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## **‘Between a Rock and a Hard Place’: Land Rights and Displacement in Juba, South Sudan**

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### **Introduction**

When violence erupted in Juba on 15 December 2013, tens of thousands of people fled to seek refuge in United Nations (UN) bases and entire neighborhoods were left deserted. In the weeks and months that followed, insecurity lingered and the abandoned neighborhoods became highly militarized. Reports surfaced of military actors and people displaced from fighting elsewhere in South Sudan occupying the homes of displaced persons. After the situation in Juba stabilized, the government formed a committee to address the issue and began lobbying for internally displaced persons (IDPs) to leave the UN bases. While a few people have taken the opportunity to visit or return to their former homes, the vast majority are not willing to leave the relative safety of the UN bases. Meanwhile, the status of the property they left remains a major source of concern.

More than two years after the outbreak of violence, large numbers of people are still seeking refuge in UN bases and other IDP settlements in Juba. The signing of the Agreement on the Resolution of the Conflict in the Republic of South Sudan (ARCISS) in 2015 has captured

everyone's attention and raised hopes that an end to the conflict may be in sight, but South Sudan continues to struggle with one of the world's worst humanitarian crises. Now that a political settlement has been agreed upon, the return or resettlement of displaced populations will be high on the agenda. It is important that the problems relating housing, land and property that are likely to arise during the return and resettlement process are considered in advance, such that when the time comes, plans are in place to mitigate or avoid them.

This paper represents an initial effort to scope relevant issues relating to the land rights of displaced populations, with a view towards anticipating some of the legal issues that are likely to arise with large-scale return and resettlement activities in urban areas of South Sudan.<sup>1</sup> The paper focuses on land rights issues that arise in Juba as a result of the large-scale violence and displacement that has taken place since December 2013. The paper is organized in two sections. Section one provides an overview of relevant land governance mechanisms and processes and section two goes into greater detail about the land rights issues confronting IDPs in Juba. The conclusion offers closing remarks and recommendations to inform thinking on this issue moving forward.

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<sup>1</sup> Research for this paper was conducted over a two-week period in May and June 2015. Information was compiled through a desk review of secondary source material and field interviews with displaced persons, returnees and other key informants in Juba. The primary purpose of the research was to highlight trends and scope issues for further study. Due to the limited timeframe, the research cannot provide detailed and definitive findings about the factual circumstances surrounding the incidents described by informants. Informant views should rather be taken as an expression of their viewpoint on a particular topic or incident, subject to other possible different viewpoints. Other limitations that should be borne in mind include the effect that the sensitivity of the topic of land, prevailing insecurity in many parts of Juba, and exposure to trauma among study informants have on the type of information that people provide.

## Part I: Land Governance in South Sudan

While the majority of IDPs in South Sudan have been displaced from rural areas, much of the debate focuses on populations residing in UN bases in urban areas and the options that are available for their return to their place of last residence or their resettlement elsewhere. The complexities of land issues in South Sudan pose unique difficulties for the government and the international community in their efforts to facilitate the return or relocation of IDPs in and around urban areas. The subsections below provide an overview of relevant land governance mechanisms in order to contextualize the discussion that follows.

### ***Legal and Regulatory Framework***

The legal and regulatory framework for housing, land and property reflect the many challenges that South Sudan has faced in establishing a functional state. When the regionally-autonomous Government of Southern Sudan was established in 2005, state institutions had to be constructed essentially from scratch. Rudimentary land governance processes left over from the colonial era existed in Juba and a few other urban centers, but they were not designed to accommodate the large demand for land that came with the return of millions of displaced persons and refugees and the dramatic growth of Juba over the past 10 years.

In lieu of regional legislation on land issues, the government first considered applying northern Sudanese laws as an interim measure while developing a framework for southern Sudan.<sup>2</sup> This quickly generated a backlash, as southern Sudanese widely considered the Sudanese land laws to be oppressive for the way in which they concentrated control over land and resources in the state and marginalized landholding communities. Indeed, the dispossession of community lands under the guise of these laws was among the grievances that led southern Sudanese to take up arms against the government in Khartoum. Without new laws to take their place, however, southern Sudan was left with a legal vacuum in the critical area of land law for several years after the signing of the peace agreement in 2005.

It was not until 2009 that the Southern Sudan Legislative Assembly passed the Land Act in an effort to fill the legal vacuum.<sup>3</sup> The development of the legislation was hampered by debate over whether a law could be developed in the absence of a policy to articulate the purposes of the law, and as a result, the Land Act was enacted as a temporary measure pending the development of the Land Policy. Though broad in scope, the Land Act on its face reflects many aspects of good governance in land and property issues. Perhaps most importantly, the Act recognizes customary land tenure as having equal force in law as other more formal forms of landholding, such as freehold and leasehold.<sup>4</sup>

The Land Act recognizes three categories of land—public, private and community.<sup>5</sup> Although

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<sup>2</sup> See David K. Deng, 'Land belongs to the community': *Demystifying the global land grab in Southern Sudan*, paper presented at the Int'l Conference on Land Grabbing (Apr. 2011), available at <http://www.future-agricultures.org/papers-and-presentations/conference-papers-2/1266-land-belongs-to-the-community-demystifying-the-global-land-grab-in-southern-sudan/file>.

<sup>3</sup> Land Act (2009), available at [http://www.globalprotectioncluster.org/assets/files/field\\_protection\\_clusters/South\\_Sudan/files/HLP%20AoR/South\\_Sudan\\_Land\\_Act\\_2009\\_EN.pdf](http://www.globalprotectioncluster.org/assets/files/field_protection_clusters/South_Sudan/files/HLP%20AoR/South_Sudan_Land_Act_2009_EN.pdf).

<sup>4</sup> *Id.*, § 8(6) (stating "Customary land rights including those held in common shall have equal force and effect in law with freehold or leasehold rights...").

<sup>5</sup> *Id.*, ch. III, § 9.

there is a certain degree of uncertainty over how these classifications are to apply in practice, broadly speaking, public land refers to land that the government manages in trust for the people of South Sudan as a whole, private land refers to individually held land mostly in urban areas, and community land is land held under the customary land tenure systems of the various communities of South Sudan. The main ambiguity lies in the distinction between public and community land. There is no land in South Sudan that is free from claims and if one adopts communities' views on what land belongs to them, virtually all land in the country (aside from urban land that is individually held and a few areas that were gazetted by the colonial administration or the national government in Khartoum) would belong to communities.

More than five years after the Land Act was passed, the legislation remains almost completely unimplemented.<sup>6</sup> The primary reason for the failure to implement the Land Act concerns the perception that it was enacted as provisional measure and has certain flaws that must be addressed before the legislation can be fully applied. Critics of the Land Act point to inconsistencies with other pieces of legislation, such as the Local Government Act (2009), and provisions that became obsolete before the legislation was even widely disseminated, such as a requirement that people asserting land restitution claims associated with property disputes arising during the civil war (1983-2005) do so within three years of the passing of the Land Act, or by February 2012.<sup>7</sup>

The implementation of the Land Act was also plagued by institutional shortcomings. Since 2005, the South Sudan Land Commission (SSLC), an independent commission formed under the Interim Constitution of Southern Sudan, has been the primary institution responsible for addressing land issues. As independent commission, however, the SSLC is not represented in the council of ministers, where most major executive decisions are made, and does not have the ministerial mandate or the institutional clout to promote far-reaching reforms such as those envisaged in the Land Act. During the political reshuffling that occurred in July 2013, the President addressed this institutional gap by adding land issues to the mandate of the Ministry of Housing and Physical Planning. The 2013 renamed Ministry of Land, Housing and Physical Planning has been given the new title of Ministry of Land and Urban Development in the upcoming Transitional Government of National Unity. It has been slow to assume its role due to institutional constraints and the outbreak of conflict in December 2013.

The ambiguities over who actually owns the land in South Sudan will likely complicate future efforts to resettle displaced populations. Any effort to provide IDPs with alternative land to resettle somewhere other than their place of last residence would require the government to negotiate with a landholding community in order to acquire a parcel of land, which the authorities could then survey, demarcate and issue to IDPs. Experience has shown this to be a very complicated undertaking in and around Juba due to a variety of factors, including the high demand for land and the lack of trust between communities and the government.<sup>8</sup> Legislative gaps, such as the lack of legislation for land registration or land use planning, also contribute to

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<sup>6</sup> The Land Act itself is also quite broad in scope and envisages the process of developing implementing regulations to spell out the details of how institutions should apply the law has stalled. As a result, the necessary rules and procedures to guide implementation do not yet exist.

<sup>7</sup> Local Government Act (2009), available at <http://mlgi.org.za/resources/local-government-database/by-country/sudan/sub-national-legislation/The%20Local%20Government%20Act%202009.pdf>; Land Act, ch. XIII, § 78(4).

<sup>8</sup> Indeed, complications have already arisen between the Government and communities regarding access to land to house military personnel that are being redeployed outside of the city limits. See *JMEC urges consultation with Bari community over army relocation*, Radio Tamazuj (23 Feb. 2016), available at <https://radiotamazuj.org/en/article/jmec-urges-consultations-bari-community-over-army-relocation>.

the weakness of land governance processes and are likely to make the return and resettlement process all the more difficult.

## **Land Registration**

Landholdings in urban areas in South Sudan are managed primarily through leaseholds with the state government. Statistics on the number of registered leaseholds in Juba are not currently available, but according to a 2013 study, entitled, *South Sudan Country Report: Findings of the Land Governance Assessment Framework (LGAF)*, more than 50 percent of the landholdings in Juba have not been registered.<sup>9</sup> Although a systematic problem across Juba, much of the unregistered land is located in neighborhoods from where people were displaced in December 2013. The manner in which registration is managed in these areas is therefore highly relevant to understanding the land rights of IDPs in Juba.

There are two main processes through which individuals may register their leaseholds in Juba: a more formal government process and less formal community processes. The government process arises in one of two scenarios: either the Central Equatoria State (CES)<sup>10</sup> government identifies a neighborhood or settlement with a high number of unregistered landholdings where they would like to pursue survey, demarcation and registration activities, or else it negotiates with communities living in peri-urban areas to gain access to a parcel of land for the government to develop and distribute to interested applicants.<sup>11</sup> At the end of the process, the Ministry of Physical Infrastructure gives the landholder a written lease and other associated documents as evidence of ownership, and the lease is registered in the land registry in the High Court.<sup>12</sup>

The community process follows a somewhat different approach. Community registration can be conducted in urban areas where community leaders seek to formalize individual landholdings in existing settlements or in peri-urban areas where land that is under customary land tenure is converted into individual landholdings. Community leaders will often establish a committee to make decisions regarding pricing and who will be eligible to apply for plots. According to the *LGAF* study, the Central Equatoria state government has given tacit approval to community registration processes in recent years.<sup>13</sup>

There are a number of differences between the government and community registration processes, but the most important distinction concerns tenure security, which tends to be weaker

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<sup>9</sup> David K. Deng, *South Sudan Country Report: Findings of the Land Governance Assessment Framework (LGAF)*, SSLS (Nov. 2014) [hereinafter *LGAF Report*], available at [http://sslawsociety.org/public\\_html/LGAF\\_SouthSudan\(Nov19\).pdf](http://sslawsociety.org/public_html/LGAF_SouthSudan(Nov19).pdf).

<sup>10</sup> In 2015, President Kiir initiated a series of legal actions to increase the number of states from 10 to 28. It remains to be seen how the new division of states might affect this process.

<sup>11</sup> Whichever process is used, demand usually far outstrips supply. People whose applications are accepted are sent to the Survey Department and asked to pay a fee that ranges from \$32 USD to \$188 USD, depending on the class of the plot. This amount covers: the survey fee; a token that is issued by the community in the applicant's name designating which plot he or she is to receive; a service fee; a transport fee; and a stamp duty. The surveyors will also often require other informal fees when they arrive in the field.

<sup>12</sup> According to a recent study on land governance in South Sudan, staff in these institutions tightly guard access to information about landholdings. Registry staff suffer from a chronic inability to produce land records, suggesting a high degree of clerical errors in the registry and discrepancies between the information recorded in the registry and realities on the ground. Documents in the registry are also poorly maintained and subject to deterioration from dust and exposure to the elements. *LGAF Report*, *supra* note 9.

<sup>13</sup> *LGAF Report*, *supra* note 9.

in community process.<sup>14</sup> Often the community will only provide residents with a document authorizing temporary use of the land, whereas the government issues leases for terms of 25 years or more.

Many of the neighborhoods in Juba from which people were displaced had recently undergone survey, demarcation and registration through the community process. Individuals would have been given tokens and documents as evidence of their landholding, but the security of tenure is considerably less than those who obtained documents through the official government process. As explained further in section two below, in at least one neighborhood, a second community committee was formed after people were displaced in December 2013 and proceeded to issue new token to new occupants, ignoring any previous landholdings. Situations such as these are likely to generate numerous disputes if and when the primary occupants come to reclaim their land.

## **Dispute Resolution**

South Sudan has a pluralist legal system that incorporates parallel systems of statutory and customary courts. The 2008 Judiciary Act structures the statutory courts in a single hierarchy, starting with the Supreme Court at the national level, followed by three regional courts of appeals, and high courts in the capitals of each of the states. At the local government level, the Judiciary Act envisages county courts and payam courts in all of the counties and payams. However, only a fraction of county courts have been established and there is not yet a single payam-level statutory court in South Sudan.<sup>15</sup>

Statutory courts are only geographically accessible in and around urban areas. In rural areas, where the vast majority of the population resides, customary courts are the main institutions of dispute resolution.<sup>16</sup> As Tiernan Mennen notes in a 2012 study on customary law and land rights in South Sudan:

“Chiefs are overwhelmingly responsible for the administration of justice throughout the 10 states [of South Sudan], and the customary court system handles the vast majority of disputes, according to customary law.”<sup>17</sup>

Land disputes involving registered landholdings in urban areas are typically adjudicated in the formal system at the level of the high court. In locations that have experienced large numbers of disputes, high court judges have channeled land disputes to the county courts. Disputes involving unregistered landholdings are usually dealt with in customary courts or through mediations with community leaders.<sup>18</sup>

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<sup>14</sup> According to the LGAF report, the community process is also more expensive than the government process, and decisions about who will be given land are more likely to exclude certain groups, such as people who come from what are perceived to be rival ethnic groups. *Id.*

<sup>15</sup> David K. Deng, *Challenges of Accountability: An assessment of dispute resolution processes in rural South Sudan*, SSLS and Pact (Mar. 2013), available at [http://www.pactworld.org/sites/default/files/Challenges%20of%20Accountability\\_FINAL%20May%2016.pdf](http://www.pactworld.org/sites/default/files/Challenges%20of%20Accountability_FINAL%20May%2016.pdf).

<sup>16</sup> According to the 2008 census, 83 percent of the population resides in rural areas. South Sudan National Bureau of Statistics, Statistical Yearbook (2011), available at <http://static1.1.sqspcdn.com/static/f/750842/11453911/1301368226337/Statistical+Year+Book+For+Southern+Sudan+2010+Final.pdf?token=mbEkID25%2FGplDOS73MM%2BXvnY0tE%3D>.

<sup>17</sup> Tiernan Mennen, *Customary Law and Land Rights in South Sudan*, Norwegian Refugee Council (NRC), Information, Counseling and Legal Assistance (ICLA) Project, p. 13, available at <http://www.nrc.no/arch/img/9195246.pdf>.

<sup>18</sup> LGAF Report, *supra* note 9.



The jurisdictions of statutory and customary courts are described in the 2008 Judiciary Act and the 2009 Local Government Act.<sup>19</sup> In practice, however, responsibility for dispute resolution is distributed across many different forums, court rulings are shared in an ad hoc manner, if at all, and the entire process is poorly coordinated.<sup>20</sup>

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

Where a suit or other proceeding in a Civil Court raises a question regarding succession, inheritance, legacies, gifts, marriage, divorce, or family relations, the rule for decision of such question shall be:

- (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>21</sup>

The application of customary law to these types of disputes makes it difficult for women to enforce their constitutional or statutory rights, even in statutory courts. The poor coordination among the systems also causes additional complications, in that women who receive favorable decisions in customary or statutory courts may find that their husbands or male relatives resurrect the dispute in another court that does not recognize the initial court's ruling.<sup>22</sup>

Courts also face serious constraints in enforcing their decisions in South Sudan. In urban areas, this enforcement gap is most apparent in the unlawful appropriation of land by individuals who wield political or military authority. As Sara Pantuliano noted in 2009:

“[Land grabbing by military personnel or powerful members of the community] concerns both returnees and residents as a number of long-term residents are losing their land to soldiers occupying it by force. In a number of cases, long-term residents have lost their land to well-off returnees, who have used the military to force owners to give up their property. Land ownership documents mean little when threatened by a gun.”<sup>23</sup>

People who receive favorable decisions in statutory courts are often unable to enforce them, as court decisions are typically carried out by a small number of court police who are not able to enforce court orders on well-armed military personnel.

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<sup>19</sup> Local Government Act, supra note 7; Judiciary Act (2008), available at <http://southsudanpolice.net/wp-content/uploads/2013/04/Judiciary-Act-2009.pdf>.

<sup>20</sup> To a certain extent, the uncertainties in the allocation of responsibility over land disputes in the judicial system can be traced to legislative ambiguities in the administrative structure of customary and statutory courts. Whereas statutory courts lie firmly within the national Judiciary, customary courts fall under the Ministry of Local Government at the state level, an executive institution. This mixture of centralized statutory courts and decentralized customary courts serves to widen the gulf between the two systems. Chiefs also play both executive and judicial roles, which raises separation of powers issues.

<sup>21</sup> Code of Civil Procedure Act (2007) [on file with author].

<sup>22</sup> Strategic Initiative for Women in the Horn of Africa (SIHA), *Falling Through the Cracks: Reflections on Customary Law and the Imprisonment of Women in South Sudan* (Dec. 2012), available at <http://www.sihanet.org/content/falling-through-cracks-0>.

<sup>23</sup> Sara Pantuliano, *Going Home: Land, return and reintegration in Southern Sudan and the Three Areas* (2009), available at <http://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/5558.pdf>.

The weakness of existing dispute resolution processes increases the risk of conflicts arising around the return and resettlement process. Specialized dispute resolution processes should be considered for disputes associated with return and resettlement so as to alleviate some of the burden on existing systems. Particular attention will need to be paid to the land rights of vulnerable populations, including women and minority groups.

## **Expropriation**

Shortly after the end of the civil war in 2005, state and local governments in southern Sudan began an extensive urban rezoning process. As a consequence of the large-scale displacement during the war and the influx of people after the signing of the Comprehensive Peace Agreement (CPA), towns and cities across South Sudan had been growing in a haphazard and disorganized manner. Most landholdings in urban areas were comprised of informal settlements whose poor planning undermined efforts to develop formal land governance systems and presented a number of risks to health and security. The rezoning process was meant to address these issues and pave the way for more organized urban development initiatives.

The rezoning process started in Juba in 2009, when the CES Governor issued an executive order, authorizing demolitions in a list of twenty-nine areas in Juba. The demolitions targeted informal settlements on roads and other public spaces and were supervised by a demolition committee that included the CES Governor, Juba County Commissioner, and a number of security advisors.<sup>24</sup> UNMIS voiced concern about the process in a report from 2009:

“UNMIS is concerned that implementation of the Government of Central Equatoria’s plan to improve living conditions in Juba has not been done in a manner which is consistent with southern Sudanese law and international human rights standards.”<sup>25</sup>

The manner in which demolitions have been conducted over the years has generated a considerable amount of resentment among local populations. Evictions are often carried out with little or no notice and involved heavy security contingents. In some cases, displaced groups have reacted violently to demolition activities. Researchers from the Overseas Development Institute (ODI) documented an incident in an area called Hai Miskin (meaning ‘poor neighborhood’ in Arabic) in Juba.<sup>26</sup> Residents of the area said that they were informed overnight that the land they were staying on had been sold and that they would have to vacate their homes. When they refused they were reportedly assaulted by the police and threatened with further violence if they did not quit the area immediately. In a more recent incident, after a demolition process was carried out on the outskirts of Juba in May 2013, a mob formed and attacked two officials from the Archdiocese of Juba.<sup>27</sup>

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<sup>24</sup> According to the Southern Sudan Relief and Rehabilitation Commission (SSRRC), 27,896 people were displaced by the demolitions between January and March 2009. At that point, the authorities stopped keeping track of the numbers, but the United Nations Mission in Sudan (UNMIS) estimated that an additional 30,000 to 40,000 people were affected from March to June 2009. David K. Deng, *Land Administration in Juba: The complexity of land in a growing post-conflict capital city* (Jan. 2010) (unpublished directed research paper in fulfillment of J.D., New York University School of Law) [on file with author].

<sup>25</sup> Skye Wheeler, South Sudan Demolition Leaves Scores Homeless, IOL News (28 May 2009), available at <http://www.iol.co.za/news/africa/south-sudan-demolition-leaves-scores-homeless-1.444668>.

<sup>26</sup> Ellen Martin and Irina Mosel, *City Limits: Urbanisation and Vulnerability in Sudan, Juba Case Study*, Humanitarian Policy Group (HPG) (Jan. 2011), available at <http://www.odi.org.uk/sites/odi.org.uk/files/odi-assets/publications-opinion-files/6511.pdf>.

<sup>27</sup> Comboni Missionaries, ‘Church Personnel Attacked by Angry Mob Over Demolitions’ (24 May 2013), available at <http://www.combonisouthsudan.org/index.php/527-church-personnel-attacked-by-angry-mob-over-demolitions>.



Independent avenues to lodge a complaint against an expropriation are only accessible to a small segment of the population. Individuals and groups with financial means may contest expropriations through judicial actions. In February 2013, for example, a group of traders in Nimule, along the South Sudan-Uganda border, took the Government of South Sudan to court in order to stop a demolition ordered by the Deputy Minister of the Interior.<sup>28</sup> The land was being expropriated to establish offices for the customs department, but the traders complained that they were not given adequate notice and that compensation had not been provided. Another example can be seen in a planned expropriation in a neighborhood in Juba called Hai Kassava, where people's land was being expropriated in order to transfer it to a private investor. According to experts interviewed in the 2013 *LGAF* study, residents of the area filed a complaint in court and convinced a judge to grant an injunction stopping the eviction.<sup>29</sup> The investor, however, appealed the decision and the appeals court overturned the lower court ruling, allowing the project proponents to proceed with the demolition.

For most populations, contesting expropriations in court is inaccessible either in terms of cost or geographic proximity. Statutory courts have not been established in many of the counties of South Sudan and are not geographically accessible to populations in many rural areas. Other possible avenues of complaint include the submission of complaints through administrative processes, such as complaining directly to the Ministry of Physical Infrastructure. Government officials acknowledge, however, that the chances of such complaints succeeding are fairly low.

The manner in which rezoning, expropriation and demolition activities have taken place in recent years are highly relevant for displaced populations in Juba. The demolition activities leave numerous disputes in their wake and any new disputes that arise as a result of displacement since December 2013 will be superimposed on an already contested space. In addition, several people interviewed for this study indicate that additional demolitions have taken place in neighborhoods from where people were displaced. Given the weakness of processes to contest expropriations, returnees will have limited options to contest any demolitions that took place during their absence.

### ***Women's Land Rights***

South Sudanese law affords women equal rights to own land as men. The 2011 Transitional Constitution states, "Women shall have the right to own property and share in the estates of their deceased husbands together with any surviving legal heir of the deceased." This provision is mirrored in the 2009 Land Act. However, these protections are routinely violated in practice. According to the 2013 Draft Land Policy:

"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. Women's land rights remain largely conditional, derived through their marital or childbearing status and dispossession of widows, daughters, and divorced women is common. There is tension between competing notions that customary rules and practices should adapt to changing socioeconomic circumstances and those who resist change, fearing its impact on tradition and cultural identity, leading to a significant gap between the law and practice,

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<sup>28</sup> Sudan Tribune, *Land dispute leaves over five people dead in South Sudan's capital, Juba* (7 Mar. 2012), available at <http://www.sudantribune.com/spip.php?article41811>.

<sup>29</sup> LGAF Report, *supra* note 9.

particularly in rural areas.”<sup>30</sup>

According to the *LGAF* study, land administration systems in urban areas allow for land to be registered in the name of women, though the forms that are used do not appear to allow for joint registration. In Juba, for example, several panel participants said that it was not unusual for land to be registered in the name of a woman, particularly unmarried women or professional women who have some educational background and financial means. Women’s ability to purchase land in Juba was also reflected in a study by Tiernan Mennen:

“In Juba, it is easier for women to own land. According to discussions with community members, leaders and government officials Bari chiefs have been relatively progressive with regards to women’s rights. Nevertheless, most land is obtained through market transactions, including through the chiefs for community land. If you have money, you can buy land, regardless of gender.”<sup>31</sup>

There are several reasons for why women may be having more success getting land registered in their names in more cosmopolitan areas such as Juba. As discussed above in the section on land registration processes, there is a semi-formal registration process in Juba that operates parallel to the more formal government registration process. Individuals from within the community may therefore have more control over how the registration process operates and more confidence that the rights of their female relatives will be protected. Furthermore, in circumstances in which communities divide land that was collectively owned into individual parcels that are distributed upon request to members of the community, the costs of allocating land through the semi-formal process may be less than through other more formal registration processes. Males in the family may therefore be more willing to allocate land to their female family members.

Outside of these examples, however, government officials in the Central Equatoria State Ministry of Physical Infrastructure and representatives of INGOs active in the land sector reported that it is rare to find women who have land registered in their name in most urban areas. According to estimates from a legal adviser with the RSS Civil Service Commission, in big cities such as Juba, Wau and Malakal, at most 10 to 20 percent of land is registered in the name of women.<sup>32</sup> In the smaller cities and towns, the numbers are undoubtedly far lower. The *LGAF* report also notes that officials in the registry are sometimes reluctant to register land in a woman’s name for fear of reprisal from her male relatives. 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.

Most of the difficulties that women face in registering their land rights can be traced to customary norms that prioritize property ownership for men and their male heirs. For married women, the family land will almost always be registered in the name of their husbands. Parents also privilege access to land for their sons over their daughters. According to local authorities in Northern Bari Payam, for example, a parent who has sons and daughters will first sell land that would otherwise go to the daughters before selling that which would go to the sons.<sup>33</sup> South Sudan has not yet developed a family law that would provide a statutory alternative to inheritance rules under customary law, and in the absence of a written will expressing the decedent’s wishes, widows and their children are at increased risk of being dispossessed of their land by their in-laws.

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<sup>30</sup> Southern Sudan Land Commission, Land Policy (draft) [on file with author].

<sup>31</sup> Mennen, *supra* note 17.

<sup>32</sup> *LGAF* Report, *supra* note 9.

<sup>33</sup> *LGAF* Report, *supra* note 9.

Despite the evidence that women's property rights continue to be violated in contravention of existing statutory and constitutional law, there is some evidence of evolving attitudes on the matter. Women played key roles in the liberation struggle both on and off the battlefield, and prominent women have risen to leadership positions in government and civil society. Women leaders often argue that the best way to recognize their contribution is by putting the issue of women's rights in the center of the agenda. There are also a large number of female-headed households as a result of the war and society is being forced to reassess the manner in which it treats unmarried women. The return of people from the diaspora is bringing an influx of new ideas, and people are slowly beginning to appreciate the importance of educating and providing for their daughters. Divorce is still largely discouraged, but women are increasingly successful at advocating for their right to extricate themselves from bad relationships and to do so without losing their children and property. These changes are particularly apparent among the youth.

### ***Transitional Government of National Unity***

In August 2015, the warring parties in South Sudan — the Government of the Republic of South Sudan (GRSS) and the Sudan People's Liberation Movement-in-Opposition (SPLM-IO) — and other stakeholders signed the Agreement on the Resolution of the Conflict in the Republic of South Sudan (ARCISS).<sup>34</sup> The ARCISS commits the parties to forming a Transitional Government of National Unity (TGoNU) that will be responsible for implementing an extensive post-conflict stabilization and reform agenda over the course of a 30-month transitional period. Chapter IV of the agreement, entitled, "Resource, Economic and Financial Management," includes several provisions relating directly to land reforms. Within the first year of the transitional period, the TGoNU is required to:

"[I]nitiate an in-depth national debate to review the current national land policy and the Land Act, 2008 [sic], in order to achieve consensus over land tenure, use, management and address issues of land grabbing, other malpractices involving land, carry out necessary reforms, undertake mapping, and to maximize economic utilization of land in South Sudan."<sup>35</sup>

In addition, the TGoNU is expected to establish a registry of lands at all levels of government for the issuance of deeds, empower land commissions at different levels of government "to develop and interpret legislation regarding land issues and to reflect customary laws and practices, local heritage and institutional trends," and assist in the mediation of conflicts arising from land.<sup>36</sup>

Once established, the TGoNU will have its hands full with establishing security, ensuring humanitarian support and facilitating the return and resettlement of displaced populations, in addition to the many governance reforms that it is called upon to do, and there is a high risk that stipulated deadlines will not be met. President Kiir's October 2015 executive decree seeking to divide the country into 28 states will further complicate efforts to implement the land reforms described in the ARCISS. As the primary locus for decision-making on land issues lies at the state level, the creation of new states will have far-reaching impacts for how power over land is allocated in South Sudan. Despite these challenges, the fact that land issues are addressed independently in the ARCISS demonstrates the importance of addressing problems relating to land as a critical component of long-term and sustainable peace.

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<sup>34</sup> Intergovernmental Authority on Development (IGAD), Agreement on the Resolution of the Crisis in South Sudan (ARCISS) (Aug. 2015), available at <http://www.sudantribune.com/spip.php?article56093>.

<sup>35</sup> *Id.*, Ch. IV, § 4.2.1.1.

<sup>36</sup> *Id.*, § 4.2.1.2-4.

## Part II: Land Rights and Displacement in Juba

The conflict that erupted in December 2013 has displaced approximately 2.2 million people, including 1.66 million IDPs and 650,000 that have sought refuge in other countries.<sup>37</sup> Nearly 200,000 IDPs are currently residing in UN protection of civilian (POC) sites throughout the country. The other 90 percent reside in other IDP settlements, are interspersed among host populations elsewhere, or are struggling to survive in remote rural areas.<sup>38</sup>

The interconnectedness of these populations is particularly apparent with respect to land issues. As discussed further in the section on secondary occupation below, in many cases, IDPs fleeing violence in other parts of the country have occupied homes abandoned by IDPs who fled the December 2013 violence in Juba. Humanitarian organizations have documented incidents where this secondary occupation has led to violence. According to UNHCR:

“In the Jebel Peace area, IDPs and host community report that new arrivals (predominantly women with children) are left to sleep outside or occupy abandoned homes of Nuer IDPs (many located at UN House). Secondary occupation has already presented problems in cases where Nuer return to briefly to check on property and clash with new IDP arrivals in their homes. Extreme poverty among the disproportionately-high number of female IDPs, and the proximity of soldiers stationed in the area, presents significant risks for gender- related exploitation and/or violence.”<sup>39</sup>

The subsections below delve deeper into these issues with reference to primary data compiled over the course of this study.

### ***Politicization of the Return Process***

The question of whether IDPs should leave the PoCs and where they should go remains a great source of contention both within IDP communities and between IDP communities and the Government. Although humanitarian actors have carried out assessments in an effort to determine IDP preferences in this regard, the data are not conclusive and it is difficult to assess whether people would prefer to return to their homes in Juba, to their ancestral homelands elsewhere in South Sudan or to alternate locations. A 2015 survey by the SSLS asked 619 displaced persons from various locations in South Sudan where they would prefer to live.<sup>40</sup> Forty-seven percent of displaced respondents said their ‘place of last residence,’ 41 percent said their ancestral homelands, and 20 percent said they would prefer to stay where they are.<sup>41</sup>

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<sup>37</sup> United Nations Office for the Coordination of Humanitarian Affairs (UNOCHA), South Sudan Humanitarian Bulletin (1 December 2015), *available at* South Sudan,

[http://reliefweb.int/sites/reliefweb.int/files/resources/OCHA\\_SouthSudan\\_humanitarian\\_bulletin\\_1Dec2015.pdf](http://reliefweb.int/sites/reliefweb.int/files/resources/OCHA_SouthSudan_humanitarian_bulletin_1Dec2015.pdf)

<sup>38</sup> As the United Nations High Commissioner for Refugees (UNHCR) notes, this trend is also reflected in Juba: “Despite the significant number of IDPs currently located at UNMISS Tomping and UN House, an invisible population of IDPs have arrived to many other parts of Juba and continue to do so as the armed conflict evolves.” UNHCR, *IDPs in Juba (outside of Protection of Civilian sites)* (2014).

<sup>39</sup> *Id.*

<sup>40</sup> The entire sample size was 1,525, of which about 40 percent identified themselves as currently an IDP.

<sup>41</sup> *Search for a New Beginning: Perceptions of Truth, Justice, Reconciliation and Healing in South Sudan*, SSLS, UNDP and the Kingdom of the Netherlands Embassy to South Sudan (forthcoming). By contrast, a January 2014 survey of IDPs in Juba carried out by REACH found that 78.6 percent of households wanted to relocate outside Juba. Of those who wanted to relocate, about 70 percent wanted to leave the country for neighboring countries (mainly Ethiopia), and 30 wanted to return to their state of origin (mainly Jonglei, Unity and Upper Nile States). REACH, *Rapid Shelter Sector Assessment, Fact Sheet #1, UN House Site, Juba* (Jan. 2014).

Populations that have been exposed to trauma on this scale tend to experience unpredictable and frequent changes in their viewpoints and findings such as these must be interpreted with a degree of caution. Nonetheless, the data point to a division of opinion between those who would prefer to return to their place of last residence and those who prefer to either remain where they are or return to their ancestral homelands. The latter viewpoint may reflect ongoing insecurity in urban areas and an unwillingness or inability to return to their former lives after experiencing such traumatic events. What is clear is that to date, relatively few IDPs have chosen to leave the PoCs and populations remain as large as they were during the early days of the conflict.

## Documentation

The widespread loss of property documents will prove to be a difficult issue to contend with in the years to come. Some people were able to grab a few personal items when they fled the violence in December 2013, but most lost all their possessions.<sup>42</sup> As a community leader in one of the study locations observed, “I was able to flee with the [land] documents back in December [2013]. Most other people only had the clothes on their back. They left everything.”<sup>43</sup>

The precise number of people who managed to retain their property documents is not entirely clear. In a series of focus group discussions that the International Rescue Committee (IRC) conducted in 2015, most participants reported that they lost all their belongings and money in the crisis, including land documents.<sup>44</sup> However, a February 2014 survey by REACH found that 45 percent of IDP respondents who reported owning their homes said that they had official documentation proving ownership.<sup>45</sup> Of the 55 percent who did not have official documentation, 45 percent said they had lost the documents, 23 percent said the documents had been damaged, and 27 percent said official titles had never been issued. In any case, most sources agree on the widespread loss or destruction of property documents since December 2013.

The loss of documents in and of itself is not an insurmountable barrier to making a claim to a particular plot of land. South Sudanese law recognizes non-documentary forms of evidence and if a claimant can bring forward witnesses that confirm his or her ownership rights, it can carry some weight with the authorities. As one interviewee observed, local authorities are useful repositories of information, in this regard:

“For both of our plots [in Khor William and Mangateen], all the documents are lost. When we left [in December 2013], the houses were looted and everything was taken. When I came back in November [2014], there was a community of chiefs in the area. I spoke to one chief who was among the civilians who had left UNMISS Tong Ping before the relocation and gone back to Mangateen. I told him that this is our land and asked him to keep an eye on it. He said, ‘Yes, I know that there are a family of Dinka Bor who are there now. I know that this is in fact not your dad’s land but your brother’s land.’ So it seems that the chiefs in that area know who was living there by that time.”<sup>46</sup>

Theoretically, it is possible to obtain replacement documents whether the land was obtained through the official government process or through the community process. One interviewee who had lost his property documents in other circumstances but was not displaced by the

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<sup>42</sup> According to IRC, most IDPs in Juba that they interviewed “reported that they lost all belongings and capital in the crisis.” Int’l Rescue Committee (IRC), *Summary Report on Safety and Security in UN House in Juba* (Apr. 2015).

<sup>43</sup> Interview with Community Leader in Mangateen (May 2015).

<sup>44</sup> IRC, *supra* note 42.

<sup>45</sup> REACH, *supra* note 41.

<sup>46</sup> Interview with Female IDP in Juba (May 2015).

violence in December 2013 said that he was able to get replacement documents with relatively little effort from the community committee who had issued them.<sup>47</sup> He was only required to bring forward people who could attest to his claim and pay a small fee and the committee was able to issue replacement documents. IDPs interviewed for this study who had lost their documents and were trying to return to their homes also said that they thought they would be able to get replacement documents from the committees that issued them, though none had yet done so.<sup>48</sup>

Additional complications are likely to arise when the committees that issued the documents are themselves contested. In a neighborhood of Juba called Hidden City, for example, an initial pre-December distribution of property was done through a local committee comprised mainly of Nuer. After the December 2013 crisis, another committee constituted itself and began issuing tokens and documents to parcels of land in Hidden City. A member of the initial committee was among the individuals interviewed for this study. He is currently residing in the UN House POC site. According to him, the first committee is the legitimate body and any distribution done by the new committee is illegal.<sup>49</sup> However, until the matter is resolved, even if the initial committee were to issue replacement documents, they would remain disputed.

### ***Urban Rezoning and Demolitions***

As noted above, urban rezoning and development initiatives are typically accompanied by extensive demolitions. This process invariably gives rise to numerous disputes, as property lines are redrawn and land rights are redistributed. Many of the areas from which people fled had experienced such demolition activities in recent years. The disputes associated with those demolitions have now become intertwined with disputes arising as a result of the displacement in December 2013. As one interviewee explained:

“In 2013, before the conflict, when they were demarcating land in Khor William, half of our property in Khor William was demolished. Now, our neighbors, who are Equatorian, are trying to annex our land because nobody is there. They are saying that judging by the way the land was demarcated, the land should belong to them. But when the demarcation was done, the surveyors had actually decided that half of our neighbor’s land should be ours. ... And he [our neighbor] is a police officer, so it makes it worse.”

Interviewees also noted new demolition activities taking place in areas that have been devoid of inhabitants. For example, one interviewee said that he had a school in Hidden City that had been demolished while he was in the POC site. He says that someone else is constructing houses on the land.<sup>50</sup>

### ***Preexisting Land Disputes***

Land issues that have arisen as a result of large-scale displacement in Juba in December 2013 are made all the more complex by preexisting disputes in many of the locations from where people were displaced. The preexisting disputes may be more individualized, such as those that result from systemic problems of fraud and poor urban planning, or more collective disputes involving entire communities. Indeed, many of the locations from where people were displaced in

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<sup>47</sup> Interview with Lawyer in Juba (May 2015).

<sup>48</sup> Interview with Community Leader in Mangateen (May 2015).

<sup>49</sup> Interview with Community Leader in UN House (May 2015).

<sup>50</sup> Interview with IDP in UN House (May 2015).



December 2013 had been newly settled within the last decade since the signing of the CPA in 2005 and were subject to highly contentious disputes in recent years.

In 2012, for example, a violent episode took place in a neighborhood called Mia U Saba, when then Vice-President Riek Machar supposedly acquired a large parcel of land in order to develop a farm. The precise sequence of events was highly contested at that time and remains so, but shortly after acquiring the land, individuals began settling there. The new residents established a committee and began surveying plots and distributing tokens to people. Local chiefs and other community leaders reacted against the distribution scheme, and fighting broke out between a small group of people before taking on ethnic overtones. A number of people were killed and the Legislative Assembly called for investigations into the incident.<sup>51</sup> Similar disputes associated with allegations of land grabbing or illegally acquired plots were also prevalent in the areas of Mangateen and New Site, bordering Mia U Saba.<sup>52</sup>

When residents were displaced from these areas, it created opportunities for individuals and groups who felt as though the land had been illegally acquired to assert their claims. According to one interviewee, the Juba County Commissioner issued a decree in 2014 that the people who had been staying in the areas of Mangateen and New Site were illegally residing on other people's land and that the land should be returned to the rightful owners.<sup>53</sup> He encouraged citizens from these areas to return and reclaim their lands. While the decree was not followed, the manner in which it was made highlights how collective disputes such as these can be used to justify ongoing rights violations.

### **Dispute Resolution**

The formal court system does not appear to be a major avenue for dispute resolution in the locations visited over the course of this study. People who pursued claims in these areas typically did so through security committees that have been established at the local level in the various locations. The committees were reportedly established as a joint initiative of the Ministry of Information and several security agencies, including the criminal investigation department, military intelligence and national security. Rachel Nyadak, the Deputy Minister of Information, was said to be leading the initiative.<sup>54</sup>

There appears to be some variation in the effectiveness of the different committees. According to a community leader interviewed in Mia U Saba:

“The government has formed a committee to identify houses that have been grabbed. The committee is supposed to tell the people who have grabbed houses to move away, but process is taking long and people are getting frustrated.”<sup>55</sup>

A community leader in Mangateen, however, expressed more confidence in the committee in that area:

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<sup>51</sup> *Land dispute leaves over five people dead in South Sudan's capital, Juba*, Sudan Trib. (7 Mar 2012), available at <http://www.sudantribune.com/spip.php?article41811>.

<sup>52</sup> Interview with INGO staff in Juba (May 2015).

<sup>53</sup> *Id.*

<sup>54</sup> The researcher tried to obtain an interview with Hon. Nyadak, but she was traveling when the fieldwork was taking place.

<sup>55</sup> Interview with Community Leader in Mia U Saba (May 2015).

“The reason that there are so many problems in Mia U Saba and the other areas is because of the leadership of that place, especially the committee that was formed. Here [in Mangateen], the committee is working. In the other places, the leadership is not working well.”<sup>56</sup>

Mangateen is also more homogenous and original owners and secondary occupants tend to be civilians from the same Nuer community. The community leader proceeded to narrate his personal experience:

“When I came out of UNMISS, I found a man and his wife staying in my house. I told them it was my house and asked them to leave. The man said when he came, he found the house empty and he didn’t have any place to stay so he just moved in. I have allowed them to stay there, but with my consent. Any time I need the house, I will get it back. ...The family was Nuer from Malakal. This area is occupied by the same ethnic group [Nuer], which makes it very easy to get the land back. When you ask people to leave, they will leave. They are all civilians.”<sup>57</sup>

In both Mangateen and Mia U Saba, interviewees said the security committees were presided over by military commanders. According to the interviewee in Mangateen:

“The committee in this place is overseen by a commander, just like the one in Mia U Saba. For me, if I have a dispute, I will go direct to the commander and the commander will make sure that person leaves the land. But in the other areas, they will not follow through.”

Additional research would be required to understand the procedures that claimants follow in bringing their disputes to the committees and the remedies that are offered, but several interviewees pointed to the role of the military as being instrumental in either the success or failure of efforts to reclaim land. According to one interviewee, a number of people have tried to bring land claims to military courts, but the response from the courts is that they need the permission of the military leadership in Bilpam before they can do anything.<sup>58</sup> That permission has not been forthcoming.

When people bring their claims to the formal system, they tend to do so through the police rather than the formal courts. While this may, to a certain extent, reflect people’s familiarity with the police as opposed to the judiciary, the high cost of land claims may also factor into people’s calculations. Court fees vary according to the size of the claim at hand and there is no uniform schedule of fees available at most statutory courts. Typical court fees can range from five to ten percent of the value of the land and can reach as high as \$1,250 to \$2,500 USD for valuable property. Litigants must also pay for the services of an advocate, typically in the range of \$750 to \$1,000 USD, though courts can force the other party to pay those costs in damage awards.<sup>59</sup> Customary courts are more affordable, but they typically do not have jurisdiction over disputes involving registered lands.

When a complaint is brought to the police, it is often brought as a trespass claim. Claimants may have to pay informal fees for the police to travel to the property and address the issue, and the types of remedies that are available are limited, but the claimant avoids the high court fees and attorney fees associated with civil litigation. The approach also only works when power dynamics enable enforcement by the police. For example, the police would be ill-equipped to intervene against well-armed military actors.

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<sup>56</sup> Interview with Community Leader in Mangateen (May 2015).

<sup>57</sup> *Id.*

<sup>58</sup> Interview with Community Leader in Mia U Saba (May 2015).

<sup>59</sup> LGAF Report, *supra* note 9.

Any dispute resolution process would also have to overcome perceptions of bias among displaced populations. Events since December 2013 have eroded trust among citizens and the displaced population is affected most of all. Few believe that they would be able to obtain a fair hearing through the existing justice mechanisms. As one interviewee explained:

“I really don’t know what kind of recourse we have. It kind of puts us between a rock and a hard place. Here we are, we’ve lost the documents and I don’t know if we can trace copies. If I was to show up at the police station, I don’t know whether they would even bother to follow up. Maybe I shouldn’t be saying this, this is probably just superstition, but I’m afraid if I show up to the authorities, they’ll just look at me like a Nuer girl who doesn’t speak Arabic well and I would just land myself into trouble. They might even side with the other person who is trying to claim my property.”<sup>60</sup>

The manner in which the TGoNU manages the return and resettlement process will provide an early indicator of whether it is able to begin reestablishing trust between state and society. It is important the process be designed in close consultation with displaced populations and host communities and that it be entirely free from actual or perceived coercion. If people feel forced into decisions that they do not support, it will only deepen feelings of distrust and heighten tensions.

## **Remedies**

Determining appropriate remedies for people who lost their property as a result of the conflict will be a major challenge for the government moving forward. In the current context, only a few people have sought to reclaim their property and, as discussed above, their main avenue of dispute resolution are local security committees that have been established at the neighborhood level in locations from where people have been displaced. It is safe to assume that if the conflict ends and a return process proceeds in earnest, people will increasingly begin using the court system to address any disputes that arise.

The post-CPA return process can provide insights into the problems that are likely to surface when people return to reclaim their lands. There are two main problems that arose with the return of populations after the signing of the CPA, both of which are associated with institutional shortcomings rather than gaps in the legal framework. First, the number of land disputes totally overwhelmed existing institutions. The scale of displacement during the war, the loss or destruction of land documents and low institutional capacity were among the many factors that contributed to the large number of land disputes in the post-CPA period. Some efforts were made to establish alternative forums for dispute resolution, such as mobile courts and other committees that travel to areas with a high incidence of disputes, but the scale of the problem nonetheless overwhelmed the justice system. Second, even if courts are able to reach a decision on a particular dispute, they lack the enforcement capacity to effectively implement their decisions. This lack of enforcement capacity is particularly apparent when the losing party wields political or military authority.

Due to the highly fact-specific nature of land disputes, courts and other government institutions mostly determine remedies on a case-by-case basis. Particularly challenging cases arise when secondary occupants build permanent structures on land that belongs to someone else. Often the disputing parties will seek to negotiate a settlement in which either the primary occupant is

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<sup>60</sup> Interview with IDP in Juba (May 2015).

compensated for the loss of their land and the secondary occupant remains on the land or vice versa. If the state is able to make available alternative land to resettle one of the parties, that can often facilitate an agreement, although with the scarcity of land in and around Juba, this type of arrangement is often not possible.

The current conflict is likely to give rise to disputes unlike those that arose during the post-CPA. To the extent that fighting among units of the SPLA was responsible for most of the destruction of property in Juba, the government would be responsible for compensating people for their loss. Some legal questions might arise if the military forces were not acting in their official capacity, in which case the government could claim that it is not responsible for any destruction of property that resulted. A similar defense could be raised for property that has been seized by military personnel. To the extent that this defense applies, the complainant party would have to seek a remedy directly from the individual or group that destroyed their property or occupied their land.

Given the scale of the devastation caused by the conflict, the provision of collective remedies may also be appropriate. The peace agreement includes language on the creation of a Compensation and Reparation Authority (CRA), the details of which are yet unknown. Such a reparations program could involve the provision of collective compensation awards and/or alternative land for resettlement for populations whose property was lost as a result of the conflict. In proceeding with any such program, the Government should be careful to distinguish reparations that are provided to individuals or groups as remedies for harms they suffered as a result of the conflict, and resources that people would otherwise be entitled to by virtue of their status as South Sudanese citizens. Drawing a clear line between these two forms of support is a difficult challenge for any collective reparations program.

## Conclusion and Recommendations

Despite the signing of the ARCISS in August 2015, the humanitarian crisis in South Sudan has continued to worsen. Until South Sudan's leaders follow through on their commitments and learn how to resolve their political disputes without resorting to violence, the focus of the people of South Sudan and the country's international partners will remain on the emergency situation. But South Sudan cannot afford to turn a blind eye to the governance challenges that will increasingly emerge as sources of tension once the country begins its transition from conflict. A central issue in this regard concerns the land rights of displaced populations and host communities throughout the country. In order to minimize the risk of tension and violence around the return and resettlement process and increase opportunities for the process to contribute to renewed trust between state and society in South Sudan, this paper recommends the following:

- **Plan ahead** – When the TGoNU is established, the country will soon turn its attention to the return and resettlement of displaced populations in Juba and elsewhere in South Sudan. The safety and security of displaced and host populations will be a central factor in determining the timing of any such initiative, and IDPs should not be encouraged to move if they do not feel safe doing so. Nonetheless, it is vital that the TGoNU and its international partners consider foreseeable problems in advance and put in place appropriate mechanisms to address them. While humanitarian partners, UNMISS and South Sudanese political entities are already engaged in a variety of working groups to plan for the eventual return of displaced populations, transparency and coordination between these groups and consideration for the views of displaced persons should be of primary concern.

- **Involve IDPs in decision-making processes** – Displaced populations and host communities should be involved at every stage in the design and implementation of return and resettlement processes. Extensive experience with resettlement and large-scale rural to urban migration demonstrates that displacement can alter future settlement priorities, making it difficult to assess and predict preferences of displaced persons. Interpreting responses therefore requires a deep understanding of the context and should take into account the fluidity of opinion among displaced populations. Working groups focused on durable solutions for IDPs, particularly those in the UNMISS bases, should consider planning at household level, to mitigate pressure or unsafe movement of populations.
- **Support existing dispute resolution processes** – Mechanisms for dispute resolution provide an opportunity to address grievances before they rise to the level of violence. Dispute resolution will be important whether people decide to return to their place of last residence or to relocate elsewhere.

In the immediate context, development actors should consider working with the established committees in Juba to provide some oversight and transparency for the process. How this is done will depend in large part on how the politics plays out and whether the committees can be considered trusted partners in dispute resolution.

In the longer-term, the government will need to establish a more regulated dispute resolution process to accompany returns in urban areas and resettlements elsewhere. For example, the establishment of a land division in the High Court as provided for in Section 99 of the Land Act would provide an important avenue for redress for land disputes associated with the return and resettlement process. It will also be important that the military provide support for land dispute mechanisms. Given the prevalence of land grabbing by military actors, military support will be vital to ensuring that decisions from any dispute resolution process are enforced.

- **Policy and legislative reforms** – The TGoNU, once established, should proceed in earnest with the national dialogue on land issues as provided for in the ARCISS. This process should be immediately followed by enactment of the land policy and other important legislation, such as that pertaining to land registration, land use planning and community lands. These legislative reforms are essential to strengthen land governance processes and ensure that South Sudan is better able to manage land rights issues associated with displacement moving forward.

The current Land Act 2009 should be reviewed and amended once the draft land policy is adopted into Law, in order to be in conformity with the land policy and the constitution.

The incoming TGoNU should ensure that the statutory law provisions promoting equal rights of women to land are applied by the statutory courts, including through training of customary authorities to increase their knowledge of the statutory law.

Ensure that clear and accessible mechanisms for land administration and management are established and maintained to protect the rights of IDPs, returnees, and host communities to land and allocation of plots and process of demarcation, surveying and registration should be made more transparent.

- **Land Coordination Forum** – Among the aforementioned land use planning governance processes, the Government of South Sudan should allow non-state actors to re-commence management of the Land Coordination Forum (LCF). The LCF shares information, coordinates technical and financial assistance to the Land Commission, facilitates discourse on land policy and legislation and creates vertical and horizontal linkages with government institutions, civil society actors, and other stakeholders. In February 2015, management of the LCF was taken over by the Ministry of Lands Housing, and Physical Planning (MLHPP) (in the new peace deal the ministry will be called Ministry of Lands and Urban Planning (MLUP)) and has not convened since. Humanitarians and key stakeholders have been working to reconvene the LCF since October 2015. The Ministry should allow concerned civil society and humanitarian groups to re-launch the LCF, to expedite attention to land tenure issues and increase transparency.
- **Land issues and transitional justice** – Durable solutions to the many dilemmas of internal displacement in South Sudan will require a comprehensive approach that is sensitive to the role that impunity, historical grievances and exposure to trauma have played in exacerbating crises. The ARCISS provides for the formation of a Compensation and Reparation Authority, under the chapter of the agreement related to “Transitional Justice, Accountability, Reconciliation and Healing.” The text does not specifically outline the manner in which these activities and mechanisms shall be implemented, but the TGoNU is required to enact legislation establishing the institution within the first six months of the transitional period. In assessing priorities for reparations, the TGoNU and the CRA should undertake a comprehensive assessment of destroyed and illegally occupied homes of IDPs. As the transitional period unfolds, the CRA and the other transitional justice institutions provided for in the ARCISS should address land tenure as an integral component of the accountability and reconciliation process.
- **Further research and analysis** – As the TGoNU proceeds with implementation of the ARCISS, additional analysis and research will be necessary to understand the changing dynamics and frame appropriate responses. For example, the impact of President Kiir’s decision to divide the country into 28 states will be of central importance to understanding where challenges might arise in protecting the rights of IDPs, particularly with respect to land. In addition, the ARCISS provides for a number of new ministries, and analysis will be required to understand where discussions of IDP rights will occur within the new government.



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