban growth is particularly evident in Juba. Returnees, IDPs, economic migrants, security sector personnel, expats

working in the international aid industry, and people coming to work for the new government have flocked to the city in recent years. Precise population statistics are not available, but it has been estimated that when the CPA was signed in 2005, Juba was home to about 250,000 people, including 163,000 residents and 87,000 IDPs (Martin and Mosel 2011). A 2009 land use survey by the Japanese International Cooperation Agency (JICA) estimated Juba’s population at 406,000, with a 12.5 percent growth rate (Id.) UN World Urbanization Prospects estimates Juba’s population in 2024 to be at 479,359 people, while other estimates place the population at between 500,000 to 600,000 people. However, this number can vary depending on different sources and the impact of factors such as internal migration, conflict, and displacement, which have significantly affected population distribution in South Sudan.



# 5. Gender equality and social inclusion on land

## 5.1 Introduction

Much of South Sudan is still rural, which means land is majorly governed through customary laws administered by customary authorities which are rooted in a patriarchal system. The customary land rights that determine access, inheritance, and succession are based on patriarchal lineage. The report reviews the legal regime governing gender equality and finds that the laws in South Sudan are progressive and transformative in nature. The challenge lies in the implementation and enforcement of these laws. In practice, women still experience exclusion and marginalization on aspects of ownership of land. The study finds that cultural norms and practices are still commonly practiced even when they contravene the provisions of the law. The situation is much worse on matters of succession and inheritance. Although the laws provide for a gender quota, in governance institutions, these are seldom filled by women. It is attributed to the low levels of literacy among other

factors. The study further considered the rights of returnees and IDPS to land, the rights of widows and widowers as well as rights of single-headed households. These categories of people face grave challenges in land access and ownership.

## 5.2 The legal and policy frameworks governing gender equality in South Sudan

South Sudan's legal and policy frameworks largely meet international standards, including the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), all of which promote non-discrimination based on sex. However, the state must ensure equal support across all sectors of

society and implement laws to reduce discrimination against women in practice. This is essential to enhance women's social, economic, and political rights, including property ownership.

CEDAW recognizes that discrimination violates the principle of equality of rights and requires state parties to take 'all appropriate measures, including legislation, to ensure the full development and advancement of women, for purposes of guaranteeing them the enjoyment of human rights and fundamental freedoms and equality with men. CEDAW, Article 5 (a), provides that state parties shall 'modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women. South Sudan ratified the CEDAW in 2014 and is yet to incorporate most of the provisions into its legal frameworks, therefore the enjoyment of rights by women largely remains on paper.

The African Charter on Human and Peoples' Rights on the Rights of Women in Africa, along with its supplementary protocol, the Protocol on the Rights of Women in Africa (the Maputo Protocol), prohibits discrimination against women and articulates the protection of women's rights. South Sudan signed the Maputo Protocol in 2013, and the National Assembly approved its ratification in 2014. Other legal frameworks yet to be adopted include the UDHR, the ICCPR, and the ICESCR. Important to note is, that in June 2019, South Sudan's Transitional National Legislative Assembly (TNLA) unanimously voted to ratify the ICCPR as well as the ICESCR and their respective First Optional Protocols without reservations. It is anticipated that the process of ratification will soon be completed. The ICCPR prohibits legislation of policies that discriminate against women.

The provisions in the statutory frameworks also relate to Priority 17 of the African Union Agenda 2063, which focuses on attaining full gender equality in all spheres of life. SDG 5 focuses on achieving gender equality and empowerment of women and girls by 2030. Key targets and indicators associated with the AU Agenda 2063 (to be achieved by 2023) and SDGs – that are to be achieved by 2030 – include land governance targets and indicators in the realms of equitable access to land for women, men, and youth; and security of land rights for women and vulnerable groups.

Under South Sudan's constitution and law, women and men have equal rights. The 2009 Land Act and Local Government Act assert that all male and female citizens of South Sudan are equal in respect of their rights, including to work, hold political positions and be employed in governmental institutions, social security, and financial rights, and to own, buy, sell, and transfer properties. Although South Sudan's laws do not explicitly discriminate against women, men continue to make decisions on and transact in land and properties. Additionally, the institutional framework in South Sudan includes provisions to ensure representation of women and marginalized groups in decision-making bodies related to land governance. A quota policy requires a minimum of 35 percent representation of women in such bodies. However, the implementation of this provision has not been consistent and as such achieving full representation and meaningful participation of marginalized groups is a far cry.

Although the 2009 Land Act states that women shall have the right to own and inherit land together with any heirs of the deceased, women's land rights are at present highly insecure (De Wit 2004; Pantuliano 2007; GoSS 2009a). The Van Vollenhoven Institute 2024 study found that in South Sudan's customary tenure systems women traditionally do not own land independently. As the customary inheritance systems are aimed at the retention of property and material wealth

within the male lineage, women generally have limited and conditional access to lands, derived from their position as wives, daughters or sisters. Men inherit land from their fathers and women are supposed to marry and acquire rights to land through their husbands. Single women may be granted access rights via their male family members, but widows and other women without husbands or families are in a highly vulnerable position and are regularly denied access to community land.<sup>16</sup> Obstacles abound for widows when trying to claim inherited leasehold rights from the government. To ensure the widow's protection and support, widows may be "inherited" by a male relative of the deceased husband, with more or less say for the widow in this decision.<sup>17</sup> Divorced women are particularly disadvantaged as most of this category lose custody of their children and access rights

to land. Reliance on customary law marginalizes women because customary tenure systems offer only indirect right of access to land either through their fathers, brothers, or through their husbands when married (USAID 2010).

Transforming social norms, customs, traditions, and values that are discriminatory to women gaining rights in land requires deconstructing patriarchal barriers, which perpetuate the traditional authorities' usual way of doing things. The tools, processes, strategies, and policies needed to dismantle patriarchy are centred on the premise that women should enjoy all the rights accorded to them in the existing legal frameworks of South Sudan without any hindrance. Below is a summary of the legal provisions on gender and land.

**Table 5: Summary of the legal provisions on gender and land**

Legal and policy tools	Gender equality provisions
Transitional Constitution of South Sudan (2011 as amended)	<ul style="list-style-type: none"> <li data-bbox="502 1193 1420 1361">▪ Article 14 recognizes that 'all persons are equal before the law and entitled to equal protection of the law without discrimination as to race, ethnic origin, colour, sex, language, religious creed, political opinion, birth, locality, or social status. This provision of the Constitution prohibits discrimination based on sex and makes it clear that men and women are equal before the law.</li> <li data-bbox="502 1373 1420 1697">▪ Article 16 deals specifically with rights of women. It outlines the following '<i>women shall be accorded full and equal dignity of the person with men</i>'; '<i>women shall have the right to participate equally with men in public life</i>' and it also calls on all levels of government to '<i>promote participation of women in public life and their representation in the legislative and executive organs by at least 25 percent as an affirmative action to redress imbalances created by history, customs, and traditions</i>'; and '<i>enact laws to combat harmful customs and traditions which undermine the dignity and status of women</i>'. Finally, it explicitly recognizes women's rights to property by stating '<i>women shall have the right to own property and share in the estates of their deceased husbands together with any surviving legal heir of the deceased</i>'.</li> <li data-bbox="502 1709 1420 1776">▪ Article 28 states that '<i>every person shall have the right to acquire or own property as regulated by law</i>'.</li> <li data-bbox="502 1787 1420 1948">▪ Article 34 recognizes the right for '<i>every citizen to have access to decent housing</i>' and that '<i>no one shall be evicted from his or her lawfully acquired home or have his or her home demolished save in accordance with the law</i>'. In addition, it obliges the government to take measures to achieve the progressive realization of the right to housing for all, regardless of sex.</li> </ul>

16 Van Vollenhoven Institute, p. 30.

17 Ibid.

Legal and policy tools	Gender equality provisions
The Land Act (2009)	<ul style="list-style-type: none"> <li>▪ The Land Act includes many of the same provisions as the Constitution. Section 8 of the Land Act confirms that <i>‘every person shall have the right to acquire or own property as regulated by law and as stipulated in Article 28 (1) of the Constitution’</i>.</li> <li>▪ Women shall have the right to own and inherit land together with any surviving legal heir or heirs of the deceased as stipulated in Article 16 (5) of the Constitution.</li> </ul>
The Local Government Act (2009)	<ul style="list-style-type: none"> <li>▪ Section 110 of the LGA specifically deals with the rights of women and provides the same protection as the Constitution and the Land Act by reaffirming that <i>‘women shall be accorded full and equal dignity of the person with men’</i> and specifically stating that <i>‘women shall have the right to own property and share in the estate of their deceased husbands together with any surviving legal heirs of the deceased’</i>.</li> </ul>
The Investment Promotion Act (2009)	<ul style="list-style-type: none"> <li>▪ Provides for two women to be appointed by the President to be in the Investment Board (in case there are no female members in the Board).</li> </ul>
The Draft Land Policy (2023)	<ul style="list-style-type: none"> <li>▪ Article 3.7 states that <i>“men and women will enjoy equal rights to land and property.”</i></li> <li>▪ Article 4.7 focuses on the Equality of Men and Women in the Exercise of Land Rights. The policy requires all government agencies and all traditional authorities to ensure that men and women enjoy equality of rights to land and other property.  The policy requires that men and women be treated fairly and equally when they seek access to administrative and legal services related to exercise of their land rights. Outlines strategies for extending and protecting women’s land rights in both customary and statutory land access, use, and management systems.</li> </ul> <p>Specific actions include:</p> <ul style="list-style-type: none"> <li>▪ National and state governments to develop programmes to train, recruit and mentor women in land administration and adjudication roles.</li> <li>▪ National government to:             <ol style="list-style-type: none"> <li>i) establish paralegal organizations and networks in rural areas capable of providing advice and aid to women on inheritance and land issues;</li> <li>ii) amend and /or promulgate marriage, inheritance, and related laws to ensure recognition of the equal rights of those women who may not enjoy equal rights under various provisions of customary law and practice (such as divorcees, widows, and daughters); and</li> <li>iii) establish programmes to monitor compliance with laws requiring the adequate representation of women on governing bodies, including local committees, dealing with land issues.</li> </ol> </li> <li>▪ State Ministries responsible for land administration to provide information and services to women on their land rights.</li> <li>▪ Adoption of a Community Land Act which would create <i>“greater statutory protection for land held under customary tenure”</i> and which <i>“would extend the full enjoyment of customary land rights to women”</i>.</li> </ul>

## 5.3 Women's land rights

### Women's land tenure at family and community level

Access to land means the power to acquire property rights through various ways, the rights to use as well as decide how to use the land and enjoy produce from it (e.g., income, food crops, timber, wood). Access to land also includes the right to exclude persons from the land; the right to transfer land rights to members of the family or non-family through bequests, gifts, selling, or renting; to use the land as loan collateral; and to use other resources related to the land. The term also covers the enforcement mechanisms of property rights institutions existing at all levels (family to national) including participation in managerial bodies in solving land conflicts and the right to access property rights information (FAO 2015).

Legal pluralism, whereby customary laws exist in parallel to statutory systems poses a big challenge to the realization of these rights. The rules for access to and use of land under customary law are mostly established, administered, interpreted, and enforced by male traditional leaders or chiefs. Across South Sudan, customary rules are not equi-

table, with each ethnic group applying laws relating to land and land rights within its own territory (USAID 2020), and yet some restrict women's access to land and property (Deng 2016).

According to the Gender Assessment of the Land Sector in South Sudan 2020, the following analysis was done to show what rights to land are accessible to women under the different tenure types. The grid breaks down the rights bundle, thus:

- a) The right of possession (hold) – This states that the titleholder is the legal owner of the property.
- b) The right of control (use) – This states that the titleholder can use the property in any legal way.
- c) The right of exclusion – This states that the titleholder can limit who enters the property.
- d) The right of enjoyment – This states that the titleholder may participate in legal activities they find pleasurable on the property.
- e) The right of disposition (bequeath) – This states that the titleholder has the right to transfer ownership of the property to another party.



**Table 6: Tenure type, characteristics and entitlement rights for men and women**

Tenure type	Characteristics	Who holds which right (F=Female, M=Male, CM=Collective Male, CF=Collective Female)				
		Hold	Use	Transfer	Quiet enjoyment	Bequeath
Freehold (private)	Held in perpetuity and include the right to transfer and dispose of the land.	CM; CF	CM; CF	CM; CF	CF	CM
Registered Leasehold	Leaseholds can be obtained for customary and freehold land. Leases can be granted for periods of 99 years or less. Leases of more than 105 hectares of customary land must be approved by two local government bodies.	CM; CF	CM; CF	CM	CF	CM
Customary ownership	<ul style="list-style-type: none"> <li>▪ Used for residences, agricultural, forestry, and grazing.</li> <li>▪ May be granted for the life of the landholder and are inheritable.</li> <li>▪ Can be subject to usufruct rights and sharecropper agreements but cannot be alienated.</li> <li>▪ Allocated by traditional authorities subject to pre-notification of local government authorities and pre-approval of local government authorities for non-residential land over 250 feddans. (A feddan is a unit of area. 250 feddans is about 105 hectares.)</li> </ul>	CM	CM; CF	CM	CF	CM
Non-formal tenure system (public)	Land pertaining to the State, including roads and other public transportation thoroughfares; watercourses over which community ownership cannot be established; and forest and wildlife areas formally labelled as national reserves or parks. By default, land over which no private ownership including customary ownership is established is declared public.	CM; CF	CM; CF			

Source: IGAD 2020.

In most traditions of South Sudan and under customary law, women are entitled to usufruct rights to land, secured by their father and family before marriage, and by their husband and his family during marriage and widowhood (Deng 2016). Rights over a piece of land are seen to be inherited exclusively by men, since women leave their own lineages and clans when they marry. To maintain the integrity of family and clan territories, an important principle is that women do not take their father's land away from the family and clan upon marriage (Leonardi and Santschi 2016). Each married woman living in a rural area has a homestead and a garden where she and her children can cultivate, and where she has the right to remain with her children if she is widowed. Her sons later inherit that land and other property (both under monogamous and polygamous marriages). However, the right of widows to remain on their land is predicated primarily on having sons to inherit that land. Widows without children or with only daughters find themselves in a more insecure position. If they lack support from relatives and in-laws or the finances to seek legal support, their rights may be denied.

In their study, Leonardi and Santschi (2016) note that for widows to continue having usufruct rights to land or even inherit land, much depends on the widow's individual status and relations in the community she finds herself in. If a widow is well-behaved, she can be supported but if she is not, she may be pushed out of the land completely without regard as to where she will go or survive. However, the definition of 'well-behaved' can be very subjective and socially constructed, which makes their condition more precarious. In many other cultures, the widow would be inherited by the late husband's brother or close relative, where she will continue to benefit from the land. A widow who neither 'behaves well' nor agrees to be inherited loses out greatly on land access rights and livelihood support.

Women whose access to land is greatly challenged are the single women who have increasingly become heads of households due to the many years of conflict that saw many men, who were the heads of households die. Customary institutions have had little experience of dealing with women as heads of households and many traditional institutions have not adjusted as fast in dealing with such emerging contexts making land access rights weaker despite statutory provisions for women's land and property rights (Deng 2016).

Cultural norms and male dominated practices often lead to women's renouncing their lesser inheritance shares in favour of their brothers and male relatives. In many cases, women choose not to claim their inheritance to maintain their relationships with the brothers who would not accept sharing the land and properties inherited with their sisters. The custom is to keep the lands for male family members (?)<sup>18</sup> allegedly to protect family's properties from being transferred by their sisters to non-family members.

In the critical discussions with KIIs and FGDs meetings on women's land rights several aspects interconnect: the contradictions of the national statutory laws and customary practices, unresolved tensions between the individual land rights of men and women, and the management practices of communal lands where the needs of the community must be balanced with the needs and rights of its individuals. Traditionally, women have rights to own land from their husband side, but at the same time it has been disputed by some relative from the husband that women should not be allowed to register land in their name for fear of losing the family land in case the women decided to separate from the husband, and especially when the husband dies.

18 FGD: Payam chiefs, Yei. 22<sup>nd</sup> April 2024.

Three key barriers contribute to limited legal awareness among women and marginalized groups:

- **Limited access to information:** There is a lack of information provision by the government regarding land rights, particularly in rural areas. This limited access to information prevents women and marginalized groups from understanding their legal rights related to land.
- **Lack of capacity building opportunities:** Opportunities for capacity building, such as training programmes on land rights, are scarce. Without access to such programmes, women and marginalized groups may remain uninformed about their rights and unable to advocate for their land rights effectively.
- **Language barriers:** Language barriers pose a significant challenge to legal awareness, especially when legal education sessions are conducted in foreign languages that some individuals may not understand. This lack of linguistic accessibility further marginalizes women and marginalized groups.

Therefore, access to and control over land resources in South Sudan are often distributed unequally among different gender and social groups. Economic resources play a significant role in determining access to land, with wealthier individuals, regardless of gender, having greater ability to purchase land. However, for those who lack economic resources, access to land may be limited, and they may have to rely on inheritance through customary practices. In many cases, customary practices govern land inheritance, and these practices may vary among different communities. While some communities may uphold gender equality in land inheritance, others may prioritize male heirs, leading to disparities in land ownership between men and women. Thus, women who lack economic resources may face challenges in accessing and controlling land, as they may have to navigate customary laws that favour male heirs.

### Customary practices related to succession and inheritance

Customary law and institutions are recognized as part of South Sudan's legal system. The Constitution recognizes "*customs and traditions of the people*" as one of the sources of legislation (Section 5). As mentioned earlier, an estimated 87 percent of the land in South Sudan is community land which is governed by customary law and accessed through allocation, inheritance, gift, and purchase. Women and girls' access to land is often contingent on their relationship to a man and they usually do not have an independent right to claim or inherit land under customary law. Widows, single mothers, and other women without husbands or families are regularly denied access to community land. When women are identified as vulnerable, chiefs can make an exception and give women access to land – usually for a limited period of time.

Customary practices related to succession and inheritance in South Sudan vary among different communities. However, some common practices include:

- **Preference for male heirs:** In certain communities, there is a preference for male heirs in land inheritance. This means that male descendants, such as sons or brothers, are prioritized in inheriting land over female descendants.
- **Patrilineal inheritance:** This inheritance system dictates that land and property are passed down through the male line of descent. In such systems, sons or other male relatives inherit land from their fathers or male ancestors.
- **Family consensus:** Inheritance decisions may be made through family consensus or discussions among family members. This may involve elders or other respected community members mediating inheritance disputes and ensuring that inheritance arrangements are fair and equitable.

### Succession and inheritance in the legal framework

The legal framework concerning land rights in South Sudan provides for equality in inheritance of land between women and men. The Transitional Constitution of South Sudan recognizes the right to equality before the law and prohibits discrimination on the basis of gender. Additionally, the Land Act of 2009 contains provisions aimed at ensuring gender equality in land ownership and inheritance. Under the legal framework, individuals are entitled to pass on their property, including land, to their heirs according to their wishes or in accordance with legal provisions.

However, despite the legal provisions promoting equality, customary practices often play a significant role in determining inheritance patterns in Yei River County. Customary laws and traditions may vary among different ethnic groups and communities, influencing decisions regarding inheritance. In some cases, these customary practices may not align perfectly with the principles of gender equality enshrined in statutory law, leading to disparities in inheritance rights between men and women.

### Women and the formalization of land rights / registration

Women continue to face major obstacles associated with land registration although a small number of financially resourced women in urban areas like Juba have successfully registered plots in their own names. Research further suggests that due to cultural attitudes, some officials in registration departments are often unwilling or unable to register land in women's name. Some of the associated registration challenges include the high costs of first-time registration / documentation or the costs of updating records during land transfers (inheritance, gift, or sale). Most of the processes lack transparency and operate in a top-down manner meaning that women run higher risks of incurring informal costs (bribes). These make the formal and informal costs of land registration extremely high. Also, given the triple roles of women (the produc-

tive, reproductive and community roles), many do not have the time to follow up the lengthy registration processes and are not familiar or even aware of steps to take in the formal processes.

The World Bank (2014) 'Land Governance in South Sudan: Policies for Peace and Development' report further notes that land administration systems in urban areas do allow for land to be registered in the name of women, though the forms that are used do not appear to allow for joint registration. In Juba, for example, it is common for land to be registered in the name of a woman, particularly if she is literate or has financial backing. There are several reasons why women may also be succeeding in getting land registered in their names in more cosmopolitan areas such as Juba: (i) Under the semi-formal registration process, individuals from within the community typically have more control over how the registration process operates and more confidence that the rights of their female relatives will be protected and (ii) In circumstances where communities divide land that was collectively owned into individual parcels for members of a particular community, the costs of allocating land may be less than through the formal registration process. Males in the family are also more willing to allocate land to their female family members.

A growing number of researchers note that though individualization and commoditization of land for private use is gaining traction, it also weakens women's customary land rights under customary law because it increases the uncertainty of their access to land. Land title registration may imply losing land for most women because of their weaker positions in market competition, although there may be gains for some that are financially stable. Matthew and Deng (2019) suggest that future discussions and iterations of the Draft Land Policy need to account for the impacts that progressive or mandatory registration have on women's land rights. Most importantly, although registration is often presented to protect women's land rights, this approach assumes not only that women know

their rights, but also that they have equal access to the financial capital, administrative resources, and social space required to pursue, process, and define a claim. In a context where the land rights of women and ethnic ‘outsiders’ are viewed as secondary and conditional, widespread registration can undermine existing rights and increase marginalization (Pritchard and Deng 2019). In undertaking registration reforms, it will be important to prioritize the rights of women – especially in access to communal land that many continue to benefit from.

## 5.4 Access to land justice for women

### Women’s access to land justice

For too long, the customary law Courts have been dominated by men with a very limited number of women sitting in as chiefs (local judges) despite the requirement by the law of including women representation before the Courts as in the Local Government Act 2009. The Courts also apply customs or norms that are regressive towards recognizing women’s land rights. In many instances, women have been unable to obtain decisions related to property or land on inheritance, allocations, use, access, and ownership in their favour due to patriarchal societal barriers. Most customary law Courts preside over divorce cases within their communities and limit women’s rights related to land and property. The patriarchal system also fails to recognize women’s care-giving role and household contribution hence disadvantaging women. Owing to the nature of conducting proceedings in Customary Courts, they risk being inconsistent and rely on the presiding chief’s discretion running the risk of subjection to manipulation by the chiefs who are mostly men and hold prejudice against women land rights (IGAD 2020).

On the other hand, the formal Courts / dispute resolution structures are not easily accessible to

the larger South Sudan population and are not largely understood regarding their operations since they have not been established in many parts of the country. Due to this, enforcement of women’s land rights through these structures is limited. Where the formal structures exist, the procedures are usually complex, shrouded in lengthy and bureaucratic processes requiring support from lawyers, which has financial implications that are not usually available for many women who have limited incomes or sources of livelihood.

These circumstances limit access to justice for women, especially in the rural areas leading to loss of access to land and property ownership by women during some of their life circumstances like divorce, death of a spouse or parent rendering some of them homeless. Additionally, many women are exposed to exploitation and abuse, they may choose to stay in abusive marriages or relationships to hold on to access, ownership, and use of land, and property.

The Van Vollenhoven Institute 2024 study concluded that while access to justice mechanisms in South Sudan is complicated for many people, it is even more difficult for women in fragile positions. When women are able to access Courts, particularly if they manage to secure a lawyer’s services, good results have been achieved, although some judges remain reluctant to grant women land rights. Moreover, a positive decision by the Court does not necessarily result in a positive outcome, considering the difficulties of implementing Court decisions and the possible backlash from families and communities that women often experience. The role of chiefs in these cases is often limited if not counterproductive, as they are often a source of discrimination. The community mediation groups seemed to have created a much-needed space for women to bring their land-related grievances, both due to the easier access and process, and the more transparent and less discriminatory process<sup>19</sup>.

19 Van Vollenhoven Institute, p. 36.

In a nutshell the underlying causes of the limited access to justice by women before the formal and informal institutions on land dispute resolution could be attributed to the following:

- The patriarchal nature of dispute resolution structures which creates restrictions for women to effectively address women's land rights since most cultural norms and practices rarely recognize women's land rights;
- Occupation of leadership and participatory roles mostly allocated to men in customary Dispute resolution structures. In such platforms, women are represented mainly by male relatives presenting the risk of distorting women's land rights limiting access to justice;
- Limited efforts geared to codification of customary laws / norms among the different communities in South Sudan. Customary are manipulated by men to their advantage;
- Women have limited awareness of the formal Court procedures and other alternative dispute resolution mechanisms, and they are not available at the customary level;
- Women have limited access to money and other resources to enable them to pay the Court fees and hire lawyers;
- Lengthy procedures on access to justice, especially in the formal forums;
- Intimidating systems that might not encourage women in the society to speak out, fearing repercussions in the community and at household level like GBV;
- Limited opportunities for legal aid services, few organizations offer legal counselling and legal representation for women before the Courts of law (IGAD 2020).

## 5.5 Women's participation in land governance

Article 16 of the TCRSS (as amended) provides for 35 percent representation of women at all levels of government and institutions. This creates an opportunity for women's participation at all levels of government in South Sudan however, this quota is largely unattained. Currently, a small percentage of women are constitutional post-holders and work in government administrative set up especially at the sub-national level. Based on staffing information gathered from a few land institutions at the national level, an analysis of the gender composition is presented below.

The MLHUD has 23 females (19 percent) out of 118 classified staff – 95 male (81 percent). The number of women holding senior positions in which critical decisions on housing and land are made is quite small as compared to men instead, the number is slightly high under the inspection roles<sup>20</sup>. For a Ministry that champions land rights, the number of female staff do not meet the affirmative action threshold of 35 percent. Having a critical number of women in a land administrative institution is important in amplifying their voices and include women's perspectives.

Although most of the Directorates of the South Sudan Land Commission are not fully operational, the executive positions constitute 33 percent female representation, and the classified staff (employees who are not required to hold a certificate or a letter of authorization as a prerequisite to obtain or keep their job) have 44 percent of female representation.

The Specialized Standing Committee on Land and Physical Infrastructure in the National Legislative Assembly has 15 members, with four (26 percent) female representation. The chair is a male and the

20 Interview with the Under Secretary MLHUD, May 2024.

deputy chair a female. Given the recent amendment of the number of female representatives in the executive bodies to 35 percent, the current composition of the Committee does not meet the 35 percent quota.

Although Article 123 (6) of the Transitional Constitution of South Sudan provides for a substantial representation of women in the Judiciary having regard to competence, integrity, credibility and impartiality, the Judiciary is dominated by men and features a handful of women at the lower County Courts. Judicial appointments since independence of South Sudan have mainly featured male judges with only two females, with one of the appointees serving as a ‘secretary’ to the Chief Justice (Logo 2014).

Section 45 (1) (f) of the Land Act provides for a woman representative to be among the five members of a County Land Authority (CLA). Although the legal requirement exists, these structures have not yet been constituted.

Apart from cultural biases against women’s participation in public spaces, the high illiteracy rates among women of approx. 70 percent are a leading obstacle in filling the 35 percent quota in public administrative bodies – especially at the sub-national level. The lack of critical numbers in the land decision-making bodies impacts decisions on land matters, from which the largest percentage of the women rely. While it is possible to appoint women to executive positions, it is challenging to find qualified women to fill up various structures at both national and sub-national levels.

During the consultations for the new land policy in 2023, special workshops on improving women’s access to land and property were organized. However, putting this into practice continues to be problematic, partly because the land policy is yet to be passed and signed into law. In 2021, South Sudan developed its National Women’s Land Rights Agenda to guide and implement actions

that would strengthen women’s land rights. Part of this was to ensure that the National Land Policy was strengthened in terms of Gender Equality. The National Women’s Land rights Agenda is intended to contribute to the improvement of land governance in South Sudan to enable enhanced economic growth, increased resilience, food security, reduced conflicts, improved natural resources management, and reduced land degradation.

The agenda builds on the National Gender Assessment of the land sector in South Sudan which identified key issues impeding the realization of women’s rights to land ownership with analysis on the land-related legal policy and frameworks that give the citizens of South Sudan power to access and own land irrespective of their gender. Key identified strategic, and long-term women’s land rights policy support challenges issues include:

- provision of rights and protection for civil and customary marriages;
- protection of the land rights of women living in de-facto unions and presumptive marriages;
- requirements for joint consent for land transactions in urban and rural areas regardless of the type of marriages;
- consideration for joint registration by both spouses;
- recognition for the disproportionality of the impact that natural resources concessions and state-led expropriation have on women lands and property; and
- assurance that compensation for land rights is not exclusively channelled through men and male relatives.

Key identified priority issues identified in the National Women’s Land Rights Agenda include:

- structural exclusion of women in policy formulation and implementation processes in the land sector;

- gender gaps to land under South Sudan's plural legal systems and socio-cultural diversities;
  - limited platforms for women's popular demand on equitable land rights;
  - limited access to justice for women in the formal and informal dispute resolution mechanisms;
  - limited access to information, awareness, and resources on women's land rights;
  - inadequate implementation of policies and laws promoting women's land rights;
  - weak coordination and collaboration between land governance structures and key stakeholders on women's land rights; and
  - key land sector actors have limited institutional capacity (human resources, technical knowledge).
- **Returnees and displaced people:** Yei River County, like many regions in South Sudan, has experienced significant population displacement due to conflict and natural disasters. Returnees and displaced people often struggle to reclaim their land rights upon returning to their communities. Their land may have been occupied or redistributed during their absence, leaving them without secure tenure or facing competing claims. Additionally, these individuals lack the documentation or legal support necessary to assert their rights. The situation in Yei is worsened by presence of former army generals who have forcefully settled on lands belonging to others.
  - **Single-headed households:** Single-headed households, particularly those led by women, are vulnerable concerning land rights. These households include single mothers, elderly individuals, or individuals with disabilities who lack the support networks typically associated with extended family structures. As a result, they face challenges in accessing and maintaining land tenure, leaving them susceptible to land dispossession or exploitation by more powerful actors within the community.

### Rights of vulnerable populations

From the primary data collection, Key informants and FGDs highlighted several groups within Yei River County as being vulnerable concerning land rights: The groups include:

- **Widows or widowers and female-headed households:** Widows, widowers, and female-headed households often encounter significant challenges regarding land rights in Yei River County. In many communities, discriminatory practices and customs were reported to exclude them from inheriting or retaining land after the death of their spouse. Without secure land tenure, widows and female-headed households face heightened vulnerability to poverty and exploitation. Additionally, they lack the legal awareness and resources needed to navigate complex land tenure systems and assert their rights effectively.



# 6. Case study: Land administration and management in Yei River County

## 6.1 Overview of Yei River County

Yei River County is one of the six counties of the Central Equatoria State, subdivided into five Payams: Yei Town, Mugwo, Otego, Lasu, and Tore. Central Equatoria State comprised six counties: Terekeka, Juba, Lainya, Kajokeji, Yei River, and Morobo. Yei River County has rather a complex history of local governance on land rights, which justifies the choice to conduct fieldwork in the County for the Legal, Social and Institutional Framework on Land Rights Project in South Sudan.

The British colonial rule in Yei and later the impact of the Sudan People Liberation Army / Movement (SPLA/M) during the North-South civil war resulted in many changes to local governance. These changes are reflected in how land is locally perceived or governed today. Demographically, the Kakwa ethnic community forms the majority

community in Yei River County, so local governance practices in the County are commonly based on Kakwa traditional practices.

In the precolonial period, traditional leadership in Yei was based on a group of stakeholders (*Monye-menu*<sup>21</sup> – land custodian, *Matat Lo kudu* – chief of the rain, *Katokelanit* – traditional healer, and *Matat Lo Galaka* – chief of the ranch), each tasked with a specific aspect of governance. A *Monye-menu* was (and still is) the basic territorial unit owned by a clan, and the *Monye-menu* tasked with land administration on behalf of the landowners in the clan.

During the colonial period, the British colonial administration in Yei forcefully resettled various clans from their traditional settlements to preselected areas, arguably to eradicate sleeping sickness. In the process, this administration replaced the group of traditional leaders with individual

21 Land custodians and chiefs, Yei, 22<sup>nd</sup> April 2014, FGDS with Youth and Traditional Leaders.

chiefs who became facilitators between the colonial administration and the communities. Most of those settlements remained in the villages throughout the postcolonial period.

During the civil war (1983–2004), the SPLA/M made more changes to traditional leadership, replacing chiefs perceived as “incapable” with those aligned with military objectives. This restructuring extended to the administrative level, with villages being upgraded to Counties, Payams, and Bomas without comprehensive studies on the implications for land rights and administrative boundaries. As part of these changes, numerous army garrisons were established, ostensibly to train soldiers. However, the impact on land rights and conflict around land became evident following the initiation of South Sudan’s land reform programme in 2005. One notable consequence was the refusal of the army to relinquish control over these garrisons to the rightful owners, exacerbating tensions and disputes over land ownership and use.

The militarization of leadership in villages, coupled with the establishment of army garrisons, created a volatile environment where land rights became increasingly contested. The lack of clear administrative boundaries and the military’s refusal to cede control over strategic locations further complicated efforts to resolve land-related conflicts. These developments underscored the need for comprehensive land governance reforms that account for the complexities introduced by militarization and administrative restructuring. Addressing land rights issues effectively requires not only legal and policy reforms but also efforts to mitigate the impact of militarization on local governance structures and community relations.

This cannot be a localized approach but requires a national reconciliation process through the application of transitional justice mechanisms. This nationally determined process must be unanimously agreed and must have political commit-

ment towards its implementation. The examples that can be cited are the Truth and Reconciliation Commission of South Africa and the Gachacha Courts of Rwanda.

### **Housing, land, and property**

Almost all the Focus Group Discussion’s (FGDs) 43 participants responded that their households (plots) do not have formal written documentation to prove their tenure arrangements, such as a written ownership paper. Moreover, this made the households to more susceptible to face an ownership dispute. Rules and processes on housing and land are unclear to the community, and eviction threats, among other issues such as lost documents, unlawful occupation, and land grabbing disputes are on the rise.

Yei River County has established land institutions, the County Land Authority, the Payam Land Councils and the Boma Land Administration. These have had basic training and are actively supporting land administration activities, although at a small scale as there is limited capacity as well as lack of equipment and technical staff to enable them perform optimally.

Although Yei River County benefited from the training of para-engineers in surveying in 2006, only three of those trained are in the county. Because of limited capacity, Yei River County has over the years borrowed land administration services, particularly survey services from Juba County. This has been a costly and unsustainable venture that has led to the stalling of delivery of land services. Yei lacks the equipment and necessary personnel to deliver the land services necessary for the guarantee of tenure security to its people.

## 6.2 Factors affecting access to land in Yei River County

Access to land for communities in South Sudan is hindered by various factors, including lack of clear land documentation, corruption, high land registration costs, adherence to customs and traditions, and limited institutional capacity. Communities face challenges such as land grabbing, illegal sale of land, and lack of knowledge about their land rights, which further exacerbate tenure insecurity and hinder equitable access to land.

Specific challenges as discussed by both KII and FGDs include:

- When Yei town was liberated from the Khartoum government in 1997, all government buildings and private lands which were registered and owned by traders from Sudan were handed over to the County governments. However, some individuals who settled on individual land and traders from Sudan have refused to hand over the buildings they are occupying to the County government, they take them as rewards for their contribution to the independence of South Sudan.
- The absence of a judge for the high Court in Yei River County for over eight months since October 2023 presents a critical obstacle to the resolution of land disputes. Without judicial oversight, the adjudication of land-related cases is significantly impeded, leading to prolonged legal proceedings and heightened tensions among communities. Land disputes are inherently complex and often require impartial judicial intervention to reach fair and equitable resolutions. However, the prolonged vacancy in the high Court exacerbates delays in the legal process, prolonging the uncertainty and instability surrounding land tenure issues. Furthermore, the lack of judicial oversight may erode public trust in the legal system and exacerbate perceptions of injustice. Communities reliant on

the Courts to uphold their land rights may feel disenfranchised and vulnerable in the absence of timely and effective judicial intervention.

Addressing the absence of judicial oversight in Yei River County requires urgent action to fill the vacant judge position and ensure the swift resolution of land disputes. By reinstating judicial oversight, the local authorities can alleviate tensions, restore confidence in the legal system, and facilitate the peaceful resolution of land-related conflicts.

- The rapid expansion of the town of Yei's urban areas, coupled with the absence of proper town planning, has facilitated widespread land grabbing in the area. As urban areas expand unchecked, there has been a notable increase in encroachments on agricultural and residential lands, perpetuating tensions and conflicts over land ownership and use. Without adequate urban planning measures in place, the process of urban expansion becomes haphazard and unregulated. As a result, valuable agricultural lands are converted into urban developments, displacing local farmers and disrupting food production systems. Additionally, residential areas may become overcrowded, leading to inadequate infrastructure and services for residents. The phenomenon of land grabbing not only threatens the livelihoods of those directly affected but also undermines the broader goals of sustainable development. By prioritizing short-term gains over long-term sustainability, unchecked urban expansion exacerbates environmental degradation, exacerbates social inequalities, and perpetuates cycles of poverty and insecurity. Addressing the challenges posed by urban expansion and land grabbing in Yei requires comprehensive urban planning strategies that prioritize equitable access to land and resources. This includes the establishment of clear land-use regulations, mechanisms for community participation in decision-making processes, and initiatives to protect agricultural lands and natural habitats.

- Encroachment into Yei River County territory from neighbouring counties, such as Lanyia County, further complicates land governance and exacerbates tensions among communities. Clear demarcation and resolution of territorial disputes are essential to prevent conflicts.
- **Security threats:** The presence of armed individuals, including government soldiers grazing cattle on farming lands, poses a serious security threat to local communities. Additionally, the destruction of marketplaces by livestock further compounds security concerns and hampers economic activities.
- **Environmental degradation:** Unauthorized cutting down of trees without replanting plans contributes to environmental degradation and exacerbates the impact of limited rainfall in the County. Addressing deforestation and promoting sustainable land use practices are crucial for environmental conservation and climate resilience.
- **Complex land governance procedures:** The lengthy and bureaucratic procedures involved in land acquisition, which require approval from multiple land governance authorities, pose significant challenges for individuals and families seeking land for settlement or investment. Streamlining these procedures and enhancing transparency in decision-making are essential to improve access to land resources.
- **Limited financial resources:** Many landowners in Yei River County lack the financial resources to register or develop their land, making them vulnerable to land grabbers. Poverty exacerbates land insecurity and impedes sustainable land management efforts.
- **Overcrowding and limited land availability:** The influx of returnees from Sudan, Uganda and DRC has led to overcrowding in certain areas, including Morobo and Lainya among other areas, exacerbating competition for limited available land. Additionally, many returnees find themselves without land, either because their previous land was grabbed during their absence or because there is simply no land available for allocation.
- **Lack of legal documentation:** A significant portion of land in South Sudan is owned by communities but lacks formal legal documentation. This absence of legal documentation makes it difficult for communities to assert their land rights and exposes them to the risk of land grabbing and conflicting claims.
- **High costs and resource constraints:** Accessing land documentation involves significant costs, including expenses for site visits, legal assistance, and administrative fees. However, many communities lack the financial resources to cover these costs, further marginalizing them from formal land ownership.
- **Corruption and double allocation of land:** Corruption within the land management system is rampant and often leads to double allocation of land, where the same plot of land is allocated to multiple individuals or entities. This corruption undermines the integrity of land administration and perpetuates land grabbing and disputes.
- **Conflicting land claims and weak institutional capacity:** Historical land injustices, conflicting land claims, and weak institutional capacity contribute to land disputes and undermine effective land governance. Weaknesses in land administration institutions impede the enforcement of land laws and exacerbate existing challenges.
- **Informal settlements and changing land values:** Informal settlements and land speculation contribute to the fragmentation of land ownership and further complicate land governance. Rapid urbanization and changing land use patterns add additional pressure on available land resources.

Addressing these limiting factors requires comprehensive reforms in land governance, including measures to improve land documentation, strengthen institutional capacity, combat corruption, and promote equitable access to land resources. Efforts to raise awareness on land rights, address gender inequalities, and provide legal assistance to vulnerable communities are also crucial in overcoming these challenges and ensuring sustainable land management in South Sudan.

### 6.3 Cost drivers of land registration in Yei River County

Based on the inputs provided by KII and FGDs, the main cost drivers and considerations for conducting land rights documentation and mapping exercises include:

- **Site visit:** This involves the cost of physically visiting the land to assess its boundaries, condition, and other relevant factors.
- **Survey costs:** Expenses related to conducting surveys to accurately map the land and determine its boundaries.
- **Sketch map:** Creating detailed maps or sketches of the land for documentation purposes.
- **Land lease documents:** Costs associated with obtaining or drafting lease agreements for the land.
- **Land contract:** Expenses related to legal contracts governing the land use or ownership.
- **Residential certificate from the chief:** Document confirming residential status issued by traditional leaders.
- **Free of charge certificate from the municipalities:** Some municipalities issue certificates confirming certain aspects of land ownership or use free of charge.

- **Allotment certificates:** Documents indicating the allocation of specific plots of land to individuals or entities.
- **Title deed from the Judiciary:** Formal legal document proving ownership or rights to the land.
- **Approval certificate for building:** Necessary documentation to obtain approval for constructing buildings on the land.
- **Unofficial/facilitation costs:** Additional expenses that may arise during the documentation process, such as fees for expediting procedures or informal payments.
- **Land dispute costs:** Expenses incurred in resolving disputes related to land ownership or use.
- **Currency fluctuations:** Fluctuations in local currencies against major currencies like USD can impact the overall cost of the documentation process.

Overall, these factors contribute to the complexity and expense of land rights documentation and mapping exercises, highlighting the need for careful planning, adequate resources, and stakeholder engagement to ensure successful outcomes.

A tool for costing and financing land administration services was developed as part of this assignment and can be used to populate and draw a proximately realistic estimate for provision of transparent and cost-effective land administration services. In order to do this, it is paramount that government departments at various levels work together to agree on fees to be charged and clear regulations and fees schedule be made known to the general public through a client's charter. In this way, the land administration services in South Sudan can be made more affordable and sustainable over the long term.

## 6.4 Challenges faced by county government in Yei River County

Effective land management is essential for ensuring equitable access to land rights and sustainable development. However, the County government of Yei faces numerous challenges in this endeavour. Below is a summary of key obstacles encountered by the County governments in managing land resources and ensuring equitable access to land rights.

### Lack of infrastructure

The lack of infrastructure, especially concerning digitalization and computer systems, presents a major obstacle to efficient land management practices. Without sufficient technological resources and systems in place, government agencies face significant challenges in handling land administration processes effectively. In Yei, the State Ministry of Infrastructure operates under severe limitations for example the absence of electricity hampers daily operations, hindering access to essential digital tools and communication networks. Moreover, the scarcity of functional computers further exacerbates these difficulties, impeding data processing and record-keeping tasks. Compounding these challenges is the absence of adequate storage facilities, such as lockable drawers, necessary for the safekeeping of critical land documents. Without secure storage options, vital records are at risk of damage, loss, or unauthorized access, undermining the integrity of land administration processes.

### Budgetary constraints

Limited budget allocations hinder governments' ability to equip land management ministries with essential resources. This includes funding for digital tools, technology necessary for effective land management. Additionally, budget constraints limit the ability to provide training and capacity-building programmes for staff, hindering their proficiency in utilizing modern

land management tools and technique. Despite developing a budget, the state department highlighted that no resources were allocated to them, leaving them surviving with resources from few services charged by the state department. All revenues are collected and channelled to the County budget, but minimal, and in some cases, none is allocated to the state department of infrastructure.

### Manual work supports corruption

Reliance on manual processes within land administration departments creates opportunities for corruption. Without proper oversight and accountability mechanisms, government officials may engage in corrupt practices, exacerbating issues of inequitable land access.

### Capacity constraints

Inadequate technical capacity, such as a shortage of skilled surveyors and planners, undermines governments' ability to manage land resources effectively. Without qualified personnel, land administration processes are delayed or conducted improperly, leading to disputes and inefficiencies.

The shortage of qualified personnel exacerbates existing challenges in land governance and administration. Without skilled surveyors and planners, governments struggle to conduct accurate land surveys, demarcations, and spatial planning activities. This leads to inconsistencies in land records, improper land allocations, and disputes over land ownership and boundaries. Furthermore, the lack of technical capacity hampers efforts to implement modern land management practices and utilize digital tools effectively. In Yei, the absence of skilled personnel impedes the adoption of technology-driven solutions for land administration, limiting the ability to improve efficiency, transparency, and accountability in land governance.

A detailed staff capacity table below provides insight into the extent of the capacity constraints facing land management ministries. This table highlights the shortage of skilled personnel across various roles, including surveyors, planners, and administrative staff, underscoring the magnitude of the challenge and the need for urgent action. Addressing capacity constraints requires invest-

ment in training and capacity-building initiatives to enhance the skills and expertise of land management personnel. Governments must prioritize recruitment and retention strategies to attract qualified professionals and provide ongoing professional development opportunities necessary for improvement of land administration services.

**Table 9: Capacity assessment of government institutions – Yei River County, Ministry of Physical Infrastructure**

Position	Level of training		Number of staff		Required / optimal public service number	
	Senior	Junior	Senior	Junior	Senior	Junior
Surveys and mapping	Trained	Untrained	3	1 trained	5	20
Physical planning	1 trained	2 untrained / learning on the job	1	1 trained and 2 going through on job training	3	7
Land valuation and taxation			1	1 trained and 2 going through on job training		
Registration			1	1 trained and 2 going through on job training		
GIS			1	1 trained and 2 going through on job training		
Cartography			None	None		
Planning & quality assurance (M&E)			None			
Land use regulation & compliance	1 trained	2 going through on job training	1	1 trained and 2 going through on job training		
Finance and administration			1		1	1
Internal audit			nil			

Source: Key informant interviews with staff in the Ministry of Physical Infrastructure.

### Resource constraints for training

Resource constraints for training initiatives exacerbate the challenges faced by governments in land management. In Yei, where resources are limited, the inability to allocate sufficient funds for training programmes hampers efforts to enhance the understanding and capacity of personnel involved in land administration at the county level. Without adequate training, County land officials tasked with land management responsibilities may lack the necessary skills and knowledge to effectively carry out their duties. This has resulted in inefficiencies, errors, and inconsistencies in land administration processes, further complicating land tenure issues and perpetuating disputes. Additionally, the absence of training programmes undermines efforts to modernize land management practices and implement new technologies or systems. Without ongoing training and professional development opportunities, land officials struggle to adapt to changes in land governance frameworks or emerging best practices in the field.

To address resource constraints for training, the County must prioritize investments in capacity-building initiatives for personnel involved in land administration. This includes allocating sufficient funds for training programmes, workshops, and seminars to enhance technical skills, legal understanding, and proficiency in modern land management techniques. Furthermore, the County can explore partnerships with international organizations, NGOs, and other stakeholders to leverage additional resources and expertise for training initiatives. By investing in the professional development of land management personnel, governments can strengthen their capacity to effectively manage land resources and promote equitable access to land rights for all citizens.

### Land grabbing and marginalization

The widespread practice of land grabbing in Yei River County, coupled with the marginalization of certain groups, intensifies inequalities in land

access and ownership. Land grabbing in Yei occurs when powerful individuals or entities seize control of land, often through coercive or illegal means, for their own benefit. This, in many cases involves displacing local communities, exploiting natural resources, or establishing exclusive land ownership without regard for the rights of existing land users. The lack of legal protections and political influence, makes many people in Yei vulnerable to exploitation and displacement. To address these challenges, the County must prioritize transparent and equitable land governance processes that prioritize the needs and rights of all citizens, particularly marginalized groups. This includes enforcing land laws and regulations, protecting the rights of vulnerable communities, and promoting inclusive decision-making processes in land management.

### Land disputes

Land disputes are a significant drain on both time and resources, diverting attention away from effective land management practices. In Yei, the protracted nature of land disputes not only ties up valuable administrative resources but also creates uncertainty and instability within communities. As disputes linger unresolved, they can escalate into broader social conflicts, undermining trust in governmental institutions and impeding progress towards sustainable development goals. To address these challenges, governments must prioritize investments in mechanisms for resolving land disputes swiftly and fairly. This may involve establishing specialized dispute resolution bodies, such as land tribunals or mediation committees, equipped with the necessary legal expertise and resources to adjudicate conflicts effectively. The Local government Act, 2009 provides a number of land dispute resolution institutions that are yet to be operationalized in Yei River County. There is also a need to promote transparency and accountability in land administration processes which is essential for preventing disputes from arising in the first place.

**Lack of proper documentation:** Incomplete or inadequate documentation of land plots and ownership status complicates land management efforts. At the time of this research, land documents are stored in hard copies at the state Ministry of Physical Infrastructure, the lack of trust between communities in Yei and the state regarding land documentation is a significant barrier to effective land governance and sustainable land management. This distrust stems from various factors: Historical Injustices, Perceptions of corruption within land administration institutions, Limited transparency in land documentation processes, including opaque decision-making and insufficient public access to land records. Communities may feel excluded from decision-making processes and lack confidence in the accuracy and reliability of land documentation. In addition, weak enforcement of land laws and regulations leads communities to question the state's commitment to upholding land rights. When land disputes arise, inadequate legal remedies or delays in resolving conflicts can further undermine trust in the state's ability to protect land rights.

Addressing the lack of trust in land documentation requires concerted efforts to enhance transparency, accountability, and community participation in land governance. This may involve measures such as improving the transparency of land administration processes, strengthening legal frameworks to combat corruption, enhancing public access to land information, engaging communities in decision-making, and building partnerships between government institutions and civil society organizations to promote dialogue and trust-building.

## 6.5 Capacity development needs at state and county levels

From the primary data collection, stakeholders at state and county levels in Yei identified various capacity development needs related to land use mapping and participatory methodologies. These include:

**Training on the law:** Capacity-building initiatives are required to train stakeholders on the Land Act of 2009<sup>22</sup> and other relevant legal frameworks governing land governance. These trainings will aim to enhance understanding of the law, their rights and responsibilities and its practical application at different levels of government and within communities. Training should be tailored to State officials in the Ministry of Physical Infrastructure, women and youth groups, and traditional authorities.

**Capacity building for land officers:** There is a need to enhance the capacity of land officers through targeted training programmes. This includes equipping them with the necessary specialized knowledge and skills to effectively carry out their duties in land administration and management.

**Digitalization of land records:** Stakeholders require support and resources to digitize land records and establish modern management information systems for land databases and documentations. This digitalization effort aims to streamline land administration processes and improve access to accurate land information.

**Coordination of different agencies:** Capacity development efforts should focus on enhancing coordination among different agencies responsible for land governance at the national and state levels. This includes training programmes aimed at improving collaboration and cooperation among stakeholders involved in land management.

**Conflict resolution mechanisms:** Capacity development programmes should focus on equipping stakeholders with skills and mechanisms for resolving land-related conflicts effectively. This includes training on conflict resolution techniques and mediation processes.

**Urban planning:** Capacity building efforts should include training on modern urban planning methodologies, especially in rapidly growing urban areas like Yei. This training aims to enhance stakeholders' capacity to plan and manage urban development in a sustainable manner.

**Legal representation and legal aid**<sup>23</sup> support communities in matters that require legal representation and legal awareness. In the past South Sudan Law Society provided such support that was considered helpful to communities.

Addressing these capacity development needs is essential for strengthening the institutional framework for land governance in South Sudan and ensuring effective and equitable management of land resources.

## 6.6 Recommendations for addressing land management challenges in Yei River County

Below are proposed recommendations in addressing land governance and management issues in Yei River County:

### 1. Enhance legal documentation and land registration processes

The report highlights that most participants (43 respondents) indicated that their households do not have formal written documentation to prove their tenure arrangements. The same was echoed by key informants who empha-

sized the need to streamline the process of land registration by reducing bureaucratic steps and providing clear guidelines for land documentation and registration. This can be done in partnership with the County Ministry of Physical Infrastructure and popularised among all key stakeholders. The process has to be done in a transparent way, rebuilding trust between government officials and community members. Additionally, a community-led mapping project with the involvement of local chiefs and land committees can ensure the accurate and inclusive documentation of land ownership.

### 2. Strengthen legal awareness and access to legal support

The report identifies that “widows, single mothers, and other women without husbands or families are regularly denied access to community land” and lack “legal awareness and resources needed to navigate complex land tenure systems. There is need to enhance legal awareness campaigns and provide free or subsidized legal support to vulnerable groups to help them assert their land rights. This could be done in partnership with NGOs and legal aid organizations to offer workshops and legal clinics in Yei River County, focusing on land rights and inheritance laws.

### 3. Support the establishment and / or operationalization of decentralized land management Institutions

The report highlights that Yei River County has land committees, most of which are yet to be operationalized in practice as envisioned in the Local Land Governance Act and the Land Act, 2009. The committees envisioned in these laws were intended to play a critical role in resolving land disputes. Programme interventions can work to ensure that County Land Management Committees, Payam Land Councils, and Boma Land Authorities are fully

23 FGD: Payams chiefs, Yei. 22<sup>nd</sup> April 2024.

operationalized and empowered to resolve land disputes and manage land allocations. Once established and operational, the project can further provide training and resources to these committees and regularly monitor their performance to ensure they are effectively addressing land issues.

#### 4. Promote gender equality in land ownership and inheritance

The report highlights that “*customary practices often play a significant role in determining inheritance patterns,*” often disadvantaging women. There is a need for the enforcement of legal provisions that promote gender equality in land ownership and inheritance and educate communities and traditional authorities on these laws. This can be done through conducting community outreach programmes that involve local leaders and women’s groups to advocate for gender-equal land rights. Create awareness around and transform discriminatory social norms or practices against women land rights.

#### 5. Support the development and implement urban planning strategies

The report describes the rapid expansion of the town of Yei that is resulting to widespread land grabbing and unplanned settlement. The project can support development of comprehensive urban planning strategies to manage the expansion of Yei town and prevent land grabbing. This can include the development of zoning by-laws and urban development plans that designate specific areas for residential, commercial, and agricultural use, ensuring sustainable land use. The process of urban planning must be participatory, factoring in the different land uses.

#### 6. Improving infrastructure and technological resources at the State Ministry of Physical Infrastructure

The report highlights the poor documentation and storage of land document at the state

ministry. In the immediate term, a manual land management system that is efficient and organized can be established, alongside storage cabinets to ensure safety of these critical documents. In the medium term, there is need to invest in digital infrastructure. This should be accompanied with equipping land management offices with necessary digital tools, including computers, software, and reliable internet access. In the long-term, before the county is connected to electricity, the project can secure funding for the installation of solar power systems to ensure continuous electricity supply for digital operations. This will support the creation of an online land registry system to store and manage land records securely and efficiently. Digitalization needs to be accompanied by capacity building of the staff.

#### 7. Strengthen policy, institutional and legal framework

Institutional and legal frameworks are a cornerstone for attainment of land rights tenure for South Sudanese. The Government of South Sudan under the leadership of National Ministry of Land, Housing and Urban Development and with support of Transitional National Legislative Assembly, CSOs and development partners should ensure that all relevant policies, institutional and legal frameworks are developed and passed and enacted.

#### 8. Strengthen sector coordination

Strengthening land sector coordination mechanisms at national and sub-national levels under the leadership of National Ministry of Land, Housing and Urban Development is needed to organize, lead, and create synergies among sector players so that they understand what is happening in the sector and provide opportunity for building synergy. This will result into better land services.



# 7. Challenges and recommendations

## 7.1 Introduction

Land rights in South Sudan present a complex interplay between ownership, government policies, community dynamics, and resource utilisation. In rural areas, where 83 percent of the population directly derives their livelihood from land and over half live in poverty, harmonising private, public, and communal land ownership poses challenges, especially in agriculture and livestock production, leading to conflicts. The legacy of a prolonged civil war and historical neglect has weakened land governance structures. Despite introduced reforms, a weak rule of law and resource constraints limit their impact. The implementation of land policies and legal frameworks is inhibited by prevailing negative customs, further complicating land service delivery by governance structures across the country's ten states and 79 counties.

Whereas a comprehensive Land Act and Local Government Act exist, the enabling subsidiary legislation is not in place to give force to these instruments. As such, the operationalization of the land administration system largely remains unimplemented. There are also substantive laws that are not in place such as the valuation laws and the physical planning laws. These are crucial for the overall development of the land sector. There is a continuing lack of clarity regarding the authority, roles, policies, and procedures at various levels of government and between government and traditional authorities for land administration. Land agencies face challenges of shortage of funds, material resources, and sufficiently trained staff. Despite these deficiencies in the current legal framework, the South Sudan NLP, currently ready for tabling before the Legislative Assembly raises so much hope for comprehensive land reforms. Once passed, the review of the legal framework to operationalize the progressive land policy provisions will be undertaken and hence the need for more systematic capacity building of duty bearers

to ensure the envisaged land reforms are effectively and efficiently implemented in a sustainable manner.

Although a case study was undertaken in only one state, triangulation with other studies was undertaken in order to draw these conclusions and recommendations. The tools used in this study remain available for further research into the situation in other states.

## 7.2 Challenges in improving land rights recognition in South Sudan

This study identified key challenges that need to be addressed if a land programme would successfully be piloted and implemented.

### Land administration

South Sudan's land administration system is still in its infancy with many institutions not functioning optimally. The challenges identified in this study include:

1. Limited implementation of the legal framework arising out of the lack of the enabling subsidiary legislation in the form of rules, regulations and guidelines.
2. Many of the laws that are complementary to the Land Act and the Local Government Act have not been enacted. These include the Community Land Act, the Land Survey Act, the Town and Country Planning Act, the Land Valuation Act and the Land Registration Act.
3. Land administration institutions are weak and understaffed. Some of the decentralized institutions have not been established despite their existence in the law.
4. The land administration institutions suffer from poorly defined mandates and administrative procedures, the lack of coordination among bodies with complementary responsi-

bilities, the low technical capacity of personnel and the frequent reshuffles of officers in land institutions.

5. The ambiguities and gaps in the legal framework make it difficult to develop standardized approaches to tenure formalization.
6. There are no clear processes for formalization of land rights except for the conversion of community land to freehold.
7. There is no National Land Registry in South Sudan. In states where a Land Registry exists, it sits in the Judiciary and do not have up to date cadastral maps.

### Land dispute resolution

Although the land dispute resolution system for South Sudan is well articulated in the legal framework, justice reforms have not yielded much. The following are the challenges identified in the study:

1. The number of statutory courts is still very low, and in more remote locations of the country there is simply no statutory court to turn to. The formal courts / dispute resolution structures are not easily accessible to the larger South Sudanese population and are not largely understood regarding their operations since they have not been established in many parts of the country.
2. South Sudan, it takes an average of one to two years to resolve a land dispute in the first instance. There are no publicly available statistics on the number of land disputes at the first instance court because there is no streamlined process of registration and tracking of cases.
3. Accessing the courts entails substantial court fees, particularly in land-related cases, where these fees can reach up to ten percent of the land's value.
4. There are no pro bono legal services available to most of the people of South Sudan. The rights seeking public must in the expenses

associated with hiring a lawyer, as their legal representation can significantly influence the outcome of a case within the adversarial system of South Sudan.

5. The complexity and delays of court procedures further deter people from using them.
6. The combination of long court cases with hefty costs offers opportunities for those with more resources to drag the case in court and force a less wealthy party to give up.
7. The resolution of land conflicts using customary law makes it difficult for women to demand or claim their constitutional or statutory rights, even in statutory courts.
8. The poor coordination among the formal and customary land justice systems affects the resolution of land disputes and creates fertile ground for forum shopping.
9. The provision of legal aid and legal awareness is limited throughout the country and where it exists, it is not sustainable due to limited donor support.
10. Capacity to implement alternative dispute resolution is low and as such traditional authorities continue to use customary norms and practices to dispense justice.

### Land use planning and management

Land use planning is important for development control and harmonious co-existence of society. In South Sudan, land use planning is not mainstreamed into the country's land governance framework. The following are the resulting challenges identified by this study:

1. The current legal framework provides local government with almost exclusive responsibility for land use planning and management but provides no legislative guidance for doing so.
2. Existing planning practices are fostering the development of land use conflicts and lack the application of planning standards.

3. Urban planning is impacted by the absence of the town and country planning law, leading to mushrooming informal settlements.
4. Lack of formal planning processes result in large informal settlements with little infrastructure, whether in the form of roads, water, or electricity.
5. The lack of capacity of urban professionals (planners, municipal engineers, urban designers, architects, etc.) and technical equipment has resulted in the uncontrolled growth of urban settlements, which is exacerbated by waves of returnees and refugees.
6. There is no national spatial development framework for South Sudan.
7. Although state and local governments oversee most town planning activities, there is also a degree of competition between the national government and state governments over control of the urban planning process.
8. There is lack of capacity for participatory land use planning that enables tenure security.

### Gender equality and social inclusion

Although South Sudan has a progressive legal framework on gender equality, transforming social norms, customs, traditions, and values that are discriminatory to women gaining rights in land requires deconstructing patriarchal barriers, which perpetuate the traditional authorities' usual way of doing things. The following are the identified challenges.

1. In most traditions of South Sudan and under customary law, women are entitled to usufruct rights to land, secured by their father and family before marriage, and by their husband and his family during marriage and widowhood.
2. Widows without children or with only daughters find themselves in a more insecure position. If they lack support from relatives and

in-laws or the finances to seek legal support, their rights may be denied.

3. Women whose access to land is greatly challenged are the single women who have increasingly become heads of households due to the many years of conflict that saw many men, who were the heads of households die.
4. Customary institutions have had little experience of dealing with women as heads of households and many traditional institutions have not adjusted as fast in dealing with such emerging contexts making land access rights weaker despite statutory provisions for women's land and property rights.
5. There is a lack of information provision by the government regarding land rights, particularly in rural areas. This limited access to information prevents women and marginalized groups from understanding their legal rights related to land.
6. Opportunities for capacity building, such as training programmes on land rights, are scarce. Without access to such programmes, women and marginalized groups may remain uninformed about their rights and unable to advocate for their land rights effectively.
7. Language barriers pose a significant challenge to legal awareness, especially when legal education sessions are conducted in foreign languages that some individuals may not understand. This lack of linguistic accessibility further marginalizes women and marginalized groups.
8. Although registration is often presented to protect women's land rights, this approach assumes not only that women know their rights, but also that they have equal access to the financial capital, administrative resources, and social space required to pursue, process, and define a claim.

9. Apart from cultural biases against women's participation in public spaces, the high illiteracy rates among women of approx. 70 percent are a leading obstacle in filling the 35 percent quota in public administrative bodies – especially at the sub-national level.
10. Returnees and displaced people often struggle to reclaim their land rights upon returning to their communities. Their land may have been occupied or redistributed during their absence, leaving them without secure tenure or facing competing claims. Additionally, these individuals lack the documentation or legal support necessary to assert their rights.

## 7.3 Recommendations

Based on the findings of this study, the following recommendations are proposed. Consideration is given to the magnitude of reforms needed in the land sector in South Sudan. As such, a decentralized approach that strengthens local land governance is encouraged as a starting point to land programming in South Sudan. Whereas this approach is the most preferred, when considering land rights mapping, it is important to bear in mind the central role that the Ministry of Lands, Housing and Urban Development and the Ministry responsible for lands at state level play in initiating systematic land registration.

### 7.3.1 Land administration

#### 1. Operationalize legal frameworks

Develop comprehensive guidelines, regulations, and procedural rules to effectively implement the provisions of the Land Act and the Local Government Act.

## 2. Support legislative development

Assist the Ministry of Lands, Housing, and Urban Development and the National Legislative Assembly in finalizing the National Land Policy and enacting the necessary land-related laws for its operationalization.

## 3. Strengthen decentralized land institutions

Enhance local land institutions and establish local land registries to facilitate the accurate mapping of land rights.

## 4. Capacity building for land administration

Build the capacity of land administration staff and local governance institutions, focusing on systematic land registration, fit-for-purpose approaches, and the use of technology for mapping and recording land rights.

## 5. Improve sector coordination

Strengthen the South Sudan land sector coordination mechanism, ensuring alignment among donors and stakeholders.

## 6. Advocate for national cadastre and registry

Promote the establishment of a National Cadastre and Land Registry within the Ministry of Lands, Housing, and Urban Development.

## 7. Enhance land records management

Improve the land records management system, beginning with the lowest levels of local government and progressively advancing towards national-level improvements.

### 7.3.2

#### Land dispute resolution

##### 1. Mainstream Alternative Dispute Resolution (ADR)

Institutionalize ADR mechanisms as a primary method for accessing land justice in South Sudan. The use of retired civil servants particularly from the police force and traditional leaders would go a long way in aiding

ADR institutionalization given their seniority and respect within the communities.

##### 2. Expand legal aid and education

Strengthen and extend legal aid and education services to lower levels of governance, such as the Payam level.

##### 3. Empower customary law courts

Build the capacity of customary law courts and traditional authorities, focusing on gender equality and social inclusion in land dispute resolution.

##### 4. Strengthen civil society capacities

Enhance the capabilities of civil society organizations in promoting gender justice and integrating gender considerations into land justice interventions.

##### 5. Collaborate with the Judiciary

Work with the Judiciary to improve case management and the collection of gender-disaggregated data.

### 7.3.3

#### Land use planning and management

##### 1. Develop Town and Country Planning Act

Collaborate with the Ministry of Lands, Housing, and Urban Development to develop the Town and Country Planning Act.

##### 2. Prepare National Spatial Development Framework

Work with the Ministry to create a National Spatial Development Framework that guides land use planning.

##### 3. Capacity building for physical planners

Build the capacity of physical planners, emphasizing participatory and inclusive methodologies in land use planning.

## 7.3.4

**Gender equality and social inclusion****1. Training on gender equality**

Provide training to decentralized land administration structures and traditional authorities on gender equality and social inclusion.

**2. Gender-transformative approaches in land administration**

Train technical staff at County and Payam levels on gender-transformative approaches in land administration.

**3. Develop training curriculum for civil society**

Create a curriculum for civil society organizations focused on gender-transformative approaches in land programming, including land rights mapping, registration, and dispute resolution.

**4. Training for justice structures**

Educate justice structures on gender justice principles.

**5. Disseminate gender equality messages**

Develop and disseminate simplified messages in local languages about gender equality in land matters, considering the various intersectionalities of women. Due to low literacy levels, radio programmes are recommended as the most effective communication method.

**6. Empower women in leadership**

Build the capacity of women in leadership roles to ensure their effective participation.

**7. Promote land rights awareness for internally displaced persons (IDPs) and returnees**

Develop key messages that address the land rights of IDPs and returnees.

**8. Monitor gender equality and social inclusion**

Establish indicators for monitoring gender equality and social inclusion within the land sector.



# Annex 1 – Key terms and definitions

<b>Access rights to land</b>	The local and / or legally recognized right to enter and use a physically defined area. Access rights may be obtained through family or group membership or through legally sanctioned processes such as allocation, purchase, and inheritance. Rights may be defined in terms of location, time, use and the individual's relationship to the community.
<b>Boma</b>	The lowest administrative unit in a county in South Sudan (below Payam). It shall exercise deconcentrated powers within a county. About 3 – 4 Bomas shall constitute a Payam based on the LGA 2009.
<b>Cadastral registration</b>	A form of registration of rights that accurately describes a land parcel in an identifiable map.
<b>Collective ownership</b>	A situation where holders of land rights are clearly defined as a group and have the right to exclude others from the enjoyment of those land rights.
<b>Common property</b>	Common property refers to situations in which entitled beneficiaries hold specified rights in common to specific areas of land, land-based natural resources, or other types of property. For example, community members can use a common pasture for grazing their cattle independently of one another. The community controls the use of the common property and can exclude non-members from using it. Common property in this sense is distinct from “ <i>open access systems</i> ” where there is no control over access, and no one can be excluded.
<b>Communal property ownership</b>	Communal ownership is a commonly used term to describe those situations where rights to use resources are held by a community. While these rights may include communal rights to pastures and forests, they may also include exclusive private rights to agricultural land and residential plots. The community, which may be designated as a village-based or more geographically dispersed community, or a clan or a lineage, is the landholder. As such, it can allocate extended use rights on specific land areas to households, individuals, or specific groups. Those who are allocated the rights can transfer this land by inheritance but are generally not, in principle, permitted to sell it without sanction by the group as a whole or by a community leader. Under certain circumstances, the community can reallocate the land to somebody else.
<b>Communal grazing land</b>	An area of grazing land which is owned in undivided shares by all members of a community.
<b>Community land rights</b>	Community land rights are collective rights of land ownership, access or use held or exercised in common by members of a community. Community or “ <i>communal</i> ” land is land over which a community has collective rights of ownership or access and use. The community may or may not have legally recognized ownership over the land. In some cases, for instance, the state may be considered the owner of the land claimed by the community.
<b>Community tenure system</b>	Written or unwritten land ownership practices in certain communities in which land is owned or controlled by a family, clan, or a designated community leader.
<b>Council</b>	The Land Council at the Payam administrative level.

<b>County</b>	The third level of government in South Sudan and the administrative unit between the State and the Payam as described in the Interim Constitution of South Sudan. It refers to a territory in which the administrative jurisdiction of a local government council is established. A County is constituted by about 3 – 4 Payams based on the LGA 2009.
<b>County land authority</b>	The body administering and managing land at the county level.
<b>Customary land rights</b>	Rights on land conferred by or derived from customs or customary law and /or practices.
<b>Customary law</b>	The conventions and rules which a particular community observes developed over time and are usually uncodified.
<b>Customary tenure</b>	Customary tenure is the holding of land in accordance with customary law. It refers to the communal or individual possession of rights to use and allocate land derived from sharing a set of common rules and principles, established by customary practice, and often rooted in a shared cultural identity.
<b>Deed registration</b>	Deed registration is a system of proof of property ownership and interests, based on the registration of transfer and other deeds. A deeds registration system is limited in that it does not provide a guarantee of title. All it typically provides is access into the chain of transactions that can be used to prove title.
<b>Freehold tenure</b>	Means a form of land ownership held in perpetuity with the rights to transfer and dispose of such land (according to Land Act 2009). Freehold is the right to full private ownership of land, free of any obligations to the state other than payment of taxes and observance of land use controls imposed by the state in the public interest. This term is used interchangeably with <i>private property</i> or <i>private land ownership</i> .
<b>Informal settlements</b>	Designated settlements / neighbourhoods where land occupation does not comply with tenure, layout, construction, services and or fiscal obligations. In connection with human settlements, the term refers to an area with a group of individuals (households) that are not legally registered in the name of the occupiers.
<b>Land</b>	All land-based natural resources, including urban land, rural land, forest land, pasture land, swampland, floodplains, flora, and local fishing grounds, and lands under which subterranean resources exist, but not those subterranean resources themselves (according to Land Act 2009).
<b>Land administration</b>	The processes (i) of determining, recording and disseminating information about the tenure, value and use of land when implementing land management policies; (ii) of collecting of revenues from the land through sales, leasing and taxation, and the resolving of conflicts concerning the ownership and use of land; (iii) of transferring rights in land from one party to another through sale, lease, loan, gift and inheritance, and the regulating of land and property development. Land administration functions may be divided into four components: judicial, regulatory, fiscal and information management.
<b>Land tenure</b>	The legal regime in which rights in land are exclusively assigned to an individual, a group or another entity, who is said to “hold” the land. It can be defined as the mode by which land is held or owned, or a set of relationships among people concerning land or its product.

<b>Land tenure formalization</b>	A process by which informal tenure is integrated into a system recognized by public authorities. This may happen through individuals taking needed steps to achieve legal recognition, or by the state moving to confer such recognition on its own initiative. Informality is the status of assets and operations that lack legal recognition by the state. In its most commonly accepted meaning, formalization of land rights refers to the incorporation of a set of practices and rules within the framework of the law of the state. Accordingly, formalization of land rights aims to give them an identifiable legal form. Tenure formalization is often presented as a means of ensuring tenure security.
<b>Land tenure systems</b>	Access to land and its benefits are governed through land tenure systems. These determine what rights can exist and how the rights are distributed among individuals and groups. In a given jurisdiction, various types of tenure are interrelated and interact with one another, within what can be called a land tenure system. A land tenure system refers to the regulation for the allocation and security of rights in land, transactions of property, the management and adjudication of disputes regarding rights and property boundaries. It comprises the set of possible bases under which land may be used. As such this range encompasses both rural and urban tenures and includes ownership, tenancy, and other arrangements for the use of land, including non-statutory, or customary ones. Land tenure systems also define the responsibilities that people have with respect to their land and what restrictions may apply. For example, the right to use water in a stream crossing the land may include a responsibility of providing clean water to downstream users and a restriction of only drawing water during certain seasons.
<b>Land governance</b>	This refers to <i>“the rules, processes and structures through which decisions are made regarding access to and use (and transfer) of land, the manner in which those decisions are implemented and the way that conflicting interests in land are managed.”</i>
<b>Lease</b>	An agreement between the owner of land and another party by which the owner transfers possession and occupancy of such land to another party in consideration for use but not ownership with prescribed terms and conditions like period of occupancy or utilization.
<b>Legal pluralism</b>	The co-existence of different bodies of laws, rules and norms governing the use of land.
<b>Local community</b>	A group of families or individuals, living in a circumscribed territorial area at the level of a locality, which aims at safeguarding their common interests through the protection of areas of habitation, agriculture, whether cultivated or fallow, forests, sites of cultural importance, pastures, and area of expansion.
<b>Mediation</b>	A process for resolving disputes where two or more parties to a dispute over land meet and attempt to settle a matter with the assistance of a mediator.
<b>Ownership</b>	The right within the limits provided by law to possess, occupy and use land in perpetuity; the right thereon can be inherited by devise or intestacy, and is subject to lease, sale, mortgage, or other transfers and transmissions within the limits of the law.
<b>Pastoral land</b>	The land used by livestock for grazing, pasture, and water, including routes provided for their mobility and space ancillary to the activities.
<b>Parcel</b>	An area of land or plot delineated by a survey plan prepared by or under the direction of the Department of Survey.
<b>Payam</b>	The fourth level of government in South Sudan and the intermediate administrative unit between the County and the Boma. About 3 – 4 Payams compose a county in accordance with the Local Government Act 2009.
<b>Public land</b>	Any land owned or / and held by the Government of South Sudan, State or Local Government.

<b>Public authority</b>	Government of South Sudan, State Government, municipality, or other public bodies as may be prescribed by law.
<b>Register</b>	The official repository of records pertaining to interests in land.
<b>Registration</b>	A procedure describing a parcel of land and identifying its current owner and the form of ownership and other registrable rights in land under the laws dealing with registration.
<b>Rights to land</b>	Rights to land can be defined as the right of possession, the right of control, the right of exclusion, the right of enjoyment and the right of disposition also known as the bundle of rights. Different people or entities can have different land rights, e.g., use rights, ownership, right to manage, right to restrict access etc., to the same piece of land at the same time, therefore, it is necessary to distinguish between the different rights, see e.g. use rights or ownership. This is known as multiple rights over the same piece of land. Furthermore, the continuum of land rights describes a situation (a continuum of land rights scenario) where, in a particular country, region or area, different tenure forms incorporating a range of interests exist simultaneously. The situation is changing and transforming, and landholders change between tenure forms over time. The rationale behind the continuum as an initiative to drive land tenure policy is that tenure forms other than ownership may be better suited to local circumstances at a particular time, providing the enabling conditions for them to function effectively. Tenure forms other than ownership or near ownership (e.g. freehold, long term leases) may hold lower levels of risk of some of the possible negative consequences associated with land titling.
<b>Tenure security</b>	The right of individuals and groups to effective protection by the state against evictions or land rights violations, i.e., under international law, <i>“the permanent or temporary removal against their will of individuals, families and / communities from the home and / or the land they occupy, without the provision of, and access to, appropriate form of legal or other protection”</i> .
<b>Use rights</b>	The right to use land and to benefit from it in accordance with a designated and socially sanctioned purpose, which may also be subject to statutory recognition. Use rights are distinct from ownership or property rights in that they are specific to designated purposes; they are not necessarily exclusive and can be shared or combined with rights held by others on the same land; they may be temporary, seasonal, or permanent. Use rights are often linked to membership of a resident community, are a central component of customary rights and are perpetuated by stable and continuous occupation and use of land.
<b>Usufruct</b>	A right in a property owned by another, normally for a limited time or until death. It is the right to use the property, to enjoy the fruits and income of the property, to rent the property out and to collect the rents, all to the exclusion of the underlying owner. The holder of usufruct has the full right to use the property but cannot dispose of the property, nor can the property be destroyed.
<b>Zoning</b>	A planning procedure where a designated area is allocated for a specified use or uses. This is a commonly used approach to planning, which identifies the uses to which the zoned land may be put and specifies the type, amount, and location of that development. It is a procedure used to promote orderly development and to reduce or avoid inconsistent land uses being adjacent to one another.

## Annex 2 – Stakeholder analysis

Government institutions and other stakeholders are the groups that have an interest or right in land and those that will be affected either negatively or positively by implementing the outcomes of the assignment. These groups include:

- relevant government ministries, departments, or units;
- formal & informal land users (indigenous people using land for farming, cattle keepers, fishermen, settlement, and community festival ceremonies);
- private sector (business and road construction); and
- development partners.

Responsibility for land governance is distributed across a range of institutions at all levels of government. The South Sudan Land Commission (SSLC) is an independent institution that was established in 2005. It has been the driving force behind the Land Act and Land Policy and has provided leadership on land issues over the past few years. In 2019, however, the mandate of land policy development reverted to the Ministry of Lands, Housing and Urban Development, with the Chairperson of the South Sudan Land Commission chairing the National Task Force on land policy development. As an independent institution without representation in the Council of Ministers and with a limited presence at the state level, its mandate is limited to mediate dispute resolution and restitution.

Other national-level institutions – such as the Ministry of Lands, Housing and Urban Development, the Ministry of Agriculture, Forestry, Cooperatives and Rural Development, the Ministry of Wildlife, Conservation and Tourism, and the Ministry of Roads and Bridges – each deal with their own types of land issues, but do not cover the whole range of governance challenges that arise with respect to land.

The main locus of decision-making for most land issues resides at the state level. State Governors, Ministries of Physical Infrastructure, and Ministries of Agriculture and Forestry are key players in this regard. However, there is poor coordination between institutions at various levels of government (vertical overlap) as well as between institutions within each level of government (horizontal overlap), which undermines performance and gives rise to a considerable number of disputes among government institutions.

The Land Act has also created several new institutions at the local government level that are meant to eventually take primary responsibility over land matters. The County Land Authorities (CLAs) and Payam Land Councils (PLCs) have only been established in a handful of areas, but there is competition among interest groups over the composition of the CLAs – already causing political squabbles to emerge in various locations.

## Institutional and stakeholder mapping

Undertaking institutional and stakeholder mapping is important for purposes of understanding what they are doing, where, with whom and how, but a stronger process that will lead to designing a process for conflict, gender, and context-sensitive process for documenting and mapping land rights. This requires full stakeholder engagement given the following reasons:

- The South Sudan Local Government Board have consistently called for parties to ensure the full and effective participation of relevant stakeholders in the design and implementation of the project at the state and county levels.
- Demand for meaningful engagement and inclusion by the indigenous people and civil societies.
- Recognizing that conflict, gender, and context-sensitive processes for documenting the process and mapping land rights would not happen effectively without partnerships and buy-in across a large swath of government, NGOs, Civil Society, businesses, and institutions.

Government institutions, NGOs and Civil Societies linked to land rights documentation reported that: the contested land rights across South Sudan are the potential causes of conflict and intercommunal violence. As the Government of South Sudan struggles to gather momentum and maintain the current peace status in the country and with the national election in 2024, that will cement the results of the R-ARCSS, it is critical that the land question is well managed so as to mitigate the possibility of the country's degeneration into conflict.

Most of the NGOs and Civil Societies urge South Sudan's government to create as much space as possible for open dialogue on land issues among various sectors of South Sudanese society, particularly women and other marginalized groups. In

this regard, support to inclusive conflict, gender, and context-sensitive process for documenting process and mapping land rights is crucial. This argument provides a more suitable starting point for this assignment for the identified stakeholder for meaningful engagement as it aligns well with the assignment objectives.

The analysis of the secondary data showed that there are several important stakeholder groups at the national and state levels responsible for the land rights documentation process in the country. These include groups from local communities, traditional authorities / institutions, local and international non-government organizations (NGOs), academia, development partners / donors, relevant government institutions, private sector / investors, and religious institutions. **The analysis listed the institutions** that are active in land rights documentation in the table below.

#	Institution	Type of land	Responsibility / mandate
<b>NATIONAL LEVELS</b>			
1	Ministry of Lands, Housing and Urban Development	Government land, community land and public land	Town planning, land registration, land use planning. The Ministry is leading the development of the National Land Policy and is setting up the Land Reform Unit within the Ministry to stir land reforms.
2	Ministry of Agriculture and Forestry	Agricultural schemes, agro-industrial complexes, forest plantations, forest reserves	Agricultural development, food security, conservation, land use mapping
3	Ministry of Livestock and Fisheries	Grazing land, fishing sites	Livestock and fisheries development
4	Ministry of Environment	None	Promote policies and activities to protect the environment
5	Ministry of Wildlife, Conservation, and Tourism	Animal park and parks reserve	Administering parks and reserves, developing tourism sector
6	Ministry of Transport, Roads, and Bridges	Transport corridors	Develop a legal framework and implement a strategy for transport
7	South Sudan Land Commission	None	Advise government institutions on land law and policy development, arbitrate land claims among willing parties
8	National Legislature	None	Make clear legislation on land rights
9	The Local Government Board (LGB)	None	Coordination and supervision of policy implementation
10	South Sudan National Bureau of Statistics	None	Collect data on land rights, analysis, establish a database and dissemination
11	Ministry of Gender, Child, and Social Welfare (SMoGCSW)	None	Ensure strategic coordination of policy implementation around gender
12	Ministry of Justice	None	Promote policies to manage land
<b>STATE LEVELS</b>			
13	Ministry of Housing, Land and Public Utilities	Government, community, and public land	Town planning, land registration, land use planning
14	Ministry of Local Government (MoLG)	Government, community, and public land	Town planning, land registration, land use planning
15	State Legislatures	None	Make clear legislation on land rights
16	State Land Commission	None	Advise government institutions on land law and policy development, Arbitrate land claims among willing parties
<b>LOCAL GOVERNMENT AND COMMUNITY LEVELS</b>			
17	Council of Traditional Authorities	Community land	Organizing stakeholder dialogue forums on land rights
18	The County Government Institutions	Government, public and community land	Ensure effective supervision and monitoring of the land registry
19	Community Leaders and Citizens	Community land	Organizing stakeholder dialogue forums on land rights
20	Association of Women in Local Government Administration (WiLGA)	None	<ul style="list-style-type: none"> <li>▪ Ensure women's perspectives and interests are integrated into policy</li> <li>▪ Enhance advocacy of women's representation in land administration</li> </ul>

## Development partners, civil society organizations, and their areas of support

Agency	Area(s) of support
AECOM VISTAS (Viable Support to Transition and Stability)	Implements a conflict mitigation, stabilization, and transition programme funded by USAID, which inter alia includes mapping competing territorial claims in western Upper Nile for future consensus building activities.
European Union	Provides technical assistance to land authorities under the “Support to Land Governance in South Sudan” programme, focusing on secure tenure, and supports the creation of a digital land registry within the Ministry of Land, Housing and Urban Planning.
Food and Agriculture Organization	Together with the Ministry of Agriculture and Food Security, FAO developed Agricultural and Land Tenure Guidelines for South Sudan (2015). FAO is supporting the review of the National Land Policy.
Inter-Governmental Authority on Development	Leading the implementation of the IGAD Land Governance Strategy with different activities supported across Member Countries. IGAD supports the Government of South Sudan to mainstream gender into land administration institutions. A National Women’s Land Rights Agenda was developed in 2021 to guide this process. IGAD is supporting the finalization of the South Sudan National Land Policy and the Institutionalization of the Land Reform Unit within the Ministry of Lands, Housing and Urban Development.
International Organization of Migration (IOM)	Developed the 2015 Land in Shelter: Due Diligence Guidelines for Shelter Actors in South Sudan. IOM through FAO Supports the Finalization of the National Land Policy.
Norwegian People’s Aid (NPA)	Has worked on land reform in South Sudan since independence and financially supports the South Sudan Land Alliance and its regional branches. NPA supports legal aid and legal awareness in South Sudan as well as dispute resolution mechanisms.
Norwegian Refugee Council (NRC)	Have a dedicated Information, Counselling and Legal Assistance (ICLA) programme with a focus on the research and analysis of HLP rights issues. Chaired the former Land Coordination Forum (LCF).
South Sudan Land Alliance (SSuLA)	Works to enhance access to and ownership of land for all people of South Sudan, particularly the marginalized men, women, and children by advocating to influence land policy and legal frameworks.
South Sudan Law Society (SSLS)	An independent organization comprised of South Sudanese lawyers working on human rights. SLLS has a dedicated Property Rights team and research programme.
Sudd Institute	South Sudanese think tank publishing widely on key issues confronting contemporary South Sudan, including land disputes and climate change.
UN-Habitat	Is broadly engaged in South Sudan, notably working with urbanization-related issues, especially in the Juba area.
UNMISS	Engages on HLP through its Rule of Law Unit, particularly in relation to the safe and voluntary return of refugees, resolution of land disputes, and the return of property lost during conflict.
United Nations Mine Action	Undertake demining of land in South Sudan.

Agency	Area(s) of support
USAID	Supported the Sudan Property Rights Program (SPRP 2008–2011) and its follow-up, the Sudan Rural Land and Governance (SRLG 2011–2014). Through the provision of technical and financial support, SPRP provided guidance and leadership to South Sudan Land Commission (SSLC) to develop the Draft National Land Policy, and the SRLG aims to usher it into practice.
Voice for Change	CBO. Among other activities, work on gender and land issues.
World Bank	Funds the South Sudan Agriculture development Project (SSADP) which commenced in 2015. The World Bank also conducted a Land Governance Assessment in South Sudan in 2014 together with David Deng of the South Sudan Law Society (SSLS).

### Challenges identified and potential solutions

#	Challenges	Potential solution
1	Limited understanding of what community land ownership entails concerning the rights and responsibilities of communities and government institutions	Support for dialogue on community land ownership and clarification of community and government rights in the National Land Policy and amended legislation
2	Inadequate engagement with communities concerning activities on community lands, including land formalization processes and infrastructure links to the land sector	Inclusive and sustained consultation with diverse stakeholders through the local government and partners
3	Disputes among state and local governments over control of land administration in and around urban areas	Creating space for dialogue among relevant institutions and support from higher levels of government to resolve outstanding issues
4	Land formalization processes in urban areas that do not comply with South Sudanese law, particularly around prior notice / compensation, and impose a disproportionate share of the costs on the most vulnerable in the society	Increased Housing, Land, and Property programming to address the costs of land formalization.
5	Ambiguity in existing law relating to community land ownership, particularly if unregistered community land rights have equal protection in law as registered community land rights	Support the adoption of a National Land Policy and amendment of existing laws to clarify that community land rights will be fully protected whether they have been registered or not
6	Assumptions that most displaced people will return to their places of origin (rural) and a failure to adequately plan for urban return, resettlement, and reintegration	Increased Housing, Land and Property programming.
7	Manipulation of land formalization processes to benefit more powerful individuals and groups	Increased support for land governance programs to address the institutional weaknesses; Encourage freezes on land survey and demarcation processes to provide space to enact the necessary changes
8	Formalizing land holdings as a means of accommodating returnees without considering the complications, whether in terms of underlying claims or driving dysfunctional land formalization processes	Consider alternative options and formalize landholdings only as a last option; Increasing engagement with land administration institutions to reduce the likelihood that they contribute to conflict over the longer term

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## Imprint

### Published by the

Deutsche Gesellschaft für  
Internationale Zusammenarbeit (GIZ) GmbH

Registered offices  
Bonn and Eschborn, Germany

Project: Improved knowledge on legal, social, and institutional framework  
conditions on land rights in South Sudan | GIZ Study and Expert Fund  
(SEF South Sudan)

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### As at

September 2024

### Design

Katrin Straßburger / W4 Büro für Gestaltung  
Frankfurt, Germany

### Photo credits

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### Text

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German Federal Ministry for Economic Cooperation and Development (BMZ)