

## Housing, Land and Property Mapping Project South Sudan<sup>1</sup>

### Background

The following fact sheet and research memo have been developed to provide quick and key information of the legal and procedural context relating to Housing, Land and Property ("HLP") within the target country. They are intended to inform programming and emergency responses, especially those involving shelter interventions. A rapid understanding of the tenure landscape in each country context can assist in delivering stronger and more equitable responses. However these documents are not intended to be legal advice.

The HLP mapping project has been undertaken by the international law firm Webber Wentzel for the International Organization for Migration (IOM), using templates developed by the Australian Red Cross and the International Federation of the Red Cross and Red Crescent Societies (IFRC). All of the research has gone through a verification process with in-country lawyers and/or country experts.

### Document Change Management

These documents are intended to be used and updated as necessary to ensure that they are always providing the most current and relevant information. We would appreciate ongoing feedback and updates from those working in country, in response or preparedness.

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<sup>1</sup> Southern Sudan is the historical term used before the introduction of the Transitional Constitution of the Republic of South Sudan, 2011. Earlier legislation refers to South Sudan as Southern Sudan. For example, the Land Act, 2009, defines "Southern Sudan" as the territory that constituted the three former provinces of Bahr el Ghazal, Equatoria, and Upper Nile in their boundaries as they stood on January 1, 1956. In practice, both terms are used interchangeably.

## Housing, Land and Property Law in South Sudan

### 2. KEY LAWS AND ACTORS

<p><b>Laws</b></p>	<p><b>The Transitional Constitution of 2011</b></p> <p>The Transitional Constitution of the Republic of South Sudan, 2011 was drafted by a Southern Sudan Constitutional Drafting Committee. It was published in April 2011 and came into force on 9 July 2011 to support the rights, duties, powers, and institutions of a sovereign state so as to achieve a permanent constitution that is deemed legitimate in the eyes of the South. The Constitution prescribes a three-category land tenure system divided into public land, community land, and private land. An Amended Transitional National Constitution is to be passed to the Transitional Legislative Assembly once it is reconstituted.</p> <p><b>The Land Act of 2009<sup>2</sup></b></p> <p>While the Constitution provides the universal system, namely that the people <i>own all land in South Sudan</i>, the Land Act regulates land tenure and protects rights in land in Southern Sudan while creating an enabling environment for economic development in the land and natural resources sectors. The Land Act reiterates the Constitutional provision that the people <i>own all land in South Sudan</i>. Interesting to note that <b>the Land Act</b> was enacted before the Transitional Constitution came into force.</p> <p><b>Revitalized Agreement on the Resolution of Conflict in the Republic of South Sudan (R-ARCSS), signed 28 August 2018</b></p> <p>While the R-ARCSS is not a law, it is a key policy document.</p>
<p><b>Key government actors</b></p>	<p>Land Governance in South Sudan, and the responsibility thereof, is dispersed among institutions at all levels of government. The South Sudan Land Commission (<b>SSLC</b>) is predominantly responsible however, as the SSLC has been the driving force behind the 2009 Land Act and associated land policies.</p> <p>The Ministry of Housing, Physical Planning and Environment is the main national governmental body for the registration of ownership and planning developments within the land sector. The Ministry of Agriculture and Forestry is the main national governmental body for the growth, development and management of the agricultural sector. It must also be noted that local community authorities and village chiefs, as well as local communities also play a key role in providing for land rights.</p> <p>It must be noted that non-governmental bodies like the Traditional Authority within the relevant rural areas in South Sudan are also responsible for making recommendations for those looking to acquire land ownership through customary land tenure. The Traditional Authority comprises of Traditional chiefs and local Government.</p>
<p><b>Shelter cluster</b></p>	<p>The Shelter and Non-Food Items (NFIs) Cluster was launched in South Sudan in 2011 and acts as a coordinating mechanism of partner organizations working to provide life-saving household items and shelter materials to conflict- and disaster-affected people in South Sudan. IOM leads the Cluster at the national level with the support of World Vision International as Co-Lead.<sup>3</sup></p>

<sup>2</sup> National Legislative Bodies / National Authorities, *South Sudan: Land Act, 2009*, February 2009, available at: <https://www.refworld.org/docid/5a841e7a4.html>, accessed 1 July 2020.

<sup>3</sup> Global Shelter Cluster- Coordinating Humanitarian Shelter 'In Africa- South Sudan' available at <https://www.sheltercluster.org/response/south-sudan>, accessed on 14 July 2020.

### 3. COMMON TYPES OF TENURE

The Transitional Constitution prescribes a three-category land tenure system divided into public land, community land, and private land. Public land means all land owned, held or otherwise acquired by any level of government. Community land includes all lands traditionally and historically held or used by local communities or their members. Private land includes registered land held by any person under leasehold tenure, investment land acquired under lease from the government, and any other land designated as private land in accordance with the law.

The Land Act and the Constitution state that the people *own all land in South Sudan*.

The table below summarises the most common types of tenure in South Sudan.

Tenure	Commonly Registered?	Key Features	Title document
<b>Ownership of land</b>	Yes	The basic premise that the " <i>land belongs to the people of South Sudan</i> " still endures, and government is considered to be the custodian and allocator of that land. Land usage is regulated by the government in accordance with the Constitution and Law. <sup>4</sup>	Yes
<b>Customary Land Ownership</b>	No	This type of Land Tenure is characterised by observing and participating in the conventions, customs and traditions that the South Sudanese people observe. Rights in land are obtained by virtue of this observation of customs. It includes all lands traditionally and historically held or used by local communities or their members.  Customary land rights have equal force and effect in law with freehold or leasehold rights acquired through statutory allocation, registration or transaction. <sup>5</sup>	Title deed <sup>6</sup>
<b>Freehold</b>	No	Freehold ownership can be defined as any estate which is "free from hold "of any entity besides the owner, hence the owner of such enjoys free ownership for perpetuity and can use the <b>land</b> for any purposes in accordance with local regulations. According to the definition set out in the Act, freehold is defined as "a form of land ownership held in perpetuity with the rights to transfer and dispose of such land". The Land Act clearly designates that land belongs to the people and, as such, all citizens hold	In practice, no title deeds are issued

<sup>4</sup> Ajo Noel Julious K 'Land Ownership and conflict of laws in South Sudan' *Sudan Tribune* 1 August 2015 available at <https://www.sudantribune.com/spip.php?article55887> , accessed on 5 July 2020.

<sup>5</sup> The Land Act, 2009 at section 8(6).

<sup>6</sup> Although some land managed and allocated by traditional/customary authorities is titled & deeded, most is not. This land is most commonly held and managed without formal documentation. Comment by KIRBY, Megan – HLP Officer IOM South Sudan.

		freehold titles to their land. Such a system is the result of this statutory assertion.	
<b>Leasehold</b>	Yes	<p>A form of land or property tenure where one party to an agreement buys the right to occupy the land or building for a set duration.</p> <p>Section 17 of the Land Act purports that:</p> <p>(1) A Derivative right to land shall confer the right of occupancy or usage upon a person or community and shall be registered by the Land administration.</p> <p>(2) Derivative rights to land shall include lease, sub-lease, usufruct, easement and any interest analogous to these rights.<sup>7</sup></p>	Lease agreement & public deed

#### 4. SECURITY OF TENURE OF VULNERABLE GROUPS

<b>Women</b>	<p>In terms of the Transitional Constitution and the Land Act, women have the right to security of tenure. Section 13(4) of the Land Act provides that "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 20(5) of the Constitution".<sup>8</sup></p> <p>Customary structures and inadequate oversight mechanisms over customary authorities may result in practice on a limitation on women enjoying this right.</p>
<b>Minority groups</b>	<p><b>According to Article 28 of the Transitional Constitution, Right to Own Property<sup>9</sup>,</b> "Every person shall have the right to acquire or own property as regulated by law."</p> <p>Accordingly, it is implied that minority groups are allowed to legally own or rent land subject to the laws of the country. The contention lies in the latter part of the statement as currently, there are no articulated national policies and laws in South Sudan governing rights to land for these categories of people. None of the existing legal frameworks on land has explicitly addressed land concerns of youth and other vulnerable groups.<sup>10</sup></p> <p>South Sudan has 64 tribes and each of these is not considered a minority group. Indigenous groups are not explicitly mentioned in any of the existing South Sudanese policies, nor is South Sudan a signatory to the Universal Declaration on the Rights of Indigenous Peoples.<sup>11</sup> There is a reference to 'indigenous knowledge' in the Environmental Policy, but the term is not used to denote the heightened land rights that indigenous peoples are afforded under international law.</p>
<b>Informal settlements</b>	<p>The issue of landlessness, in South Sudan, is rarely considered in government policy. It is a trite assumption that due to the low population density in South Sudan there is</p>

<sup>7</sup> The Land Act, 2009 at section 17.

<sup>8</sup> The Land Act, 2009 at section 13(4).

<sup>9</sup> The Transitional Constitution of the Republic of South Sudan, 2011 at Article 28.

<sup>10</sup> Deng, D. 2011. 'Land belongs to the community, Demystifying the 'global land grab' in Southern Sudan' Paper presented at IDS conference April 2011, Brighton.

<sup>11</sup> International Bank for Reconstruction and Development ' Land Governance in South Sudan: Policies for Peace and Development' Report No. 86958-SS May 2014 at 69.

<p><b>and Landless people</b></p>	<p>enough land for everyone.<sup>12</sup> However, there are flaws in this notion as certain populations are at increased risk of landlessness, such as divorced women, widows and orphans. Moreover, the relatively new development that sees the government evicting people from public spaces have contributed to the problem.</p> <p>The existing legal framework in South Sudan is inadequate to address the needs of those living in informal settlements as the Land Act (2009) fails to recognise "informal settlement residents' land rights and does not adequately protect them from forced eviction". Additionally, although the Land Act has established quite an extensive tenure system, there are no provisions for tenure systems that might protect or support the "regularization of informal settlements".<sup>13</sup></p>
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## 5. EVICTION, EXPROPRIATION AND RELOCATION

<p><b>Eviction</b></p>	<p>Article 34(3) of the Transitional Constitution avers that "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."<sup>14</sup> The above law prohibits evictions save for certain circumstances. An eviction can only occur through the handing down of a court order. Section 86(1) of the Land Act asserts that a court may grant an order of eviction if it deems it just and equitable to do so after considering all the relevant circumstances.</p>
<p><b>Expropriation</b></p>	<p>The Transitional Constitution allows for expropriation under Article 170 (2). It states that the government at all levels, may expropriate land in the public interest as shall be prescribed by law.<sup>15</sup></p> <p>The Land Act provides under section 73 for the "Government of Southern Sudan, State Governments and any other Public Authority [to] expropriate land for public purposes subject to compensation and upon agreement as prescribed by this Act or any other law".<sup>16</sup> The Ministry of Humanitarian and Disaster Management intends to conduct an Expropriation programme in accordance with the Revitalized Agreement on the Resolution of the Conflict in the Republic of South Sudan (R-ARCSS). Compensation will be determined by the Ministry and Parliament based on government and international compensation guidelines.</p>
<p><b>Relocation</b></p>	<p>Under section 71 of the Land Act, the Environment Restoration provision states "where the misuse of land endangers the population or nature, the authority concerned may requisite the rights of occupancy of people living in the area after consultation and subject to relocation".<sup>17</sup></p> <p>The Land Act provides that national and state government and private companies must proceed with a resettlement plan for communities affected by expropriation or by any investment activity.<sup>18</sup> It goes on provide that internally displaced persons shall</p>

<sup>12</sup> Sara Pantuliano, 'The land question: Sudan's peace nemesis' HPG Working Paper December 2007.

<sup>13</sup> USAID Sudan ' LAND TENURE ISSUES IN SOUTHERN SUDAN: KEY FINDINGS AND RECOMMENDATIONS FOR SOUTHERN SUDAN LAND POLICY' December 2010- This publication was produced for review by the United States Agency for International Development. It was prepared by Tetra Tech ARD.

<sup>14</sup> The Transitional Constitution of the Republic of South Sudan, 2011 at Article 34(3).

<sup>15</sup> The Transitional Constitution of the Republic of South Sudan, 2011 at Article 170(2).

<sup>16</sup> The Land Act, 2009 at section 73(1).

<sup>17</sup> The Land Act, 2009 at section 71.

<sup>18</sup> The Land Act, 2009 at section 71(1).

	<p>be consulted and shall have opportunities to participate in planning and implementing resettlement programmes; and it places a positive obligation on the expropriating party to assist internally displaced persons and returnees in their efforts to improve their livelihood.</p> <p>Also, the Ministry of Humanitarian Affairs and Disaster Management (MHADM) developed the Framework for Return, Reintegration and Relocation of Displaced Persons in 2017 which details policy guidance for the near future.<sup>19</sup> The framework is a tool for addressing internal displacement and resolving IDPs situation. Moreover, it aims to strengthen coordination within national and international partners on IDPs issues and efforts to enhance the plight of the IDPs.<sup>20</sup></p>
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<sup>19</sup>Framework for Return, Reintegration and Relocation of Displaced Persons: Achieving Durable Solutions in South Sudan February 2017.

<sup>20</sup> Framework for Return, Reintegration and Relocation of Displaced Persons: Achieving Durable Solutions in South Sudan February 2017.

**HOUSING, LAND AND  
PROPERTY MAPPING PROJECT  
SOUTH SUDAN**

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**WEBBER WENTZEL**

in alliance with > **Linklaters**

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## 1. Introduction

The International Organization for Migration (IOM) and its partners are first responders to humanitarian emergencies caused by conflict or natural disasters. Humanitarian assistance falls within IOM's mandate to support governments in addressing the needs of internally displaced persons (IDPs).

The Australian Red Cross, with technical support from the International Federation of Red Cross and Red Crescent Societies, has provided the research template to which this memorandum responds. This memorandum comprises three main sections:

- The first section, entitled 'Common types of tenure', provides an overview of the different types of housing and land tenure in South Sudan. It outlines the methods used to create and transfer tenure and analyses the degree of security of tenure afforded by each form of tenure.
- The second section, entitled 'Security of tenure of vulnerable groups', considers whether, and to what extent, certain groups face legal barriers to accessing land and housing.
- The third section, entitled 'eviction, expropriation and relocation', considers South Sudanese law which governs, or is applicable to, forced evictions, compulsory acquisition of land and relocations. This section also considers whether compensation is available in these situations.

### 1.1 Background information on South Sudan

The creation of South Sudan stems from the 2005 Comprehensive Peace Agreement ("**CPA**"). The CPA was established, entered into and used as a mechanism to end the on-going civil war that was occurring between the North and the South.<sup>21</sup> Subsequent to the execution of the CPA, two Constitutions were founded and used to create legal order in South Sudan. The first was the country's *Interim Constitution of the Republic of South Sudan* which had entered into force in July 2005. The second was the *Interim National Constitution of South Sudan* which became enforceable in December 2005. However, both documents were then replaced by the *Transitional Constitution of 2011* which was specifically enacted to cater to South Sudan's transition to independence.

### 1.2 Governmental Structure

With the advent of the 2011 Constitution<sup>22</sup>, The Republic of South Sudan was created. The executive power of the country is vested in the President and the Vice-President. The President, who is directly elected, has a four year term. The legislative power is bicameral and comprises of the National Legislative Assembly ("**NLA**") and the Council of States.

Post independence, the NLA body consisted of the following members of the previous regional legislative body: the South Sudan Legislative Assembly; and the South Sudanese who had seats in Sudan's National Assembly. The majority of the members of the NLA were elected directly. However, the rest were elected from a closed list to ensure that there was proportional representation for women and various other minority groups.

Upon independence, the Council of States consisted of all South Sudanese people who had been elected by state legislatures to seats in Sudan's Council of States. There were also 20

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<sup>21</sup> Ahmad Alawad Sikainga, Jay L. Spaulding and Others 'South Sudan' available at Encyclopædia Britannica inc. 7 June 2019 available at <https://www.britannica.com/place/South-Sudan>, accessed on 30 June 2020.

<sup>22</sup> The Transitional Constitution of the Republic of South Sudan, 2011.

members appointed by the President. The members of the NLA and the Council of States are to serve a four year term.<sup>23</sup>

The country continues to be plagued with civil unrest despite the 2005 CPA. Due to the eruption of another civil uprising in December 2013, an additional peace agreement was entered into and signed in August 2015. This peace agreement provided for the creation of a transitional power-sharing government. The government would include members of current administration as well as members from the rebel forces.

Land governance in South Sudan, and the responsibility thereof, is dispersed among institutions at all levels of government. The Ministry of Lands and Planning is predominantly responsible for handling all the land related issues and has been the driving force behind the 2009 Land Act and associated land policies. Additionally, the South Sudan Land Commission ("**SSLC**") was established in 2005 and has been the leading institution in providing guidance on land issues in the country. However, the SSLC's ability to execute its mandate is heavily impaired by its lack of representation in the Council of Ministers, in addition to having very limited presence at state level.<sup>24</sup>

### 1.3 Demographics

The effect of the civil unrest has had disastrous consequences for the people of South Sudan. It is one of the world's poorest countries and ranks among the lowest in many socio-economic categories. Problems are exacerbated by ongoing tensions with Sudan over oil revenues and land borders, fighting between government forces and rebel groups, and inter-communal violence.<sup>25</sup>

South Sudan has a population of 11,193,725 people, with an annual growth of 1.19% from 2019. The urban population accounts for 24.6% of the population.<sup>26</sup> The city with the largest population is the country's capital, Juba, with a current estimate of 450,000 people.<sup>27</sup> Most of the population lives off farming, while smaller numbers rely on animal husbandry- more than 70% of the populace lives in rural areas. The country has reverted to a provincial division of 10 states; which had been preceded by a division of the country into 32 states, which had reflected specific tribal boundaries.

The average life expectancy in South Sudan is about 58 to 59 years of age. The infant mortality rate is at 59 deaths per every 1000 live births. The maternal mortality rate is among the world's highest for a variety of reasons, including a shortage of health care workers, facilities, and supplies; poor roads and a lack of transport; and cultural beliefs that prevent women from seeking obstetric care.

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<sup>23</sup> Robert O. Collins, Ahmad Alawad Sikainga and Others 'South Sudan' available at Encyclopædia Britannica inc. 7 June 2019 available at <https://www.britannica.com/place/South-Sudan/Government-and-society#ref333967> accessed on 30 June 2020.

<sup>24</sup> International Bank for Reconstruction and Development ' Land Governance in South Sudan: Policies for Peace and Development' Report No. 86958-SS May 2014 at 27.

<sup>25</sup> Index Mundi "South Sudan Demographics Profile 2019' available at [https://www.indexmundi.com/south\\_sudan/demographics\\_profile.html](https://www.indexmundi.com/south_sudan/demographics_profile.html), accessed on 2 July 2020.

<sup>26</sup> Worldometer 'South Sudan Population ' available at <https://www.worldometers.info/world-population/south-sudan-population/>, accessed on 2 July 2020.

<sup>27</sup> Worldometer 'South Sudan Population ' available at <https://www.worldometers.info/world-population/south-sudan-population/>, accessed on 2 July 2020.

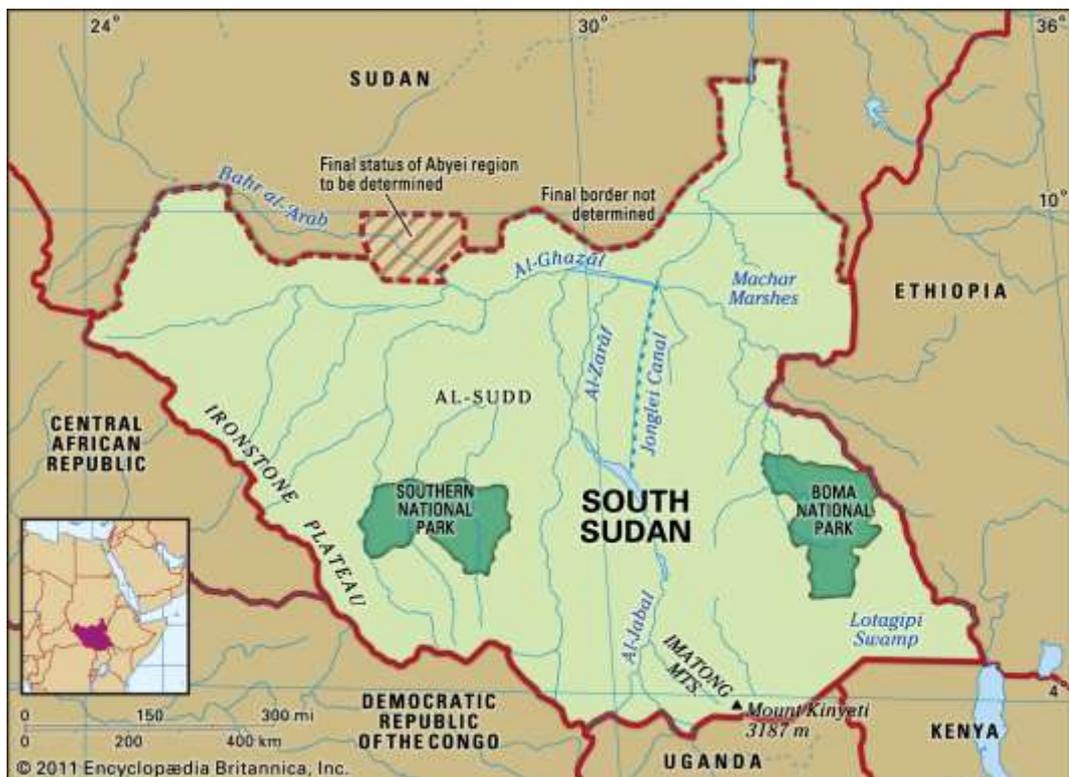
Educational attainment is extremely poor due to the lack of schools, qualified teachers, and materials. Less than a third of the population is literate (the rate is even lower among women), and half live below the poverty line. Many adults missed out on schooling because of warfare and displacement.

There are three predominant religions practiced in South Sudan: Animism, Islam and Christianity. Languages spoken in South Sudan include English as the official language; Arabic (includes Juba and Sudanese variants); and regional languages like Dinka, Nuer, Bari, Zande, Shilluk.

#### 1.4 Overview on Land Laws

Under the Transitional Constitution of the Republic of South Sudan 2011, and the transitional government, the laws pertaining to land have either been slightly supplemented upon or remain unchanged. The basic premise is that the "*land belongs to the people of South Sudan*" and government is the custodian and allocator of that land. Land usage is regulated by the government in accordance with the Constitution and Land Act of 2009.<sup>28</sup>

The transitional government has made it possible for the population to obtain land which is regulated by the Judiciary and Ministry of Housing and Planning. ;



Physical features of South Sudan. *Encyclopædia Britannica, Inc.*<sup>29</sup>

<sup>28</sup> Ajo Noel Julious K 'Land Ownership and conflict of laws in South Sudan' *Sudan Tribune* 1 August 2015 available at <https://www.sudantribune.com/spip.php?article55887> , accessed on 5 July 2020.

<sup>29</sup> Robert O. Collins, Ahmad Alawad Sikainga and Others 'South Sudan' available at Encyclopædia Britannica inc. 7 June 2019 available at <https://www.britannica.com/place/South-Sudan/Government-and-society#ref333967> accessed on 30 June 2020.

## 2. Common Types of Tenure

### 2.1 Key Legislation and Policies Governing Housing, Land Ownership and Planning<sup>30</sup>

#### 2.1.1 The Transitional Constitution of 2011

The Transitional Constitution of the Republic of South Sudan of 2011 was drafted by a Southern Sudan Constitutional Drafting Committee. It was published in April 2011 and came into force on 9 July 2011 to support the rights, duties, powers, and institutions of a sovereign state so as to achieve a permanent constitution that is deemed legitimate in the eyes of the South Sudanese people and contributes to South Sudan's development of democracy, constitutionalism, and the rule of law.<sup>31</sup>

The Constitution prescribes a three-category land tenure system divided into public land, community land, and private land. Public land means all land owned, held or otherwise acquired by any level of government. This classification includes land owned by Bomas, Counties, States and Federal government or administration as well as all land that is not otherwise designated as community or privately held. The Department of Lands at the Ministry deals with the demarcation of lands.<sup>32</sup>

Community land includes all lands traditionally and historically held or used by local communities or their members. This category includes communal grazing lands for animals, hunting grounds, or locations of traditional sacrifices and worship.

Private land includes registered land held by any person under leasehold tenure, investment land acquired under lease from the government, and any other land designated as private land in accordance with the law. The assumption implicit in this framework is that all investment land (land for businesses) is acquired from the government through the leasehold tenure.

It must be noted that there appears to be immense uncertainty regarding what constitutes public and community land in South Sudan. The Land Act, which is described below, defines community land as land "held, managed or used" by a given community. By contrast, public land includes land which "no private ownership including customary ownership may be established by any legal process."

There is no *terra nullius* in South Sudan and the Land Act formally recognizes all land administered under customary land tenure. Communities then ought to own nearly all the rural land in the country. If this reading of the law is correct, then public landholdings

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<sup>30</sup> Although not yet passed into law, a comprehensive National Land Policy (2019) has been drafted, reviewed by MPs and proceeded successfully through two readings on the floor of Parliament. The passage of this document into law was delayed due to the dissolution and re-constitution of Parliament in February 2020, proceeded by the pandemic. When ultimately passed (possibly later in 2020), this document will serve as the primary source of legal guidance on matters of land administration and ownership in South Sudan. It addresses significant concerns that the 2009 Land Act could not anticipate (i.e., mass displacement, PoC/ collective settlement sites, massive and widespread destruction of property, loss of documentation etc). When/if this policy is enacted, this HLP profile will be updated to reflect its provisions.

<sup>31</sup> United States Institute of Peace 'Constitution Making in Sudan and South Sudan' available at <https://www.usip.org/programs/constitution-making-sudan-and-south-sudan>, accessed on 6 July 2020.

<sup>32</sup> Ajo Noel Julious K 'Land Ownership and conflict of laws in South Sudan' *Sudan Tribune* 1 August 2015 available at <https://www.sudantribune.com/spip.php?article55887>, accessed on 5 July 2020.

in rural areas ought to be limited to a "few forest reserves, game reserves, national parks and agro-industrial schemes."<sup>33</sup>

### 2.1.2 **The Land Act of 2009**<sup>34</sup>

This Act regulates land tenure and protects rights in land in Southern Sudan while creating an enabling environment for economic development in the land and natural resources sectors.<sup>35</sup>

The government enacted the Land Act of 2009, pursuant to Article 170(1) of the Constitution enabling governmental regulation of land usage. The Land Act reiterates the Constitutional provision that the people *own all land in South Sudan*.

Section 6 of the Act Asserts the *General Principles*<sup>36</sup> that must be considered under *Land Ownership*:

(1) The regulation of land tenure, usage and exercise of rights thereon shall be a concurrent competence, exercised at the appropriate level of government in Southern Sudan.

(2) Rights in the land owned by the Government of Southern Sudan shall be exercised through the appropriate or designated level of government in Southern Sudan, which shall recognize customary land rights under customary land law.

(3) All levels of government in Southern Sudan shall institute a process to progressively develop and amend the relevant laws to incorporate customary laws, practices, local heritage and international trends and practices.

(4) All lands traditionally and historically held or used by local communities or their members shall be defined, held, managed and protected by law in Southern Sudan.

(5) Customary seasonal access rights to land shall be respected, provided that these access rights shall be regulated by respective states taking into account the need to protect agricultural production, community peace and harmony, and without unduly interfering with or degrading the primary ownership interest in the land, in accordance with customary law.

(6) Without prejudice to the provisions of Article 180 (7) of the Constitution and the provisions of this Act, subterranean natural resources shall be owned, regulated and managed by the Government of Southern Sudan.

(7) Communities and persons enjoying rights in land shall be consulted and their views duly taken into account in decisions to develop subterranean natural

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<sup>33</sup> International Bank for Reconstruction and Development ' Land Governance in South Sudan: Policies for Peace and Development' Report No. 86958-SS May 2014 at 92.

<sup>34</sup> National Legislative Bodies / National Authorities, *South Sudan: Land Act, 2009*, February 2009, available at: <https://www.refworld.org/docid/5a841e7a4.html>, accessed 1 July 2020.

<sup>35</sup> LandLinks 'South Sudan: Overview' available at <https://www.land-links.org/country-profile/south-sudan/#1528477144698-7dfba3fc-2682>, accessed on 7 July 2020.

<sup>36</sup> The Land Act, 2009 at section 6.

resources in the area in which they have rights; they shall share in the benefits of that development.

In addition to the above governing principles, The Land Act prescribes that land may be acquired, held and transferred through **customary, freehold** and **leasehold** tenure. All citizens hold freehold titles to their lands. Non-citizens may acquire leasehold for specific periods but may not possess land in freehold, according to Section 14 of the Land Act.

## 2.2 Three distinct types of Land Tenure

In terms of Section 7(2) of the Land Act, there are three distinct ways in which land tenure can be achieved: customary land ownership; freehold land ownership and leasehold ownership.<sup>37</sup>

These are explained in more detail below:

### 2.2.1 Customary Land Ownership

What is it?

This type of land tenure is characterised by observing and participating in the conventions, customs and traditions that the South Sudanese people observe. Rights in land are obtained by virtue of this observation of customs. It includes all lands traditionally and historically held or used by local communities or their members.

Customary land rights have equal force and effect in law with freehold or leasehold rights acquired through statutory allocation, registration or transaction.<sup>38</sup>

Who can own Land?

The South Sudanese government has enacted extensive laws pertaining to customary land. In considering the previous Constitution, it would seem sensible to continue including these extensive laws in subsequent Constitutions as it will allow for ethnic communities to possess land through customary practice. Citizens of South Sudan who follow the customs or adhere to the rules and observations of the customs are eligible for this type of tenure.

How does it work?

Section 15 of the Act, *Allocation of Customary Rights to Land*, regulates this aspect. Customary land ownership can be acquired upon recommendation from the relevant traditional authorities within the area. The land is awarded for agriculture, grazing and forestry use.<sup>39</sup>

The Traditional Authority, in consultation with other members of the community, determines the size and the boundaries of the portion of land in respect of which

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<sup>37</sup> The Land Act, 2009 at section 7(2).

<sup>38</sup> The Land Act, 2009 at section 8(6).

<sup>39</sup> The Land Act, 2009 at section 15(1).

the right is allocated, in accordance with the customary law and practices prevailing.<sup>40</sup>

Prior to allocation of a customary land right, the Traditional Authority which allocated the land shall notify the County Land Authority or the Payam<sup>41</sup> Land Council or any other relevant land administration, and thereafter, furnish the relevant information pertaining to the allocation for their records.<sup>42</sup>

The Act provides that any allocation of a piece of land beyond 250 feddans<sup>43</sup> for commercial, agricultural, forestry, ranch, poultry or farming purposes shall be approved by the Ministry of Lands and Planning, in the State, after transmission by the County Land Authority or the Payam Land Council.<sup>44</sup>

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.<sup>45</sup>

- 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.

A Traditional Authority may on behalf of the community, in accordance with customary law and practices, cancel a customary land right allocated if:<sup>46</sup>

- a) the holder of the right fails to observe any condition or restriction attached to the right under customary law and practices, this Act and regulations;
- b) the land is being used predominantly for a purpose not sanctioned under customary law and practices; or
- c) on any other ground as may be prescribed by customary practices, this Act or any other law.

It is important to note that a customary land right allocated under this Act may endure for the natural life of the person to whom it is allocated, except to the extent of the provisions of section 14 of the Act<sup>47</sup>, and subject to the conditions of

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<sup>40</sup> The Land Act, 2009 at section 15(2).

<sup>41</sup> "Payam" means sub-location of a county.

<sup>42</sup> The Land Act, 2009 at section 15(3).

<sup>43</sup> "Feddan" is how land is measured in some states in South Sudan. This is the old way of land division that is being substituted by square metres system but only occurs in some states. A Feddan is equivalent to 1.03 acres.

<sup>44</sup> The Land Act, 2009 at section 15(5)

<sup>45</sup> The Land Act, 2009 at section 15(7)

<sup>46</sup> The Land Act, 2009 at section 16(1)

<sup>47</sup>Rights of Non-Citizens to Land: Subject to the provisions of section 16 of this Act, individual or collective foreign entities may acquire leasehold or other interest in land for a specified period and not freehold in land in Southern

allocation agreed upon, and unless the right is relinquished by the holder. Such a right may be inherited, subject to encumbrances but cannot be alienated. Inherited rights are not recorded in publicly available documents.

## 2.2.2 Freehold Land Ownership

What is it?

This is the absolute ownership of the property and the land on which it stands.

The Land Act defines freehold as "a form of land ownership held in perpetuity with the rights to transfer and dispose of such land". The Land Act clearly designates that land belongs to the people and, as such, all citizens hold freehold titles to their land. Such a system is the result of this statutory assertion.

Who can own land?

All citizens hold freehold titles to their lands. The Land Act does not specifically state who may hold a freehold tenure, it only states that private land includes any registered land by any person under a freehold tenure.<sup>48</sup> It is therefore, assumed that any South Sudanese citizen may hold freehold land provided that it is classified as private land. Note: Amendments are being considered on land ownership.

According to Section 14 of the Act, an individual or collective foreign entities may acquire leasehold or other interest in land for a specified period, but not freehold in land in Southern Sudan<sup>49</sup>, for residential or investment purposes.

How does it work?

The process of obtaining freehold tenure can be done only through the Land Ministry who regulates the process.

Section 18 of the Land Act states:<sup>50</sup>

- (1) Any person owning land in Southern Sudan may lease this right to another person or persons for a fixed period of time in accordance with the provisions of this Act;
- (2) The contract of lease shall not be more than 99 years.
- (3) Unless otherwise provided for in this Act or any other law, the provisions of subsection (1) above, shall apply to all leases including those governed by customary law and any other law

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Sudan, for residential or investment purposes or for any other reasons in conformity with the interest of the people of Southern Sudan and in accordance with the provisions of the Investment law or any other law.

<sup>48</sup> The Land Act, 2009 at section 12(a)

<sup>49</sup> The Land Act, 2009 at section 14.

<sup>50</sup> The Land Act, 2009 at section 18.

### 2.2.3 Leasehold Land Ownership

What is it?

Section 17 of the Land Act provides that:

- (1) A derivative right to land shall confer the right of occupancy or usage upon a person or community and shall be registered by the land administration.
- (2) Derivative rights to land shall include lease, sub-lease, usufruct, easement and any interest analogous to these rights.<sup>51</sup>

Section 22 of the Land Act, lists the duties of a lessor as:

- (1) To refrain from any conduct contrary to the lease agreement that may interfere or suspend the enjoyment of the lease;
- (2) To ensure that the leased land does not contain any latent defect that renders it unfit for its normal use;
- (3) Land leased under a long term lease may be subject to development and alteration, provided that such activities shall not destroy or fundamentally alter the original nature of the land, except as specifically determined in the lease agreement.

Section 23 of the Land Act details the rights and duties of a lessee as:<sup>52</sup>

1. The lessee shall inspect the leased land and improvement made therein if any, before taking possession and failure to do so shall be presumed that the conditions stipulated in the lease are complied with;
2. The lessee shall be responsible for the normal maintenance of the ownership and shall deliver it back without fundamental alteration, including the cost of damages resulting from abnormal use, except as otherwise provided by the lease;
3. Where the lessee intends to carry out any activity different from the one planned in the lease agreement, the same shall consult the lessor and if necessary they shall review the agreement accordingly.

Who can own land?

As per section 13 of the Land Act, the rights of citizens to land are:<sup>53</sup>

- (1) not to be denied by the Government of Southern Sudan, State Government or community on the basis of sex, ethnicity or religion;
- (2) Every person shall have access to land for housing, cultivation, pasture, grazing, or fishing as shared resources as shall be regulated by this Act, rules and regulations;

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<sup>51</sup> The Land Act, 2009 at section 17.

<sup>52</sup> The Land Act, 2009 at section 23.

<sup>53</sup> The Land Act, 2009 at section 13.

- (3) Any person may have access to land for investment purposes under this Act and the investment laws<sup>54</sup>;
- (4) 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 20(5) of the Constitution.

The rights of non-citizens to land<sup>55</sup> are stated in Section 14 of the Land Act:

- (1) Subject to the provisions of section 16 of the Land Act (cancellation of customary land rights), individual or collective foreign entities may acquire leasehold in land for a specified period and not freehold in land in Southern Sudan, for residential or investment purposes or for any other reasons in conformity with the interest of the people of Southern Sudan and in accordance with the provisions of the Investment law or any other law.

How does it work?

The registration begins at the Ministry of Lands. The next step in the process is executed at the Local Land Authority e.g. state government. The process is then finalized at the judiciary. The land documents should bear all the legal documents of all the relevant institutions.

Leases, depending on whether they are long or short term, operate in different ways and are governed by sections 19 and 20 of the Land Act respectively.

Long term leases:

- (1) are for more than one year and shall be in a written form; and
- (2) shall not exceed 99 years, and any lease for more than 99 years shall be considered a lease for 99 years within the meaning of this section.<sup>56</sup>

Short term leases:

- (1) are for one year or less and includes a tenancy for a year renewable annually;
- (2) may be oral or written; and
- (3) for an oral lease to be valid, it requires a witness for both parties in accordance with the provisions of the Evidence Act, 2006.<sup>57</sup>

Section 21 of the Land Act regulates the operation of sub-leases:<sup>58</sup>

- (1) Subject to any provision affecting rights on lease, the holder of a registered lease may, according to the terms of the contract of lease sub-lease her

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<sup>54</sup> There is a set of laws that support investment, together with the Ministry of Investment established under the transitional government that was implemented after the signature of the Revitalized Agreement on the Resolution of Conflict in the Republic of South Sudan(R-ARCSS) on 28 August 2018.

<sup>55</sup> The Land Act, 2009 at section 14.

<sup>56</sup> The Land Act, 2009 at section 19.

<sup>57</sup> The Land Act, 2009 at section 20.

<sup>58</sup> The Land Act, 2009 at section 21.

or his right for any period that is equal to or less than the remainder of the period of the lease.

- (2) The provisions of this Act affecting leases, lessors and lessees shall apply to sub-lessors and sub-lessees, with such adaptation as are necessary for application.
- (3) If a lease is terminated by the operation of law or by any other reason stipulated in the contract of lease, such termination shall end the sub-lease.

Section 24 of the Land Act allows for a breach of a lease agreement<sup>59</sup> to be dealt with in the following manners:

- (1) A lessor may terminate a lease for failure to pay rent due under the lease agreement;
- (2) A lessor or a lessee may terminate the lease for failure of the other party to comply with the conditions of the lease contract;
- (3) In the event of failure to reach a consensus over the termination of a lease for the reasons mentioned in subsection (1) above, the parties may refer the dispute for mediation in accordance with the provisions of section 91 of this Act.

### 2.3 Contradictions in the Law- Commentary by Ajo Noel Julious K<sup>60</sup>

Ajo Noel Julious, in his commentary of the apparent contradictions in the opposing pieces of legislation poses the question "From whom are we getting the lease title to our land if the land belongs to the people of South Sudan?" This question forms the basis of the confusion surrounding the legislature governing land rights. Under the Constitution, the government can only lease its own land, public land, to private investors. This is unconceivable because the government does not possess original ownership rights in the land of South Sudan.<sup>61</sup> It is stated emphatically that the people do. However, the fact remains that, despite the Constitution saying that the people own all land and establishing an elaborate land tenure system, *private land ownership continues to be governed through a leasehold system*.<sup>62</sup>

The reasons for this are partly historical, says Julious. "Before South Sudan broke away and became independent, land belonged to the Government in the Sudan. Under this legal regime, people witnessed widespread displacement of settlements as the government gave away land for investors. Scenarios like these informed the pronouncements in the Interim Constitution and the Transitional Constitution that land belongs to the people."<sup>63</sup>

He goes onto assert that "people in power also carefully crafted the Transitional Constitution. It gave the People the right to own the land by one hand and took that right away by the other. It explains that land belongs to the people yet one can only own a lease from the government.

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<sup>59</sup> The Land Act, 2009 at section 24.

<sup>60</sup> Ajo Noel Julious K 'Land Ownership and conflict of laws in South Sudan' *Sudan Tribune* 1 August 2015 available at <https://www.sudantribune.com/spip.php?article55887> , accessed on 5 July 2020.

<sup>61</sup> Bruce, John. 1998. 'Sudan Country Profile. Country Profiles of Land Tenure: Africa', 1996, Land Tenure Center Research Paper No. 130.

<sup>62</sup> Ajo Noel Julious K 'Land Ownership and conflict of laws in South Sudan' *Sudan Tribune* 1 August 2015 available at <https://www.sudantribune.com/spip.php?article55887> , accessed on 5 July 2020.

<sup>63</sup> Ibid.

The reality is that the government owns the land and all of us today hold leasehold titles over our plots."<sup>64</sup>

The Land Act prescribes that land may be acquired, held and transferred through customary, freehold and leasehold tenure. All citizens hold freehold titles to their lands. Non-citizens may acquire leasehold for specific periods but may not possess land in freehold, according to Section 14 of the Land Act.

The difference in the statutory and Constitutional tenure systems is borne of the fact that the Land Act was enacted under the *Interim Constitution of Southern Sudan*. When the Transitional Constitution was enacted, it did not take cognizance of the existing Land Act and changed the whole tenure system.

The shift in the land tenure system through the Transitional Constitution is unfortunate, according to Julious.<sup>65</sup> The *Interim Constitution of Southern Sudan* and the 2009 Land Act had come up with a very elaborate land tenure system guaranteeing rights informed by historical practices and events.

South Sudan is in the process of putting up the permanent Constitution<sup>66</sup> and it should be able to clearly define whether land belongs to the government or the people under this permanent Constitution as the current legislative framework leaves much confusion and uncertainty.

#### 2.4 Registration of land rights in terms of lease and freehold tenure<sup>67</sup>

The process of obtaining registration certificates of ownership rights, having regard to the apparent inconsistencies between the Land Act and the Transitional Constitution is set out below.

##### *Freehold*

**Registration/Recording:** Freehold rights currently do not exist anywhere in South Sudan and there is no process for registering freehold rights.

**Transferability:** In theory, freehold is freely transferable among South Sudanese. Non South Sudanese nationals, however, are not allowed to own land in terms of freehold, though they may obtain long-term leases of up to 99 years.

##### *Leasehold*

**Registration/Recording:** Leaseholds are registered in land registries managed at state-level by the Ministry of Lands, Housing and Urban Development and the judiciary. The system is loosely based on a series of colonial and post-colonial laws.

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<sup>64</sup> Ibid.

<sup>65</sup> Ajo Noel Julious K 'Land Ownership and conflict of laws in South Sudan' *Sudan Tribune* 1 August 2015 available at <https://www.sudantribune.com/spip.php?article55887> , accessed on 5 July 2020.

<sup>66</sup> 2011. Southern Sudan Land Commission International Land Coalition. 2012. Land Matrix 'Draft Land Policy February 2011', available at. <http://landportal.info/landmatrix> , accessed on 5 July 2020.

<sup>67</sup> D.K. Deng. (January 2014) ' South Sudan Country Report Findings of the Land Governance Assessment Framework (LGAF) South Sudan Law Society at 14.

**Transferability:** Leases are freely transferrable. They are available to both South Sudanese citizens and Non South Sudanese nationals.

As per section 53, General Principles<sup>68</sup>, of the Land Act 2009:

- (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 Act shall be registered in accordance with the provisions of this Act and regulations

Section 54<sup>69</sup> of the Land Act regulates the Land registry while sections 55 and 56<sup>70</sup> govern the initial registration process. A Certificate of Titles and the relevant provisions are in section 57 of the Act.<sup>71</sup>

## 2.5 Community Land Registration<sup>72</sup>

Section 58 of the Land Act of 2009 makes provisions for community land ownership:

- (1) Upon demarcation, the title relating to community land or other deeds registered in respect of such land shall be endorsed by the registration office in the prescribed form.
- (2) Community land may be registered in the name of the following –
  - a. a community;
  - b. a clan or family as per the customary practices applicable;
  - c. a community association as per the founding document; or
  - d. a traditional leader in trust for the community and with the consent of the members of the community.
- (3) Individual members of a specific community may be entitled to request individual registration after the particular plot of land has been partitioned from the relevant community.<sup>73</sup>
- (4) Such partition referred to in subsection (3) above, shall be operated in respect to custom and practices of the community.

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<sup>68</sup> The Land Act, 2009 at section 53.

<sup>69</sup> The Land Act, 2009 at section 54.

<sup>70</sup> The Land Act, 2009 at section 55 and 56.

<sup>71</sup> The Land Act, 2009 at section 57.

<sup>72</sup> Although some land managed and allocated by traditional/ customary authorities is titled & deeded, most is not. This land is most commonly held and managed without formal documentation. Comment by KIRBY, Megan – HLP Officer IOM South Sudan.

<sup>73</sup> The Land Act, 2009 at section 58.

**Transferability:** Each of the 10 states has local government regulations that deal with issues of land. In some communities the transferability of land rights among individuals within the community are governed by that community's customary principles. The transfer of land rights among community members do not typically employ written agreements, whereas the transfer of rights to people from outside the community is often accompanied by written contracts with communities and/or government institutions.<sup>74</sup> Agreements with members of other communities, such as the lease of community land to private interests or the expropriation of community land in the public interest, are also regulated by statute.

There is tremendous variation in how customary/ traditional lands are managed, allocated, transferred, documented and/or owned (in the eyes of the state). There is no unified adherence to legal guidance/ legislation on the management of customary lands across the country.

## 2.6 Which, if any, of these types of tenure provide a high degree of security of tenure?

South Sudan has numerous challenges due to the lack of infrastructure and expertise within the land administration system.<sup>75</sup> The land administration system has to deal with, among others, the overlapping claims resulting from the civil wars, and the increasing demand for land, created by a population increase in towns, development and the formation of state governments. There are developed procedures and information management systems, but some of the under-developed states still use outdated systems. Documents are handwritten and kept in poor conditions where they are subject to deterioration and damages from the elements as well as the propensity to be misplaced or lost.

Furthermore, the land administration system does not retain an abundance of information.<sup>76</sup> Rather, the most basic information of the landholdings is recorded. This information includes the following:

- (1) Identity of the owner
- (2) Number of the plot
- (3) Sketch of the plot
- (4) Standard lease agreement

Further, information regarding encumbrances, such as mortgages, liens or pending lawsuits and secondary rights are not recorded in the registry. Land information systems lack transparency as registries are not open to the public and to access information members of the public may have to hire an intermediary. Access is only granted to those who can demonstrate ownership over the property. Ownership is proven through a prima facie legal title.

The tenure with the most security is freehold tenure where ownership is established through a legal title.

Customary land rights can only be cancelled by the Traditional Authority, on behalf of the community, for the following three reasons found in section 16 of the Land Act 2009:

- a. if the holder of the right fails to observe any condition or restriction attached to the right under customary law and practices, the Act and its regulations;

<sup>74</sup> D.K. Deng. (January 2014) ' South Sudan Country Report Findings of the Land Governance Assessment Framework (LGAF) South Sudan Law Society at page 14.

<sup>75</sup> David K. Deng January 2014., South Sudan Country Report ' Findings of the Land Governance Assessment Framework(LGAF) South Sudan Law Society at page 15.

<sup>76</sup> Ibid

- b. if the land is being used predominantly for a purpose not sanctioned under customary law and practices; or
- c. on any other ground as may be prescribed by customary practices, this Act or any other law.<sup>77</sup>

In analysing section 16, it is apparent that, unlike leasehold and freehold tenure, a prima facie legal set of facts is not necessary to prove ownership.<sup>78</sup> Therefore, it would seem that due to the outdated practices, if one were to lose their lease agreement they would lose their proof of ownership along with the access to the information systems which would have recorded their ownership. Customary tenure affords more stability in terms of ownership as land is dealt with by the local traditional authority rather than by the government.

## 2.7 **How does tenure differ between urban and rural areas?**

Tenure within the urban and rural areas differ slightly. An estimated 78% of all households earn their livelihood from agricultural practices, on their customary land.<sup>79</sup> Most rural areas do not have leasehold as there is minimal investor presence, making customary land tenure and freehold tenure the most common.<sup>80</sup> The establishment of state governments may bring about some changes in relation to tenure systems in rural areas.

## 2.8 **What are the main government and non-government bodies (e.g. representative bodies) that administer or deal with housing, land and property?**<sup>81</sup>

### I. Governmental Bodies

The Ministry of Housing, Physical Planning and Environment is the main national governmental body for the registration of ownership and planning developments within the land sector. The Ministry of Agriculture and Forestry is the main national governmental body for the growth, development and management of the agricultural sector. The South Sudan Land Commission (SSLC) is also responsible for land governance in South Sudan.

Local government within the relevant area is responsible for making recommendations for those looking to acquire land ownership through customary land tenure; and there may still be a role for the traditional chiefs.

### II. Non-governmental bodies

CAFOD- Catholic Agency for Overseas Development. CAFOD works in disaster relief and development, in particular on basic infrastructure, worker's rights and advocacy towards donor governments. CAFOD works to promote peace and justice in South Sudan, as well as providing immediate humanitarian aid.

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<sup>77</sup> The Land Act, 2009 at section 16.

<sup>78</sup>David K. Deng January 2014., South Sudan Country Report ' Findings of the Land Governance Assessment Framework(LGAF) South Sudan Law Society at page 36. .

<sup>79</sup> LandLinks 'South Sudan: Overview' available at <https://www.land-links.org/country-profile/south-sudan/#1528477144698-7dfba3fc-2682> , accessed on 7 July 2020.

<sup>80</sup> Worldometer 'South Sudan Population ' available at <https://www.worldometers.info/world-population/south-sudan-population/>, accessed on 2 July 2020.

<sup>81</sup> The Land Act, 2009.

CMI- Crisis Management Initiative- CMI works to support peace by focusing on mediation and dialogue, mediation support, and conflict prevention and resolution support. CMI works to ensure the inclusion of women and youth, who form the majority of South Sudan's population, into its peace processes. It assists South Sudan's transformation into a stable country by supporting the increased participation of these groups in decision-making and conflict resolution processes.

IRC- International Rescue Committee- The IRC responds to the world's worst humanitarian crises and helps people to survive and rebuild their lives. The IRC provides is providing emergency assistance to more than 800,000 people in South Sudan.

Islamic Relief is an independent humanitarian and development organisation with a presence in over 40 countries around the globe. Islamic Relief has been providing emergency humanitarian support in South Sudan since civil war broke out in 2013.

2.9 **What non-legal documents or actions (e.g. verbal agreements or handshakes) are used to create or transfer tenure?**

Freehold tenure can only be created or transferred with a due legal process. Leasehold tenure is created or transferred by way of a short- term lease.

In respect of customary tenure, the Traditional Authority within a particular area has the ability to regulate and uphold certain practices that may be used to create or transfer tenure. These practices differ between the various areas and ethnicities, although the overarching traditional authority oversees customary tenure in general. Customary tenure is a "living institution" and evolves over time in response to changes in the institutional, economic and physical environment.<sup>82</sup> As such land tenure can be created and transferred during the evolution of the practice.

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<sup>82</sup> Freudenberger, Mark. *The Future of Customary Tenure*, USAID Issue Brief, 2010

### 3. Security of Tenure for Vulnerable Groups

Both the Land Act and the Transitional Constitution have provisions that deal with the land rights of a number of vulnerable groups such as returnees and women, concerning property grabbing, conflict management, and dispute resolution.<sup>83</sup>

#### 3.1 Women

##### 3.1.1 Can women legally own, rent or inherit land and housing?

The rights of women to ownership of land is provided for in the Transitional Constitution. Further, section 13(4) of the Land Act, which provides for the rights of citizens to land, states that "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 20(5) of the Constitution."<sup>84</sup>

Land administration systems in urban areas allow for land to be registered in the name of women.

##### 3.1.2 In practice, do they? If not, why not?

All efforts are made to implement these rights for women.

The judiciary has been resolute in implementing the Land Act in relation to the registration of ownership title deeds and other legal rights with respect to ownership of land.

The government has made efforts to disseminate the Land Act throughout the country and this, among other factors, may have contributed to a change in the landscape described in the 2007 Forest Policy Framework, "*despite the existence of legal provisions recognizing the equal rights of women to land, widespread knowledge, recognition and protection of those rights, remains limited throughout South Sudan.*"<sup>85</sup>

*It is important to note that this assertion means that Women's land rights remain largely conditional. Research suggests that most women's property rights in South Sudan are mostly derived through their marital or childbearing status. The trite tension between the notions that customary rules and practices should "adapt to changing socioeconomic circumstances" and the idea that culture and traditional identity must be preserved remains. This creates a significant lacuna between the law and its implementation and practice.*<sup>86</sup>

In disputes relating to family matters, such as those relating to inheritance or the distribution of property upon divorce, custom is often applied whether it is brought in customary or statutory courts. Section 6 of the 2007 Code of Civil Procedure Act avers that:

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<sup>83</sup> Deng, David. *Land Belongs to the Community: Demystifying the 'global land grab' in Southern Sudan*, Land Deal Politics Initiatives, Working Paper 4, 2011.

<sup>84</sup> The Land Act, 2009 at section 13(4).

<sup>85</sup> Forest Policy Framework, Ministry of Agriculture and Forestry, 2007.

<sup>86</sup> Forest Policy Framework, Ministry of Agriculture and Forestry, 2007.

(a) Any custom applicable to the parties concerned; provided that, it is not contrary to justice, equity or good conscience and has not been by this, or any other enactment, altered or abolished or has not been declared void by the decision of a competent Court; or,

(b) The Sharia Law in cases where the parties are Muslims except so far as it has been modified by such custom as is above referred to.<sup>8788</sup>

Therefore, the application of customary law to these types of disputes may make it difficult for women to enforce their constitutional or statutory rights, even in statutory courts. Although a court may make favourable decisions towards women, the lack of coordination between these two systems often results in their husbands or male relatives restarting the dispute in another court that does not recognize the initial court's ruling.<sup>89</sup>

With respect to women owning property in urban areas, evidence suggests that it is a rare occurrence, and at most 10 to 20% of land is registered in the name of women in big cities such as Juba, Wau and Malakal.<sup>90</sup> In the smaller cities and towns, the numbers are undoubtedly far lower. This is because officials in the registry are sometimes reluctant to register land in a woman's name for fear of retaliation from her male relatives. Often, due to cultural stigmas that prioritize property ownership for men and their male heirs<sup>91</sup>, disgruntled husbands, brothers or in-laws have been known to threaten officials who register land in women's name without the knowledge of their families.

In addition, parents prioritise giving access to land to their male children over their daughters. The lack of laws regarding inheritance under customary laws has also played an integral part in maintaining this unfair practice.

Women's property rights are on the top of the agenda for development actors in South Sudan, but insufficient attention is paid to women's rights in the development of policies and laws. There has been a subtle shift in attitudes towards women with the liberation struggle and the role women are playing therein. It has been suggested that this has allowed women to rise to some powerful leadership roles in civil society.<sup>92</sup> This is often a great position to be in to effect change in policy and contribute to the development of women's rights. Policies to this effect could be developed in tandem with legislation that provides detailed mechanisms to give meaning to the rights enshrined in the Transitional Constitution and the Land Act. The legislation could provide minimum

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<sup>87</sup> Code of Civil Procedure Act, 2007 at section 6.

<sup>88</sup> .Köndgen, Olaf. (2018), The Transitional Constitution does not provide for Islamic Shariah law in so far as it violates the principles espoused in it. Sharia law is predominantly practiced in customary settings amongst the Muslim people within their own rural villages.

<sup>89</sup> Strategic Initiative for Women in the Horn of Africa (SIHA) (2012). Falling Through the Cracks: Reflections on Customary Law and the Imprisonment of Women in South Sudan, December, available at <http://www.sihanet.org/content/falling-through-cracks-0>, accessed on 11 July 2020.

<sup>90</sup> UN Women. Facts and Figures: Economic Empowerment, available at <http://www.unwomen.org/en/what-wedo/economic-empowerment/facts-and-figures>, accessed on 10 July 2020.

<sup>91</sup> UNHCR. (8 May 2019). Tearing Down the Walls: Confronting the barriers to internally displaced women and girls' participation in humanitarian settings, available at <https://www.refworld.org/docid/5cd17b2d4.html>, accessed on 11 July 2020.

<sup>92</sup> International Bank for Reconstruction and Development ' Land Governance in South Sudan: Policies for Peace and Development' Report No. 86958-SS May 2014 at 46.

standards for how women's property rights may be treated in general as well as in customary law marriages.<sup>93</sup>

## 3.2 Indigenous Groups

### 3.2.1 Is indigenous customary ownership (or custodianship) of land legally and recognised?

The term 'indigenous peoples' is rarely encountered in discussions about land in South Sudan and there is no consensus on how the term applies in the South Sudanese context. However, there are 64 native tribes to South Sudan which could perhaps satisfy this definition.

Indigenous groups are not explicitly mentioned in any of the existing South Sudanese policies, nor is South Sudan a signatory to the Universal Declaration on the Rights of Indigenous Peoples.<sup>94</sup> There is a reference to 'indigenous knowledge' in the Environmental Policy, but the term is not used to denote the heightened land rights that indigenous peoples are afforded under international law. There is little understanding among South Sudanese about the technical aspects of indigenous people's land rights or about how the term 'indigenous people' would apply in the South Sudanese context considering the origins of the country.<sup>95</sup>

## 3.3 Minority Groups

### 3.3.1 Can minority groups (i.e. ethnic minorities, immigrants, stateless people) legally own and/or rent land and housing?

**According to Article 28 of the Transitional Constitution, Right to Own Property<sup>96</sup>,** "Every person shall have the right to acquire or own property as regulated by law."

Accordingly, it is implied that minority groups are allowed to legally own or rent land subject to the laws of the country. The contention lies in the latter part of the statement as currently, there are no articulated national policies and laws in South Sudan governing rights to land for these categories of people. None of the existing legal frameworks on land has explicitly addressed land concerns of youth and other vulnerable groups.<sup>97</sup>

**Article 34 of the Transitional Constitution provides for. Rights to Housing<sup>98</sup> and asserts that**

1. Every citizen has the right to have access to decent housing.

<sup>93</sup> Strategic Initiative for Women in the Horn of Africa (SIHA) (2012). *Falling Through the Cracks: Reflections on Customary Law and the Imprisonment of Women in South Sudan*, December, available at <http://www.sihanet.org/content/falling-through-cracks-0>, accessed on 13 July 2020.

<sup>94</sup> International Bank for Reconstruction and Development ' Land Governance in South Sudan: Policies for Peace and Development' Report No. 86958-SS May 2014 at 69.

<sup>95</sup> Ibid.

<sup>96</sup> The Transitional Constitution of the Republic of South Sudan, 2011 at Article 28.

<sup>97</sup> Deng, D. 2011. 'Land belongs to the community, Demystifying the 'global land grab' in Southern Sudan' Paper presented at IDS conference April 2011, Brighton.

<sup>98</sup> The Transitional Constitution of the Republic of South Sudan, 2011 at Article 34.

2. The State shall formulate policies and take reasonable legislative measures within its available resources to achieve the progressive realization of these rights.

3. 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.

The above indicates that immigrants and stateless people, by virtue of not being citizens of South Sudan, do not have a right to access decent housing.

One of the objectives<sup>99</sup> of the Land Act is to facilitate the reintegration and resettlement of internally displaced persons, returnees and other categories of persons whose rights to land were or are affected by the civil war. To this effect section 59 provides that the Council of States shall be competent to monitor the repatriation, relief, resettlement, rehabilitation, reintegration of returnees and internally displaced persons, and reconstruction of disaster and conflict affected areas.

The Land Act<sup>100</sup> provides that national and state government and private companies must proceed with a resettlement plan for communities affected by expropriation or by any investment activity. It goes on provide that internally displaced persons shall be consulted and shall have opportunities to participate in planning and implementing resettlement programmes; and it places a positive obligation on the expropriating party to assist internally displaced persons and returnees in their efforts to improve their livelihood.

The legislation above aims to improve the current predicament on minority groups in South Sudan.

3.3.2 In practice, do minority groups legally own and/or rent land and housing? If not, why not?

The government has recognized the rights of IDPS and this has been stipulated in the Revitalized Agreement on the Resolution of the Conflict in the Republic of South Sudan (R-ARCSS). It was signed by all the parties to the Transitional Government and is now in process of being implemented by the Ministry of Humanitarian and Disaster Management.

It has been reported that urban centres in South Sudan are experiencing an influx of economic migrants from North Sudan<sup>101</sup> as well as from neighbouring countries. The rights of these populations are not the focus of government policies.

### 3.4 Landless people and Squatters

3.4.1 Do landless people/squatters have rights to land and/or housing (e.g. adverse possession)? If so, are those rights respected?

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<sup>99</sup>The Land Act, 2009 at section 1(f).

<sup>100</sup> The Land Act, 2009 at section 71.

<sup>101</sup> Yasin Abdalla Eltayeb Elhadary, Challenges Facing Land Tenure System in relations to Pastoral Livelihood Security Journal of Geography and Regional Planning Vol. 3(9), pp. 208-218, September 2010.

UN Habitat categorizes informal settlements into two kinds:<sup>102</sup>

Squatter settlements: where land and/or buildings have been occupied without the permission of the owner; and

Illegal land development: where initial occupation is legal but where unauthorized land developments occur.

The issue of landlessness, in South Sudan, is rarely considered in government policy. It is a trite assumption that due to the low population density in South Sudan there is enough land for everyone.<sup>103</sup> However, there are flaws in this notion as certain populations are at increased risk of landlessness, such as divorced women, widows and orphans.

The existing legal framework in South Sudan is inadequate to address the needs of those living in informal settlements as the Land Act (2009) fails to recognise "informal settlement residents" land rights and does not adequately protect them from forced eviction". Also, although the Land Act has established quite an extensive tenure system, there are no provisions for tenure systems that might protect or support the "regularization of informal settlements".<sup>104</sup>

#### 4. Evictions, Expropriations and Relocation

##### 4.1 Eviction

##### 4.1.1 Are there laws or regulations prohibiting forced evictions?

Forced eviction is "the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection".<sup>105</sup>

Article 34(3) of the Transitional Constitution avers that "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".<sup>106</sup>

Section 84 of the Land Act allows for eviction proceedings to be instituted against unlawful occupiers as defined by the Act. Section 84(2) defines an unlawful occupier as "any person who settles or occupies a land without a customary or legal title or without the express consent of the owner or person legally in charge of the said land before the commencement of this Act".<sup>107</sup>

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<sup>102</sup> UN-Habitat, 2003a: pp. 82-83.

<sup>103</sup> Sara Pantuliano ' The land question: Sudan's peace nemesis' HPG Working Paper December 2007.

<sup>104</sup> USAID Sudan ' LAND TENURE ISSUES IN SOUTHERN SUDAN: KEY FINDINGS AND RECOMMENDATIONS FOR SOUTHERN SUDAN LAND POLICY' December 2010- This publication was produced for review by the United States Agency for International Development. It was prepared by Tetra Tech ARD.

<sup>105</sup>Committee on Economic, Social and Cultural Rights, general comment No. 7

<sup>106</sup> The Transitional Constitution of the Republic of South Sudan, 2011 at Article 34(3).

<sup>107</sup> The Land Act, 2009 at section 84(2).

Subsection 3 and 4<sup>108</sup> maintains that any public authority or person who owns or holds land may institute proceedings for the eviction of an unlawful occupant and the unlawful occupant shall be evicted from land by a court order.

The above laws prohibit evictions save for certain circumstances. As mentioned, an eviction can only occur through the handing down of a court order. Section 86(1) of the Land Act asserts that a court may grant an order of eviction if it deems it just and equitable to do so after considering all the relevant circumstances. The unlawful occupier has the right to appeal an eviction order<sup>109</sup> and has possible recourse to "minimum standard alternative resettlement conditions" to be provided by the authorities"<sup>110</sup>.

The Land Act, however, does not adequately protect informal settlers from forced eviction".<sup>111</sup> This is demonstrated below.

4.1.2 In practice, are those laws adhered to?

There is no concrete evidence to suggest that these laws are not adhered to.

### **Expropriation**

4.1.3 Are there laws or regulations permitting the government to expropriate land?

The Transitional Constitution allows for expropriation under Article 170 (2). It states that the government at all levels may expropriate land in the public interest as shall be prescribed by law.<sup>112</sup>

The Land Act provides under section 73 for the "Government of Southern Sudan, State Governments and any other Public Authority [to] expropriate land for public purposes subject to compensation and upon agreement as prescribed by this Act or any other law".<sup>113</sup> Public interest includes but not limited to:<sup>114</sup>

- (a) exclusive for government or general public use;
- (b) planning of any new Government area or the extension or improvement of any existing Government premises;
- (c) sanitary improvements and urban development;
- (d) social housing, resettlement and reintegration;

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<sup>108</sup> The Land Act, 2009 at section 84(3) and (4).

<sup>109</sup> The Land Act, 2009 at section 88.

<sup>110</sup> The Land Act, 2009 at section 87.

<sup>111</sup> USAID Sudan ' LAND TENURE ISSUES IN SOUTHERN SUDAN: KEY FINDINGS AND RECOMMENDATIONS FOR SOUTHERN SUDAN LAND POLICY' December 2010- This publication was produced for review by the United States Agency for International Development. It was prepared by Tetra Tech ARD.

<sup>112</sup> The Transitional Constitution of the Republic of South Sudan, 2011 at Article 170(2).

<sup>113</sup> The Land Act, 2009 at section 73(1).

<sup>114</sup> The Land Act, 2009 at section 73(5).

(e) control over land contiguous to any port, airstrip or airport;

(f) control over land required for defense purposes;

(g) control over land whose values enhanced by the construction of any railway, road, or public works about to be undertaken or provided by the Government; and

(h) any other activity with a public purpose undertaken by the government as specified by any other law.

4.1.4 If so, are those laws or regulations applicable in the context of a disaster?

Under the laws above, the government of South Sudan has the prerogative to take possession of land after service of a notice in terms of section 74(5).<sup>115</sup> The Act does not specify a timeline concerning when the notice is to be published and served.

In a disaster context, it is uncertain on whether the laws applicable would still apply. Under Article 189 of the Transitional Constitution<sup>116</sup>, the President, may upon the occurrence of an imminent danger, whether it is war, invasion, blockade, natural disaster or epidemics, as may threaten the country, or any part thereof or the safety or economy of the same, "declare a state of emergency in the country, or in any part thereof, in accordance with this Constitution and the law.". Once the National Legislature approves the declaration of a state of emergency, all laws, orders or measures issued or taken by the President pursuant to the state of emergency shall continue to remain in force. This suggests that they may be some variation to the laws governing evictions during a crisis.

## 4.2 Relocation

4.2.1 Are there laws or regulations governing relocations?

Under section 71 of the Land Act, the Environment Restoration provision states "where the misuse of land endangers the population or nature, the authority concerned may requisite the rights of occupancy of people living in the area after consultation and subject to relocation".<sup>117</sup>

In addition, section 71 declares a resettlement plan, which can be construed as a law governing relocation. Subsection 1 allows the Government of Southern Sudan, to proceed with a resettlement plan for the communities affected by expropriation.<sup>118</sup> The provision goes on to assert that "Internally displaced persons shall be consulted and shall have opportunities to participate in planning and implementing resettlement programs"

4.2.2 Are there any other laws or regulations (i.e. human rights instruments) that are applicable to relocations?

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<sup>115</sup> The Land Act, 2009 at section 74(5).

<sup>116</sup>The Transitional Constitution of the Republic of South Sudan, 2011 at Article 189.

<sup>117</sup> The Land Act, 2009 at section 71.

<sup>118</sup> The Land Act, 2009 at section 71(1).

Chapter Iii) of the Revitalized Agreement on the Resolution of the Conflict in the Republic of South Sudan (R-ARCSS) discusses the humanitarian assistance and reconstruction where the rights of refugees and IDPs are stipulated. This chapter has a comprehensive plan and stipulates what should be done as regards the issue of resettlement.

Other than the above, the Ministry of Humanitarian Affairs and Disaster Management (MHADM) developed the Framework for Return, Reintegration and Relocation of Displaced Persons in 2017 which details policy guidance for the near future.<sup>119</sup> The framework is a tool for addressing internal displacement and resolving the situation of IDPs. Moreover, it aims to strengthen coordination within national and international partners on IDPs issues and efforts to enhance the plight of the IDPs.<sup>120</sup>

South Sudan is party to the Great Lakes Pact. Two of these protocols deal specifically with human rights and the experience of displacement: the Protocol on the Protection and Assistance to Internally Displaced Persons, and the Protocol on the Property Rights of Returning Populations. The adoption of these two protocols was a significant recognition by states of the crucial link between protecting the rights of forcibly displaced people and achieving peace, security and development. During July 2020 it acceded to the Kampala Convention, the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa.

The government has experienced challenges in fulfilling its responsibility to assist and protect IDPs, with its lack of capacity and complex decentralised structures hindering a comprehensive response.<sup>121</sup>

## 4.3 Compensation

### 4.3.1 Are there laws or regulations providing compensation for people who are relocated, forcibly evicted, or whose land is expropriated?

Among the objectives of the Land Act is to guarantee a fair and prompt compensation to any person whose right of occupancy, ownership or recognized long standing occupancy of customary use of land is revoked or otherwise interfered with by the Government under the Land Act or any other law.<sup>122</sup>

Article 171(10) of the Transitional Constitution provides that "Communities and persons enjoying rights in land shall be entitled to prompt and equitable compensation on just terms arising from acquisition or development of land in their areas in the public interest".<sup>123</sup>

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<sup>119</sup>Framework for Return, Reintegration and Relocation of Displaced Persons: Achieving Durable Solutions in South Sudan February 2017.

<sup>120</sup> Framework for Return, Reintegration and Relocation of Displaced Persons: Achieving Durable Solutions in South Sudan February 2017.

<sup>121</sup> Norwegian Refugee Council/Internal Displacement Monitoring Centre (NRC/IDMC), *Global Overview 2014: people internally displaced by conflict and violence - South Sudan*, 14 May 2014 available at <https://www.refworld.org/docid/5374746fd.htm>, accessed 15 July 2020.

<sup>122</sup> The Land Act, 2009.

<sup>123</sup> The Transitional Constitution of the Republic of South Sudan, 2011 at Article 171(10).

The Land Act begins with the Protection of Land Rights that purports that "Pursuant to Article 32 (2) of the Constitution, no right in land shall be expropriated or confiscated save by law in the public interest and in consideration for a prompt and fair compensation".<sup>124</sup>

In addition, Section 75(1) of the Land Act states that those subjected to appropriation, are entitled to compensation that is just, equitable, and shall take into account the following factors:

- (a) the purpose for which the land is being utilized;
  - (b) the land market value; and
  - (c) the value of the investment in it by those affected and their interest.<sup>125</sup>
- (2) The compensation shall be in cash or in kind or both according to the agreement.
  - (3) Where any land is expropriated for public purpose and it is necessary to remove any person therefrom in customary occupation, compensation shall be paid as may be agreed upon.
  - (4) Where any land expropriated for public purpose is the subject of a lease under this Act, compensation shall be paid to the lessee as may be agreed upon.
  - (5) No transfer of ownership or rights over land shall be made until the type, amount, method and timing of the payment of compensation has been agreed upon with those affected.
  - (6) Subject to the provisions of sub-section (1) herein, if no agreement is reached in the compensation modalities, the case may be determined by the Southern Sudan Land Commission ascribed in section 52 of this Act.
  - (7) Where payment of compensation is not made within sixty days of transfer of the property, the affected persons shall, in addition, receive interest on the sum due at commercial rates, recoverable until such compensation is fully paid.

Compensation is also provided for in section 26 under termination for leases where the the lessee and the lessor may agree on a compensation system for any improvement and permanent investment on the land upon termination of the lease contract as stipulated in the initial contract.

Notably, section 64 of the Land Act deals with Compensation for the Community "Notwithstanding the provisions of section 72 of this Act, any community or persons affected by such activities in the area of investment shall be compensated in accordance with the provisions of section 75 of this Act and Article 180(7) of the Constitution".<sup>126</sup>

The Government of Southern Sudan or a State Government may acquire land for people who lost their right in land because of an acquisitive prescription action or for any other

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<sup>124</sup> The Land Act, 2009 at section 8(2).

<sup>125</sup> The Land Act, 2009 at section 75(1).

<sup>126</sup> The Land Act, 2009 at section 64.

reasons as effects of the civil war. As such, compensation for Restitution<sup>127</sup> is also provided for under the Land Act and states that "If the party claiming restitution to his or her right could not be restituted for some obvious reasons as the Commission finds appropriate, he or she may request the Commission or the court, as the case may be, to be awarded compensation instead. The compensation may either be in cash, or alternative land."<sup>128</sup>

Furthermore, The Act, under section 82(1) avers that "any person who in good faith occupied a land belonging to another person or group of persons may not be deprived of the right therein without compensation."

Similarly, where the misuse of land endangers the population or nature, the authority concerned may requisite the rights of occupancy of people living in the area after consultation and subject compensation as mentioned in section 75.<sup>129</sup>

An occupier in good faith may be compensated by the person evicting him/her for any improvement and enhancement brought into the value of the land prior to eviction.<sup>130</sup>

The Land Act is comprehensive in affording compensations for most situations pertaining to land and land usage.

#### 4.3.2 In practice, are these laws or regulations adhered to?

According to the World Bank, precise data about compensation for expropriations is not readily available, but independent experts in the field have maintained that in certain circumstances, the people of South Sudan receive compensation when land or property is expropriated.<sup>131</sup> Representatives in the Juba City Council have stated that "compensation is almost always provided to individuals evicted from registered plots in Juba and typically takes the form of alternative land in another region". The problem arises in that the substituted land is not always as suitable as there is no guarantee that the land is equally valuable or "has access to the same services as the land that was expropriated".

In other circumstances, informal settlers who reside on public lands are not compensated but if they are residing on residential land then they have the opportunity to formalise their land holding, subject to due process.

For the expropriation of community land in rural areas, communities are often compensated by providing them with "a number of plots in the newly demarcated areas or with direct compensation in the form of cash or building materials".<sup>132</sup>

Even if compensation is provided for, there is no guarantee it will be done immediately. In fact, the shortage of available land around Juba initiates challenges for the

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<sup>127</sup> The Land Act, 2009 at section 80.

<sup>128</sup> The Land Act, 2009 at section 80(2).

<sup>129</sup> The Land Act, 2009 at section 71.

<sup>130</sup> The Land Act, 2009 at section 89(3).

<sup>131</sup> International Bank for Reconstruction and Development ' Land Governance in South Sudan: Policies for Peace and Development' Report No. 86958-SS May 2014 at 104.

<sup>132</sup> Deng, D. 2011 'Land belongs to the community, Demystifying the 'global land grab' in Southern Sudan' Paper presented at IDS conference April 2011, Brighton.

government in finding alternative land to provide as compensation. Compensation is often delayed indefinitely as a result.<sup>133</sup>

In practice, the laws regarding expropriation are not strictly adhered to. This is in reference to the appeal process with respect to expropriations. The law is not always utilised for recourse as the avenues to lodge complaints are only accessible to a small segment of the population.<sup>134</sup> Only individuals and groups with financial means, or within the geographical area of the courts, have the opportunity to contest expropriations through

#### 4.4 Shelter Cluster

##### 4.4.1 Is there an active shelter cluster in South Sudan?

The Shelter and Non-Food Items (NFIs) Cluster was launched in South Sudan in 2011 and acts as a coordinating mechanism of partner organizations working to provide life-saving household items and shelter materials to conflict- and disaster-affected people in South Sudan. IOM leads the Cluster at the national level with the support of World Vision International as Co-Lead.<sup>135</sup>

In 2020, the cluster identified about 2 million of South Sudanese are in needs of the Emergency Shelter and Non-Food Items (ES-NFIs) assistance.<sup>136</sup> Of the amount identifies, the Cluster anticipated that 1 million people would receive assistance through distribution of goods and/or cash/voucher Assistance (CVA) as well as an integrated settlement programming. This programme is to include the new displaced population, protracted displacements, returnees, host communities and those who are affected by the natural hazards.

The Cluster has requested about USD 36 million of funds to be able to reach this population.<sup>137</sup> Youth armed conflict between factions as well as cattle raids have been the main constraints in humanitarian aid reaching affected groups. Moreover, the conflict and fighting prevented civilians from undertaking their livelihood activities.

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<sup>133</sup> International Bank for Reconstruction and Development ' Land Governance in South Sudan: Policies for Peace and Development' Report No. 86958-SS May 2014 at 104

<sup>134</sup> Sara Pantuliano ' The land question: Sudan's peace nemesis' HPG Working Paper December 2007.

<sup>135</sup> Global Shelter Cluster- Coordinating Humanitarian Shelter 'In Africa- South Sudan' available at <https://www.sheltercluster.org/response/south-sudan> , accessed on 14 July 2020.

<sup>136</sup> Global Shelter Cluster- Coordinating Humanitarian Shelter 'In Africa- South Sudan' available at <https://www.sheltercluster.org/response/south-sudan> , accessed on 14 July 2020.

<sup>137</sup>Global Shelter Cluster- Coordinating Humanitarian Shelter 'In Africa- South Sudan' available at <https://www.sheltercluster.org/response/south-sudan> , accessed on 14 July 2020.

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Rights of Non-Citizens to Land: Subject to the provisions of section 16 of this Act, individual or collective foreign entities may acquire leasehold or other interest in land for a specified period and not freehold in

land in Southern Sudan, for residential or investment purposes or for any other reasons in conformity with the interest of the people of Southern Sudan and in accordance with the provisions of the Investment law or any other law.

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