



Southern Sudan Land Commission

Government of Southern Sudan

Draft Land Policy

February 2011

Preface

The Southern Sudan Land Commission was charged under the Comprehensive Peace Agreement of 2005 to recommend and coordinate land policies for South Sudan. This document provides a Draft Land Policy, which I am pleased to put before the Nation for discussion and eventual adoption as the official Land Policy of South Sudan.

The Draft Land Policy reflects the concerns and ideas of large numbers citizens from throughout Southern Sudan, who were consulted over the past two years in workshops and meetings in all ten states. The workshops and meetings provided opportunities for citizens to speak about the land and property rights problems they and their communities were experiencing. Tenure insecurity emerged as the problem people were most concerned about. Tenure insecurity had many causes, including the disruptions and dislocations of many years of war, weak land institutions, shortage of land in towns, conflicts over land and pasture rights, and fear of land-grabbing, or taking of land by powerful interests without regard for the rights of those who have pre-existing rights to it. What came through very clearly was that people want clearer and stronger rights over their land and natural resources. They also wanted all citizens to have a fair chance to hold land, under a variety of tenure arrangements, including community tenure, leasehold and freehold. They believed strongly that government institutions and traditional authorities should administer land rights in a transparent, accountable, fair and efficient manner.

Extending and protecting rights to land to as many citizens and other qualified rights holders as possible is the principal goal of this policy. The policy identifies a great number of things that government and citizens must do to achieve this goal, including adopting various legal reforms; clarifying the roles of government institutions with respect to land administration; building the capacity of land administrative institutions, including civil and traditional authorities; taking steps to ensure these institutions are transparent and accountable; providing guidance on good land use planning practices; strengthening the rights of women to land; and many other measures described in this document.

Many people were involved in the work of developing this policy, and I would like to take a moment to thank them. I am especially grateful to the over 1000 citizens who participated in workshops and meetings on the policy across the region. Participants came from many walks of life, and all gave freely of their ideas and time. The Nile Institute managed a program of research on land issues, mostly undertaken by Southern Sudanese researchers, the results of which helped clarify important aspects of the policy. The policy process was guided by the Land Policy Steering Committee, an inter-ministerial committee of officials representing numerous Commissions and Ministries of the Government of Southern Sudan. An earlier draft of the policy was reviewed by a number of African and international experts in land policy and our work benefitted from their suggestions. Technical assistance and logistical support was provided by the Sudan Property Rights Program (SPRP), administered by Tetra Tech ARD and funded by USAID. I thank all those institutions and individuals who contributed to this Draft Land Policy.

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Chairperson, Southern Sudan Land Commission

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The Vision: To Provide Secure Land Rights for All Southern Sudanese

The draft Land Policy for Southern Sudan was developed under the leadership and guidance of the Southern Sudan Land Commission, with support and assistance from the Sudan Land Policy Program, an initiative funded by USAID and implemented by Tetra Tech ARD.

The policy is a reflection of the needs, problems and circumstances of Southern Sudan as it emerges from a long period of conflict, civil war and social, economic and political disorder. Paramount among those needs is creation of institutions that enable the citizens of Southern Sudan to rebuild their lives and their livelihoods in peace and security. Secure property rights are essential to the region's economic reconstruction and political and social development.

The policy was developed through a process of extensive public consultation across Southern Sudan. Consultative meetings solicited the views of public officials, traditional authorities, leaders of civil society groups and researchers and scholars. The principles on which the policy was built reflect the concerns and priorities of a broadly representative group of Southern Sudanese. Key policy proposals were augmented by the findings of research carried out by Southern Sudanese scholars, through a research program managed by the Nile Institute. The policy has also benefitted from lessons learned in other African countries that have sought to strengthen the land rights of their citizens.

- At the heart of the policy is a commitment to extend security of property rights to the greatest number of Southern Sudanese, regardless of their social or economic status.
- The policy recommends greater statutory protection for land held under customary tenure arrangements through enactment of a Community Land Act.
- The Community Land Act would extend the full enjoyment of customary land rights to women and would modernize the administration of customary land rights.
- The policy promotes the modernization and efficient performance of government agencies with land-related responsibilities in the Government of Southern Sudan and among state, local governments and customary authorities.
- The policy promotes the efficient and transparent operation of land markets, subject to appropriate forms of public oversight and regulation, in urban and rural areas, and of land held under freehold, leasehold and community tenure.
- The policy views the ability of poor citizens of Southern Sudan to gain security of property rights as essential to poverty reduction.
- The policy would facilitate the return of internally-displaced persons and refugees to communities from which they were displaced during the civil war or due to natural calamities, or where appropriate would help them to secure land in the host communities where they settled during the civil war.
- The policy encourages the sustainable management of land-based resources used in common, including forests, pasture lands and water resources, through collaborative planning and management initiatives.
- The policy seeks to facilitate the orderly growth of towns and urban areas, through strengthened town planning laws and capacity, and by recognizing the land needs of low-

income residents and migrants and providing basic serviced land to all. The policy calls for actions to ensure that land for a variety of commercial, industrial, housing and public uses are available under secure tenure arrangements.

- The policy recognizes the important role of independent civil society organizations and groups in representing citizens with land-related grievances and in educating citizens about how to better secure their land and property rights.

The policy does not provide answers to all of the problems that affect land tenure security in the region. But it does focus attention on priorities and problems that, in the view of participants in the policy development process, are particularly important as the region emerges from civil war and begins the process of building a new, fair and peaceful nation.

Chapter 1. Background to the Land Policy

1.1 The Historical Significance of Land in Southern Sudan

The ten States of Southern Sudan encompass a huge area which, at first glance, appears sparsely populated. Estimated population density is only 30 people/km² (United Nations, 2008) and vast swathes of land appear unsettled or unused. However, unsettled land should not be equated with unclaimed land, and much of the region's land is subject to customary claims by the numerous and varied communities throughout Southern Sudan. Chiefs and other figures of traditional authority retain significant control and say over land allocation, use, and claims. Besides its importance as a resource and source of livelihood, land is vested with cultural and spiritual significance, closely linked to the history, traditions, and social relations of many of Southern Sudan's people.

Contesting visions of development and authority over land were among the many significant contributing factors in the decades-long civil war fought between the Sudan government and the Sudanese People's Liberation Army. "Land Belongs to the People" was a fundamental concept for rallying support among the rural population, embodying the notion that customary leaders and laws would play a significant role in governance once the South achieved its independence. It was widely assumed and expected that any emergent government would work in partnership with customary land institutions and that people would have a significant say in how land is administered and allocated.

However, the war disrupted governance and social hierarchies, undermined the role of many traditional authorities, and displaced millions of people. In the resulting confusion, roles and responsibilities for governance were unclear and questions of authority over land were subject to confusing and conflicting claims. Despite the promulgation of the Interim Constitution in 2005 and the passage of numerous laws, including the 2009 Land Act, roles and responsibilities for the administration and adjudication of land rights remain unclear or unfulfilled. While the emerging State is founded on constitutional principles that recognize the universal right to land, effective implementation and protection for all rights-holders remains elusive. Effective systems for governing, adjudicating, and protecting land rights are still in their formative stages and the roles and responsibilities of respective authorities are still being negotiated.

The Government of Southern Sudan (GoSS) recognizes the need for a land policy that establishes principles for land governance and the protection of land rights, defines roles and responsibilities at all levels of governance, both statutory and customary, and provides guidance on further legislative and regulatory reforms necessary to extend and better protect land rights and ensure their fair and effective administration.

1.2 The Process of Developing the Land Policy

In 2006, the Southern Sudan Land Commission initiated a process of land policy development that included study tours, workshops, public consultations, and research. A Land Policy Steering Committee comprised of members from 13 GoSS Ministries, Commissions, and Boards was established to advise and guide the land policy process. The public consultation process included ten state consultations, two

thematic consultations (on women's land rights and private-sector investment), and numerous meetings with government and civil society stakeholders, the intent of which was to solicit and incorporate stakeholder views and concerns into the land policy. The cumulative proceedings from all consultative workshops were analyzed and summary findings presented in a validation workshop held in Juba in June 2010, comprised of key government, traditional, and civil society leaders. The Nile Institute, a Southern Sudanese non-governmental research organization, was commissioned to carry out research on topics that the Land Commission and the SPRP thought merited close study. Topics included the functioning of customary land institutions and GoSS and state-level land agencies, the management of conflicts affecting agriculture and grazing rights, and the rapid growth of informal settlements in Juba. The results from the consultations, the validation workshop, and the findings of the Nile Institute research were used to draft the policy, which was then reviewed further by government officials and land tenure specialists with knowledge of land tenure and policy reform in Southern Sudan and in Africa generally.

1.3 Climate, Topography and Agro-Ecology

The climate of Southern Sudan is tropical with distinct dry and wet seasons with considerable variations from one part to the other. The rainy season is generally from April to October with the wettest period between May and September. Mean temperatures vary from 25 to 30 degrees Celsius during the rainy season and over 40 degrees in some parts during the dry season. The mean annual rainfall also varies from as low as 500 mm in the Northern and drier areas to as high as 2260 mm in mountainous areas and in Western Equatoria State.

Southern Sudan has diverse topographic features ranging from the eastern and central hills and mountains to the northeastern flat lowlands and swamp areas. There are a number of diverse agro-ecological zones in Southern Sudan and their classification varies according to the specific use and biophysical properties. According to the GoSS Ministry of Agriculture and Forestry (MAF), there are five agro-ecological zones: the Green Belt, Ironstone Plateau, Hills and Mountains, and the Flood Plains.

1.4 Demography and Population

The Population and Housing Census of 2008 estimated a total resident population in Southern Sudan of about 8.3 million people. An additional two to three million Southern Sudanese are estimated to live in neighboring countries, further abroad, or in northern Sudan. One obvious pattern of population movement is from rural to urban areas, where relatively better social services and economic opportunities are available. This trend is generating considerable growth in the demand for land in urban areas for housing, businesses and public services. Though difficult to estimate with precision, the 2011 independence referendum and the hoped-for arrival of peace and security throughout the country will result in the return of large numbers of citizens currently living abroad, increasing demand for land in rural and perhaps especially urban areas.

1.5 Main Sources of Livelihood

Land is and will continue to be important for livelihoods in Southern Sudan. Approximately 50 percent of the population lives below the poverty line, defined as those earning less than SDG 72.9 per month, with the greatest incidence of poverty in Northern Bahr El Ghazal, Warrap, and Unity States. (SSCCSE, 2009)

The majority of Southern Sudanese depend upon agriculture and livestock, both commercial and subsistence, for a significant proportion of their livelihoods. In the more arid regions, livestock rearing is the main occupation and people derive their livelihoods from a combination of activities such as herding, subsistence cultivation, hunting, gathering, bee keeping and fishing. In agricultural areas such as the green belt through the Equatorial states, farming, bee-keeping, small-scale trade and fishing are the main sources of livelihoods. Secure rights to acquire, access, use, and transfer land and associated productive resources are essential for the well-being of families and communities and national economic development. In recent decades, urban-based livelihoods have become increasingly important, as conflict has contributed to insecurity in rural areas and families have found security in town and cities. While some are returning to rural areas in the aftermath of peace and security, many others are remaining or coming to towns and cities in light of the greater prospects for jobs and more reliable cash income.

1.6 The Principal Policy Problem: Widespread Tenure Insecurity

An extensive process of public consultation, primary and secondary data from research, and anecdotal evidence all indicate that insecure rights to land are a concern for people throughout Southern Sudan. People's concerns about tenure insecurity reflect larger anxieties about a political and economic environment characterized by weak institutions, continuing insecurity and violence, and inconsistent governance and protection of rights. Widespread tenure insecurity and violation of land rights impedes achievement of peace and security; forestalls individual, community and public sector efforts to increase wealth and reduce poverty; and can undermine the authority of new government institutions. The following are important contributors to tenure insecurity in Southern Sudan:

1.6.1 Dislocations due to civil war or natural calamities; post-war conflict over land rights

The civil war and natural disasters resulted in widespread destruction, displacement and the deterioration of effective governance, all contributing to conflicts and weaknesses in the administration of land rights. There are an estimated 390,000 internally displaced persons (IDPs) in Southern Sudan, informally settled in urban areas or on land provided by host communities. Many IDPs attempting to return to their areas of origin have found their land occupied, even as host communities complain that IDPs must vacate land and return to their own areas. Current institutions and procedures for restitution and compensation for lost land or facilitating integration into host communities are absent or inadequate for resolving land conflicts.

1.6.2 Weak land administration and management

Southern Sudan's systems of land administration, both customary and statutory, have been weakened by decades of civil war and lack of investment in their core capacity and development. There is a continuing lack of clarity regarding the authority, roles, policies and procedures at various levels of government and between government and traditional authorities for land administration. Land agencies are hampered by a shortage of funds, material resources, and sufficiently trained staff. Stakeholders have complained that limited capacity and poor management by land administration

officials has led to confusion over land ownership, due for instance to the issuance of duplicate titles or lost records.

1.6.3 Lack of transparency and accountability

There are widespread concerns about corruption, favoritism, and capricious actions by some government officials and traditional leaders in the administration and allocation of land. Those without power, political access, and money fear they will be at a disadvantage when seeking to acquire land or defend their land rights. There is widespread concern that some government departments will abuse their authority to acquire and dispense land, without proper consultation with affected individuals and communities.

1.6.4 Gender bias and discrimination

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 Southern 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, particularly in rural areas.

1.6.5 Informal settlements in cities and towns

Urban centers around Southern Sudan are growing rapidly as people seek better security and access to schools, health facilities, and employment. Unplanned informal settlement expansion onto land in peri-urban areas is causing conflicts with communities who claim customary rights to it. Government agencies have been unable to keep up with the demand for serviced land in urban areas, requiring new residents to build on land over which they have uncertain tenure, and to purchase land rights from persons who may not have the right to sell it.

1.6.6 Conflicts over access to land with pasture and water

Conflicts among pastoralist groups and between pastoralists and agriculturalists are widespread in Southern Sudan. In many parts of the region successful livestock production requires that herders move their herds in search of water and forage, whose availability varies from place to place seasonally. However, the expansion of permanent settlements and cultivation in some areas is affecting the free movement of livestock, resulting in conflicts between farmers and herders. Farmers complain that pastoralists destroy their crops by moving animals through cultivated areas while pastoralists complain of farmers expanding into areas traditionally used for grazing or transit. There are widespread reports of violent clashes, made worse by the use of automatic weapons and the inability of traditional leaders to mediate such crises.

1.6.7 “Land-grabbing;” the acquisition of land without regard for the interests of existing land rights holders.

In many parts of the region, land holdings, large and small, urban and rural, are being allocated or illegally occupied without taking account of the rights of current land holders. These practices reflect a disregard and in some cases confusion over the proper land administrative authorities to engage in when applying for land. Some government officials have taken land allocation decisions without consulting communities and individuals who have ownership or use rights to the land in question.

1.6.8 Disagreements regarding boundaries between counties and payams.

There has been considerable conflict between county and payam officials and residents over boundaries between counties and between payams. Disputes are widespread, contributing to insecurity and in some cases the delay of investment and development. Authorities at appropriate levels need to be empowered and assisted to mediate boundary disputes and adjudicate boundary determination fairly and accurately.

Chapter 2. The Policy Goal: Strengthening Land Tenure Security for All Citizens

2.1 The Importance of Tenure Security

The previous sections have described some of the causes of land tenure insecurity. The principal aim of the land policy is to strengthen land tenure security for all citizens of Southern Sudan who hold land or wish to hold land. What do we mean by land tenure security? A useful definition is provided by the FAO.

“Land tenure security is the degree of confidence that land users will not be arbitrarily deprived of the bundle of rights they have over particular lands. Tenure security is the reasonable guarantee of on-going duration of land rights, supported by the certainty that one’s rights will be recognized by others and protected by legal and social remedies when challenged.”

While the benefits of land tenure security to the well-being of individual citizens, men and women, wealthy and poor, are obvious, why does the Government of Southern Sudan give such great importance to fostering land tenure security when the region is facing so many other pressing problems?

2.1.1 *Tenure security builds peace*

Tenure insecurity impedes the full achievement of peace and political security within Southern Sudan. Full peace is not possible where thousands of people displaced during the civil war face continuing uncertainty over their ability to re-claim property they lost in their home areas. Many displaced families may want to stay in the places where they settled during the civil war. Having built homes and businesses, they may be under pressure to leave. The Government of the Southern Sudan fully embraces its obligations under international law as reflected in the Pinheiro Principles, which provide that returning refugees and internally-displaced persons shall have rights of land restitution.

Many conflicts in rural areas are due to competition for natural resources, and especially over grazing rights and water-use rights. Many others are due to lack of clarity and competition over boundaries between counties and between payams. Public confidence in the work of government and traditional authorities is enhanced where they are successful in helping resolve conflicts fairly and justly and in ways that increase public security and reduce violence.

2.1.2. *Tenure security is essential to economic development*

Economic development and investment occurs where businesses, workers, farmers and homeowners are secure in their land and property rights. Business-people are prepared to invest in factories, farms and shops and employ workers where procedures for securing land are transparent and their land rights are secure and of sufficient duration to fully realize returns to investment. These principles apply to businesses of all types and sizes, from smallholder family farms to large agricultural enterprises, and from large factories to small workshops and shops.

2.1.3 Tenure security unifies the nation

Governments have few responsibilities of greater importance than defining and protecting property rights. Successful countries, defined as having political stability and reasonably high levels of economic welfare, are usually countries that offer their citizens fair access to property and protect property rights against unreasonable taking by the State or by other citizens.

The leaders of Southern Sudan recognize the central importance of secure property rights to building a peaceful and prosperous nation. There are many legacies of the recent past that have eroded tenure security and which are addressed in this policy. There are also several positive features of existing property-rights arrangements which will be protected and strengthened. Among these is the diversity of customary land tenure arrangements and the assurance that they provide communities that their cultural values will be respected by national and state governments, subject to the provision that the constitutional rights of all citizens will be respected by customary land institutions and authorities.

2.2 Current Conditions Favorable for Policy Implementation

The current political and social context presents a number of opportunities and conditions favorable for implementation of this policy:

2.2.1 The Government of the Southern Sudan accords property rights and tenure security great importance

The Comprehensive Peace Agreement (CPA) identifies questions of land usage as one of five economic and financial matters meriting priority in the implementation of the Agreement. The parties to the CPA agreed “to create a process to resolve conflict on land issues by developing and amending legislation to reflect customary laws and practices, local heritage, and international trends.” The CPA provides for the establishment of the National Land Commission, the Southern Sudan Land Commission, and State Land Commissions. Southern Sudan’s political leadership, including the presidency and the parliament, have shown their support for security of land rights through the adoption of the Land Act of 2009 and through the wide public consultation that has characterized the development of this policy.

2.2.2 Widespread public support and continuing confidence in customary institutions

Most land in Southern Sudan is administered and held under customary tenure. Importantly, customary tenure systems are generally effective at providing secure access to land, as a social right and on a reasonably equitable basis, to the majority of qualified persons seeking land. Reliance on customary authorities to administer land tends also to be cost-effective. This is because customary land administrators possess a remarkable store of information about land and land rights in their areas; capacities that the State can reproduce at considerably greater cost. Customary tenure systems are not without their problems. Women gain access to land through marriage, but they rarely enjoy rights independent of their marriage relationship. Record-keeping standards, though adequate in past times, are not always up to the needs of contemporary circumstances. Clearer records can help women certify their land rights. Prohibitions against buying and selling land may constrain certain kinds of investments.

For the most part, these and other problems can be overcome while retaining the key elements of the customary tenure system: access to land as a social right and administration of land by customary authorities. Customary tenure arrangements are on balance an asset to the policy's goal of extending secure land rights to the greatest number of Southern Sudanese.

2.2.3 A commitment to the rule of law; and to transparency and accountability in land rights administration

Southern Sudanese were aggrieved by past policies and laws that diminished their land rights and tenure security. Among these unjust laws was the Unregistered Land Act of 1970. This law declared all land not formally registered to be owned by the Sudanese government. This meant that nearly all land held under customary tenure arrangements, and which historically had not been subject to registration, fell under the authority of the Government of the Sudan. The result in many parts of the South was loss of land rights without regard to prior customary claims and without compensation. The Unregistered Land Act of 1970 and other unjust land laws were among the factors that divided the North and the South, leading ultimately to the civil war. The popular phrase, "Land Belongs to the People," has its origins in popular resistance to State actions that extinguished land rights without adequate procedural safeguards.

Chapter 3. Guiding Land Policy Principles

3.1 Security of Land Rights

The underlying principle of Southern Sudan's land policy, and all laws and regulations related to the exercise of land and property rights in Southern Sudan, is that all citizens shall enjoy security of tenure over their land. To this end, public agencies responsible for land administration will operate to protect the security of tenure of land holders.

3.2 Equitable Access to Land

Equitable access is promoted through a variety of policies and strategies, including the retention of customary tenure systems, which provide access to land as a social right in rural areas, and through land policies and programs in urban areas that provide secure tenure to serviced land at reasonable cost.

3.3 Security of Tenure Provided through a Diversity of Tenure Types

The policy recognizes that tenure security can be provided through a diversity of property rights systems and instruments, the principal ones being customary tenure, and freehold and leasehold tenure. Generally speaking, customary tenure will more commonly prevail in rural areas, while freehold and leasehold will be more common tenure types in towns and cities.

3.4 Transparency

The process and procedures by which statutory and traditional authorities administer, allocate, and adjudicate land rights shall be clarified and known to citizens. Documentation of land ownership such as titles, transfers, and maps shall be matters of public record, accessible to all legally-entitled stakeholders.

3.5 Accountability

Citizens and other recognized rights-holders expect government officials and traditional authorities to administer land rights in a just and fair manner, in accordance with both the spirit and letter of Southern Sudanese laws. Laws and procedures shall ensure the right of stakeholders to reasonably contest alleged improper and illegal decisions by government and traditional authorities. It is incumbent upon government and traditional authorities to demonstrate that their decisions and actions are taken in accordance with the law.

3.6 Participation

To foster transparency and accountability, both traditional and statutory authorities must ensure that citizens, communities, and other stakeholders with recognized rights in land are involved in decisions that affect their land rights. In particular, government shall consult with traditional authorities and their constituents before claiming and allocating land under competing claims.

3.7 Gender Equity

Men and women will enjoy equal rights to land and property.

3.8 Statutory Recognition of Community Land Rights and Institutions

Systems of community, or customary, tenure and administration have considerable meaning and value in the lives of millions of Southern Sudanese. The policy recognizes the effectiveness of customary systems to deliver secure land rights in a cost-effective manner. The policy accords statutory recognition to community tenure on an equal legal footing with other forms of tenure.

3.9 Clarity of Roles and Responsibilities

The policy defines the respective roles and responsibilities of government and traditional authorities at all governance levels for effective land rights administration.

3.10 Peaceful Mediation

Management and resolution of land-related conflicts in Southern Sudan requires deliberative, transparent, and accountable processes that involve all rightful stakeholders. Those entrusted to mediate shall do so impartially with the intent of reaching equitable outcomes.

3.11 Protection

Government officials and traditional leaders are expected to fulfill their role as guardians of the public trust and manage institutions and systems in a manner that protects the land rights of citizens and other legally-recognized rights holders.

3.12 Appropriateness of Institutions, Methods and Tools

Tenure security depends upon institutions governing by rules, methods, and tools that are feasible, effective, and accepted by all affected stakeholders. The government shall work with traditional authorities and civil society to craft and manage a land tenure system that is cost-effective, equitable, and accepted by all stakeholders.

3.13 Subsidiarity

The evolving federal system of governance in Southern Sudan is based on the premise that the central authority should manage only those functions necessary for cohesion of the State or which cannot be fairly and effectively managed by state-level, local or customary authorities. State and local governments and traditional authorities will be largely responsible for land administration and adjudication. However, the Government of Southern Sudan and the Judiciary of Southern Sudan will fulfill key roles in promulgating laws and guidelines as final arbiters and guarantors of constitutionally and legally-defined land rights.

3.14 Efficiency of Land Institutions

Citizens will not enjoy access to property nor will they be secure in their property rights where land allocation decisions are unduly delayed or land records are poorly maintained and are inaccessible. Central and state governments will endeavor to make the financial resources available to ensure that public land offices are adequately staffed and funded and that staff are well-trained.

3.15 Sustainable Use of Land and Natural Resources

Current holders of rights to land and other natural resources have an obligation to their neighbors, to the country and to future generations to use what they have been given sustainably. The policy, in conjunction with other government policies for agriculture, forestry, water use and the environment, considers good stewardship of land and natural resources to be an obligation of land ownership.

Chapter 4. Land Policy Statements

4.1 Policy Statement 1: Tenure Security Will Be Provided under a Diversity of Tenure Systems.

The principal aim of Southern Sudan's land policy is to ensure that the greatest number of citizens are secure in their rights to land as defined by law. The government shall facilitate access to land at reasonable cost for all citizens, regardless of their socio-economic status. All Southern Sudanese who hold land under legally-recognized forms of tenure will be protected from the capricious or arbitrary loss of land rights. Where land is taken for public purposes, landholders will receive fair and just compensation.

Strategies for promoting land tenure security

- The Land Act 2009, Section 7 (2) recognizes three types of land tenure in Southern Sudan: public, community, and private land. Most land in rural areas is held under community tenure and rights are administered by traditional authorities. Most land in urban areas is held under public and private tenure, and is administered by statutory authorities. The Land Act 2009 and this Land Policy accord all three systems of tenure—community land, public land and private land—equal status before the law. This Land Policy endorses in general terms the existing patterns of land tenure as they relate to land use, that is:
 - Community tenure will be the principal form of tenure in areas that are predominantly rural;
 - Public and freehold tenure will be the principal forms of tenure in areas that are gazetted officially as urban areas, under the Town and Country Planning Act;
 - Public land also includes land over which no private ownership including customary ownership is established; roads and other public transportation thoroughfares; water courses over which community ownership cannot be established; and forest and wildlife areas formally gazetted as national reserves or parks;
 - Peri-urban areas may be administered under community, public or private tenure, subject to principles of good land administration and planning and the comparative capacities of alternative tenure systems to administer land rights in given areas efficiently;
 - It is government's intention to offer freehold title to the original holders of customary rights on community land converted to state land for purposes of urban expansion.
- Citizens will enjoy high levels of security of tenure over their parcels and holdings, regardless of the tenure system under which it is held. Section 8 of the Land Act 2009 constitutes a set of legal protections ensuring security of tenure. Importantly, Section 8 (6) provides that "Customary [Community] land rights including those held in common shall have equal force and effect in law with freehold or leasehold rights acquired through statutory allocation, registration or transaction." Moreover, Section 8 (2) provides 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."
- To ensure transparency and accountability to the citizenry in the practice of land administration, the Land Policy endorses the principle that wherever possible legally-constituted bodies charged with allocating land and adjudicating land disputes should be constituted by citizen members,

appointed from various representative bodies. Civil servants should serve as advisors to land authorities, and not as members.

4.2 Policy Statement 2. On the Role of Security of Land Tenure in Reducing Poverty.

The government recognizes that provision of equitable, secure access to land is an important component of any strategy to reduce poverty in Southern Sudan. Land is a basic asset for Southern Sudanese; families without secure rights to land for a home or a plot to cultivate face significant obstacles overcoming poverty. Community tenure arrangements that recognize access to land as a social right provide an important safety net that can help reduce poverty. Poor families living in urban areas often face particular difficulties in gaining access to land for housing and businesses, due to the high costs of land. The policy will encourage efforts by the government and the private sector to provide orderly and timely access to land in urban areas to all citizens.

Strategies for ensuring the land policy helps reduce poverty

- The policy recognizes that one of the great advantages of community land tenure systems is that they usually provide land to qualified members of communities organized by family, clan or ethnic groups as a social right, not dependent upon wealth or economic status. Central government and states will work with community land institutions to ensure that the rights of citizens to exercise their legitimate rights to community land are fully respected.
- The policy encourages planners responsible for designing development initiatives for agriculture, water use and the use of natural resources to design them in ways that involve and directly benefit low-income land holders and that respect and protect the rights of smallholders over their land, water and grazing rights.
- Where large-scale development projects that use extensive areas of land and other natural resources are being contemplated, any loss of pre-existing and future rights of community right holders to the benefits of the use of those resources should be compensated, consistent with existing law.
- The policy recognizes that low-income citizens, demobilized soldiers and IDPs and returning refugees will migrate to existing cities and towns in large numbers, in search of economic opportunity. To avoid the growth of informal settlements in cities and towns, poorly served by basic services, the policy encourages central government and concerned state authorities to make available serviced land in an efficient, timely and orderly manner, and to provide new residents with lease-rights or other forms of secure tenure that protect them against removal.

4.3 Policy Statement 3. On Restitution of Land Rights.

The policy recognizes that ensuring that refugees, IDPs and returnees have secure land rights is essential to the future peace and security of Southern Sudan. The policy calls for the acceleration of efforts to assist IDPs and refugees to make a free and informed choice in shaping solutions to their displacement. These choices may include local integration, return to their community of origin or relocation elsewhere in Southern Sudan. The policy supports efforts that facilitate the transition from displacement to a future of long-lasting peace and sustainable development

Strategies for Resettlement of IDPs and Returnees and Restitution of Land Rights to Persons Affected by the Civil War

- **Extension of the deadline to make claims for restitution of land rights lost due to the civil war.** The process of restitution has been impeded by the lack of capacity in the Land Commission to meet its mandates under the Land Act 2009 to receive and review restitution claims. It is further impeded by the lack of awareness of the process among the population as a whole. The Land Act 2009 currently provides that all claims for restitution must be received by the Land Commission by February 16, 2012. This Land Policy extends this deadline for three years, to February 16, 2015, giving claimants more time to file claims, to be informed of the claims process and also giving time for the Land Commission and local and traditional authorities to fully assume their responsibilities in administering the restitution process.
- **The Land Commission's capacity and the capacity of traditional authorities to administer the restitution process will be increased.** The strategy for hearing and adjudicating land restitution claims that is developed by the Land Commission should give considerable weight to building the capacity of and vesting authority for this process in traditional authorities. Their authority and this process would be subject to constitutional and legal provisions and protections regarding land rights.

The policy recognizes that the needs and current circumstances of persons and families internally displaced during the civil war vary. There is no single solution appropriate to everyone. A variety of flexible options are more likely to result in durable outcomes, satisfactory to all parties. The policy offers three broad pathways for restoring and normalizing the land rights of persons displaced during the civil war.

- **Return and re-integration:** The first avenue is restitution of rights to land held in the communities where IDPs and refugees originated and from which they fled during the civil war. Many families have safely returned to their homes of origin and begun the process of reintegration. Others have wished to return home, but have discovered that their land and property have been occupied by others. Some of these returnees have managed to secure the return of their property or have secured monetary compensation for lost land rights and/or have been granted comparable parcels of land in their communities of origin. Satisfactory resolution of claims has in many cases been carried out under the supervision of customary authorities through traditional practices.
- **Local Integration:** Integration of IDPs or refugees into the communities where they have settled is another means for normalizing land rights of people displaced by conflict. Though displacement is often considered to be temporary, many IDPs and refugees and their families have developed close ties to the communities where they have settled. These persons and their families should be entitled to stay in the communities where they were settled if they so choose, and subject to the agreement of local community institutions. Those who seek to be permanently integrated and accepted in the community where they settled during the civil war will receive the full array of land rights available to any other member of the community. They

will also be fully observant of local land-use and natural resource management customs and practices, including those governing use of pastures for grazing of livestock. They will recognize the authority of local community land institutions over land administration and land use matters.

- **Settlement elsewhere:** Settlement in another place is an option available to IDPs and returnees wishing not to return to their place of origin or to remain in the community where they settled during the conflict. The Land Commission and traditional authorities in areas where returnees choose to resettle will collaborate in making land available in ways that are sensitive to host community needs and comply with the Land Act 2009's mechanisms for settlement of disputes. A durable solution is achieved when former IDPs no longer have specific assistance and protection needs that are linked to their displacement and such persons can enjoy their rights without discrimination.

4.4 Policy Statement 4. On the Right of Eminent Domain.

The recognized authority of the government to take or allocate land from private owners as well as regulate land-use in the public's interest is a common tool of governance worldwide. The exercise of this authority is subject to the test of whether or not there are compelling public health, economic growth, or environmental protection objectives at stake in which the public has an interest. When exercising the power of eminent domain, government must demonstrate the compelling reasons for action and provide fair and adequate compensation to affected landowners in a timely manner. The law of eminent domain shall provide affected stakeholders, including individuals and organizations, with a legitimate interest to seek an injunction from the judiciary against the exercise of this authority, provided it can be shown this power was exercised in an arbitrary or unfair manner, without compelling reason, or in violation of the law.

The government may propose to take, reserve, or re-allocate land for a range of legitimate public uses, including the establishment of national parks, forest reserves, military installations, and rights-of-way. Government's power of eminent domain is restricted to securing land for public use only, and not for subsequent transfer or sale to private individuals. Given concerns about corruption, the historical legacy of distrust toward the arbitrary exercise of State power, and the expectation that government should act in the interest of the wider public, government at all levels must exercise this authority with restraint, transparency, and accountability. Government authorities are required to provide clear public explanations when it exercises its authority and restricts or removes private or customary rights in land.

4.5 Policy Statement 5. On Public Participation.

Members of the public affected by land use or land development decisions that have potential impacts on their enjoyment of current or future land rights will have the opportunity to present their views directly or through designated representatives before decision-making authorities.

4.6 Policy Statement 6. On Assigning Roles and Responsibilities for Land Administration.

The principle of subsidiarity will be applied in those cases where different bodies of government hold concurrent powers for land administration. It is expected that state and local governments will take

principal responsibility for assigning and administering land rights. The roles of the central government in land administration will principally be those of setting standards, ensuring accordance with the Constitution and federal laws, and coordinating or mediating among lower levels of government.

The Land Commission will convene a broadly-based review of the current roles and responsibilities of all institutions involved in land administration and rights adjudication, with a view to identifying areas of concurrent powers and responsibilities. The Commission will develop recommendations intended to clarify, differentiate, and expand or limit the authority of different government institutions as necessary to simplify and rationalize land administration in Southern Sudan.

4.7 Policy Statement 7. On the Equality of Men and Women in the Exercise of Land Rights.

The policy requires all government agencies and all traditional authorities to ensure that men and women enjoy equality of rights to land and other property. The policy requires that men and women be treated fairly and equally when they seek access to administrative and legal services related to exercise of their land rights.

Strategies for Extending and Protecting Women's Land Rights

Recognizing that various aspects of inherited Sudanese law, customary practices, and administrative procedures limit the full enjoyment by women of equal land rights, the policy requires the government to take a number of actions that ensure equality of women's land rights in law and in practice.

- Central and state governments will develop programs to train, recruit, and mentor women in land administration and adjudication roles.
- Central government will support establishment of paralegal organizations and networks in rural areas capable of providing advice and aid to women on inheritance and land issues.
- Central government will amend and/or promulgate marriage, inheritance, and related laws to ensure recognition of the equal rights of those women who may not enjoy equal rights under various provisions of customary law and practice (divorced, widowed women, daughters, etc.).

Central and state governments will establish programs to monitor compliance with laws requiring the adequate representation of women on governing bodies, including local committees, dealing with land issues.

- The policy encourages State Ministries responsible for land administration to provide information and services to women on their land rights.

4.8 Policy Statement 8. On Community Land Tenure Systems

The policy recognizes the importance of community tenure arrangements in providing land to millions of Southern Sudanese, particularly in rural areas, as a social right. Because land is a social right under community tenure systems, poor people have access to land at no or little cost for housing, agriculture and small business purposes. Community tenure contributes to poverty reduction, another important goal of this Land Policy.

The policy recognizes also that community tenure arrangements, like other systems of land rights, may fall short in providing land rights in a fair, equitable and efficient basis. Community land rights and their administration should be governed by principles of gender equity and equal protection before the law as set out in the Interim Constitution.

The policy is committed to retaining community tenure arrangements in parts of the country where they continue to enjoy the support of community members. Because of the tendency in the past for community land rights to be viewed as informal, or of a lower legal status than leasehold, freehold and state tenures, holders of customary rights have been vulnerable to taking of rights without due process or just compensation. Therefore, the policy provides for the statutory recognition of community land rights, on a par with other systems of land tenure, through promulgation of a Community Land Act.

Key Provisions of the Community Land Act

The Act will give legal status to land rights held under community tenure and place the administration of land rights carried out by traditional authorities under the legal protection and supervision of Southern Sudan statutory law.

- The Community Land Act shall provide legal, statutory recognition of customary systems of land governance, currently carried out throughout Southern Sudan by traditional authorities. By bringing the work of chiefs and other customary land administrators under the supervision of Southern Sudanese law, the government can promote the development of good administrative practice through the training of chiefs and their staff, by overseeing and upgrading administrative procedures, and by the promulgation of appropriate rules and regulations that streamline community land administration. Where individual chiefs are performing poorly or acting in bad faith, the Community Land Act will provide measures for holding chiefs accountable to the law.
- The Community Land Act shall recognize and protect a fundamental principle of community land tenure: that all qualified citizens who are bona fide members of families, clans or communities that hold land in trust for their members continue to have access to land as a fundamental right of their membership in the group or community, providing that suitable land is available. Exercise of this right is free of any monetary costs, apart from reasonable administrative fees. By giving community tenure the protection of the law, the Government of Southern Sudan is placing its fullest political and legal authority behind protecting the land rights of the poor.
- The Community Land Act shall facilitate the reform of certain practices associated with the administration and assignment of community land rights that are inconsistent with the rights and protections guaranteed women under the Interim Constitution and the Land Act 2009. Specifically, the Community Land Act will ensure the removal of any restrictions to the full enjoyment of equal rights of women to use and own land under community tenure.
- The Community Land Act will recognize the community land rights of persons who undertake to recognize the authority of local chiefs or other legally-recognized local bodies over land matters, even where they are not by birth or marriage members of families or clans who have historically lived in a particular area.

- The Framers of the Act, while giving due regard to the important role played historically by chiefs and other traditional authorities in administering customary land rights, will consider the merits of placing administrative rights and responsibilities over community land under civil Land Authorities, whose membership may be made up of qualified citizens, both elected and appointed.

4.9 Policy Statement 9. On Public Education about Land Rights.

The policy endorses efforts by the government and civil society to inform Southern Sudanese of their land rights. Given the importance of land tenure security to Southern Sudan's economic development and to the establishment of peace and security across the region, the international community is encouraged to support programs in land rights education. Southern Sudan civil society organizations have important roles to play in land rights education and in providing legal assistance to citizens seeking restitution of lost land rights or fair treatment before land administrative bodies.

4.10 Policy Statement 10. On Mediation of Land Rights Conflicts.

The Southern Sudan Land Commission and state-level Land Commissions have important roles to play in mediating land-related conflicts. Their capacities to assist land authorities at state and county levels, customary authorities, and aggrieved parties to resolve conflicts equitably will be increased. Traditional authorities have long been effective in mediating conflicts, but the complexity of the land disputes they often face today require new conflict mediation skills. These will be provided through training and various kinds of technical assistance. Government's commitment to an independent judiciary will give legitimacy to the outcome of disputes settled in courts. Acceptance by government and extension of legal recognition to alternative dispute resolution mechanisms will also enhance Southern Sudan's capacity to settle land-related disputes efficiently and peacefully.

Strategies for Building Capacity to Mediate Land-Related Disputes

- State Legislative Assemblies will be encouraged to enact appropriate legislation to empower local institutions to deal with conflicts over natural resources.
- States and counties will develop and apply appropriate tools for managing pastoral based conflicts, including the creation of buffer zones and cattle routes, and demarcation of boundaries.
- Central government will set standards and assist the states in provision of training in alternative dispute resolution principles and methods
- Central government and states will establish criteria for determining the appropriate channels and authority for hearing, mediating, or adjudicating claims, conflicts, and cases.
- Both national-level and state laws shall clearly define the proper circumstances and processes for appealing outcomes to higher levels.

4.11 Policy Statement 11. On Land Rights Registration and Land Records.

The policy recognizes that land rights registration has an important and growing role to play in extending tenure security to land holders. Land rights registration is most likely to be appropriate in

settings where tenure security cannot be assured by community systems or other traditional arrangements where access to land is based on clearly defined group or clan membership. The greatest need for land rights registration, usually taking the form of recording of leasehold and freehold rights in official records maintained by the Ministry of Physical Infrastructure, will be in cities and towns and in rapidly growing peri-urban areas.

Existing law and regulations already provide for registration of rights in Southern Sudan in areas officially demarcated and gazetted as cities and towns, though aspects of existing laws and regulations will require review and revision, as described in Policy Objective 17. Generally speaking, the capacity of authorities with responsibilities to register land rights is weak. The accuracy of land registration documents requires improvement. The quality of property diagrams is below standard. Recommendations are made to develop the capacity to accurately register land rights at various levels of government.

Registration of customary land rights

The proposed Community Land Act will make provision for the progressive recording of rights held under customary tenure. How and under what circumstances rights will be recorded and under what statutory authority land records will be maintained are important questions that will be considered as the Community Land Act is developed.

4.12 Policy Statement 12. On Development of Land Markets.

Land transactions based on sales between individuals currently take place mainly in towns and cities, which are places of greatest commercial activity and population growth in Southern Sudan. An accurate and secure land registration system is an essential service that government provides in facilitating the smooth functioning of land markets in urban areas.

Market transactions of land do not traditionally feature in community rights systems. However, there is evidence that community systems are accommodating a growing number of land transactions based on sale of land rights, particularly of land held under community tenure and administered by chiefs in peri-urban areas. In rural areas, local entrepreneurs and others are seeking new opportunities, including farming opportunities, in areas with suitable land. The Community Land Act will recognize and accommodate market transactions of rights in community land through provisions that help ensure they take place with due consultation with existing rights holders and after review by appropriate local authorities.

The emergence of new land markets including rental markets will be encouraged as they have potential to broaden access to land.

In order to enhance the efficiency of land markets, the Government shall:

- Facilitate the allocation of serviced land for investment purposes
- Facilitate and promote efficient and transparent land market operations, including in community land

- Regulate land markets to ensure efficiency, equity and sustainability.

4.13 Policy Statement 13. On Promoting Private Investment.

National economic development and job creation are important objectives of the central government. The acquisition and allocation of land for private investment is an important means for fulfilling that objective. Procedural requirements that increase the time and costs borne by investors without providing any perceivable public benefit or protection are excessive and constrain economic growth. Where land is provided for private investment, the boundaries and terms of use will be clearly indicated and known by all affected stakeholders.

Strategies for making land available for private, commercial investment

- Identify appropriate government authorities responsible for working with immediate stakeholders (i.e., investors and communities) to delimit boundaries of land allocated for private investment and negotiate terms of use.
- Develop and enforce zoning requirements for industrial, agricultural, and commercial uses of land.
- Review and streamline the procedures for acquisition and registration of land by investors, especially where such changes do not compromise protection of the public interest, health, and safety.

4.14 Policy Statement 14. On Extending Tenure Security to Residents of ‘Informal’ Settlements.

So-called informal settlements are growing rapidly in Juba and other centers of population growth in Southern Sudan. The land and service needs of residents of informal settlements are recognized by the Land Policy as legitimate needs, and the policy encourages an approach to informal settlement planning and upgrading that starts with people and communities where they are. The policy does not endorse forced removal of residents of informal settlements, and residents should be moved only when adequate assistance is provided to help residents settle on adequate land at alternative locations, under secure tenure.

Informal settlements are generally unplanned by government agencies, but evidence suggests that residents themselves, through informal community associations, work to harmonize their investment activities and land allocations with a view toward minimizing conflict over land. Already, preliminary studies have shown that residents have developed community registers that list households residing in their areas. GoSS and State and local planners should use community-generated data as a starting point for extending permanent land rights to residents and as aids to planning the upgrading of settlements.

GOSS should guide State and municipal governments in the drafting of plans for upgrading informal settlements. Appropriate laws, including amendment of the Land Act, would be put in place to support the process of implementing group titling and incremental tenure upgrading projects. Such an approach would start with the recognition of the rights of ‘squatters’ to stay where they are and encourage them to invest in housing and other improvements.

Appropriate measures that include the introduction of taxes on private but undeveloped land will be put in place to improve the supply of land for residential development. While some communities may be able to contribute to the costs of tenure upgrading, such programs are expensive and often require financing. Commercial banks are often unwilling to provide financing for upgrading schemes or provision of credit to those occupying land in informal settlements. Microcredit organizations and civil society organizations have an important role in developing and implementing alternative forms of financing the upgrading of informal settlements. For state governments, additional sources of financing could come from local taxes and the national budget. The private sector, international financial organizations and donors will be requested to provide financial assistance for informal settlement stabilization and upgrading.

The policy provides the following guidance with respect to securing stronger rights for residents of informal settlements in towns and cities:

- Government at all levels will not remove residents of informal settlements without due process of law. When removal or transfer is deemed absolutely necessary, it should be done only after suitable alternative land is provided, compensation is provided for lost investments in housing, and assistance is provided to re-locate at alternative sites.
- Central government and states will carry out baseline surveys in informal settlements to gather essential socioeconomic and land claims data for use in planning.
- State governments will develop land information systems based upon de facto community systems of documentation currently in use in many informal settlements.
- State and municipal governments, guided by the central government, will develop plans for upgrading of informal settlements, including the acquisition and allocation of land and provision of services.
- The central government will encourage state and municipal governments to allocate sufficient funds in their budgets to implement plans for upgrading informal settlements.
- The central government will identify and develop financing mechanisms for use by state and municipal governments to support the upgrading of informal settlements, including allocation of tax revenues, donor support, and development of public-private partnerships.

4.15 Policy Statement 15. On Community Rights to Natural Resources used in Common.

In some jurisdictions, community land used in common—for forest products, grazing and water supply—has been alienated by central and state level authorities for public use or for sale or lease to private investors without taking account of the ownership interests of communities in the land and its associated natural resources. This has occurred despite the fact that historically and customarily communal land has fallen under the ownership of communities, and its use has been regulated by traditional or other community-level authorities.

As demand for land grows for large-scale enterprises, particularly for agricultural uses, there is a danger that the land needs and current and future land rights of existing and mainly small-scale crop and livestock producers in areas claimed by large enterprises will be overlooked or dismissed.

This policy makes clear that the ownership of all land within the boundaries of communities is vested with communities, with the following implications:

- Community institutions will take principal responsibility for ensuring that community resources are used sustainably, for the benefit of current and future generations.
- Communities, through their county and payam land institutions, will have the legal authority to enter into lease agreements with outside investors for the development of agricultural and other business enterprises. The revenue from these agreements will accrue to local public accounts and will be used for purposes that benefit the public only.
- Central and state governments may fix regulations and guidelines for reviewing the public benefits, costs and social and environmental impacts of large-scale investments particularly. Regulation should serve the goal of fostering a balanced and integrated rural economy in which small-scale family holdings and traditional uses of communal resources are encouraged and protected and are not marginalized by large-scale projects.

4.16 Policy Statement 16. On Land Use Planning and Management.

The use of land in urban and rural areas as well as in sensitive ecosystems has been a major area of concern in Southern Sudan. Problems of rapid urbanization, inadequate land use planning, poor natural resources/ecosystem conservation and management, and differences between government and communities regarding urban planning and land use which may result in eviction of residents of informal settlements require appropriate policy responses.

Land Use Planning Principles

It is recognized that land use planning is essential to the efficient and sustainable utilization and management of land and land based resources. However, not much work has been done in Southern Sudan to ensure that such plans are effectively prepared and implemented. This has been largely due to the historical low priority accorded to land use planning in areas outside the main towns, lack of technical and institutional capacity of government ministries and local authorities, and the lack of an effective coordinating framework for preparation and implementation of planning proposals. Lack of a national land use framework has not helped the situation. These problems manifest themselves in terms of uncontrolled urban expansion, land use conflicts, environmental degradation, and the spread of informal settlements.

The key issues that need to be addressed in land use planning are:

- Lack of a Town and Country Planning Law to guide the preparation of land use plans at national, regional and local levels so as to promote coordinated and orderly development;
- The need for planned rural settlements that enable cost-effective location and provision of services;
- Lack of efficient and sustainable utilization and management of land and land based resources;
- Establishment of an appropriate framework for public participation in the development and implementation of land use plans; and

- Establishment of an effective coordination framework for preparation and implementation of planning proposals.

To address land use planning issues, the Government shall:

- Enact a Town and Country Planning Act and harmonize it with the Local Government Act 2009 and other laws so as to provide an appropriate framework for preparation and implementation of national, regional and local area land use plans and ensure the planning process is integrated, participatory and meets stakeholder needs;
- Develop a national land use policy as a basis for land use management; and
- Facilitate appropriate institutional and technical capacity building initiatives to support land use planning at national, regional and local levels.

National and Regional Planning

The Government shall:

- Facilitate the development of national and regional/physical development plans as a basis for investment and sustainable utilization of natural resources, taking local land use practices into account;
- Provide for implementation of a service center strategy for easier provision of infrastructure; and
- Identify and map areas which are prone to natural calamities such as floods and drought, for national disaster preparedness.

Rural Land Use Planning

To secure effective rural land use planning, the Government shall:

- Embed rural land use planning in all laws related to planning;
- Recognize rural settlement planning as a tool for sustainable resource management, alignment of infrastructure standards and provision of public sites;
- Provide for rural land use strategies to assist communities achieve optimum productivity; and
- Make rural land use planning an integral part of land adjudication process.

Urban and Peri-Urban Land Use Planning

Land tenure insecurity has inhibited the development of land in urban and peri-urban areas. The historical approach to land use planning is based on tenure segregation among classes and absolves temporary plot holders of the need to pay land taxes thereby compromising potential sources of finance for urban development. These problems are exacerbated by inadequate urban planning and the absence of a cadastre for use in property rating.

The Government shall:

- Facilitate the preparation and implementation of local area development plans for all urban and peri-urban areas in the country in a participatory manner;
- Establish an effective coordinating mechanism for the preparation, implementation of plans and development control;
- Review the current urban land zoning that is based on housing classes to provide for equitably secure tenure across housing categories; and
- Ensure integration of all urban economic activities including urban agriculture and forestry into overall urban development planning.

Regulating Use and Development of Land

The key to effective land use planning lies in the existence of institutional capacity and governance structures for judicious implementation and enforcement of approved plans, policies and strategies.

Problems associated with development control include:

- The absence or non-enforcement of a building code and development regulations; and
- Weak and inadequate institutional capacity.

To ensure that land use plans are applied as tools for effective land use management, the Government shall:

- Introduce planning and development control regulations to harmonize governance structures, decision-making processes, and planning standards;
- Provide a coordinated framework for enforcing planning decisions; and
- Establish effective and transparent mechanisms to resolve planning and development control disputes.

Ecosystem Protection and Management

Southern Sudan faces many environmental problems including the degradation of natural resources such as forests, wildlife habitats, wetlands, fragile ecosystems, and pollution of pastures and water. The management of these resources presents a formidable challenge in the absence of policies, legislation, and institutional capacity to address these issues.

To ensure the protection of ecosystems and their sustainable management, the Government shall:

- Undertake a survey of all critical ecosystems to determine their sustainable land uses;
- Strengthen environmental regulation, planning, monitoring, and enforcement to ensure protection of ecosystems; and
- Encourage the sustainable management of land based resources used in common, including forests, pasture lands and water resources, through collaborative planning and management initiatives.

Urban Environmental Management

Southern Sudan's rapidly growing towns and cities are afflicted with solid and liquid waste disposal problems. Urban environmental problems are acute in the fastest growing towns as well as those located on rivers, floodplains and mining areas.

To address urban environmental problems the following measures shall be implemented:

- Prohibit the discharge of untreated solid and liquid waste into rivers by providing appropriate waste management methods;
- Develop a framework for rehabilitation of dumping sites and land that has been subjected to environmental degradation; and
- Regulate all mining, quarrying and exaction activities.

Environmental Assessment and Audit as Land Management Tools

Increased investment in sectors such as mining and infrastructure development has been taking place without much regard to environmental considerations. The development has been taking place in the absence of sector-specific legislation, performance standards and enforcement capacity. Government needs to promote environmental impact assessment and audit as tools for land management by implementing the following principles:

- Ensure that environmental impact assessments and audits are carried out for all proposed projects, that have a likelihood to degrade the environment;
- Monitor urban and rural environmental degradation regularly;
- Encourage public participation in the monitoring and protection of the environment; and
- Institute enforcement mechanisms such as the "polluter pays principle," and provide incentives to promote cleaner production and prevent pollution of soil, water and air.

Sectoral and Cross-Sectoral Land Use

Effective land management requires coordination and cooperation among different sectors. The implementation of this Policy will require the participation of all relevant sectors such as agriculture, livestock, human settlements, water, energy, industry, tourism, wildlife, and forestry.

To achieve this objective of effective land management, the Government shall:

- Facilitate an integrated and multi-sectoral approach to land use;
- Formulate a clear land use policy to guide rural and urban development, reduce land use conflicts and promote productivity;
- Ensure that all public and private institutions whose functions are associated with land use are involved in the implementation of this Policy;
- Align the land use provisions of the Local Government Act 2009 and other relevant laws with this Policy; and
- Rationalize and harmonize all relevant sectoral policies relating to land with this Policy.

4.17 Policy Statement 17. On Efficient and Transparent Land Administration.

Land administration refers to processes of determining, recording and disseminating information about the ownership, value and use of land and its associated resources. An efficient land administration system, among other things, guarantees the recording of land rights, promotes tenure security, and guides land transactions.

The principal functions of land administration are:

- Adjudication and registration of land rights
- Allocation and management of land
- Facilitation of a land market
- Development and maintenance of a land information system
- Land valuation for taxation and property management
- Establishment of mechanisms for land disputes resolution.

However, the existing land administration system has not performed these functions adequately. The system is out-dated, hampered by operational inefficiency and unclear roles and responsibilities among actors. It is inadequately resourced, prone to abuse, resulting in inordinate delays and injustice in the administration of land.

Land Administration System

Southern Sudan's land tenure system is characterized by unclear and overlapping lines of authority among the Government of Southern Sudan, state governments, county governments, traditional authorities and other actors. Institutional weaknesses at all levels of government have contributed significantly to the malfunctioning of the land administration system and to tenure insecurity. In order to address these issues Government shall:

- Clarify the roles and jurisdiction of various national state and local level institutions over the administration and management of land.

Land Rights Delivery

Land rights delivery is the process of mobilizing institutional mechanisms and personnel for ascertaining and registering rights under all tenure regimes. Both the traditional and statutory systems for land rights delivery have not supplied adequate land delivery services. Further, both systems have not achieved equitable distribution of the limited land resources. This unsatisfactory land rights delivery is caused by, among other things, unclear and ambiguous processes and procedures for land allocation, poor record keeping and corruption among land administration structures. In order to establish an efficient land delivery system, the Government shall:

- Align land rights delivery procedures and processes with this Policy;
- Enact a Land Registration Act which shall recognize and protect all legitimate rights and interests in land held under all categories;

- Ensure that land records are authenticated, documented, and their custody and sanctity secured; and
- Computerize land records and facilitate access to information.

Land Adjudication and Registration

Land adjudication is the process of ascertaining and recording rights and interests in land claimed by individuals and other entities. Once ascertained, such rights and interests are entered into a land register, which facilitates the accuracy of the land information system and enables efficient transactions in land. The land claims of Government, groups, families and individuals require adjudication. To that extent, Government shall:

- Ensure that land claims are adjudicated and the land register kept up to date.

Land Demarcation, Survey and Mapping

The processes of land demarcation, surveying and mapping are integral to an efficient land administration and management system. In addition to preparing the maps and plans to support land registration, they map the earth for land use planning.

These processes have been hampered by a variety of factors, chief among which are shortage of qualified personnel in some areas, outdated equipment, and lack of funding. The Government shall:

- Facilitate the training of surveyors in South Sudan and abroad;
- Promote and regulate the operations of private surveyors;
- Enact a Land Survey Act that incorporates the use of modern technology such as Global Navigation Satellite Systems (GNSS) and Geographical Information Systems (GIS) and streamline survey authentication procedures; and
- Legally recognize demarcation and mapping of community boundaries for land held under customary tenure.

Cadastre

An efficient system of land delivery requires adequate capacity for the preparation and maintenance of cadastre indicating not merely who owns what interest in land but other details such as land suitability, uses, size, distribution and topographical characteristics. Due to various constraints such as the use of paper records and the slow pace of land registration, the Southern Sudan cadastre remains sub-optimal. The Government shall:

- Modernize the land delivery infrastructure, through computerization and use of other electronically linked systems;
- Create human resource capacity to operate the modernized infrastructure; and
- Remove constraints to the realization of an optimal cadastre and ensure public access to the cadastre.

Land Information Management

An important function of land administration systems is to ensure that accurate land information is available on land sizes, location and proprietary characteristics, land values and land use. The information is useful for effective planning, zoning and overall management of land.

Land information consists of datasets for decision making in land administration and management. These include data on geo-referencing, mapping, land ownership, land rights, land use planning, valuation and inventories of different categories of land.

Land information is currently held mostly in paper form and managed manually. This is inefficient, time consuming and cannot support timely decision making. Other deficiencies of the existing land information system include expensive cadastral surveys, centralization of cadastral processes, and slow, cumbersome procedures. To facilitate the establishment of an efficient land information system, the Government shall:

- Prepare and implement national guidelines on land information, to govern matters such as land information standards, security, dissemination and pricing;
- Enact a Land Information Act to facilitate access to and management of land information;
- Provide necessary infrastructure such as electricity, computers and internet connectivity at all levels of land administration;
- Rehabilitate, re-organize, update, authenticate and computerize existing land records; and
- Establish mechanisms for the incorporation of traditional land information in the LIS.

Fiscal Aspects of Land Management

A clear fiscal framework for land management has the potential to raise much needed revenue for use in land acquisition and infrastructure development. Land taxation also discourages land speculation and provides incentives for efficient and appropriate land utilization. Existing laws empower the State and local authorities to assess and collect land taxes, land rates, stamp duty, and estate duty but the land taxation assessment and collection procedures under existing laws do not provide an effective fiscal management framework.

To facilitate the efficient utilization of land and land-based resources, the Government shall:

- Establish a land taxation regime that facilitates efficiency in revenue collection, utilization and servicing of land, provides incentives for appropriate land uses and discourages land speculation; and
- Improve capacity of public institutions including local authorities to assess and collect taxes.

Land Disputes Resolution

There is need to ensure access to timely, efficient and affordable dispute resolution mechanisms. This will facilitate efficient land markets, tenure security and investment stability in the land sector.

In order to facilitate effective, fair and efficient dispute resolution, the Government shall:

- Establish independent, accountable and democratic systems backed by law to adjudicate land disputes at all levels;
- Establish appropriate and inclusive institutions for dispute resolution and access to justice with clear record keeping for making decisions on specific matters; and
- Encourage and build capacity for alternative dispute resolution mechanisms such as negotiation, mediation and arbitration to facilitate speedy and cost effective access to justice.

4.18 Policy Statement 18. On Balanced Land Use and Agricultural Development.

The land policy encourages development of a balanced and integrated rural agricultural economy that accommodates a diversity of agricultural enterprises, including small-scale family farms dedicated to production for family consumption and sale as well as larger-scale commercial enterprises, oriented to market production, particularly for local markets but also for export. The land policy also recognizes the important role of pastoral livestock production in rural economic and cultural and social life. The needs of livestock producers and crop producers too often come into conflict and rural land management institutions will be assisted to effectively manage conflicts when and where they occur and in ways that treat all land users equitably.

Strategies

- Working with the appropriate GOSS institutions, the Ministry of Agriculture and Forestry and the Ministry of Housing and Physical Infrastructure will develop clear guidelines on the allocation of land for commercial agricultural development by both citizens and foreigners. Such guidelines will specify the institutional and process issues of applying for land for agricultural development and land ceilings applicable by land-use or production system.
- In collaboration with all state land institutions, the Ministry of Agriculture and Forestry will define land tenure rights applicable to rural land allocations for commercial agricultural development by citizens and foreign investors. The supportive land registration requirements must be stated clearly.
- Under the guidance of the Ministry of Agriculture and Forestry, state land institutions will develop appropriate guidelines regulating the utilization of allocated agricultural land. Appropriate economic instruments will be developed to discourage speculation.
- The South Sudan Land Commission or other designated central government institution shall be informed of all land allocations made for agricultural development purposes in the states.
- Individual States shall plan for the establishment of agricultural schemes in their respective areas. Such plans should be guided by local agricultural viability considerations. Planning and implementation of developed plans will be based on the development of appropriate partnerships between state and non-state institutions.
- The South Sudan Land Commission and the Ministry of Housing and Physical Infrastructure or other designated central government institutions will develop and implement proposals on the

contribution of allocated agricultural land to revenue generation through the payment of appropriate property taxes.

4.19 Policy Statement 19. On Mediating Agricultural Land Use Conflicts.

The high rate of human and livestock population growth has brought about increased tensions as cultivation expands into livestock routes and crops get destroyed in the process. The livelihood and mobility related tensions predominantly concern access to water and grazing land between pastoralists and agricultural groups but also among pastoralist groups themselves. As a way of addressing these issues, Government shall:

- Provide pastoral groups and agricultural communities with a sustainable institutional framework for peaceful negotiation over use of common property resources; and
- Facilitate the community land management institutions in establishing flexible arrangements for equitable grazing land and water resources sharing across community boundaries.

Chapter 5. Legislative Development and Reform

Upon the adoption of this Land Policy, existing laws pertaining to land tenure, property rights and land administration will require extensive review and amendment and new laws and implementing regulations will need to be drafted in order that the goals of the policy are given legal expression and force. Priority legislative reform actions would include:

- a) Promulgation of a Community Land Act
- b) Amendment of the Land Act to extend the restitution process
- c) Promulgation of regulations defining restitution procedures
- d) Review and enactment of legislation guaranteeing the inheritance rights of female household partners and children
- e) Review and amendment as needed of the Local Government Act 2009 in relation to this policy and the Land Act 2009
- f) Drafting of laws setting standards for land survey and valuation
- g) Drafting of a law on property mortgages
- h) Promulgation of a State Land Law
- i) Promulgation of town and country planning, land survey, land registration, and land information legislation.

Chapter 6. Implementing the Land Policy

6.1 Defining Institutional Roles and Building Capacity

Effective institutions governing according to the rule of law are essential for successful implementation of the land policy and achievement of secure land tenure in Southern Sudan. Southern Sudan's land institutions operate at the national, state and local levels. As previously noted, these institutions face major capital and human resource challenges, compounded currently by poorly defined and often overlapping mandates, lack of coordination, and poorly conceived strategies and work plans. All these factors have combined to reduce the efficiency and effectiveness of land institutions in the country. There is continuing confusion in urban areas, as both state and county-level institutions are involved in the administration and allocation of land, sometimes in conflicting roles.

6.1.1 Central government institutions: A new ministry responsible for providing unified oversight and guidance to land sector administration throughout Southern Sudan

Currently, the core set of institutions concerned with land matters operating at the national level include the GoSS Ministries of Housing and Physical Infrastructure (responsible for policy and guidance to state governments related to physical planning, surveying and mapping, and land registration), the Southern Sudan Land Commission (responsible for coordination among government institutions and levels, restitution, and conflict mediation), the Ministry of Agriculture and Forestry (for administration of forest reserves and oversight of allocation of land for agricultural investment), the Ministry of Local Government (responsible for policy and guidance to local government councils, commissioners, local assemblies, and traditional leaders with respect to land administration and management), and the Judiciary (responsible for adjudication of land-related cases and formerly, maintenance of land registries). Government needs to review the home of the main register with a view to reassigning it back to the Judiciary.

This policy recommends a thorough rationalization and reform of central government agencies responsible for land rights administration.

Specifically, the policy calls for the establishment of a central government Ministry with overall responsibility for land sector administration in Southern Sudan. The new Ministry in-charge of land will have lead responsibility for administering those aspects of the Land Act 2009 not assigned to the Land Commission or other agencies of central government. The Ministry in-charge of land will also have principal responsibility for administering legislation governing town planning, land surveying and land valuation.

Proposals for the roles and responsibilities of the Ministry in-charge of land are enunciated below.

- Lead the process of drafting and enacting legislation governing town and country planning, land surveying and land valuation.
- Lead extensive public consultations on the proposed Community Land Act, and lead the process of drafting and enacting the Act. The Ministry in-charge of land will be responsible for the

general development of land administrative institutions at the central government, state, county, and payam levels.

- Through powers delimited in enabling legislation, including the Community Land Act, the Ministry will work to ensure that the principles of security of tenure as enunciated in this policy are observed at every level of government. The Ministry will promote the development of administrative reforms as mandated by legislation.
- Establish and maintain a register of all public, private and community land in the country;
- The Ministry in-charge of land will promote the development of effective digital Land Information Management Systems at all levels.
- Coordinate and oversee statutory bodies established to regulate physical planners, surveyors, valuers, estate agents and other land related professionals.

6.1.2 The roles of the Southern Sudan Land Commission

The Southern Sudan Land Commission (SSLC) will continue to play a leading role in the country's land sector, guiding land policy development, implementation, and monitoring and evaluation, as well as fulfilling its other functions of coordination, conflict mediation and research on land conflicts and issues. In order to do this effectively, it will require more resources and a cadre of trained staff, allowing it to better advise other government institutions, systematically assess and monitor land issues throughout the country, and coordinate with States on matters of land policy and administration.

The principal functions and responsibilities of the Southern Sudan Land Commission include the following:

- Hold title to and in collaboration with appropriate government agencies manage all public lands on behalf of the State;
- Exercise the powers of compulsory acquisition and development control on behalf of the State and local authorities or governments;
- Carry out and sponsor research on matters related to land policy, land tenure and land administration;
- In accordance with its mandate under the Land Act 2009, be responsible for the restitution of land rights affected by the civil war;
- Identify key partnerships with civil society organizations, particularly for conflict-related research, monitoring and mediation; and
- Arbitrate land and resource-related conflicts at the request of affected parties.

6.1.3 State government

At the State level, the Departments of Lands, Town Planning and the Surveying Department in the State Ministries of Physical Infrastructure are currently responsible for land administration. The State Legislative Assembly and its standing committees deal with legislative matters related to land. The State High Courts and the State Courts of Appeal are the key statutory institutions that deal with land disputes at the State level. According to the Land Act (2009), all land cases are to be dealt with by a

special Land Division of the High Court in every state, but these divisions have not yet been initiated in most states.

- The Land Commission and the Ministry in-charge of land will work closely with the Ministry of Legal Affairs and Constitutional Development and the Judiciary of Southern Sudan and relevant State ministries to establish Land Divisions of the High Court in each State.
- State agencies will develop and deliver training on the proper use and maintenance of computerized land registration systems.
- State Ministries with land-related responsibilities will work with local colleges and training institutions to develop vocational and technical training programs in surveying and valuation.

6.1.3 Local-level land authorities (County Land Authorities and Payam Land Councils)

New local-level land institutions are mandated by the Land Act 2009, including County Land Authorities and Payam Land Councils. However, there are no clear procedures for establishing such institutions and few have been established to date. Local Government Councils are responsible for planning and allotment of all Local Government Council land, leading the acquisition of land for government use, regulation of seasonal access to land (pastoralists, agriculturalists, etc.), establishment of Council Land Committees or Authorities and undertaking land management.

The Land Policy proposes that the Community Land Act provide for the establishment of County Land Authorities and Payam Land Councils. These are envisaged as civic authorities, established and empowered by law and subject to various regulations and that would act as trustees and administrators of community land rights. Traditional authorities may serve on Land Authorities and Land Councils, including in the role of Chair. But importantly, the trusteeship and administrative responsibilities over community land should be legally vested in the Land Authorities and Councils, and not in traditional authorities.

6.1.4 Roles of customary authorities and customary land tenure

Historically, in Southern Sudan and other regions of Africa, rights held under customary tenure have not enjoyed a degree of legal recognition comparable to land held in leasehold or freehold by individuals or in ownership or trust by States. The Sudan's Unregistered Land Act 1970 is an egregious example of the application of statutory law to enable the State to confiscate for State purposes land held under community tenure because community rights were not formally registered in terms of an existing statute. So as to give community tenure arrangements full legal and statutory status on an equal basis with other systems of tenure, the policy recommends the preparation by the central government and the approval by Parliament of a **Community Land Act along the lines described in Policy Objective 8.**

In addressing the multiple challenges faced by holders of community land rights and community land authorities; this Land Policy proposes the following:

- State governments will assist Payam Land Councils to develop village registries for the purpose of documenting claims to land, both accepted and in dispute.
- State Ministries responsible for land administration will develop and deliver training programs on land administration and customary land management which will be used to build the capacity of traditional authorities and their substructures to apply land administration tools. Further, customary authorities will be trained on recording new land allocations in their areas, as well as recording transactions in land.
- State Ministries of Land and Gender will collaborate to develop and deliver training programs that sensitize community land authorities on issues concerning women's land and property rights. In support of this, assessments will be done to establish issues that affect women's land and property rights across Southern Sudan's main ethnic groups.
- The Land Commission will collaborate with appropriate Ministries and Commissions to initiate public debates through national radio, seminars and workshops on community tenure issues affecting women's land and property rights as a way of influencing change in local practices that negatively affect women's land and property rights.

6.1.5 Civil society organizations

A broad range of civil society organizations, both international and Southern Sudanese, are involved in land issues in Southern Sudan. The key areas of intervention include capacity building in land policy development and implementation, legal support to displaced individuals, conflict mediation, education and awareness on land rights, natural resource management, and agricultural support. Emerging Southern Sudanese civil society and community-based organization have the potential to play important roles as partners with the government and traditional authorities in strengthening land rights throughout the country.

The Government of Southern Sudan requires and welcomes the support of civil society organizations in implementing this Land Policy. SSLC and appropriate government structures at the central and state government levels recognize the importance of a strong, independent civil society in representing directly the needs of citizens seeking land tenure security.