



# Key Housing, Land and Property (HLP) Issues in Urban Areas of South Sudan

Context, Actors and Legislation

A BACKGROUND BRIEF FOR SHELTER ACTORS

September 2017

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**Shelter NFI Cluster South Sudan**  
ShelterSouthSudan.org  
Coordinating Humanitarian Shelter

This document was elaborated under South Sudan Shelter and Non-Food Items (Shelter NFI) Cluster<sup>1</sup>.  
For more information, please contact Shelter NFI Cluster: [scsouthsudan.coord@gmail.com](mailto:scsouthsudan.coord@gmail.com)



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<sup>1</sup> Research and writing of this document was conducted by Ina Rehema Jahn (Housing, Land and Property Specialist).



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## 1. Introduction

### *Statement of Purpose*

This document aims to provide an overview of the key challenges related to housing, land and property (HLP) issues in the expanding urban and peri-urban areas of South Sudan. It points out key issues that require due attention once shelter actors begin to engage more substantially in shelter provision in urban areas, in particular with regards to the return and relocation of IDPs. In addition, it presents an overview of land-relevant actors and legislation which must inform any shelter interventions in such settings. In doing so, it provides updated background information which complements and adds to the 2015 *Land in Shelter: Due Diligence Guidelines for Shelter Actors in South Sudan*.

### *Introduction*

Ownership claims and control over land and property has played a defining role during Sudan's five decade civil war that eventually led to South Sudan's independence on 9 July 2011, and is a key feature of the current conflict. Since the most recent outbreak of hostilities in December 2013, over 3.5 million people<sup>1</sup> have been displaced. The conflict is likewise marked by large-scale destruction of housing, land and property (HLP), and ongoing changes to the ethno-demographic composition of many conflict-affected areas.

Much of the recent violence and displacement in South Sudan is ongoing in and around densely populated urban areas, where ownership and control of HLP is commercially and politically very valuable. Urban areas have also been key sites of violence, displacement and HLP destruction. In the Yei area alone, recent UN satellite images show that at least 18,000 structures have been destroyed since the beginning of the conflict in 2013<sup>2</sup>. The destruction plays out in a context marked by an unclear legal framework on land, under-resourced institutions and the lack of a systematic, transparent process for land registration and allocation. These challenges are further exacerbated by the new administrative divisions of the country from the initial 10 into 28 and most recently 32 states, in due process further raising the stakes over HLP control and entrenching disputes over land between customary and statutory authorities at all levels of government (and increasingly among ethnic lines)<sup>3</sup>.

Shelter actors are therefore faced with an immensely confusing and complex picture when it comes to understanding land ownership and administration in the country. **It is hence imperative to understand and assess existing HLP issues before any shelter implementation**, and only proceed (or decide to implement elsewhere) after careful evaluation<sup>4</sup>. Risks of an uninformed approach to HLP dynamics include violations of HLP rights of respective land owners whose land is used for shelter interventions, forced evictions of beneficiaries, partial or full blocks on humanitarian activities and the lack of accountability to beneficiaries and donors, all leading to grave breaches of humanitarian principles. In addition, the provision of shelter assistance in areas where demographics have considerably changed since the beginning of this conflict can run risk to solidify and consolidate conflict-induced societal and ethnic divisions.

This background brief aims to provide shelter actors with an overview of the key HLP dynamics in peri-urban and urban areas of South Sudan. These will require due attention once shelter actors engage more substantially in shelter provision outside of the Protection of Civilian (PoC) sites, in particular with regards to the return and relocation of IDPs and refugees. In doing so it complements the existing *Shelter and Land Due Diligence Guidelines for Shelter Actors in South Sudan (2015)*. Research for this brief comprised of 30



interviews with government officials, customary authorities, NGO workers and UN officials in Juba, Bor, Bentiu and Wau conducted by IOM during February and March 2017. Research findings were further complemented by a review of the legislation, policies, policy briefs and academic literature on shelter and land tenure in South Sudan.

## 2. Housing, Land and Property (HLP) Issues in Urban Areas of South Sudan

### *Unclear and unimplemented legal framework leading to lack of tenure security*

South Sudan is witnessing a deepening “power crisis in land administration and confusion in roles of... the existing institutions at the different levels of the Government of South Sudan (GoSS) and state and local government.”<sup>5</sup> Despite an ambitious framework for land administration expressed in the 2009 Land Act, 2009 Local Government Act and 2011 Transitional Constitution of South Sudan, the institutional foundations for such a structure remain largely inexistent due to capacity and resource constraints. Elites are widely known to engage in large-scale ‘land grabbing’ and for not respecting land laws.<sup>6</sup> Likewise, most soldiers are not or only irregularly paid, leading many of them to raid and loot property to sustain themselves.<sup>7</sup>

In the few urban areas where statutory land administration structures are functional, statutory and customary land administration systems co-exist in an uneasy relationship, generating disputes as the national, state and community level compete with each other over land access and control.<sup>8</sup> The confusion over administrative boundaries between the jurisdiction of statutory and customary system is further compounded as the 2009 Land Act does not clearly spell out the roles and responsibilities of the various levels of government with regards to land administration. One additional point of contention is the question of who actually owns the land in South Sudan, centering on the legal definition of community land and public land respectively.<sup>9</sup>

Since the beginning of the current conflict, the lack of clarity around the official mandates to survey, distribute and allocate land has increased exponentially, in particular as these activities bring important revenues to a war-ravaged economy (both in the statutory and customary system). Such confusion is exacerbated by a very high turn-over of government officials, who are either routinely dismissed or rotated to another duty station. Likewise, local chiefs overseeing customary land administration are increasingly appointed directly by the government and not elected by their communities, resulting in eroding trust. As such, the 2009 Land Act is widely irrelevant for day-to-day land management of land relations in the country. This is particularly the case in rural areas, where the state is often effectively absent.

At the same time, the executive and legislative process for the implementation of the Land Act of 2009 has come to a complete standstill. The 2011 Land Policy, a crucial piece of legislation to frame and operationalize the 2009 Land Act, has been awaiting approval by the National Assembly since February 2013. Therefore, and as succinctly stated in a 2017 report by the South Sudan Law Society, “a complete lack of implementation [of the Land Act] has resulted in an on-going legal vacuum which continues to undermine tenure and livelihood security.”<sup>10</sup>



### ***Erosion of customary authorities***

South Sudan's customary authorities have been greatly weakened by the killings and disappearances of chiefs, and political appointments of customary leaders by the respective state leadership.<sup>11</sup> In many areas, in particular around Juba, chiefs have been appointed to areas to which they do not have a prior connection and of which they have no prior knowledge.<sup>12</sup> Often drawn into political power struggles related to the current conflict, chiefs are said to often abuse their position to bypass the community and make land use decisions unilaterally. As stated by a key informant, "people have realized that many chiefs are now government officials, and some even of them even wear uniforms. They used to work on behalf their communities, but across the country many chiefs are now on the government payroll."<sup>13</sup> In other areas, chiefs are also pushed away by military personnel, leading to the militarization of existing customary structures. At the same time, the ongoing conflict is leading many South Sudanese to rely more on community leaders instead on state structures, which tends to reinforce ethnic cleavages. In customary systems, access to land is closely tied to kinship and family relations, so individuals and groups from outside can be restricted from settling on community land.<sup>14</sup>

### ***Rapid and unregulated urbanization, lack of urban planning***

The urban and peri-urban areas of South Sudan have experienced unprecedented growth following the signing of the 2005 Comprehensive Peace Agreement (CPA). Much of this urbanization has occurred unregulated and ad-hoc,<sup>15</sup> leading to an ongoing expansion and proliferation of informal settlements in the country. Estimates suggest that after the CPA, Juba's population tripled to 750,000 in five years.<sup>16</sup> As a result, between 2005 and 2009 Juba's built-up area expanded by more than four times to 52 km<sup>2</sup>, largely through the proliferation of informal settlements on land outside its administrative boundaries. The continuous and unmanaged expansion of towns leads to the 'encroaching' onto surrounding (community) land, causing increasing disputes around administrative boundaries and respective oversight.

In 2014, an estimated 50 percent of the overall urban population of South Sudan resided on unregistered land.<sup>17</sup> In non-demarcated areas, residents neither enjoy tenure security nor possess official documentation to attest to their HLP ownership.<sup>18</sup> They also run the risk of eviction once the land is officially surveyed and demarcated, as many cannot afford the demarcation/surveying fee.<sup>19</sup> Pressure on urban and peri-urban areas will likely only increase with the onset of return, as many returnees will not go back to their ancestral land for farming, but instead prefer to live in urban areas which offer more economic opportunities.<sup>20</sup>

The continued competition for land holdings in peri-urban and urban areas has dramatically increased demand for private land holdings. According to a 2017 South Sudan Law Society (SSLS) study, there is an increasing sense that privatization is the only way to obtain secure tenure security, which in turn opens up new opportunities for corruption by officials and power brokers (see Emergence of hybrid land registration processes in urban areas below).<sup>21</sup>

These governance problems are further compounded by an absence of urban planning tools and processes across the country: Under the purview of the State Ministries of Physical Infrastructure (Town Planning Department), Town and Land Use Plans are created one after another following (frequent) staff turn-over, with each "new incoming staff adapting them anew for their own benefit."<sup>22</sup> These plans are not available for public review and are often inconsistent with each other.<sup>23</sup> A related problem is the non-availability of maps, which further hinders adequate land use planning and land inventory activities.<sup>24</sup> Many new



structures in South Sudan are built without building permits.<sup>25</sup> Due to the absence of urban planning, many settle on land officially designated for roads or other public purposes, where the risk of eviction is very high.

### ***Emergence of hybrid land registration processes in urban areas***

The 2009 Land Act requires that land in urban areas needs to be officially demarcated and registered. While most landholdings in urban areas are still managed primarily through leaseholds with the state government, there is no standardized and transparent government-led registration process. With increasing pressure on and competition for land in urban and peri-urban areas, community-led land registration initiatives have emerged in an effort to address the lack of organized land allocation. The key differences between these two processes is as follows<sup>27</sup>:

**Government-led registration initiatives** involve the direct identification of an existing informal settlement to be surveyed and registered, or direct negotiation “with communities living in peri-urban areas to gain access to a parcel of land for the government to develop and distribute to interested applicants”.<sup>28</sup> Independent of the process, the state level Ministry of Lands and Physical Infrastructure will conduct a survey and provide landholders copies of a written lease.<sup>29</sup> The Survey Department will in turn supply the sketch of the allocated plot (“croquis”). This lease is then registered in the Land Registry located at the High Court.

**Community-led registration initiatives** involve community leaders and influential local power brokers to come together to form Land Demarcation Committees, which are tacitly tolerated by the government. These Committees set their own criteria and costs for land demarcation. Demarcation itself is often outsourced to private surveyors. Community leaders make decision on land class and plot size and upon payment give out tokens which authorize (often only temporary) use of the land. Upon additional payment, these tokens can be upgraded to proper title deeds with the State Ministry of Housing. However, tenure security is significantly lower than through the government-led process, which directly leads to the issue of land leases for 25 years or more.<sup>30</sup> In at least one instance documented in Juba, a second community committee was formed after people were displaced in December 2013 and proceeded to issue new token to new occupants, ignoring any previous landholdings.<sup>31</sup>

While locally led land demarcation committees offer a great opportunity for easing the pressure on the government led registration, they lack any structural oversight and are therefore very open to elite capture.<sup>32</sup> Different demarcation committees are also known to apply different criteria and competing set of rules for demarcation, often with a strong ethnic bias and discriminatory against traditionally marginalized communities. In the current context, shelter actors should therefore exercise great caution to not encourage further community-issued land registration.

### ***Limited and often unreliable land rights documentation***

While land commercialization steadily increased prior to the conflict, resulting in significant surveying and demarcation efforts, 84% of all land in South Sudan still remains un-surveyed without formalized land titling.<sup>33</sup> Among those who possessed ownership documentation, many have also lost their documentation due to the conflict.



Further, as the Land Registry in South Sudan is manual and not computerized, opportunities to sell a single plot of land to multiple parties are manifold.<sup>34</sup> As expressed by a key informant, “anyone with money can obtain a land ownership document, as authorities tasked to issue land documents are extra corrupt.”<sup>35</sup> This was echoed by another respondent who stated that “it is common for three people to have title deeds to the same plot of land, given out by the same authority.”<sup>36</sup>

The Land Registry is not open to the public and it is difficult to access information without hiring an intermediary, severely compromising the transparency of the process.<sup>37</sup> Therefore, any existing ownership documentation has to be treated with caution and should not be accepted as prima facie evidence of ownership. Shelter actors thus need to conduct their own ‘background check’ and Due Diligence by consulting local authorities and community members in verifying ownership claims. South Sudanese law in fact recognizes non-documentary forms of evidence: Therefore, if a claimant can bring forward witnesses that confirm his or her ownership rights, authorities have leeway to officially recognize the claim.<sup>38</sup>

### ***Unlawful expropriation of HLP left behind by displaced populations***

Urban and peri-urban areas of South Sudan are witnessing an often systematic take-over of land and properties belonging to displaced populations. Several interviewees reported that in several key locations such as Juba, Bor and Bentiu, land and properties belonging to displaced populations are systematically confiscated by actors to the conflict. This also includes the unlawful transfer and sale of confiscated properties for profit. Likewise, many IDPs and returnees, for lack of other shelter options, are now occupying HLP left behind by those displaced.

In some of these areas official land demarcation is ongoing while most of former residents remain displaced, with Bor and Bentiu Town being two prominent examples. With the original residents displaced, it is unclear who the title deeds to these lands are given too.<sup>39</sup> In Juba, GoSS officials allegedly fenced off land belonging to IDPs now living in Juba PoC, in particular in and around the Tong Ping neighbourhood.<sup>40</sup> While (former) Chief of Army Peter Malong officially ordered the eviction of unlawful occupants from these properties, estimates are that around 3000 houses are affected by secondary occupation in Juba alone. This raises great concerns around the return of displaced populations and their access to their former land and property, in particular in light of the government’s objective for IDPs to leave the PoCs.

### ***Rising land disputes in urban areas, lack of resolution capacities***

Courts in urban areas of South Sudan have long been inundated with land disputes. In 2014, experts estimated that land disputes comprise as much as 80 to 90% of civil cases in the formal system.<sup>41</sup> Since then, land disputes, especially in urban areas, have further – and drastically - increased. In a 2017 study among 942, non-displaced respondents from urban areas across all 10 (now 32) states, 66% indicated that land disputes were common in their communities; most pronouncedly so in Bor (100% of respondents) and Juba (85% of respondents).<sup>42</sup> In addition, a third of all respondents indicated that they are currently involved in a land dispute, with Bor (100%) and Juba (52%) again reporting the highest percentage.<sup>43</sup>

The main causes of land-related disputes were reported to be secondary occupation and squatting, boundary disputes between individuals, boundary disputes between communities, land grabbing and unlawful expropriation of land and property. Unsurprisingly, recent research also clearly shows that





those who experienced displacement are much more likely to be involved in land disputes.<sup>44</sup> As conflict-related displacement has disproportionately affected members of certain ethnic communities, it is likely that “large-scale returns will not only increase the number of land-related disputes, but also that these disputes will quickly devolve into conflicts over identity, autochthony, and ethnicity.”<sup>45</sup>

In addition to notable increases in the number of land-related disputes, recent research also indicates that these disputes have become increasingly difficult to resolve.<sup>46</sup> The 2009 Land Act and Local Government Acts give chiefs the authority to solve land conflicts in rural areas and peri-urban centres, as well as small-scale land conflicts in urban areas. The jurisdiction of government courts is limited to registered lands in urban centres.<sup>47</sup> On-going displacements and returns, the cost of dispute resolution, corruption, and breakdown in the authority of local chiefs have however dramatically reduced incentives to seek assistance from customary and statutory authorities. In the same study, 85% of respondents reported that they are currently not satisfied with current Dispute Resolution Mechanisms available to them.<sup>48</sup>

These difficulties inherent to resolving land disputes are closely tied to the fact that the necessary statutory courts do not yet exist in most of the country. According to Section 99 of the 2009 Land Act, the court of first instance for all private (leasehold and freehold) and public land is the Land Division of the High Court, a Division that has yet to be established.<sup>49</sup> However, the majority of cities throughout the country do not even have a High Court where a Land Division can be established. Although the High Court in some areas has delegated its mandate over land to other courts, this is only useful when such courts are functioning and accessible to the majority of the population. Yet again, however, “only a fraction of county courts have been established and there is not yet a single payam-level statutory court in South Sudan.”<sup>50</sup> Even where courts can be accessed, the costs involved are often prohibitively high and the enforcement rate of decisions very low. Instead, most turn to customary dispute mechanisms even in urban areas, seeing the vacuum of statutory authorities.

In all likelihood, land disputes will further increase with the return and resettlement of hundreds of thousands of IDPs and refugees into highly politicized urban environments characterized by widespread squatting, looting, and property destruction.<sup>51</sup> The current dispute resolution in place is clearly overstretched and, in its current shape, will be unable to efficiently and fairly address these grievances.

### ***Difficulties for traditionally marginalised groups to access their HLP rights***

The 2009 Land Act provides men and women with equal access to land holdings. The 2011 Transitional Constitution likewise states that “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.”<sup>52</sup> However, while evidence points to increasing acceptance of women’s rights to property, research shows that there has been little change with regards to their ability to independently obtain and exert tenure rights, both in rural and urban areas.<sup>53</sup> Despite equal rights to own land under statutory law, the majority of women continue to access holdings exclusively through a male relative as required by customary law.

Although a small number of highly educated women in Juba have successfully registered plots in their own names, women continue to face major obstacles associated with land registration.<sup>54</sup> Women are also very vulnerable to unlawful dispossession of HLP.<sup>55</sup> Research further suggests that officials in registration departments are often unwilling or unable to register land in women’s name and that “it is rare to find women who have land registered in their name”<sup>56</sup> in most urban areas.<sup>57</sup> The adverse



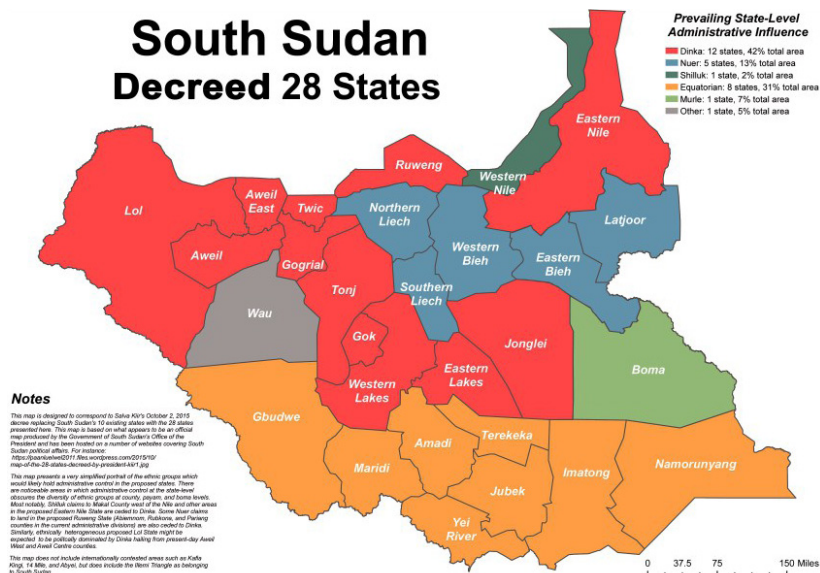
effects of existing gender inequalities in access to HLP have multiplied due to the increasing number of displaced households headed by women who have been widowed or abandoned in the ongoing conflict.

<sup>58</sup> The conflict has led to an increasing number of women no longer having the relationship with a male required by customary law systems for them to access their HLP rights. Likewise, children of those killed during the conflict will likely find it difficult to prove their claim to their land.<sup>59</sup>

### ***Continuous creation of new administrative divisions leading to new conflicts over land***

In October 2015, President Salva Kiir announced Establishment Order 36/2015, which signaled a major re-arrangement of the administrative structure of South Sudan by dividing the country from 10 to 28 states. With the given rationale of ‘bringing the government closer to the people’, the changes to the country’s administration took on even further complexity on 15 January 2017 with the creation of another 4 states by presidential order – thus bringing the total to 32. Irrespective of the official motivation and despite the unilateral rejection by the international community of these new divisions, the creation of the 32 states has critically increased the ethnic undertones of the ongoing conflict and accentuated pre-existing grievances over land ownership and control.

There are no official maps of the new states since they were declared in 2015 and the GoSS is unlikely to do so until the much delayed boundaries commission has completed its work. The below map however provides a rough overview of prevailing state level administrative influence by ethnic group as per the 28 states announced in October 2015:



Source: Radio Tamazuj, <https://paanluwel2011.files.wordpress.com/2015/12/decreed-28-states.jpg>

With the primary locus for decision-making on land issues being at the state level, “the creation of new states will have far-reaching impacts for how power over land is allocated in South Sudan.”<sup>60</sup> While all previous 10 states were served by respective State Ministries of Physical Infrastructure - key institutions in the statutory land administration - most of the new States have not yet established any substantial land administration. As the Head of the National Land Commission in Juba stated: ‘We do not have information on any newly formed State Ministries of Physical Infrastructure in most of the new states.’<sup>61</sup>



The new administrative divisions significantly exacerbate existing boundary disputes and conflicts around land ownership and control. While it is still not fully clear what exact effect the new borders will have on land rights or access to dividends from oil or other natural resources,<sup>62</sup> they ensure powerful majorities for Dinka in strategic locations and have hence been described as “ethnically defined fiefdoms of patronage.”

<sup>63</sup> By way of example, Shilluk land claims to Malakal County west of the Nile and other areas in proposed Eastern Nile State have now been ceded to Dinka. Most Nuer land claims in proposed Ruweng State are likewise ceded to Dinka, while the ethnically diverse Lol State is also dominated by Dinka. The GoSS is also planning to move the capital from Juba, which is Bari territory, to Ramciel in Lakes State which has long been inhabited by Dinka.<sup>64</sup>

The ongoing proliferation of ethnically defined states, counties and payams heightens the likelihood that land access and disputes are cast are increasingly experienced and fought over in absolute terms. Many of the newly appointed State governors do not hail from the area they are now supposed to govern, and have little knowledge about land dynamics in these respective localities. This can have a big impact on registration and allocation of land, a problem further accentuated by the fact that the GoSS nominates, rotates and/or dismisses State governors on a monthly and sometimes even weekly basis.

The creation of new administrative structures has also led to new and additional conflict around land among local authorities. In several urban and peri-urban centres of the country, a main locus of contestation over control over land lies between County Commissioners and Town Mayors, or county level and municipality level respectively. In Bor, communities have so far strongly resisted that Bor Municipality takes on its sought out role over land registration and allocation in the Town centre. Contrary to the orders of the State Governor, Bor’s County Commissioner alongside their residents emphasize that Bor Municipality has no legitimacy over land matters even the area and that it is the County Authority which has the mandate to administer land issues. While this dispute remains unresolved (March 2017), however, Bor Municipality by order of the Town Mayor has embarked on a “land demarcation campaign” in 2015 and 2016, with a focus on the Pakwau area along airport road up to John Garang University (at least 500 plots), traditionally a Nuer area whose residents have been displaced. The resulting active ongoing conflict over who has the authority to register and distribute land in Bor Town has led to what a government official described as a ‘a full-fledged internal government crisis’.<sup>65</sup> Due to growing protests by the surrounding counties, land demarcation has stalled in the last months.<sup>66</sup> Likewise in Bentiu, the Municipality Council headed by the Town Mayor was created after the beginning of the crisis in 2015 (the Town used to be under the jurisdiction of the County Authority headed by a Commissioner). The Municipality is alleged to have since begun a new process of land registration and allocation which was widely said to disregard earlier ownership patterns.

Indicative of these tensions on local level, Bor Municipality, Wau Municipality as well as Juba City Council have installed a Deputy Town Mayor for Land Affairs, which is a position without legal foundation in the 2009 Land Act and may be best understood as a political statement. In fact, the Land Act does not cover the Municipality Level, highlighting that these contestations take place without clarified without mandate and defined roles.<sup>67</sup> Another fault line is deepening tensions between the customary chiefs: Since the creation of the 32 states, counties are now sometimes smaller than urban centres. This not only reduces the jurisdiction of County Commissioners but also the Paramount Chiefs, who are now controlling much smaller territories. This runs the risk of increased fights over county, payam and boma boundaries on statutory and customary level. As such, “a lot of the [current] fighting across the country is about the implications of the 28 and now 32 states, which will exacerbate, and in some cases create, conflict over land and political institutions.”<sup>68</sup>



### ***Conflict-induced changes to ethno-demographic landscape, including ethnic reconfiguration***

A long term objective of the political elites and warring parties is to secure territorial advantage for their respective ethnic groups.<sup>69</sup> This has, inter alia, found its expression in the ongoing “effort to redraw boundaries in favour of specific ethnic polities”<sup>70</sup> and the „deliberate ethno-political targeting of civilians ...including the transfer [of] populations.”<sup>71</sup> Several respondents maintained that attempts at ethnic reconfiguration have become a politically expedient tool to consolidate support and control.

These dynamics can be well observed in and around Malakal, where government troops have pushed out Nuer and Shilluk populations off the east bank of the White Nile; allowing only Padang Dinka to remain in an area where Padang Dinka, Nuer and Shilluk have long voiced the same territorial claims.<sup>72</sup> The 2015 Establishment Order has exacerbated these pre-existing tensions by much increasing the political importance of Malakal Town, which the Dinka claim as the future capital of Eastern Nile state. The Order also effectively denies the Nuer and Shilluk access to the oil reserves in the area.

Active fighting has led to completely changed demographics in many other areas. In Bor Town, most Nuer neighbourhoods have been completely destroyed and/or lands and properties confiscated, rendering a return of these displaced populations nearly impossible. In due course, former cosmopolitan urban centres such as Bor have become mono-ethnic. As a key informant put it, “Nuer even have trouble selling their land and property left behind in Bor, and often receive threats for just trying to sell it. In many cases their land and properties are simply taken over by new occupants.” Many of these shifts in population dynamics may be irreversible.<sup>74</sup>

Recent months have also seen an acceleration in so-called ‘government-facilitated returns’, efforts which focus on Dinka IDPs displaced from and within the Equatorias. For example – with exact circumstances requiring further research and validation - Padang and Nyok Dinka displaced in Yei have been returned from the Greater Equatoria region to predominantly Bor, Malakal, Poloich, Renk, Wau, Aweil and Kajok in GoSS-organised truck convoys and/or air lifts. In Bor, a local official reported that of those returned from Yei, “60% were Dinka originally from Bor who left in the 80s, 30% were Dinka from Greater Upper Nile, and 10% are either Murle or Anuak”.<sup>75</sup> Most do not seem to own property or land (anymore) in the areas to which they are relocating. It has therefore been argued that the facilitated return and relocation of Dinka is a strategic reconfiguration of population dynamics: In March 2017, Yasmin Sooka, Chair of the Commission on Human Rights in South Sudan, referred to these movements as a “campaign of population engineering” relocating people over their ethnicity.<sup>76</sup> While informants in Bor stressed that most IDPs relocated on their own accord, the level of voluntariness needs to be urgently ascertained. In addition, and regardless of exact return motivations, many of these IDPs are still in need of humanitarian assistance.

The nature and extent of conflict will also heavily impact potential returns and settlement patterns in the future. In a 2015 study among 1,525 individuals in 11 locations across six of the former ten states of South Sudan, 46% explained that they would prefer to live in a community made up of individuals from their own ethnic group.<sup>77</sup> This echoes information obtained from UNMISS in Bor, which confirmed that most of the (Nuer) IDPs in Bor PoC only seriously consider resettling in exclusively Nuer areas such as Akobo – thus recognizing that a return to Bor will not be possible and that safety is best guaranteed in majority Nuer areas.<sup>78</sup>





As these demographic changes in South Sudan are intensifying, the stance of humanitarians and especially shelter actors vis a vis these developments needs to be urgently discussed and clarified. At the very minimum, there is a critical need for humanitarian/shelter actors to obtain an understanding of demographic changes in any given locality before the provision of any shelter support that extends beyond immediate emergency needs.

### HLP in South Sudan Peace Process

Tackling land issues is part of the 2015 Agreement on the Resolution of Conflict in South Sudan (ARCISS). The Agreement commits to **four** specific measures regarding the land policy and administration, two of them within specific timeframes, which can be used for advocacy purposes. While the very future of ARCISS is currently in doubt, the inclusion of these measures is an important rally point for any future negotiations:

1. **Initiate in-depth national debate** for review of land policy and the Land Act – within 12 months of the transition period (4.2.1.1)
2. **Establish an independent Registry** of Lands at all levels of government – within 18 months (4.2.1.2)
3. **Empower the Land Commission** at different levels of government (4.2.1.3)
4. **Assist in the mediation** of conflicts arising from land (4.2.1.4)

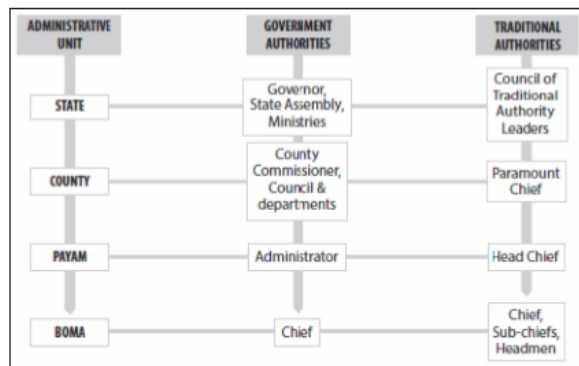
Looking ahead, the issue of compensation for lost or damaged land and property is absolutely critical. However, as of yet, any discussion around needed institutions, policy frameworks and procedures for such a land restitution process is entirely absent from the (dormant) ARCISS process.

Nonetheless, it is encouraging that the ARCISS acknowledges the importance of HLP rights, which are indeed essential to sustainable returns. Shelter actors and the Humanitarian Country Team (HCT) can make use of this tacit recognition in their advocacy and direct engagement with the GoSS. In doing so, it is important to recognize both preexisting disputes over land and more recent HLP grievances related to the current conflict. Both are areas of critical concern which urgently need to be addressed if the peace process in South Sudan is to move forward.<sup>79</sup>

### 3. Key Actors in South Sudan's HLP Administration

South Sudan is divided in three levels of government: national, state and local. The local level is itself subdivided into the county, payam (district level) and boma (village level) administration:

Figure 1: Administrative structures and governance in South Sudan



Source: Leonardi and Santschi, 2016.



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In addition, land is classified by Grade I (most valuable) to Grade IV (least valuable), depending on plot size, location and proximity to services. Class I-III can only be allocated by the State Ministry of Physical Planning, while Class IV is allocated by the County Commission/Municipality. The initial classification into land classes falls under the jurisdiction of the National and State Ministry for Lands and Physical Infrastructure.

The key actors (although their mandates are often unclear and contested) for HLP administration are:

### On **national level**:

- **National South Sudan Land Commission:** Established in 2006 to provide advice on land issues to the GoSS and draft the Land Act and Land Policy; independent institution without representation in the Council of Ministers
- **Ministry of Land and Urban Development** (formerly Ministry of Land, Housing and Physical Planning)

### On **state level**:

- **State Governor**
- **State Land Commission** (not functional in most areas); parastatal agency under direct supervision of the State Governor which is tasked to provide guidance on implementation to Land Act on state level
- **State Ministry of Lands and Physical Infrastructure:** Key institution dealing with land on a state level (Land Registration, Town Use Planning). The Ministry is led by a Minister (political appointee) and the Director General (civil servant). Technical staff further includes surveyors and engineers. In Wau, the State Ministry has the following nine departments as of March 2017:<sup>80</sup>

- i.) Land Department (oversees a specifically tasked Land Dispute Committee)
- ii.) Survey Department
- iii.) Town Planning Department
- iv.) Housing and Reconstruction Department
- v.) Roads and Bridges Department
- vi.) Mechanical Transport Department
- vii.) Public Utilities Department
- viii.) Hotel and Tourism Department
- ix.) Finance and Administration Department

- **The High Court:** Land Act decrees a separate Land Division under the High Court, which is not yet established anywhere in the country. The High Court is also where the Land Registry sits, although the Land Act decrees the State Ministry to oversee the Land Registry.
- **State Legislative Assembly:** Has a Land Resource Committee

### On **local level**:

As per Land Act 2009, the State Ministry of Lands and Physical Infrastructure sits above the County Land Authority (CLA) and the Payam Land Council (PLC). The CLA is formed by the state governor per decree, and the PLC is formed by the county commissioner. The CLA and PLC existed in a selected few of the former 10 states prior to the further devolution, but are not established in a single one of the new



states.<sup>81</sup> They are hence largely irrelevant to the day-to-day management for HLP. Key institutions on local level are instead:

*In rural context:*

**County Authority**, headed by government appointed Commissioner and Paramount Chief and supported by the administrative post of Chief Executive Officer. The Commissioner is among the most powerful actor regarding land administration and can make unilateral decisions regarding plot class IV. "Paramount Chiefs used to be elected, but now the Commissioners appoint anyone they want for the role."<sup>82</sup>

**Payam Authority**, overseen by a politically appointed Payam administrator and Head Chief.

**Boma Authority**, overseen by politically appointed Boma administrator and Sub Chief.

**Village**, headed by the community-elected Headman.

*In urban context:*

- **County Authority (from 7km from Town Centre)**: see above
- **Municipality/City Councils (within 7km of Town Centre)**, headed by the Town/City Mayor (politically appointed) and Chief Executive Officer (administrative position). The role of Town Mayor (always a political appointee) is a new institution. Wau Municipality, Bor Municipality and Juba City Council have a dedicated position of Deputy Mayor of Land Affairs. In interviews, Bor and Wau Municipality officials maintained their joint authority over land registration and allocation within their jurisdiction, and sole authority over surveying and allocation of Plot Class IV. The 2009 Land Act however makes no mentioning of Municipality or City Council and their respective role with regards to land administration.
- **Payam Authority**, overseen by a politically appointed Payam administrator and Head Chief.
- **Town Block Councils**: Forum to bring together all Town Block leaders regarding issues pertaining to urban service delivery, land demarcation initiatives etc.
- **Town Blocks**: Town Block leaders are appointed directly by the Ministry of Local Government.
- **Quarter Councils**



## **Annex 1. The Land Act of 2009**

The 2009 Land Act under Section 7 states that “all land in Southern Sudan is owned by the people of Southern Sudan and its usage shall be regulated by the Government,” implying that all South Sudanese have access rights to land anywhere in the country. According to the Land Act, land can be private, public or community land, and held either customarily, in freehold or in leasehold. In practice however, freehold<sup>83</sup> holdings do not exist.

**Public land:** Land owned by the government: “owned collectively by all people of Southern Sudan and held in trust by the appropriate level of government”<sup>84</sup>. Public land comprises land “used by government offices, roads, rivers and lakes for which no customary ownership is established, and land acquired for public use or investment.”<sup>85</sup> This includes land for government facilities; transport corridors; urban parks and recreational areas; forest reserves, wildlife reserves and national parks.<sup>86</sup>

**Private land:** Land owned by individuals and considered by law to be registered freehold land, leasehold (for a specified duration of time) and any other land declared by law as private land (GoSS 2009a).<sup>87</sup> Leasehold rights can be obtained for customary and freehold land, is contingent on environmental and social impact assessments (ESIAs), and can be granted for up to 99 years.<sup>88</sup> As a major shortcoming, it does not state how freehold rights are/can be acquired.<sup>89</sup> As a result, private land consists entirely of leaseholds in which primary ownership rests with state governments.<sup>90</sup>

**Community land:** Land owned and regulated by the community according to customary law.<sup>91</sup> The Land Act also protects the migratory rights of pastoralists to land.<sup>92</sup> Rough estimates state that 87% of the population holds land under customary land tenure.<sup>93</sup> Customary land rights are inheritable and can be subject to usufruct rights and sharecropper agreements, but cannot be permanently alienated. Most importantly, the Land Act also provides that community lands held under customary law has same legal standing as private, formalised holdings registered with the state.<sup>94</sup>

The Land Act decrees the **decentralization of land administration** to local level (State, County, and payam Land Councils), where customary chiefs are to work together with elected government officials regarding land allocation, registration and dispute resolution. The Land Act also explicitly **provides the right of women to own and inherit land** in South Sudan. Land administration must consult with communities concerned prior to any land decision whether in urban or rural areas.<sup>95</sup> It also shifts the land registration from the Judiciary (where it is currently still housed) to the **Ministry of Housing and Physical Planning**.

Addressing the claims of those who lost their property during the previous conflict, the Land Act 2009 affirms the **right to claim restitution** for those who lost their land “after an involuntary displacement as a result of the civil war starting from May 16, 1983...regardless of whether the right in land referred to was taken over by an individual or the government.”





## **Annex 2. Land Policy 2013 (awaiting approval)**

Since 2005, USAID together with the South Sudan Land Commission has worked on translating the Land Act into a Land Policy. The Land Policy was formally adopted by the Council of Ministers until February 2013, and since awaits review and approval by the National Legislative Assembly for review. Unfortunately, there has been no further political discussion on the Land Policy since the outbreak of hostilities in December 2013.

In its current form, however, the Land Policy includes the following legislation<sup>96</sup>:

Proposed Legislation	Description
Community Land Act	The Community Land Act would clarify the distinction between public and community land, describe the rules and procedures governing the expropriation 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	The Town and Country Planning Act would provide an appropriate framework for preparation and implementation of national, regional and local area land use plans and ensure the planning process is integrated, participatory and meets stakeholder needs.
Land Survey Act	The Land Survey Act would 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.
Land Valuation Act	The Land Valuation Act would set standards for land valuation.
Land Registration Act	The Land Registration Act would describe a land registration process that recognizes and protects all legitimate rights and interests in land in all categories.
Land Information Act	The Land Information Act would facilitate access to and management of land information
Mortgage Act	The Mortgage Act would lay out a regulatory system for property mortgages.

It also proposes the creation of a new position of Deputy Minister of Lands in the Ministry of Lands, Housing and Physical Planning, who would be responsible for promoting the reforms called for in the Land Act and fostering greater coherence among land governance institutions.



### **Annex 3. Key HLP actors active in South Sudan**

**AECOM VISTAS (Viable Support to Transition and Stability):** Implements a conflict mitigation, stabilization, and transition program 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” program, focusing on secure tenure, and supports the creation of a digital land registry within the Ministry of Land, Housing and Physical Planning.<sup>98</sup>

**FAO:** Together with the Ministry of Agriculture, Forestry, Cooperatives and Rural Development, FAO developed Agricultural and Land Tenure Guidelines for South Sudan (2015).

**International Organisation of Migration (IOM):** Developed the 2015 Land in Shelter: Due Diligence Guidelines for Shelter Actors in South Sudan.

**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,

**Norwegian Refugee Council;** have a dedicated Information, Counseling and Legal Assistance (ICLA) program with a focus on the research and analysis of HLP rights issues. Chaired the former Land Coordination Forum (LCF).

**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 program.

**Sudd Institute,** South Sudanese think tank publishing widely on key issues confronting contemporary South Sudan, including land disputes and climate change;

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**UN-HABITAT:** is broadly engaged in South Sudan, notably working with urbanization-related issues, especially in the Juba area.<sup>99</sup>

**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.

**USAID:** supported the Sudan Property Rights Program (SPRP, 2008 to 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.

**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).<sup>100</sup>



<sup>1</sup> OCHA South Sudan Humanitarian Bulletin Issue 12 | 28 July 2017

<sup>2</sup> The Star. 7th April 2017. 'New UN images show 18,000 structures destroyed in South Sudan's civil war', <https://www.thestar.com/news/world/2017/04/07/new-un-images-show-18000-structures-destroyed-in-south-sudans-civil-war.html>

<sup>3</sup> USAID. 2010. Jurisdiction of GOSS, State, county, and Customary Authorities Over Land Administration, Planning and Allocation: Juba County, Central Equatoria State. Washington, DC.

<sup>4</sup> See IOM Land Rights in Shelter Due Diligence Guidelines for Shelter Actors in South Sudan (2015)

<sup>5</sup> USAID. 2010. Jurisdiction of GOSS, State, county, and Customary Authorities over Land Administration, Planning and Allocation: Juba County, Central Equatoria State. Washington, DC.

<sup>6</sup> Deng, D.K. 2011. Understanding Land Investment Deals in Africa, Country Report: South Sudan. The Oakland Institute.

<sup>7</sup> Concern Staff, Bentiu, 20.02.2017

<sup>8</sup> Sudd Institute. February 2017. Land Tenure in South Sudan: Does it Promote Climate Change Resilience?

<sup>9</sup> Deng, D.K. 2016. 'Between a Rock and a Hard Place': Land Rights and Displacement in Juba, South Sudan. The South Sudan Law Society, Juba, South Sudan

<sup>10</sup> Pritchard, M. 2017. Disputing Access, Discouraging Returns. The South Sudan Law Society, Juba, South Sudan

<sup>11</sup> Interview with South Sudanese academic, 29.04.2015, Juba

<sup>12</sup> Interview with South Sudanese academic, 13.02.2017, Juba

<sup>13</sup> Interview with South Sudan Law Society staff, 08.03.2017, Juba

<sup>14</sup> Deng, David K. 2014. South Sudan Country Report, Land Governance and Assessment Framework (LGAF), p.13

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<sup>20</sup> NRC staff, 03.03.2017, Bor

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<sup>22</sup> Interview with South Sudanese land lawyer, 14.02.2017, Juba

<sup>23</sup> ibid

<sup>24</sup> Marongwe, Nelson. 2013. Land Administration Challenges in post Conflict South Sudan, p6

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<sup>26</sup> Pritchard, M. 2017. Disputing Access, Discouraging Returns. The South Sudan Law Society, Juba, South Sudan

<sup>27</sup> Matthew Pritchard's 2017 report 'Disputing Access, Discouraging Returns' for the the South Sudan Law Society provides a more detailed account of these respective land registration processes (pp 13-14, p23)

<sup>28</sup> Byamugisha, F., A. Lufafa, and T. Hilhorst. 2014. Land Governance in South Sudan: Policies for Peace and Development. The World Bank, Washington, D.C., p24

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<sup>31</sup> Law Society, Juba, South Sudan, p6

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<sup>43</sup> Ibid, p25

<sup>44</sup> Ibid

<sup>45</sup> Ibid, p30

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