



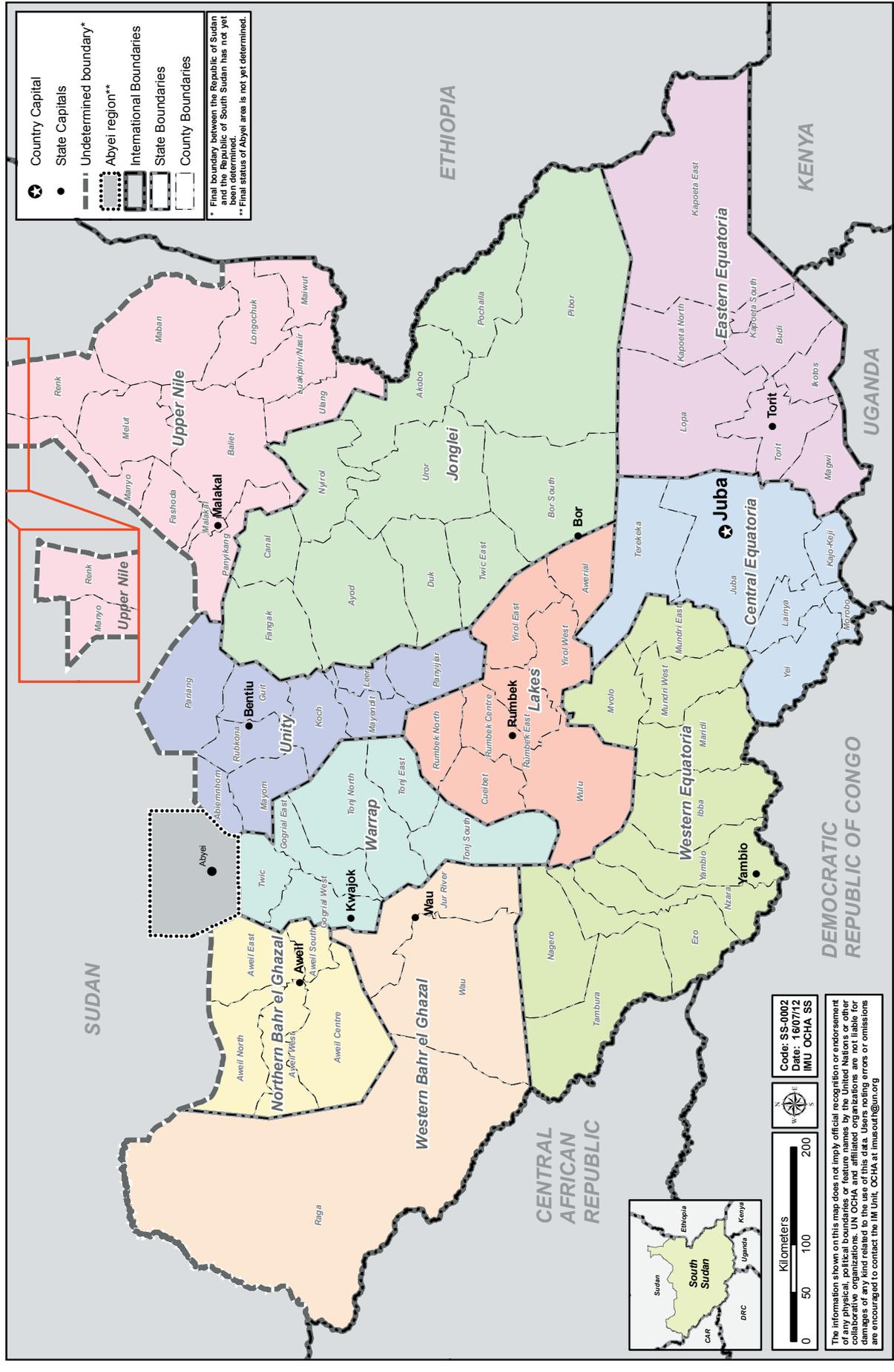
NOWHERE TO GO:

Displaced and returnee women seeking housing, land and property rights in South Sudan



NORWEGIAN
REFUGEE COUNCIL

Republic of South Sudan - Counties



Country Capital
 State Capitals
 Undetermined boundary*
 Abyei region**
 International Boundaries
 State Boundaries
 County Boundaries

* Final boundary between the Republic of Sudan and the Republic of South Sudan has not yet been determined.
 ** Final status of Abyei area is not yet determined.



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Kilometers
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NOWHERE TO GO:

DISPLACED AND RETURNEE WOMEN SEEKING HOUSING, LAND AND PROPERTY RIGHTS IN SOUTH SUDAN

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The **Norwegian Refugee Council** (NRC) is an independent, international, humanitarian non-governmental organisation which provides assistance, protection and contributes to durable solutions for refugees and internally displaced people worldwide.

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About this Project

In 2011, the Norwegian Refugee Council embarked on a five-year initiative aiming to increase displaced women's access to housing, land and property rights through international and national advocacy. The project aims to provide well-researched legal, policy and practice recommendations for the humanitarian community, including practitioners, donors, governments and civil society.

The project's evidence base is drawn from NRC's extensive operational experience, for over 15 years, as a provider of information, counselling and legal assistance (ICLA) related to housing, land and property (HLP) rights in 15 countries afflicted by conflict and post-conflict situations. The project's analysis and recommendations are based on an assessment of NRC's legal cases and commissioned country research.

This country report is one of a commissioned series. Other countries featured include Afghanistan, Ecuador, Lebanon, Liberia and Palestine (Gaza). A forthcoming global report will summarise these country experiences and draw wider lessons for policy makers about the barriers faced by displaced women as they seek to access their HLP rights.

NRC aims to:

- ▶ improve awareness of the scale of denial of displaced women's HLP rights in post-conflict settings by providing well-researched legal, policy and practice recommendations
- ▶ promote wider recognition of the importance of enforcement of displaced women's equal rights to security of tenure in national and international policies
- ▶ improve NRC's programming to promote increased security of tenure for women affected by displacement

For more information, visit www.nrc.no/womenhlp.

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NRC wishes to thank the individuals who participated in focus group discussions and interviews, and who shared their personal experiences for this research.

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ACRONYMS AND GLOSSARY

Boma	Administrative unit of a Payam administration
CBO	Community Based Organisation
CCPA	Code of Civil Procedure Act
CDR	Collaborative Dispute Resolution
CEDAW	Convention on the Elimination of all Forms of Discrimination Against Women
CEq	Central Equatoria
CPA	Comprehensive Peace Agreement
CRC	Convention on the Rights of the Child
FGD	Focus Group Discussion
GBV	Gender-Based Violence
GoSS	Government of South Sudan
HLP	Housing, Land and Property
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICLA	Information, Counselling and Legal Assistance
IDMC	Internal Displacement Monitoring Centre
IDP	Internally Displaced Person
IHRL	International Human Rights Law
INGO	International non-governmental organisation
LGA	Local Government Act
NBeG	Northern Bahr el Ghazal
NRC	Norwegian Refugee Council
Payam	Administrative unit of a County
SPLA/M	Sudan People's Liberation Army/Movement
TCSS	Transitional Constitution of South Sudan
UDHR	Universal Declaration of Human Rights
UNHCR	Office of the UN High Commissioner for Refugees
VAW	Violence Against Women

EXECUTIVE SUMMARY

Despite the legal provisions recognising the equal rights of women to land, widespread knowledge, recognition and protection of those rights, remains limited throughout South Sudan. Women's land rights remain largely conditional, derived through their marital or childbearing status and dispossession of widows, daughters, and divorced women is common. There is tension between competing notions that customary rules and practices should adapt to changing socio-economic 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

Introduction

It is hard to overestimate the importance of land in South Sudan. The struggle for access to and control of land has shaped the nation's history. The desire to control land and natural resources drove the five decade-long war for independence which resulted in the proclamation of the Republic of South Sudan in 2011. Land remains an abiding preoccupation. It acts as an identifier of community, belonging and place as well as a source of income, subsistence and survival.

Conflict and displacement have complicated traditional arrangements and for, the large part, exacerbated the situation for women but also provided some new opportunities. Conflict changed the nature of contemporary society in South Sudan, requiring many women to support families by themselves. A significant impact of the conflict has been the increased number of women who are widowed, abandoned or divorced. Many female headed households which have returned to South Sudan lack access to secure land on which to live, build or grow crops. Women had to take on roles of provider, protector and carer, yet many lack the security of tenure to enable sustainable livelihoods and achieving durable solutions.

This report looks at constraints affecting displaced and returnee women seeking to realise their housing, land and property (HLP) rights. It is based on field research in three states in South Sudan where NRC has operational presence, Central Equatoria, Northern Bahr el Ghazal and Warrap states. Many of the women and men interviewed had been displaced multiple times – within South Sudan, to Sudan or to other neighbouring countries.

The Legal Framework

South Sudan has in the past few years adopted very progressive legislation protecting women's HLP rights. The Transitional Constitution, the Land Act and the Local Government Act, all explicitly recognise women's rights to own and inherit land and property. The Constitution,

¹ South Sudan draft Land Policy, p.4.

the supreme law of South Sudan, also calls on all levels of government to enact laws to combat harmful customs and traditions which undermine the dignity and status of women. In addition, the draft Land Policy, currently awaiting adoption by the Parliament, identifies practical ways of promoting women's access to their HLP rights. If adopted, this would constitute a positive step forward.

Despite these legal provisions recognising the equal rights of women to land and property, however, the reality is that widespread knowledge, recognition and protection of those rights, remains limited throughout South Sudan. Women's HLP 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 socio-economic circumstances and those who resist change, fearing its impact on tradition and cultural identity, leading to a significant gap between law and practice².

The Land Tenure Systems and access to land by displaced and returnee women

In most areas in South Sudan rules for access to and use of land are still established by customary law and administered, interpreted and enforced by male traditional leaders. For some men it is inconceivable that women – themselves traditionally considered a form of property – should seek to own land or property. Today returnee and displaced women heading their families without a husband, have to negotiate, often unsuccessfully, with traditional leaders for access to land held commonly by the community under customary tenure, either in their areas of origin or in the areas of origin of their late or former husbands.

Likewise, for those who have chosen to return to urban or peri-urban areas, the situation can be very challenging. In urban areas land is demarcated, allocated, registered and held mainly under private tenure or as public land if used for public purposes by the government. It thus moves to a legal domain in which customary law no longer applies. Many people, however, including traditional authorities and local government officials, are not necessarily aware of this. The situation is exacerbated by unclear legislation and overlapping or competing jurisdictions of governmental institutions which create opportunities for confusion and corruption and result in a situation of chaos. While women are allowed to buy private land, very often they are unable to pay the hefty fees associated with the process that would allow them greater security of tenure. As a consequence, many returnee women have settled illegally on unused private land or public land, greatly increasing their protection risks, including being forcibly evicted from where they have settled.

2 South Sudan draft Land Policy, p.4.

Specific challenges for women in accessing their HLP rights

This report looks at the multiple layers of discrimination that women face in accessing their HLP rights and identifies gender-specific constraints that women need to overcome when they want to access such rights. It is important to recognise that these barriers are not isolated from each other but interlinked and cumulative, often making it impossible for women to access their rights and be offered the protection that should be afforded to them according to the law. Some of the barriers identified include:

- ▶ **Breakdown of traditional social obligations** which results in vulnerable women no longer being guaranteed kin support and assistance and thus forced to live in precarious conditions.
- ▶ **Financial barriers and corruption:** High financial costs were mentioned by all interviewees as a barrier to accessing HLP rights. In addition, corruption was also mentioned as a main constraint. Bribes are demanded in both the statutory and customary justice systems and throughout the entire land allocation process. Women are less likely than men to be able to pay.
- ▶ **Lack of literacy** makes it hard for many returnee women to understand land allocation systems, in particular governmental allocation processes in urban and semi-urban areas. Illiterate women were found to be vulnerable to fraudsters using forged documents registering wrong names on land documents.
- ▶ **Insufficient documentation** is a problem for many returning women as the only documents they have are often those issued during displacement (such as refugee cards) which are often in their husband's or father's names. Widows or separated/divorced women are particularly affected by this as they are no longer part of their former household.
- ▶ **HLP related violence against women** or threats of violence was reported by 71 per cent of female respondents. While seeking access to land many have had confrontations with soldiers, members of host communities, male kin and/or traditional leaders.
- ▶ **Family coercion and community pressure** obliges women to give away rights or assign property to male children. This is supported by the fact that customary law and norms still prevail in the vast majority of South Sudan.
- ▶ **Failure to implement court decisions** is widely reported. Many of those illegally in possession of female-owned land, especially the military, can ignore court orders.
- ▶ **Landlessness and homelessness** – almost twice as many women as men who approached NRC for assistance find themselves homeless, without access to land or secure accommodation. In addition, landlessness was the problem most frequently reported by female clients seeking legal assistance from NRC on HLP.
- ▶ **Shelter assistance agencies** – according to many female informants – often work with traditional male leaders and do not adequately consult women when designing and implementing their programmes. Humanitarian and development actors are therefore at risk of

unintentionally entrenching discriminatory practices.

Such are the difficulties women face in achieving their HLP rights that almost four in five women interviewed reported that if given the chance they would go back to where they had been living as a refugee or IDP.

RECOMMENDATIONS

The GoSS, with the support of the UN, international and local NGOs, and civil society, should embrace the opportunity that a post conflict environment presents to improve the rights and lives of women and girls. The goal should not be re-establishment of pre-conflict conditions but a transformative, progressive, inclusive and equitable environment to promote women's HLP rights.

The Government of South Sudan should:

- ▶ sign, ratify and accept the obligations set out in key international instruments supporting women's right to adequate housing: the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW); the International Covenant on Economic, Social and Cultural Rights (ICESCR); and the International Covenant on Civil and Political Rights (ICCPR)
- ▶ acknowledge that failure to consult women is a violation of the good practice set out in the landmark UN Security Council Resolution 1325 – On Women, Peace and Security.
- ▶ conduct gender training for officials and leaders of relevant government and non-statutory bodies involved with the rule of law and land-related administration in order to promote a better understanding of the needs of women
- ▶ ensure that statutory law provisions promoting equal rights for women to land are applied by customary courts; including through training of customary authorities to increase their knowledge of statutory law
- ▶ ensure that clear and accessible mechanisms for land administration and management are established and maintained to protect women's rights to land in order to address the widespread corruption among land actors widely reported by our informants. Allocation of plots and process of demarcation and surveying must be made more transparent. There must be greater focus on informing the wider community on these processes and particularly on ways of submitting complaints and appeals.
- ▶ appoint women to leadership and decision making positions within the land sector, ensuring their needs are heard, addressed and incorporated into land sector structural and policy reform.
- ▶ develop immediate and long-term assistance strategies to support the significant numbers of returnee and displaced women who are landless
- ▶ explore possible ways of waiving fees for surveying and registration of land, especially for vulnerable households who are unlikely to ever be able to afford to register it
- ▶ conduct research to assess the level of discrimination and exclusion

of women from government-supported land surveying and demarcation processes.

UN Agencies and International NGOs should:

- ▶ create safe spaces that encourage women, particularly those that are acutely vulnerable, to seek out information on their rights and how to participate in land reform and leadership processes
- ▶ support women's community-based organisations as they are often overlooked or ignored in favour of international and national-level organisations working on HLP issues.
- ▶ collaborate with violence against women (VAW) actors
- ▶ ensure HLP-related programmes avoid treating gender as an issue separate from all others, thus potentially further marginalising survivors of violence.
- ▶ document findings regarding the extent of the problems faced by women, in particular returnees, for example, inability to afford to register land allocated to them
- ▶ support authorities in the survey and demarcation of land with the aim of preventing or at least minimising corrupt and gender discriminatory practices.
- ▶ ensure that discriminatory customs are not reinforced by working solely or primarily with Chiefs.



1. BACKGROUND

1.1

NRC'S INFORMATION, COUNSELLING, AND LEGAL ASSISTANCE (ICLA) PROGRAMME

ICLA assists displaced persons to claim and fulfil their rights, reach durable solutions and to prevent further displacement through the application of information and legal methods.

NRC's ICLA activities primarily focus on five thematic areas:

- ▶ housing, land and property (HLP) rights
- ▶ legal identity including obtaining civil documentation necessary to access rights and services
- ▶ citizenship and statelessness issues related to displacement
- ▶ procedures for refugee status determination
- ▶ procedures for registration of internally displaced people (IDPs) when access to rights and services is dependent on such registration.

ICLA programme staff may seek, when appropriate, to promote methods of collaborative dispute resolution (CDR) in post-conflict recovering states as well as engage with statutory justice systems. Depending on the context, ICLA may:

- ▶ offer communities and the authorities capacity building and information on the law and CDR³
- ▶ provide counselling (advice and referral), legal representation and CDR services to individuals or groups who cannot effectively claim and exercise their rights
- ▶ consider supporting public interest cases in statutory justice systems in the hope of creating legal precedents that can generate positive change.

NRC has been active in Sudan, including what is now South Sudan, since 2004, providing protection and humanitarian assistance to refugees, IDPs and returnees. In the process NRC has developed a deep understanding of the gendered cultural traditions and practices that shape the lives of the people of South Sudan. In 2012, the ICLA project assisted approximately 35,000 South Sudanese through public information, individual and group counselling, capacity building and legal assistance with land cases in both the statutory and customary systems. There are ICLA teams in three locations – Central Equatoria State (CEq), Warrap State and Northern Bahr el Ghazal State (NBeG).

1.2

OUTLINE OF THE RESEARCH PROJECT

This report is part of a broad initiative. In 2011, the Norwegian Refugee Council (NRC) began a five-year research and advocacy programme on displaced women's HLP rights. Displaced women's rights are

³ <http://www.nrc.no/?did=9674674>

NRC's primary global HLP advocacy priority.

A project team was established to direct research. Case analysis was undertaken by ICLA teams and researchers in six countries: Afghanistan, Ecuador, Lebanon, Liberia, Palestine (Gaza) and South Sudan. The six country reports each seek to highlight specific challenges facing displaced women in HLP rights. They do so through a review of NRC field practice, in order to identify policy gaps and make recommendations for advocacy and programmatic approaches to strengthen women's HLP rights in emergency response and reconstruction.

The South Sudan research team focused on three states – CEq, Warrap and NBeG –

where NRC has a strong operational presence. They used both qualitative and quantitative approaches to obtain a snapshot of the current challenges faced by returnee and displaced women in claiming their HLP rights.

OBJECTIVE OF THE REPORT

This report seeks to identify specific challenges facing displaced and returnee women in exercising their housing, land and property rights during displacement, local integration and/or return. Recommendations are made for policy change and programmatic interventions addressing displacement and return which are adapted to women's specific capacities and vulnerabilities.

METHODOLOGY

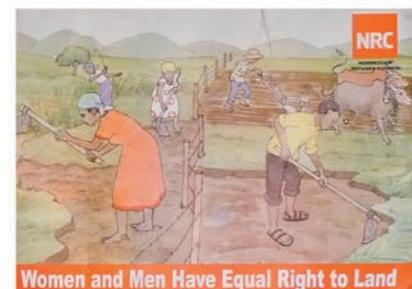
Field research for this report was conducted from 10 November – 15 December 2012. Testimonies were provided by 76 women and 69 men participating in ten focus group discussions (FGDs). Many of the representative sample of returnee men and women interviewed had been multiply displaced – within South Sudan, to the cities of Sudan or to Uganda, Kenya, the Democratic Republic of Congo or Ethiopia. The FGDs and interviews were conducted in urban, peri-urban and rural areas of return in CEq, NBeG and Warrap states.⁴

On a cautionary note, it is acknowledged that analysis is based on a relatively small sample of informants who may not necessarily be fully representative of the situation of all displaced and returnee women. Nevertheless, NRC has confidence that the findings are broadly indicative of the current situation and challenges that returnee and displaced women are facing in relation to the realisation of their HLP rights.

For a profile of the informant communities, together with more information on the range of stakeholders interviewed and the ethical considerations which governed the research methodology, please see Appendix 1. Please also note that the case studies in the report do not present the real names of the female informants who took time to share their experiences with the research team.



1.3



1.4



⁴ See Appendix 1 for additional information on communities targeted by the focus group discussions.

2. INTRODUCTION

2.1

CHALLENGES FACING POST-CONFLICT SOUTH SUDAN

South Sudan suffered from more than five decades of near continuous unrest during Africa's longest running civil conflict. It is thought that around two million people died from war-related famine, disease and injury.⁵ Some four million southern Sudanese were internally displaced (particularly to Khartoum)⁶ and around 550,000 became refugees in neighbouring states.⁷ The signing of the 2005 Comprehensive Peace Agreement (CPA) between the government in Khartoum and the Sudan People's Liberation Army/Movement (SPLA/M) ushered in a six-year interim period at the end of which the people of South Sudan voted overwhelmingly for independence. On July 9th 2011, the Republic of South Sudan was established. The Government of South Sudan (GoSS) faces a legacy of war, destruction and failure to provide basic infrastructure such as roads, schools and health facilities. South Sudan thus entered statehood as "one of the most under-developed countries in the world".⁸ The new nation "inherited little in terms of a functioning land administration system/bureaucracy".⁹

The UN Development Assistance Framework 2012-2013¹⁰ starkly summarises the realities facing the new nation:

*At least 80 percent of the population is income-poor, living on an equivalent of less than USD 1 per day. More than one third of the population is food insecure and even in a good year, 20 percent of households cannot support themselves. Less than 40 percent of the population has access to any form of health care. Half of all children do not attend school. Eighty-five percent of the South Sudanese population is illiterate. The maternal mortality rate is the highest in the world and gender based violence and rape devastates both individuals and communities. A fifteen year old girl in South Sudan has a higher chance of dying in child birth or during pregnancy than finishing secondary school.*¹¹

5 US Committee for Refugees, 2001, <http://web.archive.org/web/20041210024759/http://www.refugees.org/news/crisis/sudan.htm>

6 Bennett, J., 2005, "Joint Assessment Mission provides road-map for peace", Forced Migration Review, p.10. <http://www.fmreview.org/en/FMRpdfs/FMR24/FMR24full.pdf>

7 Malik, S. 2005, "Sustainable return depends on collaborative approach", Forced Migration Review, p.31. <http://www.fmreview.org/en/FMRpdfs/FMR24/FMR24full.pdf>

8 World Food Programme, 2012, Report on Food Security and Nutrition in South Sudan, p.1. <http://www.wfp.org/content/south-sudan-report-food-security-and-nutrition-2012>

9 Marongwe, L., 2013, Land Administration Challenges in the Post-conflict South Sudan: the experience of the USAID South Sudan Rural Land Governance Project, 2011-2014, p.1. http://www.globalprotectioncluster.org/assets/files/field_protection_clusters/South_Sudan/files/HLP%20AoR/Land_Administration_Challenges_In_Post_Conflict_South_Sudan_2013_EN.pdf

10 UN 2012. UN Development Assistance Framework South Sudan 2012, p.5. http://www.unicef.org/about/execboard/files/SSD_UNDAF_RoSS_Distribution_Draft_-_3-10-11.pdf

11 UN 2012, UN Development Assistance Framework South Sudan.

In 2011, the population of the newly independent nation was estimated at approximately nine million. Gathering data is very hard, but it is estimated that some 2.5 million people have returned to what is now South Sudan since the CPA was signed.¹² Before the further IDP crisis resulting from internal conflict which began in mid December 2013 there were an estimated 430,000 IDPs.¹³ It is reported that a further 468,100 persons have been displaced since 15 December 2013. The actual figure is likely to be higher.¹⁴

In this paper 'returnees' is used to refer both to former IDPs and refugees returning to South Sudan, but not necessarily to their place of origin, assuming that they ever had one as some of the young people 'returning' were not born in South Sudan. Many returnees are women without husbands, fathers or other male kin. By some estimations as many as 45-50 per cent of returnee households are female-headed.¹⁵

Since the signing of the CPA it is generally believed that the vast majority – over 80 per cent – of returnees to South Sudan have returned spontaneously, using their own resources. The UN has facilitated the return of more than 334,000 refugees.¹⁶ The GoSS and its international partners have admitted to being ill prepared for the unexpectedly high number of returnees and the subsequent stress on existing infrastructure, food stocks and access to land, particularly in urban areas. The rate of return is declining but it is expected that many more South Sudanese may still return.

The return process has further accelerated urbanisation. Towns have expanded outwards, transforming former rural peripheries into semi-urban landscapes. Urban areas, such as the capital, Juba and the town of Yei, have become transit points from which returnees assess the situation in their home village and reunite, if they have them, with relatives before deciding where to settle permanently. After spending time in towns many decide to stay.¹⁷ Only about ten per cent of the many

12 IRIN, 15 July 2013, New returnees in South Sudan living on the margins. <http://www.irinnews.org/report/98418/new-returnees-in-south-sudan-living-on-the-margins>

13 For an overview of internal displacement in South Sudan, see: <http://www.internal-displacement.org/8025708F004CE90B/%28httpCountries%29/CED26A2CCC87984EC12578E8005D5163?OpenDocument&expand=2&link=44.2&count=10000#44.2> It should be noted that obtaining IDP estimates is fraught with difficulty. IDMC has noted that "challenges in terms of access and verification, combined with humanitarian mandates and structures that focus primarily on conflict-related displacement, mean that figures generally fail to paint a complete picture. Gauging the impact of repeated and protracted displacement is particularly difficult." IDMC, July 2013, South Sudan: A comprehensive response to internal displacement is crucial, [www.internal-displacement.org/8025708F004BE3B1/\(httpInfoFiles\)/34C91913F2C212A5C1257BA300572C2F/\\$file/southsudan-overview-9jul2013.pdf](http://www.internal-displacement.org/8025708F004BE3B1/(httpInfoFiles)/34C91913F2C212A5C1257BA300572C2F/$file/southsudan-overview-9jul2013.pdf)

14 OCHA South Sudan Crisis Situation Report as of 16 January 2014. <http://reliefweb.int/report/south-sudan-republic/south-sudan-crisis-situation-report-16-january-2014-report-number-11>

15 Odhiambo, M., 2009, Southern Sudan Land and Property Study and Workshops: A Synthesis of Policy and Legal Issues, Southern Sudan Land Commission, Norwegian Refugee Council, Food and Agriculture Organization and UNHCR, p.9. <http://kk.convdocs.org/docs/index-35600.html>

16 UNHCR, 2013. <http://www.unhcr.org/pages/4e43cb466.html>

17 Martin, E. and Mosel, I. 2011, City limits: urbanisation and vulnerability in Sudan. Juba case study, Humanitarian Policy Group, Overseas Development Institute, p.5. <http://www.odi.org.uk/sites/odi.org.uk/files/odi-assets/publications-opinion-files/6511.pdf> and Pantuliano, S., 2009, Going home: Land, return and reintegration in Southern Sudan and the Three Areas, Overseas Development Institute, p.157. <http://www.odi.org.uk/sites/odi.org.uk/files/odi-assets/publications-opinion-files/5558.pdf>

returnees living in Juba have origins in the city.¹⁸ The population of Yei Yei has trebled since the signing of the CPA.¹⁹

Divided into ten states, South Sudan is home to about 65 tribes and countless sub-tribes and clans. Ethnic conflicts, inflamed by a half century of civil war and associated in-fighting, are still common, especially over access to land and resources.²⁰ The CPA left a number of contentious border demarcations unresolved. Districts in three states – Abyei, South Kordofan and Blue Nile – continue to be contested by the Governments of Sudan and South Sudan, resulting in ongoing armed conflict and displacement. The GoSS is primarily dependent on oil revenue but after independence this was substantially curtailed – due to tensions with Khartoum – making the government primarily dependent on international assistance.

Most South Sudanese depend on subsistence agriculture. There are major challenges due to the limited amount of fertile land, inter-ethnic tensions, lack of tools and knowledge of farming practices. Many of those who lived for decades in exile, or who were born outside South Sudan, lack agricultural skills and have little interest in becoming farmers, instead seeking urban employment.

2.2

CENTRALITY OF LAND

It is hard to overestimate the importance of land in South Sudan. The struggle for access to and control of land has shaped the nation's history. The desire to control land and natural resources drove the war for independence. Land remains an abiding preoccupation. It acts as an identifier of community, belonging and place as well as a source of income, subsistence and survival. Land and the *tukuls* (traditional thatched roof mud houses) or *rakubas* (temporary structures typically made of recycled plastic sheeting, tin sheets, and straw) built on it are key to survival. For many South Sudanese cattle, goats and chickens are their main assets.

There are three general types of land: public, private and community. Private land is held by individuals, typically as freehold (full-fledged ownership) or leasehold (for a specified duration). Public land is owned collectively by the people of South Sudan and is held in trust by the government, typically as freehold. Community land held under customary tenure is not individually owned – using the term in its traditional sense – but, rather, held by communities identified on the basis of ethnicity, residence or interest who are represented by traditional local

18 Pantuliano, S., Buchanan -Smith, M. , Murphy, P. and Mosel, I., 2007, The Long Road Home, Opportunities and obstacles to the reintegration of IDPS and refugees to Southern Sudan and the Three Areas, Overseas Development Institute, p.9. <http://www.odi.org.uk/sites/odi.org.uk/files/odi-assets/publications-opinion-files/1644.pdf> Obstacles to the reintegration of IDPS and refugees to Southern Sudan and the Three Areas, Overseas Development Institute, p.9 <http://www.odi.org.uk/resources/download/1022.pdf>

19 Sluga, N., 2011, Still a Long Way to Go: Local Integration of IDPs in Yei, Southern Sudan, Internal Displacement Monitoring Centre, p. 2. [http://www.internal-displacement.org/8025708F004BE3B1/%28httpInfoFiles%29/6B2AC1886B882D73C1257800003C9A29/\\$file/sudan-case-study-final.pdf](http://www.internal-displacement.org/8025708F004BE3B1/%28httpInfoFiles%29/6B2AC1886B882D73C1257800003C9A29/$file/sudan-case-study-final.pdf).

20 Mennen, T. , 2012, Customary Law and Land Rights in South Sudan, Report for NRC , p.10. <http://www.nrc.no/arch/ img/9683694.pdf>

leaders for the community. Different rules apply to the different types of land and different institutions are involved in administering and resolving disputes over land.

The humanitarian community has been slow in understanding how land issues impede return and reintegration.²¹ The GoSS has, at times, pledged to provide returnees with land – especially in the run-up to the January 2011 referendum on independence. On 30 December 2010, the Office of the Vice President of the GoSS issued *Procedures on Return, Reinsertion and Reintegration* to all state Governors in South Sudan. This indicated that returnees should be provided with a return package in rural areas of origin or in urban areas, if they chose to integrate in the area of their initial reception. The return package was to consist of access to land for housing and agriculture, three months of food rations and seeds and tools. The Internal Displacement Monitoring Centre (IDMC) has noted that in practice “the GoSS has provided little or no information on what returnees can expect upon returning.”²² The reintegration process has been far from straightforward and land allocations to returnees are largely confined to urban areas as in rural areas land is often not demarcated. Some returning home have found their farms occupied – now controlled by IDPs, by powerful community members or influential outsiders, including the military and agribusinesses. Tensions with pastoralists may prevent returnees from intensively cultivating land. Many, particularly women, lack the proper documentation necessary to settle back on their land. South Sudan lacks a well-functioning legal system to address land allocation and land dispute issues.

Land grabbing is occurring as a result of weak governance and ineffective processes to allocate land for large-scale investments. South Sudan has “become one of the latest investment frontiers for foreign speculators, prompted in large part by its newly found independence.”²³ IDMC reports that:

*From 2007 – 2010, foreign investors bought 2.64 million hectares of land in South Sudan (or 26,400 square kilometres) for use in agriculture, forestry, and biofuel. This represents an area larger than the entire country of Rwanda. In addition, investments in tourism and conservation bring this figure up to 5.74 million hectares of land (or 57,400 square kilometres)—or nine per cent of the country’s total area of land. While this influx of investment could mean development opportunities for rural communities, there is a higher likelihood that it will undermine local livelihoods because protection mechanisms are not in place.*²⁴

Managing the scramble for common property resources such as oil, minerals, forests, and communal land holdings is a daunting challenge for the fledgling land administration.²⁵

21 Pantuliano, op. cit., p.156.

22 Internal Displacement Monitoring Centre, 2011, Briefing paper on Southern Sudan: IDPs return to face slow land allocation, and no shelter, basic services or livelihoods, p.2. <http://www.internal-displacement.org/briefing/south-sudan>

23 AFRONLINE, 2011, South Sudan: The scramble for land, <http://www.afronline.org/?p=19944>

24 Deng, D, 2011a, The New Frontier: a baseline survey of large-scale land-based investment in Southern Sudan, Norwegian People’s Aid, p.1. http://southsudaninfo.net/wp-content/uploads/reference_library/reports/new_frontier_large-scale_land_grab_south_sudan.pdf

25 Odhiambo, op. cit. p.13.

3



LEGAL PROTECTION OF WOMEN'S HLP RIGHTS

INTERNATIONAL LEGAL FRAMEWORK

3.1

The concept of Housing, Land and Property (HLP)

3.2

The origins of the HLP concept lie in international human rights law, particularly relating to the right to adequate housing. The concept of HLP embraces a variety of access rights to land, not just private property. Therefore, HLP refers to owners, tenants, cooperative dwellers, customary and tenure owners and users, informal sector dwellers and squatters without secure tenure. From a human rights perspective, the concept of HLP is essential to ensure the protection of people in all these categories.

HLP rights are extremely important for women. In the immediate term, it is widely believed that if women have security of tenure, protection risks are decreased and women have increased ability to provide for their families. Security of tenure is also thought to improve women's ability to access credit develop income-generating initiatives and enhance their productivity.²⁶

Housing

*The right to housing is much more than just the four walls and a roof over one's head. Housing is essential for normal healthy living. Housing provides security and protection, privacy and personal space, a gathering point where many important relationships are forged and nurtured. In many countries, a house also serves as an economic centre where essential commercial activities are performed.*²⁷

Since the adoption of the *Universal Declaration of Human Rights* (UDHR)²⁸ in 1948 the right to adequate housing has been reaffirmed and recognised in several international human rights instruments as a component of the right to an adequate standard of living. It has therefore become a universally accepted human right, a humanitarian concept at the heart of international human rights law.

Land

Land rights are rights held to land and other natural resources. They can be held statutorily (through a title deed) or customarily (through customary or religious rights). More than one person can hold rights to a parcel of land, and together they make up a complex bundle of rights, similar to a 'bundle of sticks'. Separate sticks of the bundle are rights held by different people. Each stick corresponds to a separate right. Each right defines a way in which the land may be used, the profit that may be derived from it or the manner in which some or all of the rights may be disposed of to others.

²⁶ Agarwal, B, 2003, "Gender and Land Rights revisited: Exploring New Prospects via the State, Family and Market", *Journal of Agrarian Change*, Vol.3, Nos, 1 and 2, pp.184-224.

²⁷ Cunial, L, 2011, *Housing, Land and Property Training Manual*, Norwegian Refugee Council and Internal Displacement Monitoring Centre, p.11.

²⁸ <http://www.un.org/en/documents/udhr/>

One person may hold the overall registered right to a particular piece of land through a title deed. One part of this land may also be a servitude (easement) for the neighbour to access the main road. In addition, another parcel may have been rented to a private company. In this example, we have three sticks for three different rights: ownership right, easement right and rental right.²⁹

Property

The right to property is often mistakenly confused with the right to housing. Although there are certain areas of overlap the relationship between them is complex. Property can be defined as any external thing over which the rights of possession, use and enjoyment are exercised. Real property is land and ordinarily anything erected on, growing on, or affixed to it, including buildings and crops and excluding anything that may be severed without injury to the land. Real property can be corporeal (soil and buildings) or incorporeal (easement). Private property is a property held by a private party who may be an individual, a married couple, a group of people, or a corporate body such as a commercial entity or non-profit organisation.

If a person (male or female) possesses full ownership of a piece of land, it would perhaps be reasonable to assume that his/her full rights have been met. This, however, is not always the case. In regards to women, it is not enough to assess only the status of her ownership of a piece of land or an item of property. It is vital to know whether she can freely access, control and use, as well as benefit fully, from the land or property as she wants without undue influence, pressure or discrimination by her family, community or the state.

3.3

International protection of women's HLP rights

Women's HLP rights are protected by international instruments and declarations, by regional legal frameworks and by national and local laws. But not all protection instruments treat women equally. Housing rights protected by Article 11 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) provide that state parties must recognise the right of everyone to an adequate standard of living and this includes housing.³⁰

The Committee on Economic, Social and Cultural Rights (CESCR) asserts the importance of addressing obstacles to fulfilment of women's HLP rights.

Women in all groups are especially vulnerable given the extent of statutory and other forms of discrimination which often apply in relation to property rights (including home ownership) or rights of access to property or accommodation, and their particular vulnerability to acts

²⁹ Cunial, op. cit. p.12.

³⁰ Article 11: "The State Parties to the present Covenant recognise the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing and to the continuous improvement of his living conditions. The State Parties will take appropriate steps to ensure the realisation of this right, recognising to this effect the essential importance of international co-operation based on free consent." <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>

of violence and sexual abuse when they are rendered homeless. The non-discrimination provisions of articles 2.2 and 3 of the Covenant impose an additional obligation upon Governments to ensure that, where evictions do occur, appropriate measures are taken to ensure that no form of discrimination is involved.³¹

The *Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)* provides an important framework for gender equality. Recognising that discrimination violates the principle of equality of rights,³² it requires state parties to take:

All appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.³³

CEDAW, Article 5(a) provides that state parties shall:

Modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.

CEDAW goes further than other human rights instruments by recognising that gender inequality and prejudice are rooted in both the public and private spheres. CEDAW (Article 16) guarantees women the right to equality in the family. It guarantees rights to property and rights to be equal partners in decision-making about creating and maintaining a family. This support to women's equality within the family has specific implications in conflict and post-conflict periods when families are at risk of separation and women are often required to take responsibility for management of family resources.

South Sudan has not ratified the ICESCR or CEDAW and so is not bound by their provisions aimed at protecting women. The GoSS has, however, indicated its intention to adopt core international human rights instruments³⁴ and it is hoped that the ICESCR and CEDAW will be among them.

The *UN Principles on Housing and Property Restitution for Refugees and IDPs*³⁵ (more commonly referred to as the *Pinheiro Principles*) are an international standard formulated in 2005 which outlines the rights of refugees and IDPs to their original homes and lands. The *Pinheiro Principles* are the culmination of intense international and local activities in support of the right to housing and property restitution as a core

31 Committee on Economic, Social and Cultural Rights, 1997. General Comment 7 - The right to adequate housing (art. 11.1 of the Covenant): forced evictions (20/05/97), para 10. <http://www.refworld.org/docid/47a70799d.html>

32 Introduction to CEDAW: <http://www2.ohchr.org/english/law/cedaw.htm>

33 CEDAW, Article 3.

34 See: <http://allafrica.com/stories/201306111020.html>

35 http://www.ohchr.org/Documents/Publications/pinheiro_principles.pdf

remedy to displacement.³⁶ They affirm an emerging consensus that restitution programmes should seek to implement a gender strategy, particularly where the *status quo* discriminates against women's right to ownership, either in law or in practice. Principle 4.2 says states should ensure that HLP restitution programmes, policies and practices recognise the joint ownership rights of both male and female heads of households. This provision is designed to combat sex discrimination that occurs when only male heads of households are recognised as rights holders, leaving women without legal control over what should be their property. The UN Special Rapporteur on adequate housing has noted that property regimes which recognise joint rights with equal powers between spouses are those which best protect women's right to adequate housing and to equality.³⁷ It is clear that if governments and international agencies introduce and enforce measures to protect these rights, there will be greater security of tenure for women and protection of their HLP rights.

3.4

SOUTH SUDAN LEGAL FRAMEWORK AND INSTITUTIONS RELEVANT TO HLP

The management of land in what is now South Sudan has a long history. Both the Turco-Egyptian regime (1821-1885) and the period of Anglo-Egyptian rule (1898-1956) witnessed concerted efforts to intervene in the management of land and natural resources through law. None of the attempted legal reforms directly or meaningfully addressed women's HLP rights. At the end of each of these periods land continued to be administered under customary law.³⁸

*Challenges for the land sector in Southern Sudan are defined largely by the interface between customary and formal law.*³⁹

South Sudan, like many other nations in Africa and elsewhere, has a system of legal pluralism – the co-existence of parallel sources of authorities considered as legitimate renderers of justice. NRC has noted the pros and cons of such systems:

Legal pluralism can be both an asset and a risk to the rule of law. It is an asset when, in comparison to an over-burdened, cumbersome, expensive, distant and lengthy judicial process, customary justice provides an accessible and speedy solution to various disputes. It can be a risk when customary justice is based on ambiguous and inconsistently applied rules that do not offer guarantees of transparency or predictability. Customary leaders often do not act democratically and may tend to perpetuate patterns of discrimination against outsiders,

³⁶ See: <http://reliefweb.int/report/world/pinheiro-principles-United-nations-principles-housing-and-property-restitution-refugees#sthash.vkHNSvwB.dpuf>

³⁷ Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, Human Rights Council, 26 December 2011, A/HRC/19/53, para.27. http://www.ohchr.org/Documents/Issues/Housing/A-HRC-19-53_en.pdf

³⁸ Ibid. p.6 and Forojalla & Galla. op. cit.

³⁹ Odhiambo, op. cit., p.10.

women or marginalised groups.⁴⁰

Understanding this legal pluralism is of particular importance when dealing with land-related matters.

Failure to resolve the “land issue” during the negotiations leading to the signing of the CPA resulted in, what a number of stakeholders referred to as, a “legal vacuum” with reference to land in Southern Sudan. Absence of a definitive policy and legal framework to guide decision making over land and property following the signing of the CPA led to considerable confusion on the ground regarding the parameters to be used to guide land allocations, procedures for restitution of land and property and the most suitable mechanisms for resolving conflicts and disputes over land.⁴¹

In an attempt to mitigate the consequences of this legacy the GoSS has sought to modernise the administration of land and resources, address legal uncertainties and provide a legal foundation for ideas on land and resource governance espoused in the CPA, the Interim Constitution of Southern Sudan (2005) and the 2011 Transitional Constitution of South Sudan (TCSS).

Statutory law and institutions

3.5

Statutory law (often referred to as formal law) is law that has been passed and enacted by the legislature of a government. The section below reviews the main legal HLP provisions in South Sudanese law, with a particular focus on provisions protecting women's HLP rights.

The Transitional Constitution of the Republic of South Sudan (2011)

The Transitional Constitution of the Republic of South Sudan is the supreme law of the land and all other laws need to be in conformity with the Constitution (Section 3).

The Constitution has several articles that are relevant for the protection of women's HLP rights. Article 14 recognises that “all persons are equal before the law and entitled to equal protection of the law without discrimination as to race, ethnic origin, colour, sex, language, religious creed, political opinion, birth, locality or social status”. This provision of the Constitution prohibits discrimination on the basis of sex and makes it clear that men and women are equal before the law.

Article 16 deals specifically with rights of women. It reinforces article 14 by stating that “women shall be accorded full and equal dignity of the person with men” and it also calls on all levels of government to “enact laws to combat harmful customs and traditions which undermine the dignity and status of women”. Finally, it explicitly recognises women's rights to property:

Women shall have the right to own property and share in the estates of

“enact laws to combat harmful customs and traditions which undermine the dignity and status of women.”

⁴⁰ Cunial, op. cit. p.16.

⁴¹ Odhiambo, op. cit. pp.11-12.

their deceased husbands together with any surviving legal heir of the deceased.

Article 16 is the most important provision in the Constitution protecting women's HLP rights as it applies solely to women and specifically spells out their rights in terms of property ownership and inheritance.

The Constitution also recognises in article 28 that "every person shall have the right to acquire or own property as regulated by law". This provision applies to women and men equally.

Article 34 of the Constitution further recognises the right for "every citizen to have access to decent housing" and that "no one shall be evicted from his or her lawfully acquired home or have his or her home demolished save in accordance with the law". This provision protects both men and women's security of tenure by providing protection from forced evictions. In addition, it obliges the government to take measures to achieve the progressive realisation of the right to housing for all, regardless of sex, and does not require a woman to rely on her husband or male relatives for shelter.

The Land Act (2009)

The Land Act, passed by the Southern Sudan Legislative Assembly in 2009,⁴² regulates land tenure and protects land rights in South Sudan. It recognises that "all land in Southern Sudan is owned by the people of Southern Sudan and its usage shall be regulated by the Government".

The Land Act explains the different land tenure systems in South Sudan and classifies different types of land into three broad categories: 1) public land; 2) private land and 3) community land. As mentioned earlier, public land is owned collectively by the people of South Sudan and is held in trust by the government, typically in freehold. Private land is owned by individuals in freehold (full-fledged ownership) or leasehold (for a specified duration of time). Community land is held jointly by the community and regulated by the community chief, leader, elders and/or king according to local customary law.⁴³ Each type of land is regulated by different rules and administered by different actors, making the land tenure systems complex and often difficult to understand.

The Land Act includes many of the same provisions as the Constitution. Section 8 of the Land Act confirms that "every person shall have the right to acquire or own property as regulated by law and as stipulated in article 32 (1) of the Constitution".

In terms of women's HLP rights, section 13 of the Land Act affirms that:

Women shall have the right to own and inherit land together with any surviving legal heir or heirs of the deceased as stipulated in Article 20 (5) of the Constitution⁴⁴

⁴² <http://www.asareca.org/PAAP/Policy%20Instruments/South%20Sudan%20Land%20Act%202009.pdf>

⁴³ It should be noted that it is incorrect to speak of individual ownership of land held under customary tenure.

⁴⁴ This refers to the 2005 Interim Constitution of Southern Sudan, which was then replaced by the 2011 Transitional Constitutional of the Republic of South Sudan.

This is the most important article within the Land Act for women as it clearly states their right to own and inherit land. Significant weight is given to this via the linkage to the Constitution included at the end of the section.

In addition, section 5 (F) of the Land Act indicates commitment to:

Facilitating the reintegration and resettlement of internally displaced persons, returnees and other categories of persons whose rights to land were or are affected by the civil war.

The Land Act provides a basis for the protection of women's right to own and inherit land and calls for the facilitation of reintegration and resettlement processes for IDPs and returnees. However, it has been criticised for not incorporating sufficient protective mechanisms for vulnerable populations, including women, returnees and IDPs (particularly on the issue of land and property).⁴⁵ In addition, current gaps in legislation make vulnerable communities and individuals largely dependent upon customary systems of land governance which are discriminatory towards women and other non-members of the community (such as IDPs).

There has been an attempt to address these shortcomings in the draft Land Policy which is to provide guidance on how to make land rights a reality for all South Sudanese.

The draft Land Policy

The draft Land Policy, approved by the Council of Ministers in February 2013 and awaiting adoption by the South Sudanese parliament, seeks to promote the "security of property rights to the greatest number of South Sudanese, regardless of their social or economic status."⁴⁶ While the policy is not law in itself, it guides the interpretation and application of the law. Once adopted, it will constitute an important instrument in the promotion of women's HLP rights, including those affected by displacement.

The draft Land Policy starts by recognising that:

*(...) despite the legal provisions recognising the equal rights of women to land, widespread knowledge, recognition and protection of those rights, remains limited throughout South Sudan. Women's land rights remain largely conditional, derived through their marital or childbearing status and dispossession of widows, daughters, and divorced women is common. There is tension between competing notions that customary rules and practices should adapt to changing socio-economic 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.*⁴⁷

The draft Land Policy goes on to reaffirm that "men and women shall

⁴⁵ Naidoo, S., Marzatico, F. and Monaghan, L., 2013, Mine Action and Land Rights in South Sudan: Key findings and recommendations, Geneva International Centre for Humanitarian Demining (GICHD) and NRC.

⁴⁶ South Sudan draft Land Policy, p.4.

⁴⁷ Ibid., p.4.

enjoy equal rights to land and property⁴⁸ and makes a specific policy statement which 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 their land rights.*⁴⁹

It then highlights a number of specific actions that need to be taken to ensure equality of women's land rights in law and in practice, including:

- ▶ National and state governments will develop programmes to train, recruit and mentor women in land administration and adjudication roles.
- ▶ National government will support the establishment of paralegal organisations and networks in rural areas capable of providing advice and aid to women on inheritance and land issues.
- ▶ National 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 (such as divorcees, widows and daughters.)
- ▶ National governments will establish programmes 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.⁵⁰

The draft policy then calls for the adoption of a Community Land Act which would create "greater statutory protection for land held under customary tenure" and which "would extend the full enjoyment of customary land rights to women".⁵¹

The 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 to 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.*⁵²

The draft Land Policy looks further at gender equity in terms of access to land and property rights for women and calls on:

State Ministries concerned with Land and Gender [to] collaborate to develop and deliver training programmes that sensitise community land authorities on issues concerning women's land and property rights. In support of this assessment will be done to establish issues that affect

48 Ibid., p.9.

49 Ibid.,p.16.

50 Ibid., p.16.

51 Ibid., p.16.

52 Ibid. p. 17.

women's land and property rights across South Sudan's main ethnic groups.

In addition, the Policy also requests:

the Land Commission [to] collaborate with appropriate Ministries and Commission to initiate public debates through national media, 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.⁵³

The draft policy also seeks to facilitate the return of IDPs and refugees to communities from which they were displaced during the civil war or by natural disaster and, where appropriate, would help them to secure land in the host communities where they settled during the war.⁵⁴ The policy also specifically states that:

the Government of South 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.⁵⁵

The draft policy also recognises the important role of independent civil society in representing citizens with land-related grievances and in educating citizens on how to better secure their land and property rights.

To conclude, the draft Land Policy of South Sudan clearly recognises the current gap that exists between the law protecting women's rights to land and property and the reality on the ground as well as the particular challenges faced by those displaced during the war. If the current text is adopted, it will provide the various levels of government with guidance on how to best promote equality of men and women to land and property, as well as a useful platform for those advocating for greater women's access to their HLP rights. The policy will also provide a framework on how to assist persons who have been displaced to recover their land in areas of origin, locally integrate or settle somewhere else.

The main challenge however remains how to make the laws and policies a reality for the millions of South Sudanese seeking to exercise their HLP rights.

The Local Government Act (2009)

The Local Government Act (LGA) of 2009 establishes Customary Law Councils as "the highest Customary Law authority in the County"⁵⁶ with the function to protect, promote and preserve the traditions, customs, cultures, values and norms of the communities and to regulate, maintain,

⁵³ Ibid., p. 34.

⁵⁴ Ibid., p. 4.

⁵⁵ Ibid., p. 6.

⁵⁶ In each state there are a number of counties. The county authorities are the administrative unit between the state and the payam. In each county, there are many payams, the intermediate administrative unit of in the local government structure. In each payam, there are many bomas, the lowest administrative unit in the local government structure. (see interpretation section of the Land Act, 2009)

monitor and ensure proper administration of the customary law. It also establishes Customary Courts with the “competence to adjudicate on customary disputes and make judgments in accordance with the customs, traditions, norms and ethics of the communities”.

Section 110 of the LGA specifically deals with the rights of women and provides the same protection as the Constitution and the Land Act by reaffirming that “women shall be accorded full and equal dignity of the person with men” and specifically stating that “women shall that the right to own property and share in the estate of their deceased husbands together with any surviving legal heirs of the deceased.”

Further information on customary law, customary authorities and customary courts is included in the next section of this report.

The Sudan’s People Liberation Army Rules and Regulations (2009)⁵⁷

Two articles in the SPLA Rules and Regulations deal specifically with HLP. Article 6 dealing with relations with the public provides that “any SPLA personnel shall not take or use any public or private property without justification”. In addition article 31 considers “without proper authority, taking or extracting property from any person...” to be a major disciplinary offence.

These regulations are important as in many areas it is reported that SPLA personnel feel entitled to claim land given their role in securing the independence of the nation. Some people have reportedly forged connections to the SPLA, or pose as SPLA cohorts, in order to strengthen their position vis-à-vis local communities.⁵⁸ This is particularly threatening to women as socio-cultural beliefs generally make them less able than men to challenge soldiers or negotiate an effective resolution.

The South Sudan Land Commission

A key institution driving land policy is the South Sudan Land Commission⁵⁹ which sits in Juba and is mainly in charge of developing land laws and policies; conducting research on land matters; arbitrating land disputes and advising various levels of government on land issues.

The Commission is under-resourced and does not have a presence in the various states of South Sudan, thereby limiting its capacity to undertake all its functions. The Commission has however been instrumental in the

⁵⁷ While the SPLA have no legal responsibility for HLP this has been included because of the number of reports of soldiers abusing their power by illegally claiming land and using intimidation to force evictions from land, particularly those occupied or being claimed by returnee populations in Juba and other urban areas. See: Martin, E. and Mosel, I. 2011, City limits: urbanisation and vulnerability in Sudan Juba case study, Humanitarian Policy Group, Overseas Development Institute, p.5 (<http://www.odi.org.uk/sites/odi.org.uk/files/odi-assets/publications-opinion-files/6511.pdf>) and Human Rights Watch Human Rights Watch, 2009, "There is No Protection" Insecurity and Human Rights in Southern Sudan. <http://www.hrw.org/reports/2009/02/12/there-no-protection>

⁵⁸ Sluga, op. cit., p.9.

⁵⁹ <http://www.goss-online.org/magnoliaPublic/en/Independant-Commissions-and-Chambers/Land-Commission.html>

drafting of the 2009 Land Act and the draft Land Policy of South Sudan.

While land-related legal and policy frameworks in South Sudan exist on paper and provide clear protection of rights, this does not translate into a reality on the ground. A paper prepared for the World Bank has noted:

Legal and policy frameworks and instruments for land administration are largely non-existent. Mandates are poorly defined, with new institutions struggling to translate their respective mandates into programs of action. Understaffing is a major constraint, while the few staff available are both inexperienced and lack skills in planning and land administration. The resultant effect is a system of land administration that is unclear of land rights applicable in the country, has inconsistent planning and land administration procedures, and is characterised by underperforming government institutions.⁶⁰

As we have seen throughout this section, the Constitution and statutory laws of South Sudan provide for equal rights for men and women and specific protection of women's rights to land, property and inheritance. In this regard the GoSS should be congratulated for having ensured such a consistent approach across the various laws and for having recognised that women's HLP rights require specific protection.

Despite this legal recognition a lack of clear implementing policies and regulations and judicial interpretation of these provisions has undermined their application. A general lack of enforcement mechanisms at the community level, including awareness of these laws, has further weakened the application of provisions protecting women's HLP rights. The task ahead is daunting, but a solid foundation has been laid with the new laws that South Sudan has adopted. South Sudan will now need to focus on ensuring that its laws are known and enforced.

Customary law and institutions ⁶¹

Customary law is the set of customs or rules that reflect a certain community's beliefs, habits and values and is more a reflection of social convention than legal protocol. In South Sudan, as elsewhere, it typically exists in an informal, unwritten form which is orally transmitted although there have been efforts to codify some customary law.

Customary law and institutions are recognised as part of the legal system of South Sudan. The Transitional Constitution recognises "customs and traditions of the people" as one of the sources of legislation. While sources of law do not constitute statutory law in themselves, they are important as statutory law may incorporate or build on them.

Article 166 of the Constitution also recognises the "institution, status and role of Traditional Authority, according to customary law". It subordinates Traditional Authority and customary law to statutory law and the Constitution. This is of particular importance in relation to women's HLP rights, given that, as we will see in the next section, customs and traditions discriminate against them.

⁶⁰ Marongwe, *op. cit.* p.1.

⁶¹ For more in-depth analysis of customary law see Mennen, *op. cit.*

Customary law is extremely important in South Sudan, particularly in relation to land, as most land in the country is still held under customary tenure. Many of the characteristics of customary land tenure were crafted over centuries to address issues such as seasonal variation in resource supply and demand and to respond to specific needs of particular socio-economic groups. They can involve complicated arrangements to deal with competing resource user groups. In general:

- ▶ Customary tenure systems gain their legitimacy from the trust a community places in the people and institutions that govern the system.
- ▶ Customary tenure mirrors the cultural and social values of the community.
- ▶ Customary tenure may differentiate rights between community members and those considered to be outsiders.
- ▶ Customary tenure is a 'living institution' and evolves over time in response to changes in the institutional, economic and physical environment

In South Sudan:

There are four principal ways of accessing land under customary law: allocation, inheritance, gift, and purchase (or exchange of cows or other livestock). Rules for access and use of communal land are established by customary law and administered, interpreted and enforced by community leaders to protect the land from outsiders and secure the rights of individuals in the community to access and use the land. Although customary procedures vary from tribe to tribe, land tenure is largely uniform. Land is considered common property with no individual ownership and usufruct rights passed down through generations. Chiefs are supposed to regulate the use of land to ensure that it conforms to the common good and to prevent conflicts over land. Members of the community have the right to use the land for their livelihoods, usually either for farming or cattle rearing. The community retains control of land and resources meant for common use such as water holes and cattle camps.⁶²

“ Women and girls’ access to land is therefore limited to their relationship to a man (father, husband, brother) and as such they do not have an independent right to claim or inherit land under customary law. ”

Of the number of ways of accessing land under customary law, inheritance is by far the most common. Males inherit land from their fathers and females are supposed to marry and acquire rights to land through their husband. Women and girls’ access to land is therefore limited to their relationship to a man (father, husband, brother) and as such they do not have an independent right to claim or inherit land under customary law. Widows, single mothers and other women without husbands or families are regularly denied access and control over community land.⁶³

In almost all tribes in South Sudan a woman is part of the household of her parents before marriage and has the same rights to occupy and use the land as the rest of the family. When she marries, she gains access to land at her marital home on the strength of the marriage and she can use the land of the husband in the same way she had the right to use and occupy the land of her father. The only case in which a woman has the right to acquire land independently from her parental family or her husband is when she is identified as vulnerable individual by the chief of the community. This is often the case with widow single head

⁶² Naidoo et. al. , op. cit. no page number.

⁶³ Mennen, op. cit. , p.17. <http://www.nrc.no/arch/img/9683694.pdf>

*of household with children of school age. In these cases women are allocated land and have the right to defend any encroachment on their land. Other than in these types of cases, acquisition of land by women remains a big challenge in South Sudan.*⁶⁴

Exceptions to this customary practice of denying women independent access to land do exist.⁶⁵ However, they vary as customary tenure systems are unique to the locality in which they operate and are often difficult to generalise.

Decades of war and displacement have had a severe impact on customary laws and authority in South Sudan. In many communities traditional elders were killed, leaving a younger generation to try and piece together customs based on indistinct memories. There are also clashes between those who assumed leadership while displaced and those who remained and who continue to assert claims to authority. A further culturally destabilising factor is the number of South Sudanese who spent a considerable amount of time as IDPs in Khartoum, where *sharia* law is practiced, as well as neighbouring countries such as Uganda, Kenya and Ethiopia. As people return from Khartoum or neighbouring nations they are bringing back with them a hybrid set of customs and traditions, which are often at odds with the traditional customs of those who remained in South Sudan.

Conflict and displacement have also changed the fundamental structure of contemporary society, requiring many women, particularly those returning from exile without husbands, to support their families by themselves. They often face difficulties in trying to do so, as they have no or limited access to land and when they are allocated land it tends to be of lower quality.⁶⁶ Customary and traditional authorities are therefore challenged to respond to the changing needs of their communities.

While the adoption of new laws is an attempt to remedy some of the shortcomings of customary law in relation to women's access to HLP rights, the reality on the ground still appears to be very removed from the legislative processes in Juba. Customs and norms that have been used for hundreds of years will be difficult to change. While there is real momentum in terms of legislative changes, the legislative process will need to be accompanied with concrete measures at the community level, as envisaged in the draft Land Policy. Customary law still remains widely applied and customary mechanisms continue to be the most accessible form of justice for the vast majority of South Sudanese.

64 Ibid.

65 For example, in one FGD it was reported that a daughter whose marriage fails and who returns home is, at least theoretically, entitled to land from her parents or brothers if the parents have died.

66 Mennen, *op. cit.*, p.18.

3.7

MECHANISMS FOR RESOLVING HLP DISPUTES IN SOUTH SUDAN

In post conflict settings where there has been displacement and large movements of population, conflict and disputes over land tend to be frequent. South Sudan is no exception. With over two million people returning to the country in the last few years, demand for land, particularly in urban and peri-urban areas has dramatically increased.

There are three broad options available for land dispute resolution in South Sudan:

- ▶ the statutory justice system, when land is located in urban areas and the dispute concerns public or private land
- ▶ the customary justice system when land is located in rural areas and concerns community land
- ▶ collaborative dispute resolution mechanisms – commonly referred to as alternative dispute resolution (ADR) – such as negotiation, mediation or arbitration, very often performed by elders and traditional leaders, but also by local government structures dealing with land-related matters.

The 2009 Land Act requires that:

in resolving disputes to land, priority shall be given to a) alternative dispute resolution which includes dispute resolution processes and mechanisms that fall outside the government judicial process; and b) traditional dispute resolution mechanisms.

If this fails, the way in which disputes are handled differs depending on the type of land in dispute. If the dispute involves community land, the case will go through a customary court, while if the dispute involves public or private land, the case will go through a statutory court.

The judiciary in South Sudan includes:

- ▶ The Supreme Court
- ▶ Courts of Appeal
- ▶ High Courts
- ▶ County Courts
- ▶ Other courts and tribunals as deemed necessary to be established in accordance with the provisions of the Constitution and the law

For land-related disputes, section 99 of the Land Act establishes that the court of first instance is the Land Division of the High Court. However, the Land Division has not yet been established. In its absence the High Court or, in some areas other courts to which the High Court has delegated its powers, may deal with land disputes. Appeals from the High Court are made to the Court of Appeal and then to the supreme court as detailed in Figure 1 below.

FIGURE 1: Progression of land dispute case involving private or public land according to statutory law



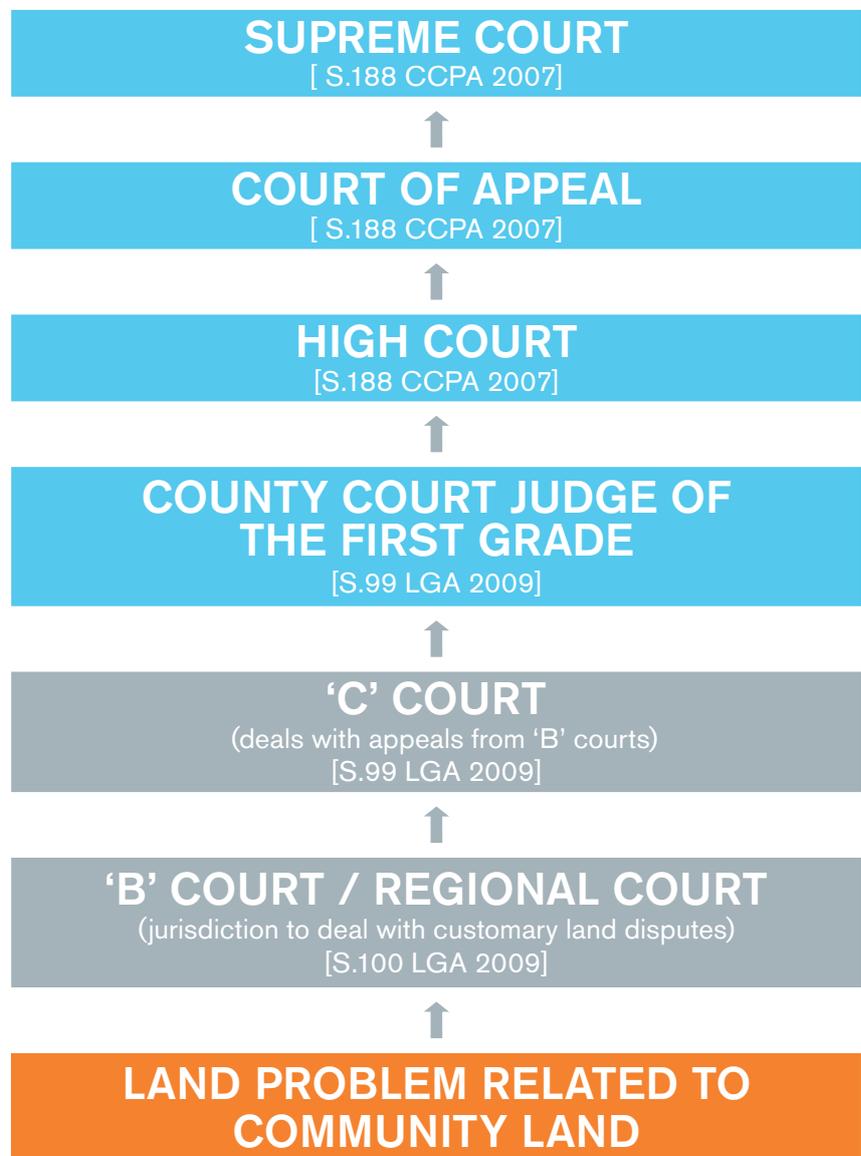
As the majority of land is still under community tenure and because some of the statutory institutions such as the Land Division of the High Court have not yet been established, the reality is that chiefs are predominantly responsible for the administration of justice throughout the ten states. The customary court system handles the vast majority of land disputes. Customary law largely embraces reconciliation and community harmony as principal tenets. Customary justice institutions remain strong, particularly in “vast, rural segments of the country where the state has little reach.”⁶⁷

Customary courts are established at *boma*, *payam* and county levels. The jurisdiction of the customary courts is set out in the Local Government Act. The first level of court in the customary system is the ‘A’ Court or the Executive Chief at the *boma* level. This court does not have jurisdiction to deal with land disputes. The second level court is the ‘B’ Court, also known as the Regional Court at the *payam* level. The ‘B’ Court can deal with appeals from the ‘A’ Court and major customary

⁶⁷ Ibid., p.13.

family matters, including inheritance, women’s rights and customary land disputes. Appeals from the ‘B’ Court are made to the ‘C’ Court which is the highest Customary Law Court at the county level. As well as having jurisdiction to deal with appeals from the ‘B’ courts, this court can deal with cross-cultural civil disputes. Appeals from the ‘C’ Courts are made to the County Court, thereby entering the statutory justice system.

FIGURE 2: Progression of land dispute case involving customary land starting in the customary courts*



*Note that in some areas, for example in CEq, as no Land Division of the High Court has yet been established, the High Court has delegated its powers to other courts given the high number of land disputes.

While the Local Government Act regulates how customary courts should function, the reality is that customary courts in existence prior to the LGA are not necessarily functioning in accordance with its provisions. These courts in particular fail to have female representation. In addition, the customary courts are often unfamiliar with their role and jurisdiction as specified in the LGA or the Land Act. They do not document the cases they resolve, thus impeding appeals to higher courts. There is also limited opportunity for women to participate in the processes undertaken in customary courts.

With the lack of clarity in relation to resolving disputes over land, the situation is extremely complex particularly in urban and peri-urban areas. Chiefs sometimes refer cases related to private land to the County courts although these courts, as explained previously, do not officially have jurisdiction to deal with such matters unless the High Court has delegated its powers to them. The reality however is that often they are the only courts available outside Juba. In addition, many chiefs hear cases related to private land as a result of their jurisdiction to deal with family law and inheritance matters.

Surveys of South Sudanese reveal a greater amount of trust in the customary system as compared with the statutory system.⁶⁸ As in many other developing countries, the statutory system is little understood by the majority of citizens and its judgments are seen as biased and/or capricious.⁶⁹

Disputes around allocation and management of land

According to section 41 of the Land Act, administration and management of land in South Sudan “should be based on the principles of decentralisation, participation and transparency for the benefit of all people of Southern Sudan”. The Act requests that “prior to any decision related to their lands whether in urban or rural area the land administration shall consult with the communities concerned”. The Act then goes on to state that “land in Southern Sudan shall be managed in a uniform and coordinated manner in which the State Government assigns the management responsibilities to Concerned Ministry at the State level, the County Land Authority and the Payam Land Council”.

The Land Act remains vague in terms of actual roles and responsibilities between the concerned ministries at the state level, the county land authority and the payam land council. In addition, many of these institutions have not yet been established in all states. There is therefore a situation of chaos in many urban and peri-urban areas in relation to land allocation, surveying, and registration of rights over land. With many returnees gravitating towards urban centres, this has resulted in the formation of informal settlements where people often lack security of tenure and are at risk of forced eviction.

In addition, the power and influence of certain chiefs has grown as a

⁶⁸ UNDP/UNMIS, 2006, Rule of Law Community Perception Survey Report for Southern Sudan, (available from the UNDP South Sudan office).

⁶⁹ Mennen, *op. cit.*, p.11.

result of urbanisation and the desire for land on the outskirts of urban areas. In terms of allocation of land, the Land Act in its section 8 notes that “customary land rights including those held in common shall have equal force and effect in law with freehold or leasehold rights”. Section 15 also cements the rights of traditional authorities “within a specific community... [to]... allocate customary land rights for residential, agricultural, forestry, and grazing purposes”. Traditional authorities can allocate land subject to consultation with the community and must inform the County Land Authority (the government body responsible for administering land at the county level) or the Payam Land Council (the government body responsible for land at the *payam* level); however, these institutions are not yet established in many areas in South Sudan.

As a result, around Juba it is reported that:

High-ranking chiefs, particularly in the surrounding rural payams, as well as the paramount chief, are reportedly increasingly co-opted into corrupt urban governmental structures, and as a result are increasingly removed from local communities. People interviewed in areas on the outskirts of Juba commented that chiefs had become too powerful following the CPA because of their influence over land use and allocation, were ‘increasingly acting like politicians’ and were not trusted by their communities. Communities are reportedly afraid to challenge the chiefs or individuals close to them for fear of retribution.⁷⁰

This confusion over levels of jurisdiction is the result of largely absent or dysfunctional statutory justice and administrative systems at the local level and limited awareness among local and traditional authorities of what the law actually says and which administration or court deals with what type of dispute. Therefore, the situation around legal and state institutions relevant to HLP is extremely complex, mainly as a result of:

- ▶ the number of institutions involved
- ▶ their overlapping jurisdiction when dealing with land disputes
- ▶ lack of jurisdictional knowledge by actors within legal institutions
- ▶ the fact that the law, regulations and mechanisms have not yet been fully developed or established.

70 Martin and Mosel, *op. cit.* pp.11-12.



SPECIFIC CHALLENGES FOR WOMEN IN ACCESSING THEIR HLP RIGHTS

While there are many cases where women's rights and priorities have been incorporated both into peace agreements and into post-conflict legal and political reforms, changes in policy and legislation at the national level have not necessarily translated into better access to decision-making processes for women, nor have they ensured that women enjoy increased protection from violence. International and national-level legal and policy change is often not reflected in women's daily lives.⁷¹

The TCSS and the 2009 Land Act assert that women can own or acquire land. However, in practice, women face challenges within both customary and statutory institutions in the realisation of those rights. Widows, single mothers and other women without husbands or families are regularly denied ownership, access or control over land. Some of the main challenges identified through the research are presented below.

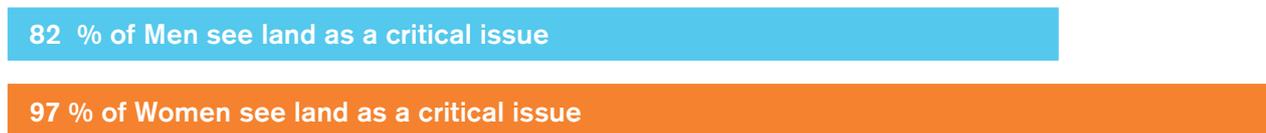
Women and girls [in South Sudan] are routinely deprived of the right (...) to own and inherit property. (...) Domestic disputes are resolved by traditional courts that often apply discriminatory customs.⁷¹

4.1

LAND IS CRITICAL FOR WOMEN AND MEN

An overwhelming majority of returnee and displaced women and men who took part in FGDs reported that land was a significant issue for them. For many, feelings of insecurity and vulnerability caused significant stress about the immediate safety and protection, as well as long-term support, of their families. This was particularly so for women and men who had sons rather than daughters – given their obligations to provide them with land once married.

FIGURE 3: Number of women and men who see land as a critical issue



Source: Focus Group Discussions

Interestingly it was younger (under the age of 25), married women who were more likely to report that land was not a critical issue, indicating

⁷¹ UNIFEM, 2007, Women Building Peace and Preventing Sexual Violence in Conflict-Affected Contexts, p. 1. http://www.unifem.org/attachments/products/WomensBuildingPeaceAndPreventingSexualViolence_eng.pdf

⁷² Human Rights Watch, 2012, World Report, South Sudan. <http://www.hrw.org/world-report-2012/world-report-2012-south-sudan>

that they fully expected that their husband and his family would ensure their housing and land needs were met, and that they did not fear divorce or abandonment in the future.

While slightly more men than women may worry about land, in reality it is women not men who have the most reason to be concerned as they are less likely to have security of tenure (actual or perceived). As indicated in the figure below, men were six times more likely to have a piece of land for their personal use without feeling at risk of being evicted. This is despite the fact, as noted earlier, that almost half of returnee households are female-headed.

FIGURE 4: Number of women and men who have use of a piece of land and do not worry about being evicted.

43 % of Men

8 % of Women

Source: Focus Group Discussions

The following graph shows the main types of HLP-related cases as stated by NRC's ICLA clients. The main problem reported was landlessness, with a much higher proportion of women approaching NRC for assistance on this issue. For men, the issue of compensation for property was significant.

So grave are the multiple obstacles to achieving safe housing and secure tenure that almost four in five of the women interviewed for this report stated that if given the chance they would go back to where they had been living as a refugee or IDP.

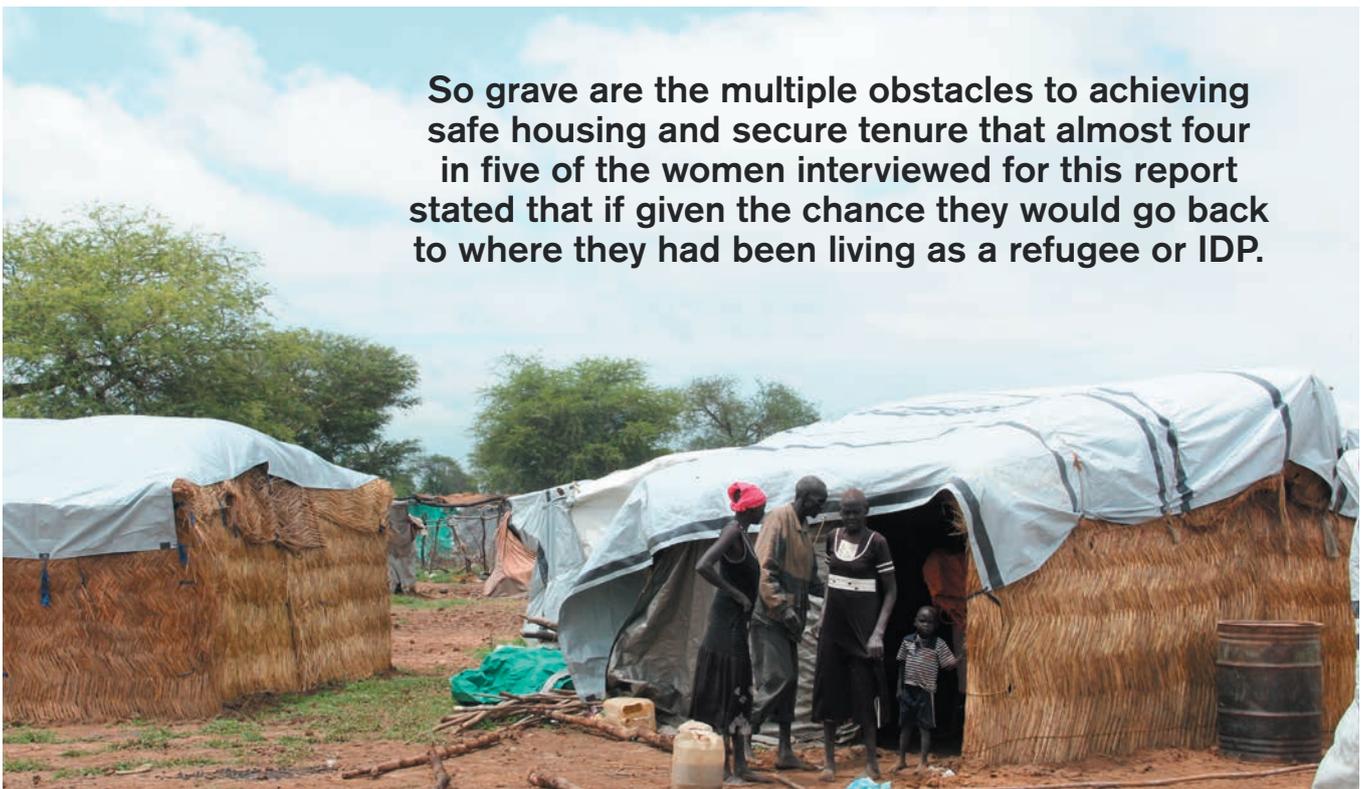
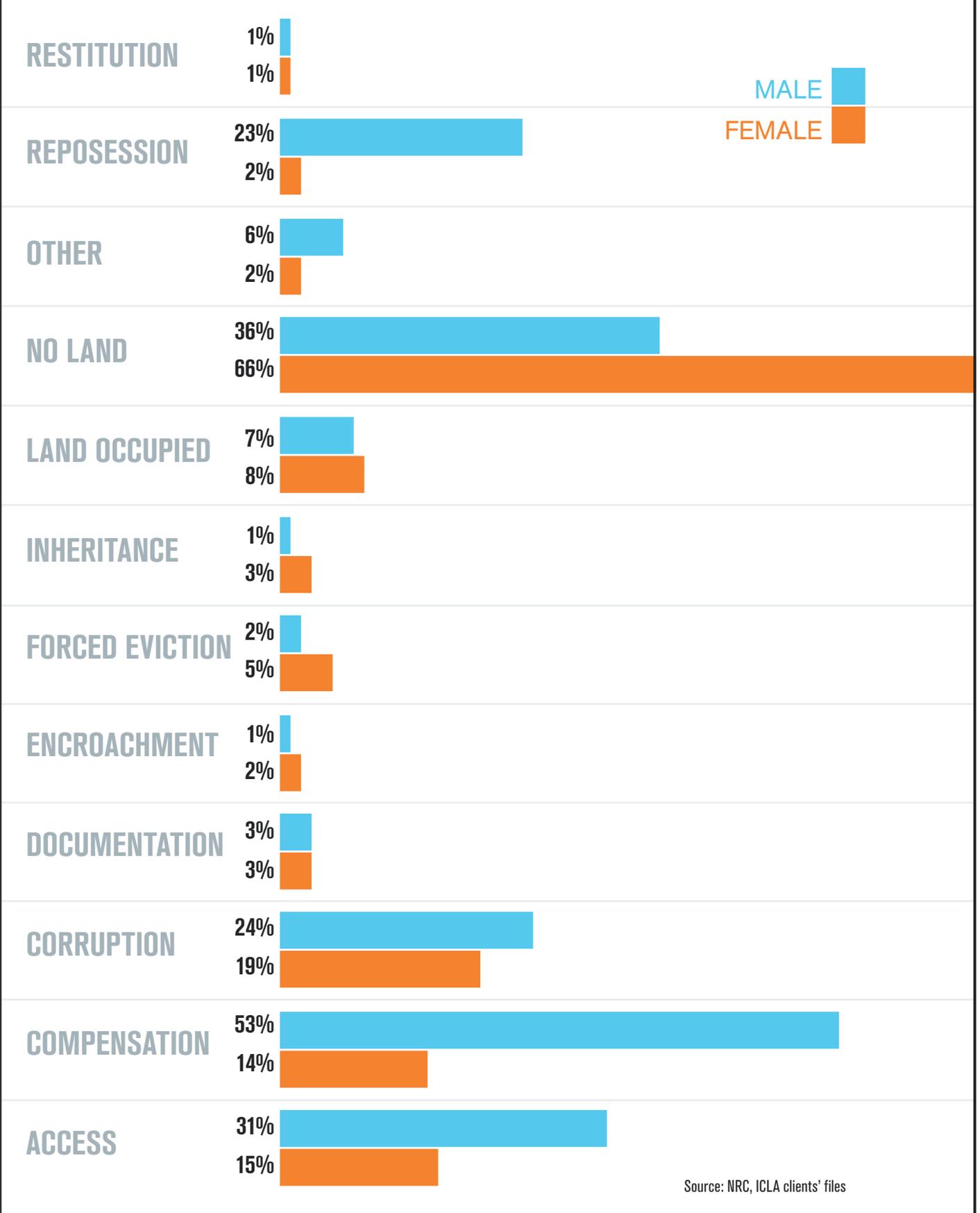


FIGURE 5: Land & Property cases reported to ICLA by issue and sex of client



POST-CONFLICT OPPORTUNITIES FOR WOMEN

As already noted, conflict and displacement have complicated traditional arrangements and for the large part exacerbated the situation for women but also provided some new opportunities. Conflict changed the nature of contemporary society in South Sudan, requiring many women to support families by themselves.

Discussions during FGDs confirmed evidence of a shift in women's place in society. A significant impact of the conflict has been the increased number of women who are widowed, abandoned by their husbands or divorced and who have returned to South Sudan without husbands, fathers or other male relatives. Women are being forced to take on the role of provider, protector and carer to children or elderly relatives. Having grown up in urban areas with greater access to education, young women (and men) are also returning with different ideas about what it means to be South Sudanese, about the expectations placed on them by a culture that they may have never felt connected to. Some female returnees have been exposed to alternative models of gendered roles and the benefits that rights provide to women.

In rural areas where women are dependent upon customary actors for allocation of land, the customary system is ill-equipped to deal with a phenomenon on this scale. This has resulted in a greater percentage of women having to negotiate with traditional leaders for land upon return and attempting to use a variety of customary practices and statutory laws to press their case.

This challenge to traditional norms and practices has provided a unique opportunity for change. Prior to the conflict, a woman's ability to have her name on a land deed would have been virtually unthinkable – as a FGD participant put it, “property cannot own property”. Today, women are increasingly able to register plots of land in their own names. This is particularly the case for female returnees (mostly widows) who have been able to secure demarcated plots from the government. They still face a significant challenge, however, in achieving security of tenure as it is very expensive to register land and most returnees are unable to afford to do so. They thus often face threats that they will be evicted from the land that they have been allocated if it is not legally registered.⁷³ As a FGD participant reported:

“I am scared to go too far from my house, I haven't paid the fees, and I am afraid that if people get to know that they will take my house from me. If I am here they can't take it away from me, can they?”

⁷³ For instance, this happened in Warrap, South Sudan in 2013. It was reported by returnees that the Ministry of Physical Infrastructure had threatened to confiscate land that was not registered by a certain date. After the intervention of Protection Cluster actors, it was confirmed by the Ministry that they would not do so.

CASE STUDY 1



NYANDENG ANYIEL

Six months after her return to South Sudan, Nyandeng, a 46 year old widow with six children, thought her problems were over when she was allocated a plot of land as a part of the government's returnee/reintegration programme.

However, she has been unable to pay the land registration fees, fears she will be evicted and has received a number of threats from members of the host community and government officials. They have told her that without the required land documents anyone can come and take her land and she will have no claim to it. This means that Nyandeng does not feel comfortable leaving her house empty for an extended period of time, fearing that if people know the house is empty they will take it from her. When she has to go and collect firewood she negotiates with a neighbour to stay overnight. As a result, Nyandeng's ability to

plant crops to feed her family and to earn money is very limited. She would like to be allocated some more land so she can farm, like the women of the host community. However, she is too scared to ask the host community chief and the returnee chief is facing similar problems.

NRC ICLA staff have begun discussions with the host and returnee chiefs, hoping to negotiate a better relationship between the two communities and to put an end to the threats and fears that each are experiencing. NRC has also met government officials, and has successfully negotiated an extension of the deadline to pay the land registration fees. While Nyandeng and others in her situation are grateful for this, they have little confidence that they will ever be able to pay such fees, given their total lack of employment opportunities.

4.3

LIMITED OPTIONS FOR ACCESS TO LAND AND HOUSING FOR RETURNEE AND DISPLACED WOMEN

The process of accessing land generally includes a variety of steps. They can vary from place to place and according to the type of land being sought. The list below is illustrative of the main steps that can be taken by returnees and IDPs. In practice not all steps are necessarily followed or in the order below:

- ▶ identification/registration of persons requiring plots of land on which to settle
- ▶ identification of available plots by relevant authorities
- ▶ allocation of identified plots to those seeking land – this may require the payment of a fee for the cost of the plot allocated
- ▶ demarcation and/or surveying of the plots allocated
- ▶ registration of the plots allocated in the name of the person the plot

was allocated to – this requires the payment of a fee for the registration process.

According to NRC's research, the most secure and preferable way for a woman to access land and housing is to legally purchase and register a plot of land in her name. However, this is also the least attainable option due to the steep costs associated with the purchase and registration. The least preferable option is for women to settle illegally on unused land in urban areas and without permission of the community in rural areas: in both situations women face dramatically increased actual or perceived protection risks. However, women often have little other option, particularly returnee and displaced women living in urban areas. Table 1 below outlines the advantages and disadvantages of each option, as discussed in FGDs.

TABLE 1: Housing options and constraints for women

	Financial means required	Biased customary practices	Corruption by decision makers	Identification documents required	Requires functional literacy	Increased risk of violence	Increased risk of eviction	Social exclusion
Legally purchase and register demarcated plot by government	✓		✓	✓	✓			
Be allocated and register demarcated plot by government	✓		✓	✓	✓			
Be allocated non-demarcated plot by chief	✓	✓	✓			✓		
Marry another man and go to his land		✓				✓	✓	
Go to land of husband or father		✓				✓	✓	
Squat on land						✓	✓	✓

Source: Focus Group Discussions

Because of long-held discriminatory practices that have resulted in South Sudanese women having fewer opportunities for education and hence employment they are less likely than men to be able to independently purchase and pay the registration fees of a demarcated plot.

TABLE 2: How a woman's marital status affects her HLP rights

MARRIED	SINGLE	DIVORCED	WIDOWED	ABANDONED
Women may stay in abusive / unhappy relationship so as to maintain living arrangements	High commodity as women will command bride-wealth.	Women are unlikely to be taken back by their families if they instigated divorce	If women have children (and at least one son) who are underage, they are more likely to be offered the land of their husbands	If bride-wealth has not been paid, women are unlikely to be accepted back by their families.
All property and land controlled is by males	High commodity if of child-bearing age. Daughters = bride-wealth to male family members	Women cannot return to their families if bride-wealth has not been paid	If women have no children, very unlikely to be provided land of husband	If union with man did not follow traditional practices, husband's family will not accept women or their children
Likely to be required to work and farm husband's land as unpaid labour	Increased risk of abduction and rape, as men cannot pay bride-wealth	Shame and guilt if women initiated divorce	If women are still of child-bearing age, it is likely they will be expected to procreate with a relative of husband such as brother or uncle	Shame and guilt of abandonment felt by women
Limited control over reproductive health	Sex outside of marriage punishable with any subsequent children not guaranteed inheritance from their father or his family	Custody of children remains with husband/father of children. Women can leave but cannot take children unless they are still breastfeeding	If ties to husband's or own family have been lost (often due to displacement) it is unlikely either will provide for women	Most women have limited training in income generation activities so as to be able to independently support themselves and children
Anecdotally, rates of domestic violence are thought to be high		If women initiated divorce, all of bride-wealth has to be returned to husband's family, minus payment for any children already born of the marriage	If elderly, women will struggle to gain agreement of extended family to take her in	Sense of belonging lost which can lead to mental health issues such as depression, suicide or risky behaviours
Rape within a marriage is not a crime (Penal Code 247 (3)) so cannot be used as grounds for divorce or to gain support from traditional chiefs in allocation of land to escape violent husband		If elderly, women will struggle to gain agreement of extended family to take her in		Women are less able to negotiate bride-wealth for their daughters
				Women are less able to pay bride-wealth for their sons which can result in young men engaging in violent behaviour against women (e.g. abduction)
				If elderly, women will struggle to gain agreement of extended family to take her in

Source: Focus Group Discussions

Currently the GoSS is demarcating plots of land in areas of high return, typically in urban and peri-urban areas. In some areas the land is being allocated to those already occupying it. This may include returnees as well as those that were never displaced. In other locations the GoSS is demarcating plots specifically for those who have more recently returned to South Sudan. Allocation of a plot by the government – the second most desired option – is often a major challenge given the expense associated with the allocation and registration processes.

While some women manage to get plots allocated to them, it was reported that it is still very common for women to come under pressure to register the plot in the names of their male children, in line with customary practices. This results in women and girls in the family having a lesser degree of security of tenure and protection.

WOMEN'S MARITAL STATUS AFFECTS ACCESS TO THEIR HLP RIGHTS

4.4

One of the findings of the research is that a woman's marital status greatly impacts on her ability to access her HLP rights. During FGDs it was confirmed that women without a male provider/protector such as a husband, father or brother) were less likely to be able to exercise their HLP rights. Widows, single women, abandoned or divorced women faced increased difficulties in accessing their rights. Another major challenge facing many returnee women "stem from the fact that women are treated the same way as 'outsiders' under customary land law. Their rights to land and property are mediated through their relationship to men as husbands, fathers or sons."⁷⁴

Some of the additional constraints linked to marital status are described in table 2.

CONSTRAINTS IN ACCESSING HLP RIGHTS THROUGH CUSTOMARY MECHANISMS

4.5

While there have been many progressive changes in the laws of South Sudan, particularly in relation to a woman's right to access land and property, the reality is that the vast majority of returnees to South Sudan still access land primarily through the customary system.

However, as described previously in this report, customary law does not generally recognise a woman's right to land, and dictates that land is to be inherited via males. This leaves many women who are divorced or abandoned by their husbands to go back to their father's land. For women who are returning to South Sudan, this creates significant problems and issues of vulnerability. For some they have been away too long, resulting in there being no one in their father's community who can

⁷⁴ Odhiambo, *op. cit.*, p.14.

4.5

remember them and therefore support their claim to inheritance. For others, such land is not an option as it is in an area that is too remote, without essential services, like schools, hospitals and even water. For many, particularly those who try to claim land in semi-urban areas, their land is often occupied by others who have realised its commercial value as towns expand. This entails filing a claim for restitution and/or compensation. Women, however, are often unaware of these remedies and how to access them.

In every FGD, the majority of returnee and displaced women consistently reported that they had been unsuccessful in trying to access land that they believed they were entitled to under customary law – whether by inheritance (through deceased husband); by birth (land of father) or by being a member of a clan or tribe. Reports of women being refused land by chiefs and male relatives were common, with several women reporting verbal or physical threats when they made such requests.

Discussions with government officials indicate that many state representatives have failed, when planning the return of refugees and displaced women, to consider the possibility for changes in customary beliefs. They expect that each family, regardless of whether they were male- or female-headed, would be both willing and able to return to the land of their ancestors. They do not even consider the possibility that women, without a male relative, are likely to be rejected by male clan leaders or chiefs.

However, some female civil servants interviewed did acknowledge that customary practices were no longer relevant to many of the women returning to South Sudan. One noted that “women of today are different than before, especially the young women, they have been exposed to city life. How can we expect them to be happy living in a village?”

In a 2011 World Vision report, South Sudanese Chief Justice Ambrose Thiik notes that “customary law embodies much of what we have fought for these past 20 years. It is self-evident that customary law will underpin our society, its legal institutions, and laws in the future.”⁷⁵ While customary law has an important place in the newly independent South Sudan, it is critical that the authorities responsible for promoting and enforcing new laws acknowledge the shifts that have been taking place in respect of the recognition of women’s rights – a process resulting from the legacy of conflict, displacement and return which this research confirms.

75 Jok, A., Leitch, R. and Vandewint, C, 2004, A Study of Customary Law in Contemporary Southern Sudan, World Vision International and the South Sudan Secretariat of Legal and Constitutional Affairs, p.7 <http://www.cmi.no/sudan/resources.cfm?id=710->

The majority of persons interviewed for this research, including 76 per cent of women and 58 per cent of men, reported that they would like to see a change in the customary practices for land allocation. Clearly, men also face challenges, including discrimination, in accessing and controlling land. Many feel it is time for women to have greater rights when it comes to access to land and inheritance.

When asked whether a divorced woman is entitled to a portion of her ex-husband's land, 76 per cent of women and 58 per cent of men reported that she was. When men were asked if they were worried about women getting too many rights, 39 per cent said they were. The all-male FGD indicated that men are less in favour of women having greater control of property such as cattle. This remains a male domain, for many the keystone of male power and social domination.

When asked about the advantages and disadvantages of using the customary system for resolving HLP claims and disputes, FGDs respondents listed them as follows:

Customary system – Perceived advantages and disadvantages for women

Advantages for women

- ▶ Inexpensive
- ▶ Can be relatively quick
- ▶ Respected by wider community
- ▶ Chiefs likely to have a deep understanding of the issue and situation
- ▶ Can be consultative
- ▶ Keeping peace in the community is core to the process
- ▶ Chief likely to have historical knowledge of land allocation / use

Disadvantages for women

- ▶ Chiefs can be authoritarian, giving no reasons for their decision
- ▶ Chiefs are not always willing to listen to each side equally
- ▶ Decision can be arbitrary and/or contradict statutory law
- ▶ Possible abuse of power by decision makers
- ▶ Cultural bias against women
- ▶ Chiefs do not fully understand their roles, powers and jurisdiction
- ▶ Opportunity for payment of bribes is present and believed to be common
- ▶ Women are less likely to be encouraged to be as vocal as men during the process
- ▶ Chiefs likely to rule in favour of those with power
- ▶ Record keeping is very limited

Source: Focus Group Discussions

4.6

CONSTRAINTS IN ACCESSING HLP RIGHTS THROUGH STATUTORY MECHANISMS

Many critics of customary law believe that gender discrimination will end once women have access to statutory courts, “where judges will use the constitution, statutes and the common law to defeat custom.”⁷⁶ However, as this research shows, access to statutory courts is not a realistic option for the majority of women in South Sudan.

Major constraints to women's access to statutory justice systems include the fact that it is extremely expensive to access the statutory courts, well beyond the means of most women. The expenses are not only associated with the large administrative fee that needs to be paid when filing a case in court, they also relate to the travel costs for those who live outside urban areas where courts are located. In addition, often parties to a case need to also pay for the transport and other related costs of witnesses, chiefs and others. Further, in cases of land disputes, fact finding missions to the area where the land is located might be needed, and parties are also expected to cover these costs. Women are much less likely than men to be able to afford these costs, leading in South Sudan, as has been noted in other contexts, to “the very real risk of customary law being relegated to the law of the poor, and statutory law being available only for the privileged few.”⁷⁷

Another significant challenge is the fact that the majority of rule of law actors (judges, prosecutors and court officials) are male. This may contribute to women's needs not being prioritised or understood, as well as preventing women from accessing and/or challenging discriminatory rulings due to feelings of intimidation. While it has often been mentioned that traditional leaders and customary mechanisms are biased against women, the statutory justice system is not without its own prejudices. It should therefore not necessarily be assumed that all female parties to a case will be treated with the same dignity and respect as the male parties in all court and administrative settings. As such, indirect discrimination may occur when social and cultural attitudes cause court personnel, law enforcement agencies and associated agencies to interpret laws and procedures in ways that discriminate against women.

Furthermore, even when the law recognises equality between men and women, the law may also inadvertently be prejudiced against women where it fails to correct discrimination. Such discrimination occurs when a law or policy that applies to everyone is particularly disadvantageous to women because of their social status and different gender roles. In South Sudan, while the law explicitly mentions women's rights to land and property, failure to provide concrete guidance and measures on what this means in practice, may result in the statutory system contributing to entrenching discriminatory practices. Some of these new legislative provisions may therefore also need to be accompanied by affirmative actions to ensure that discriminatory practices are adequately tackled.

⁷⁶ Zorn, J.G, n.d, *Issues in Contemporary Customary Law: Women and the Law*, in *Passage of Change*, p. 126.

⁷⁷ Jalal, *op. cit.* p.15.

This is particularly important as many land cases start in the customary justice system, where many decision makers are illiterate and unaware of what the law says in relation to women's HLP rights.

Finally, one of the greatest challenges to the success of land reform is enforcement of legal rulings for land disputes, particularly in urban areas. At least eleven cases were reported by women and men in the FGDs where, despite being successfully awarded rightful ownership of demarcated plots of land, they had been unable to access and use the land due to illegal occupation, often by soldiers, government officials or wealthy 'big men' with power and influence in the community. Human Rights Watch has noted that:

... soldiers frequently flout court orders to vacate land or pay compensation. In some cases, soldiers do not respond to court summonses. In other cases, they appear in court but simply ignore court orders. When judicial authorities request police to enforce the judgments, police often feel powerless to take action against soldiers.⁷⁸

ELIZABETH

Returning temporarily to her home in 2005, Elizabeth found that her three commercial plots and two residential plots were occupied by soldiers. For the past seven years, Elizabeth has been travelling between the USA and South Sudan trying to get her land back. She has tried negotiating with the soldiers themselves, only to be verbally and physically threatened, resulting more than once in a gun being pointed at her. She has tried to get the payam and paramount chiefs to support her but both say they can do nothing.

Failing to get justice through the customary system, she opened a case against the soldiers in the local County Court. Unable to afford a lawyer, she represented

herself. At each court hearing Elizabeth reports that the soldiers came, dressed in full uniform, with many of their friends, also in military uniform, verbally threatening her and trying to intimidate the judge. In early 2012, after spending more than 1,200 South Sudanese Pounds (\$300) on court 'fees', the judge ruled in her favour, agreeing with her claim that she was the rightful owner of three of these plots. Since then, however, she has been unable to get the courts or the police to enforce the ruling and to evict the soldiers from her land. With no land to come home to and running out of money she is almost ready to give up on her land and on South Sudan.

CASE STUDY 2

⁷⁸ Human Rights Watch, 2009, "There is No Protection" Insecurity and Human Rights in Southern Sudan, p.8. <http://www.hrw.org/node/80691/section/9>

Statutory system – Perceived advantages and disadvantages for women

Advantages for women

- ▶ Parties more likely to be treated equally
- ▶ Records are kept allowing for consistency in application of laws
- ▶ In theory ruling is enforceable by the police upon court request
- ▶ Women feel treated as individuals with rights, not as lesser beings as can happen in customary settings
- ▶ Women can represent themselves in court

Sources: Focus Group Discussions

Disadvantages for women

- ▶ Expensive
- ▶ Time consuming
- ▶ Difficult to physically access courts for those living outside urban areas where courts are based
- ▶ Limited in jurisdiction
- ▶ Access to lawyers outside Juba is difficult
- ▶ The public does not see the benefit of using statutory law
- ▶ Very difficult to enforce decision without the proactive support of police and court officials
- ▶ Many people do not understand court processes and systems
- ▶ Literacy required

4.7

CONSTRAINTS IN ACCESSING HLP RIGHTS THROUGH NEGOTIATION AND MEDIATION

Another way of resolving land-related disputes in South Sudan is through the use of collaborative dispute resolution (CDR) mechanisms, primarily negotiation and mediation. As mentioned, the Land Act calls for CDR processes to be attempted before any land dispute goes to court. Negotiators or mediators will generally be community leaders, elders or local government representatives, depending on the case and the type of land at stake.

While CDR processes can present many advantages, particularly in terms of reaching a win-win solution for all parties, caution needs to be exercised when there is a power imbalance between the parties as the process might reinforce this power differential to the detriment of the weaker party. As we have seen, women in South Sudan tend to be at a disadvantage when dealing with HLP disputes. Thus, while CDR can offer an option to settle a dispute, it might not necessarily work in the best interest of a woman seeking to claim her HLP rights. In addition, negotiators and/or mediators are not always aware of the provisions of the law and therefore may help reach a solution that violates women’s HLP rights.

CDR processes can, however, be a good option when maintaining a peaceful relationship with the other party or when social cohesion in the community is of primary importance. CDR processes encourage dialogue and communication between the parties and help reach a solution acceptable to both parties. It is important to note, however,

Collaborative Dispute Resolution – Perceived advantages and disadvantages for women**Advantages for women**

- ▶ Inexpensive
- ▶ Encourages dialogue between the parties
- ▶ Encourages adherence and acceptance by both parties to final decision
- ▶ Can be consultative
- ▶ Outcome can be seen as 'win-win' as each party is often given the chance to present their side of the dispute

Disadvantages for women

- ▶ Person(s) leading the process are not trained in Collaborative Dispute Resolution
- ▶ Can be time consuming
- ▶ Decision is non-binding and not enforceable
- ▶ More likely to fail
- ▶ Problem may become worse due to poor negotiation / mediation skills
- ▶ Is often not confidential
- ▶ Bribes can be used to influence process

Sources: Focus Group Discussions

that women might agree to an outcome that is not necessarily in their interests if they feel that there are no other solutions or options available. In the FGDs respondents identified advantages and disadvantages for women as set out above.

Ultimately women seeking to claim their HLP rights or resolve a dispute need to themselves decide which process to use depending on their needs and individual circumstances. Providers of legal information and assistance should help identify all the available options and support whichever choice women make.

FINANCIAL BARRIERS AND CORRUPTION

4.8

Prohibitive Costs

As we have seen, costs involved in the allocation and registration processes of land or in taking a case to court are extremely high. Financial costs were mentioned in all FGDs as a main barrier to women being able to access land and housing. Humanitarian actors and other agencies lack the funds to pay for fees related to the registration of land or the costs associated with pursuing legal action via statutory courts and, in any event, they cannot be expected to cover such fees. A more sustainable solution is required, through, for example the development of a government scheme to waive fees for land registration for vulnerable households who are unlikely to be able to afford registration costs or a general reduction of fees which most South Sudanese find prohibitive.

Corruption

Many FGD participants cited corruption as an impediment to many land tenure options, particularly during land demarcation, allocation, surveying and/or registration processes. It was reported that women are more vulnerable to extortion for bribes or being illegally dispossessed of their demarcated plot than men. Some women, especially those with limited or no literacy, do not understand the process and may inadvertently sign away their demarcated plot during the registration procedure. There have also been reports of forged documents being created for land that has already been allocated. Legitimate title holders have no option in such cases except to lodge a complaint with the Ministry of Physical Infrastructure, but they may be unwilling, or lack the resources to do so.

Both men and women are concerned about corruption. The proportion of respondent men and women reporting that the process of land surveying is corrupt and unfair is 72 per cent and 78 per cent respectively. In FGDs, it became clear that the consequences and costs for women are significantly higher than for men:

- Women felt less comfortable in questioning government officials and chiefs about their demands for payment.
- Women are seen as easy targets by unscrupulous men who target women living by themselves.
- As women are less likely to be literate, they are unable to read documents and confirm that their names and details were correct.

Examples of corruption cited included:

- payment of bribes to land surveyors to falsify and/or change documentation (names and/or plot number)
- illegal 'fees' added to surveying and registration processes by government officials
- chiefs' demands for money prior to allocation of land
- evidence that chiefs and the government assign particular plots of land to multiple persons
- women being duped by 'friends' and family into giving documents to people who promise to help them register land only to find that they register it in their own name
- women paying money to people to help them buy land or register land only to find that nothing happens and the money disappears.

Corruption by chiefs and traditional leaders is commonplace. Respondents reported that one party often bribed chiefs so that customary court rulings were in their favour. This buying of 'justice' weakens the way in which the wider community views and respects chiefs and traditional leaders. It remains unclear whether chiefs are more corrupt when dealing with cases of returnees when s/he is not known by the community and therefore lacks a pre-existing relationship with the chief.

INCREASED RISKS OF GENDER BASED VIOLENCE

JOSEPHINE & MARY

Josephine's daughter Mary was married at 16 while she and her mother were in Khartoum. Her father was convinced by the family of a mentally disabled man to agree to her marriage and they offered a large and much needed sum of money as partial payment of the bride-wealth. The family promised to provide for Mary throughout the marriage, knowing that her husband, their son, could not do so due to his poor health. According to Josephine this did not happen, and the family mistreated Mary to such an extent that she repeatedly ran away. Each time she was forced to go back by her father to her husband as her family could not return the bride-wealth.

In 2011, Josephine and Mary, along with Mary's daughter, travelled back to South Sudan, with the promise that Mary's husband would follow soon after with his parents and siblings. Upon returning to South Sudan they settled in an area of non-demarcated land that had been designated by the government and the UN for returnees. While life was difficult, they were happy to be back in South Sudan and

Mary was especially happy to be (temporarily) free from her husband and his family, who seemed to have chosen not to return and therefore abandoned her.

Within months of arriving, Mary was approached by a single man living nearby, who proposed marriage. Despite Mary refusing his advances, he persisted, until eventually in late 2011 he kidnapped Mary, hiding her for a month during which time he repeatedly raped her. After a month the perpetrator came with Mary to Josephine's house, where it was decided by the families that Mary would now have to marry the perpetrator, as her value had already been taken. The perpetrator's family agreed to pay a fine, which was significantly less than what the bride-wealth would have been.

Prior to the forced marriage, Mary died of an asthma attack, thought by Josephine to have been brought on by the trauma she had faced. The perpetrator was not charged with the kidnapping or rape and remains in the community where Josephine is currently living. She is unable to move anywhere else.

CASE STUDY 3

The focus of this research was not to measure or capture instances of physical, sexual or psychological violence directed against women. However, it quickly became apparent throughout the data collection phase that these forms of violence, in addition to economic and harmful traditional practices, are a serious concern, one which is directly linked to the lack of security of tenure for women.

In every FGD there were reports by women that:

- ▶ They had been verbally or physically threatened by host community members, male relatives or male soldiers over the land they were using.

- They felt unsafe in their current housing situation and feared sexual and armed violence.
- They knew of women who were staying in an abusive relationship because they had nowhere else to go.
- They had, or were considering, arranging for their daughters to marry so they could use the bride-price for basic housing provisions.
- They knew of women and girls who were selling sex as a means to pay for accommodation. (NB: this was reported only in Juba)

It was found that returnee women were much more likely than returnee men to experience HLP related violence – 71 per cent of female respondents reported having experienced some form of violence, compared with 39 per cent of men.

FIGURE 6: Percentage of women and men that reported having experienced threats from host community regarding the land they are staying on.

39% of Men experienced threats

71 % of Women experienced threats

Source: Focus Group Discussions

When asked about gender based violence (GBV), only 22 per cent of male respondents believed that GBV is an issue in their community but 67 per cent of women did so. This clearly shows that this is a much higher concern for women than for men.

Each of the case studies (presented in boxes throughout this report)⁷⁹ has an aspect of violence. The case studies exemplify a number of little-known realities faced by women. They show:

- Women’s vulnerability to particular forms of violence, known to be linked to HLP, but not reflected in the HLP literature.
- Many women, particularly young women, resort to using the only ‘asset’ they have – their bodies. In some cases this may involve a woman engaging in survival sex but often it reflects more the value placed on women and women’s desire to secure a safe and respected place in society.
- Conflict has had a major impact on marital customs. The inability of many young men, particularly those who have been displaced or are returnees, to meet the impossibly high obligations of bride-price, has led to a surge in the number of young men of marriageable age resorting to kidnapping women so as to force a cheaper marriage arrangement.

⁷⁹ N.B. Please note that no real names are used in the case studies.

Exposure to gender based violence increases as security of tenure decreases: women who are forced to squat illegally on land are at greatest risk of verbal, physical and/or sexual abuse. This is due to a variety of factors, not least their lack of physical security, many living in makeshift tents without locks or sometimes even walls, in an environment in which community norms and social pressures may no longer regulate male behaviour. The resultant constant fear of male violence is likely to have a significant impact on a women's mental health and her ability to plan for her own future and that of her children.⁸⁰

THELMA

By the time Thelma was ten her family had already been displaced at least four times. At the age of 11 her father and several of her siblings were killed. Within a year her mother had re-married. Her stepfather refused to take care of her, so she was sent to her paternal grandparents. By the age of 14 they had both died, leaving Thelma to fend for herself.

Having been forced to live on the streets of Juba for almost two years, Thelma decided that her best option to secure some sort of protection and future was to use the only 'asset' she had left – her body. She thought if she was to have a child the father and his kin would be forced to take her in and make her a part of their family. So she began a sexual relationship with an older boy she had met at a bar and quickly became pregnant. When she told the boy and his family, they chased her away, stating that they had no responsibility for her or the baby as there had been no marriage and no payment of bride-wealth.

Since giving birth Thelma has been living with twelve other women and men in a one-room shelter made of wooden sticks and plastic sheeting built on the side of the road in a main part of Juba. In the last twelve months the government has forced them to move three times, destroying their shelters and, often, their possessions. As neither the government nor aid agencies have provided her with any sort of land or shelter, there is nowhere else that she can go: she does not know how to contact her mother, and knows of no other relatives that she could go to. With no male relatives to advocate on her behalf, it is unlikely that the father of her child will ever provide support. Having had a child outside of wedlock, it is also unlikely that another man will agree to marry her.

Without significant support from the government or an aid agency, it is likely that Thelma will be forced to beg or engage in survival sex so as to provide even the most basic forms of support to her child.

CASE STUDY 4



80 Mental Health of Refugees, Geneva, WHO/UNHCR, 1996, <http://www.unhcr.org/3bc6eac74.pdf>

4.10

URBANISATION AND COMMERCIALISATION OF LAND

One of the main reasons given by women in the FGDs as to why they were not living in the area of their husband or father was their desire to be near services such as schools, water pumps, markets and health centres. During their exile, whether in Sudan or as refugees abroad, they had become accustomed to having access to such facilities. An FGD participant expressed a widespread sentiment:

“I don’t want to live out there. My children need to go to school and we need clean water and markets. I have been to the village and there is nothing there! Nothing! I cannot live there.”

In urban areas women are increasingly responsible for providing for their families, particularly when their husbands are unemployed, have been laid off or are only receiving irregular salaries as soldiers or civil servants.⁸¹ Many women indicated a willingness to go to their ancestral land if essential services were available there. However, understandably international aid agencies and the GoSS will only feel compelled to provide such resources and services once a suitably sized population is in situ. Equally understandably, people will not relocate unless the services are up and running.

The commercialisation of land in urban and peri-urban areas has also resulted in considerable extra difficulties in accessing land by returnees, displaced people and even poorer residents and host communities. For women, who are more likely to be both culturally and financially at a disadvantage compared with men, the impact of this is widespread. Women are more likely to be forced to relocate to more insecure locations, to lose support of a known community, to have reduced access to or entirely lose subsistence gardens/crops and to have to spend more time in collecting water and firewood. Additionally, they are less likely to benefit from any financial payment made by commercial entities for the purchase or rent of the land.

NRC’s research on customary law in South Sudan⁸² supports the observation that traditional systems of land tenure have changed due to increased pressure on land and the interests of the government in owning and controlling greater areas of land. Surveying and titling efforts have interrupted traditional patterns of land use and created opportunities for both rent-seeking and inequitable distribution of land. A disproportionate number of the victims are returnees or women.

4.11

HOMELESSNESS

It was found that almost twice as many women as men find themselves homeless, without access to land or secure accommodation. Women were also more likely to report problems claiming inheritance rights and to be evicted by their family, the community or the government. This

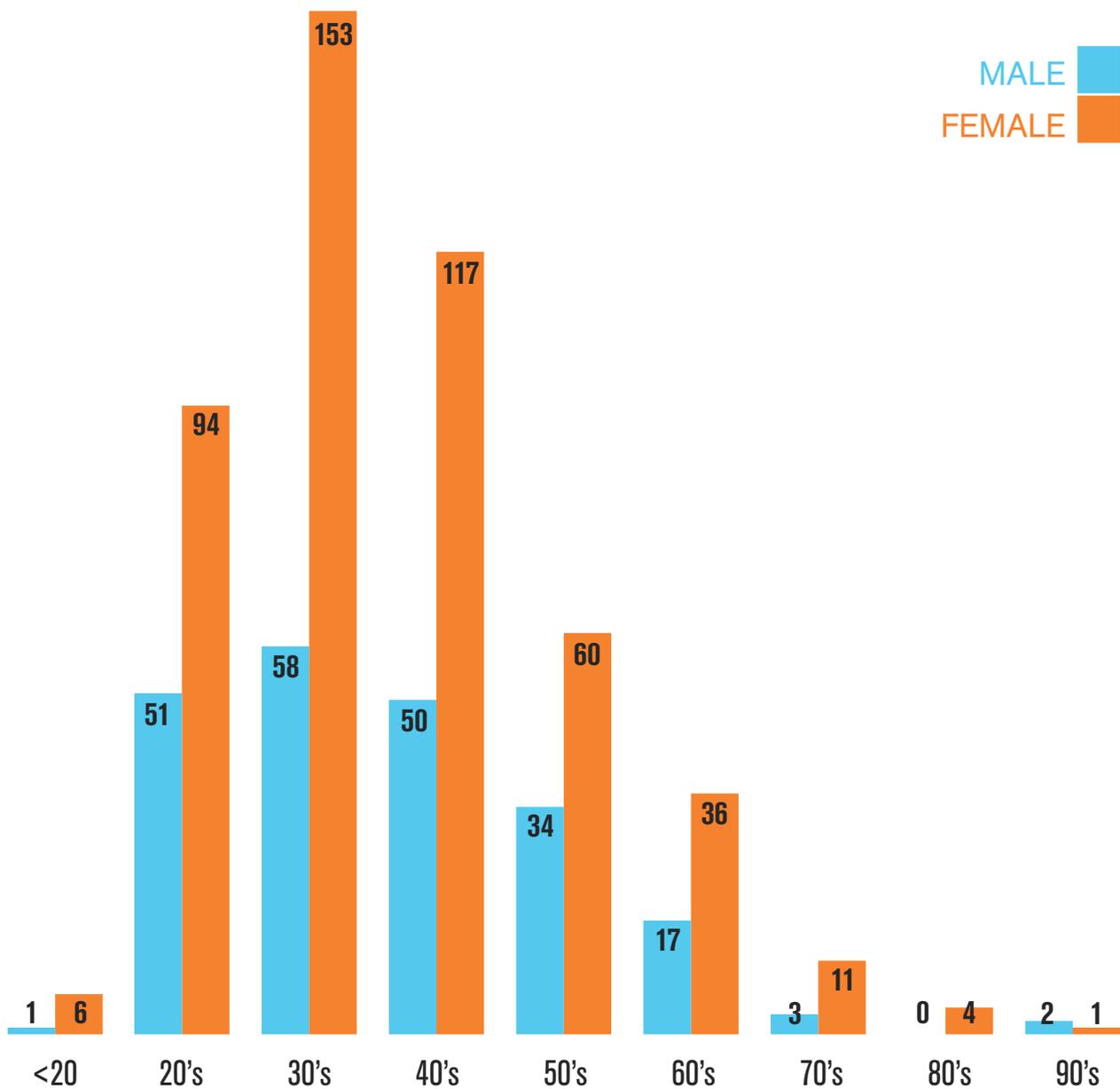
⁸¹ Martin and Mosel, *op. cit.* p.14.

⁸² Mennen, *op. cit.* , p.10.

indicates that while (some) women are aware of their rights, they are not able to enforce or benefit from them.

With higher numbers of widows and single women returning to South Sudan, it is not surprising that more women than men have contacted NRC in need of some form of shelter assistance. This could be for shelter materials for repair to already existing shelters; to build a new shelter on land they have accessed through chiefs, the government or families or for a new shelter on new land due to eviction, displacement or occupation.

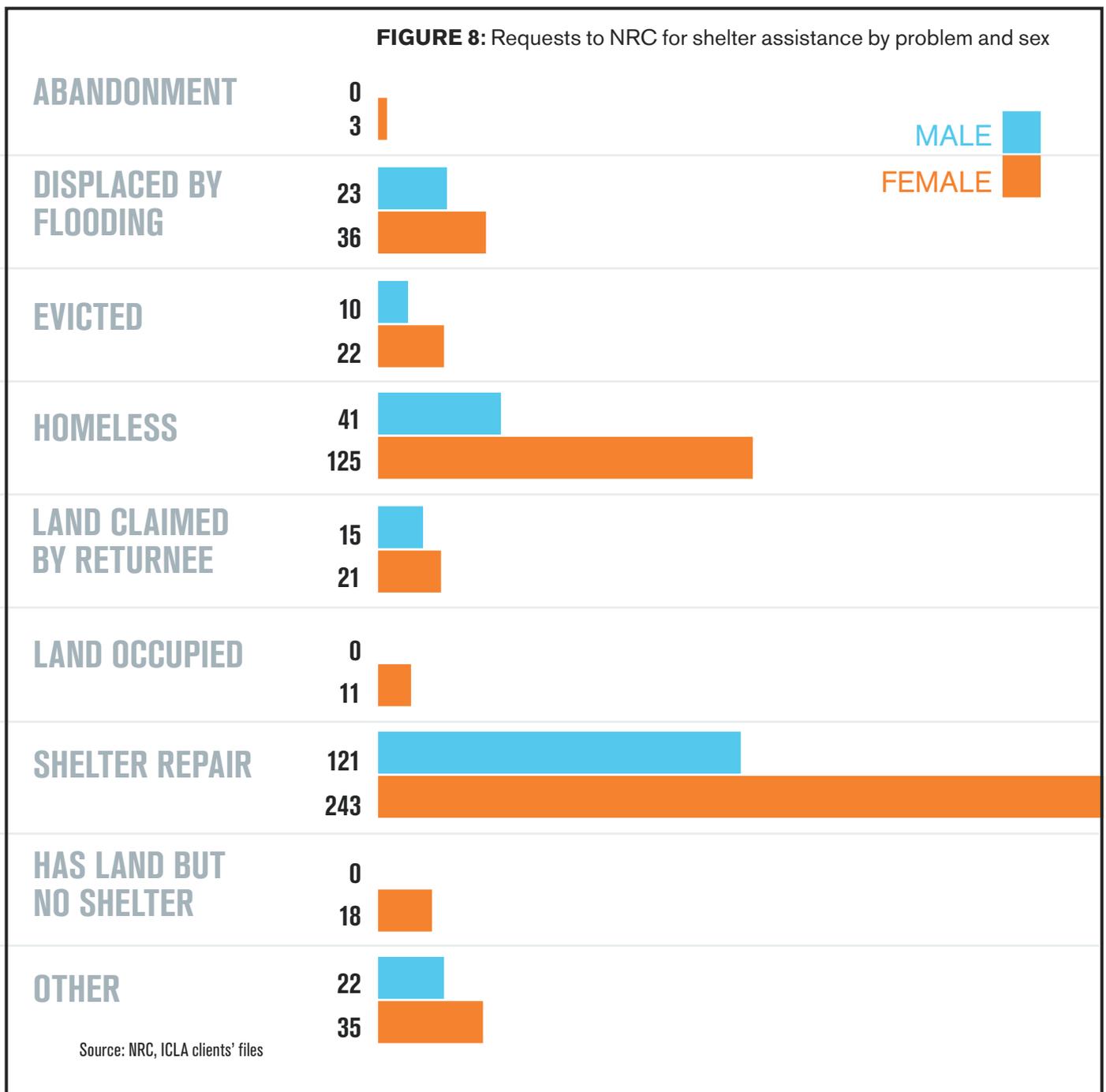
FIGURE 7: Breakdown of requests to ICLA for shelter assistance by sex and age



Source: NRC, ICLA clients' files

Of the 705 requests for shelter assistance recorded by the ICLA programme in CEq, Warrap and NBeG during 2009-2012, 501 were from returnees, 139 were from host community members and 65 were from IDPs. A total of 406 cases were reported by women, compared to 219 by men. The majority of these were women in their thirties or forties.

In CEq, more than half of the 85 reported cases were by those over 40, 21 by women between 50-60 years of age and seven by women over the age of 70. It is unclear why so many older women in CEq, were in need of shelter assistance. This raises the question of what, if any, special challenges older women in particular face in securing access to adequate and safe housing.



More than a third of the cases were reported by women who were in need of shelter repair. However very few could be referred to the NRC Shelter programme due to the insecure rights the women had regarding the land on which the shelter in need of repair was built. Many women are illegal squatters or on land that has not been formally allocated to them via the government or a chief.⁸³ The second most common request for shelter assistance was by homeless women, who were likely to be sleeping in very temporary structures, usually plastic sheeting under a tree.

HUMANITARIAN ACTORS MAY REINFORCE DISCRIMINATION AGAINST WOMEN

4.12

The international humanitarian community continues to debate whether its role is to seek to restore the conditions of a population that has experienced conflict to pre-conflict levels or to seek to 'build back better', to try to achieve results in line with international principles and development aspirations. This debate is particularly acute when it comes to responsibility for shifting gender roles and discriminatory customary practices. Some humanitarian actors may not want to address such issues, arguing, often incorrectly, that they are too difficult, too costly and too time-consuming. However, the reality is that there can be no peace without women's equality. While this debate is likely to continue for some time it should be agreed that humanitarian actors have a responsibility to at least not reinforce existing discrimination.

UN Habitat has noted that conflicts can provide opportunities for advancing women's rights:

*The absence from their communities compels women into decision making roles... (this experience) coupled with the discrimination women encounter in the post conflict situation with respect to land, housing and property has resulted in the emergence of women's organisations that are focused on women's livelihood issues including women's rights to land, housing and property.*⁸⁴

Women in the FGDs frequently reported that humanitarian organisations regularly failed to consult with women and men equally, did not try to ensure that women benefited equally from projects and failed to follow up on community-led projects where women were meant to be meaningfully included. This was especially the case for shelter assistance projects. It was reported that several INGOs worked only with traditional leaders/chiefs, relying on them to identify vulnerable households, or to distribute shelter repair kits (mostly iron sheets for roofs).

I am tired of these groups coming and only asking for the chiefs! Chiefs, chiefs, chiefs, that's all they want... I am sick of it. When are they going to realise that the chiefs are not honest, that they are not helping

⁸³ Interviews with NRC Shelter ICLA programme managers

⁸⁴ UN Habitat, 1999. Women's Rights to Land, Housing, and Property in Post-conflict Situations and During Reconstruction: A Global Overview, p.3. http://www.unhabitat.org/downloads/docs/1504_59744_Land.pdf2.pdf

us women? You see all these new iron sheets? How many of these houses are owned by the chief and his family and friends? Many! (FGD participant)

By assuming that they must work only with or via chiefs, humanitarian organisations are not only reinforcing the authority chiefs have over women but they are also missing an opportunity to encourage (and perhaps even force) a shift in discriminatory HLP beliefs and customary practices.

It was also found that fewer women than men reported knowing about the Land Act a critical document outlining procedures for land management which can be used by women when trying to claim their land rights in statutory or customary courts. This indicates that there is a need for humanitarian and development actors focusing on land rights awareness and training activities to ensure not just that they train equal numbers of women and men, but that they prioritise the training of women.

The system for surveying and registering land similarly discriminates against women. They are often less informed of their rights when customary land tenure transitions to private land tenure as a result of the application of statutory law. NGOs can play a leading role in informing women about their rights, protecting vulnerable women and families through ensuring that the women are aware of the need to register their land and thus achieve security of tenure and the right to pass the land down to their daughters.⁸⁵

Insufficiency of identification documents is another key obstacle. For many repatriated refugee families the only documents they have are those given to them during displacement, such as family registration cards issued by the Office of the UN High Commissioner for Refugees (UNHCR) or family ration cards. Typically, such documents were allocated to heads of households, with the husband automatically being assumed to be that person. If the male has since died, divorced or abandoned his wife or even stayed in the county of asylum, the woman is unlikely to have such documents, adding an additional step to this process.

4.13

INSUFFICIENT CONSULTATION WITH WOMEN

Global experiences in land reform efforts highlights some of the common pitfalls of land reform in post conflict settings if a women's rights analysis is not placed at the forefront. A World Bank review of land administration projects notes:

There has been a lack of understanding of the complexity and diversity of land tenure patterns, including women's rights, by most land administrators, by project managers, and by those providing technical assistance... There is a belief that addressing gender issues only means issuing titles or co-titles to women, with little appreciation, for instance,

⁸⁵ Mennen, op. cit. , p.10.

for what happens (a) in subsequent transactions, (b) in enforcement and actualization of those rights, (c) in realizing the benefits that may stem from formalizing women's rights..., and (d) in altering decision-making powers within households.⁸⁶

In South Sudan women and women's civil society groups do not consider they have been sufficiently involved in the development of the draft Land Policy and as a result do not feel ownership of this process.⁸⁷ In FGDs, women community leaders reported that consultation has been piecemeal and tokenistic, with little opportunity for women, particularly grass roots community leaders, to contribute to land reform consultations. They felt that any meetings that were held were regarded as tiresome add-ons, as decisions had already been made. Women interviewed considered that power brokers have little understanding of the structural inequalities that many South Sudanese women face. This exclusion of women, particularly returnees, has resulted in women feeling disconnected to their community and country, disempowered and not being in control of their immediate and long-term future. Many women in the FGDs reported feeling lost, unsure of their rights and not knowing whom to turn to.

The failure to sufficiently involve women is a departure from procedures enjoined in the UN Security Council Resolution 1325 – *Women, Peace and Security*.

- ▶ Article 1. Urges Member States to ensure increased representation of women at all decision-making levels in national, regional and international institutions and mechanisms for the prevention, management and resolution of conflict.
- ▶ Article 8. Calls on all actors involved, when negotiating and implementing peace agreements, to adopt a gender perspective, including inter alia:
 - c) Measures that ensure the protection of and respect for human rights of women and girls, particularly as they relate to the constitution, the electoral system, the police and the judiciary.⁸⁸

NON-RATIFICATION OF KEY HLP AND GENDER-FOCUSED HUMAN RIGHTS INSTRUMENTS

4.14

Human Rights Watch notes that South Sudan “has yet to ratify major human rights treaties, despite repeatedly saying it would do so.”⁸⁹ In late 2013 South Sudan's National Legislative Assembly passed bills for the ratification of two major international instruments, the *Convention on the*

⁸⁶ World Bank, 2005, A Guide to Gender Issues and Best Practices in Land Administration Projects: A Synthesis Report World Bank; Agriculture and Rural Development Department, p. 18. http://siteresources.worldbank.org/INTARD/Resources/Gender_land_fulltxt.pdf

⁸⁷ The Draft Land Policy notes that “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”, p.2.

⁸⁸ <http://www.un.org/womenwatch/osagi/wps/>

⁸⁹ See: <http://www.hrw.org/africa/south-sudan>

*Rights of the Child (CRC) and the Convention against Torture (CAT).*⁹⁰

While this is very welcome, there are still many instruments awaiting ratification. Of particular importance for the protection of women's HLP rights are the *Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)*, the *International Covenant on Economic, Social and Cultural Rights (ICESCR)*, and the *International Covenant on Civil and Political Rights (ICCPR)*. Failure to formally adhere to international human rights norms weakens advocacy initiatives to improve the rights of women and girls in South Sudan.



⁹⁰ See: <http://enoughproject.org/blogs/worlds-youngest-nation-passes-two-un-conventions>

5. CONCLUSION

Conflict and displacement has created a window of opportunity for change in South Sudan but the reality for most women seeking to actualise HLP rights is grim. Conflict has changed the fundamental structure of contemporary society, requiring many women to support families and to negotiate access to land by themselves. They are often severely handicapped in trying to do so by gender discriminatory practices. This is despite the fact that the concept of gender equality in access to land is guaranteed by the 2011 Constitution and the 2009 Land Act and the fact that the Constitution makes clear the precedence of statutory over customary law.

South Sudan is not the only conflict-affected state to have referenced its constitution as a basis for laws to legally support the rights of women and girls but which is yet to see the laws implemented in practice.⁹¹ From a women's rights point of view it is critical to monitor exactly how law is being applied and whose beliefs, habits and values are reflected in the way it is interpreted. Well-intentioned laws may be indirectly discriminatory when they fail to correct discrimination. Indirect discrimination occurs when a law or policy that applies to everyone particularly disadvantages women because of their social status and different gender roles.

Since independence, the GoSS has enacted legislation to attempt to systematise the governance of land. Much remains to be done, for "despite positive legislative frameworks, the land sector continues to be poorly governed, due to a lack of transparency and accountability, gender bias and discrimination."⁹² For the South Sudanese land reform process to promote equitable development, it is crucial that policy makers acknowledge gender inequalities and recognise, and enforce, women's equal rights to land. In South Sudan and in other post-conflict settings simply passing legislation will not necessarily translate to better HLP rights for women or greater ability to utilise statutory law, nor will it ensure their increased protection from violence. There is a long way to go before the protection afforded to women in HLP rights set out in law and draft policy becomes a reality for South Sudanese women.

91 See, for example, Afghanistan Research and Evaluation Unit, 2013, *Women's Rights, Gender, Equality, and Transition: Securing gains, moving forward*. <http://www.areu.org.af/Uploads/EditionPdfs/women%20and%20Transition.pdf>

92 Naidoo et. al., op. cit., no page number.



RECOMMENDATIONS

The GoSS, with the support of NRC and other INGOs, should embrace the opportunity that a post conflict environment presents to improve the rights and lives of women and girls. The goal should not be re-establishment of pre-conflict conditions but a transformative, progressive, inclusive and equitable environment to promote women's HLP rights.

The following recommendations, some of which are consistent with the recommendations in the draft Land Policy, are practical steps for achieving that goal:

TO THE GOVERNMENT OF SOUTH SUDAN

- ▶ Sign, ratify and accept the obligations set out in key international instruments supporting women's right to adequate housing: the *Convention on the Elimination of All Forms of Discrimination Against Women* (CEDAW); the International Covenant on Economic, Social and Cultural Rights (ICESCR); and the *International Covenant on Civil and Political Rights* (ICCPR)
- ▶ Adopt the draft Land Policy and implement all necessary measures identified therein to increase women's realisation of their HLP rights
- ▶ Conduct gender training for officials and leaders of relevant government and non-statutory bodies involved with the rule of law and land-related administration in order to promote a better understanding of the needs of women and specific risk of discrimination in protecting and securing their land rights
- ▶ Ensure that statutory law provisions promoting equal rights for women to land are applied by customary courts; including through training of customary authorities to increase their knowledge of statutory law
- ▶ 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 (divorcees, widows and daughters)
- ▶ Identify and advocate for changes in customary practices which are gender-discriminatory and in violation of constitutional and statutory provisions guaranteeing women equal property rights.
- ▶ Ensure that clear and accessible mechanisms for land administration and management are established and maintained to protect women's rights to land in order to address the widespread corruption among land actors widely reported by informants. Allocation of plots and process of demarcation, surveying and registration must be made more transparent. There must be greater focus on informing the wider community on these processes and particularly on ways of submitting complaints and appeals.
- ▶ Develop programmes to train, recruit and mentor women in land administration and adjudication roles ensuring their needs are heard, addressed and incorporated into land sector policy reform
- ▶ Establish programmes to monitor compliance with laws requiring the adequate representation of women on governing bodies, including local committees dealing with land issues
- ▶ Develop immediate and long-term assistance strategies to support the significant numbers of returnee and displaced women who are landless and/or homeless
- ▶ Explore reducing fees or possible ways of waiving fees for the surveying and registration of land, especially for vulnerable households who are unlikely to be able to afford to register their land. In other cases, where households are currently not in a position to register land due to the significant cost involved, develop alternative means of providing security of tenure until such households are in a financial position to register land.
- ▶ Conduct research to assess the level of discrimination and exclusion of women from government-supported land surveying and demarcation processes.

TO UN AGENCIES, INTERNATIONAL NGOs AND DONORS

- ▶ Create safe spaces that encourage women, particularly those that are acutely vulnerable, to seek out information on their rights and how to participate in land reform and leadership processes. Advocating for women to take on leadership and decision making positions may ensure that women's needs are heard, addressed and incorporated into land structural and policy reforms.
- ▶ Support women's community-based organisations as they are often overlooked or ignored in favour of international and national-level organisations working on HLP. It is important to recognise that women are in fact already engaging in community-based initiatives relevant to HLP reform. These need to be better understood so that they can be supported more effectively.
- ▶ In accordance with the finding concerning increased links of GBV associated with women's tenure insecurity, collaborate with Violence against Women (VAW) actors. It is crucial that HLP-related programmes avoid treating gender as an issue separate from all others, thus potentially further marginalising survivors of violence. By working with anti-VAW actors, HLP-related programmes would be more likely to comprehensively meet the needs of women and girls who report violence.
- ▶ Document further findings regarding the extent of the problems faced by women, in particular returnees, as regards their inability to afford to register land allocated to them, thus achieving security of tenure, and use this to support evidence-based advocacy.
- ▶ Support the GoSS to find alternative means of ensuring security of tenure until such women are in a position to afford registration.
- ▶ Legal assistance providers should follow up on land allocation schemes to support women heads of households and widows, in recognition of their greater risk of discrimination, corruption and overall lack of access to land administration processes.
- ▶ Support authorities in the survey and demarcation of land with the aim of preventing or minimising corrupt and gender discriminatory practices.
- ▶ Ensure that discriminatory customs are not reinforced by working solely with chiefs when planning awareness raising and training activities on land rights and for shelter allocation and distribution. All actors providing services to returnee and displaced communities must work directly with returnee and displaced women and not primarily with chiefs and men.

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APPENDICES

APPENDIX 1. METHODOLOGY AND BACKGROUND TO PROFILED COMMUNITIES

CHARACTERISTICS OF COMMUNITY AT TIME OF RESEARCH

CENTRAL EQUATORIA	Obama 11 women 9 men	Obama is an area of mostly returnees. They have a customary right to the land, thus reducing scope for land disputes. Land is scheduled to be fully demarcated and surveyed by the GoSS
	Gudele 8 women	Women included in this focus group all returned as a group from Khartoum. They are living on the ancestral land of their husbands, who were able to maintain ties to the community.
	Gudele East 13 women	The women in this group were all returnees, living on land to which another community had communal rights. They settled on this land spontaneously, and are all living on non-demarcated plots.
NORTHERN BAHR EL GHAZEL	Northern Bari 12 men	These men have all been displaced multiple times – originally due to the war (fleeing from South Sudan to Sudan). Upon return they went back to the land of their ancestors, only to find that others had taken control of choice plots of land adjacent to roads and water. They set up a small community. A neighbouring clan has since raided their cattle and taken this new land. They are all now squatting illegally with their families in a graveyard close to Juba town.
	Apada 27 women	Aparda is an area of high returnees with some host residents. The majority of returnees arrived in 2011. When the hosts – who like the returnees are Dinka, but not of the same clan – initially agreed for them to come they thought it would be only for a short time. Now the host community is seeing the potential for financial gain from land allocation. Potential for land conflict is very high. Returnees are more aware of land rights and want to see customary processes changed – as they are seen as being unfair. Hosts are worried about the returnees exhausting their limited supplies of water, firewood and arable land.
	Maper 19 men	Maper is a mixed locality of returnees and host community. Around 60 per cent of the population is composed of returnees. There are several ongoing land disputes, many of which began in 2011. NRC has an ICLA centre in Maper East.
WARRAP	<i>Block 25, Mayen Gumel</i> 17 women 16 men	Mayen Gumel (referred to as 'Khartoum Gadeet' – New Khartoum – by the returnees), is a large parcel of land allocated to the predominantly Dinka returnees by the state government in consultation with the local chiefs. This area is home to approximately 35,000 returnees. After negotiations between the government and chiefs, the land was surveyed and plots allocated to returnees. It was expected the returnees would follow authorised plot allocation procedures – which requires financial payment. This is a significant stress for most returnees, as they cannot afford to do so. There is also tension between the host and returnee communities regarding the name of the area.
	<i>Block 14, Mayen Gumel</i> 13 men	Block 14 is primarily comprised of returnees from Khartoum, as well as host community members. It is situated in the centre of the blocks into which Mayen Gumel is sub-divided, and as a result it benefits from access to a wider range of services, including schools, water points, a police force and a large market. This has resulted in resentment from residents of other blocks who feel that most services for returnees are concentrated in Block 14. There is considerable tension between returnees and host community members in Block 14. One major issue at the time the research is that the returnees' plots were sold to host community members by the Ministry of Physical Infrastructure, and the host community then asked the returnees to leave. Also, returnees in Block 14 often complain that they cannot cultivate their plots because members of the host community seek to restrict such agricultural usage of the land by returnees. Returnees also complain that the host community do not respect their title deeds, and often contest ownership by asserting that the particular plots are situated on their ancestral burial grounds.

In addition to focus group discussions (FGDs) the following stakeholders were interviewed:

Policy Makers and Policy Implementers

Interviews (face to face and via phone), discussions and open ended conversations were held with a range of government representatives from the Ministry of Housing and Physical Planning (MoHPP), Ministry of Justice and Ministry of Health and Social Welfare and HLP/gender specialists from the UN and INGOs

NRC Staff

As a leading implementer of HLP programmes within South Sudan since 2004, NRC staff possess a wealth of information on the current HLP needs of women and men; the changes in respect of HLP laws, policies and needs across time; as well as a deep understanding of the gendered cultural traditions and practices that govern the people of South Sudan.

Community Leaders

Semi-structured interviews were conducted with community leaders (both self- appointed and elected); these included chiefs and senior representatives of formal and informal community based organisations. Participants were asked about their understanding of the laws relating to HLP in South Sudan and the perceived challenges facing women and separately men in accessing their HLP rights under customary and statutory laws.

Individuals

With the assistance of NRC ICLA staff a total of ten women and five men were identified to be interviewed to provide in depth information that outlined the personal experiences that each had in fleeing their homes during the war, returning to the newly created state of South Sudan and in their personal journeys in accessing their HLP rights. Case study participants represent a range of geographical locations and specific challenges that affect HLP rights and that are known to be common in South Sudan.

Field research was complemented by document analysis looking at how the concept of HLP and the needs of the people of South Sudan (women and men) are conceptualised. It also served as a basis for comparison between policy, programme priorities and actual activities and realities.

On a cautionary note, it is acknowledged that analysis is based on a relatively small sample of informants who may not necessarily be fully representative of the situation of all displaced and returnee women. Nevertheless, we have confidence that the findings are broadly indicative of the current situation and challenges that returnee and displaced women are facing in relation to housing land and property rights in South Sudan.

For further information about the methodology employed and the enforcement of ethical standards see Appendix 1.

The researcher used both qualitative and quantitative approaches

to obtain a snapshot of the current challenges faced by returnee and displaced women in relation to HLP rights. Methods and tools were iterative and adjusted and refined as the research evolved.

The data collection phase of the research began with an analysis of policy documents focusing on women's HLP rights in South Sudan. Documents were analysed both through the perspective of policy-makers and implementers and also via the experiences and perceptions of a broad sub-section of South Sudanese women and men.

This assessment used a flexible iterative approach that combined triangulation and feedback at various intervals. Data collected in earlier stages of the research informed, and was tested against, data from later stages. The data was thus continuously analysed and the methodology refined.

Qualitative, rather than quantitative, methods were primarily used due to lack of reliable data from agencies concerned with HLP issues. Qualitative methods better enable the voices of women to be heard

We examined documents from the Government of South Sudan (GoSS), the UN and those of NRC/ICLA to judge the extent to which women's rights are being addressed, indirectly or as a cross-cutting priority and to identify gaps. Researchers sought to determine how the concept of HLP and the needs of the people of South Sudan (women and men) are conceptualised and what rhetoric is used.

A total of 76 women and 69 men participated in the 10 focus group discussions (FGDs), from which the bulk of this report and subsequent recommendations are derived. In view of this relatively small sample size from such a vast nation this report should, be seen, as a *possible* indication of the most common challenges South Sudanese women have in accessing their HLP rights.

We additionally reviewed 328 requests for assistance by returnees, IDPs and host community members (188 by men, 140 by women) made to NRC's Land and Property team between January 2011 and September 2012.

Range of interviews

Interviews – either in person or by phone – were held with a range of GoSS representatives – including the ministries of Housing and Physical Planning, Justice, Health and Social Welfare. We also interviewed HLP and/or gender specialists from the UN and international non-governmental organisations (INGOs). Such discussions initially focused on identifying if their opinions on women's HLP rights accorded with those found in the document analysis before identifying the programmatic initiatives and approaches they were implementing. All interviews began with an informed discussion and ended with open questions to allow participants to raise their own personal thoughts on HLP and other related issues. These interviews often evolved into open conversations, addressing a broad range of issues and challenges in addressing and meeting the HLP needs of women. Interviewers sought to focus primarily on the needs of internally displaced and repatriating refugee women.

Many informants saw their needs as similar, or of equal concern, as those of settled women who have not fled South Sudan’s recurrent conflicts.

NRC staff possess a wealth of information on the current HLP needs of women and men. Structured interviews, open ended conversations and assessments of project activities were conducted in all NRC ICLA field offices. Interviews with staff provided an opportunity to fill in gaps identified from the document review as well as assess how well staff understand, and find relevant, ICLA’s programme objectives.

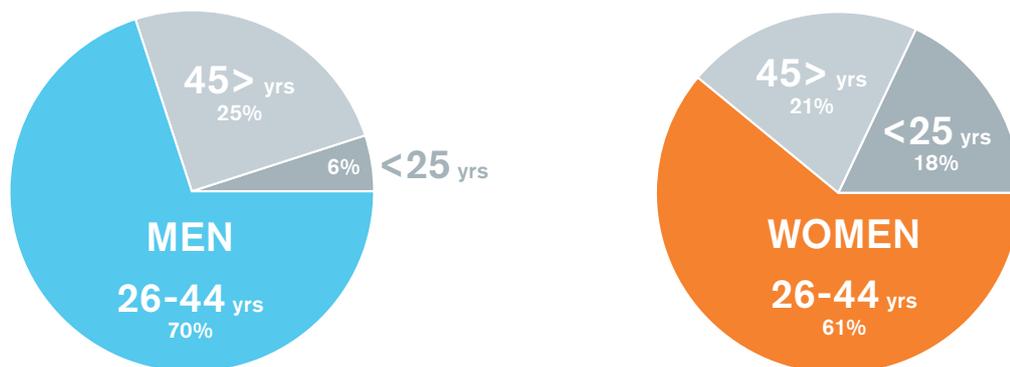
Semi-structured interviews were conducted with **community leaders** (both self- appointed and elected), including chiefs and senior representatives of formal and informal community based organisations. They were asked about:

- perceptions of and experience in working with NRC (if relevant)
- their understanding of the laws relating to HLP in South Sudan
- what they see as challenges facing women and men in accessing their HLP rights under customary and statutory laws
- their views on the effectiveness, sustainability and appropriateness of government and INGO HLP interventions
- what they saw as gaps in HLP needs in their community
- their recommendations for the government and international HLP actors.

Focus Group discussion

FGDs allow for the collection of a large amount of qualitative data in a shorter period of time as well and for robust discussion. By conducting separate focus group discussions with women and men discussions were more open, particularly when talking about sensitive issues like intimate partner violence and sexual violence. Discussions in the ten FGDs were animated, all participants expressing a willingness to participate and indicating such research was important to them and their community. Many FGD participants raised issues that had not been previously identified during the document analysis phase.

FIGURE 1: Age of FGD Participants by sex



Case study participants were not randomly selected. ICLA staff identified a sample of ten women and five men so as to represent a range of localities and particular challenges to realisation of HLP rights.

Research ethics

Ethical considerations shaped the research design. Researchers and NRC staff were concerned to ensure information collected was used in ways promoting protection for those at risk.

They ensured that:

- ▶ each individual gave informed consent to participate in the study
- ▶ informants had the right to refuse to participate and to withdraw from it any time
- ▶ participants were informed about the general purpose of the study and how information would be used
- ▶ participants understood prior to participating that they would not receive any kind of remuneration
- ▶ interviews were conducted in private, out of earshot of others
- ▶ researchers were aware that confidential information was not recorded, that photos could not be published, that names should not be linked to locations and that questions were to be asked for genuine research purposes, not just out of idle curiosity.

The researcher did not attempt to be a counsellor and was able to provide referral information to credible agencies. The researcher remained aware of possible biases introduced by the use of local translators.

Profile of those interviewed

The majority of those who participated in the research had been out of South Sudan for less than ten years (64 per cent of women; 36 per cent of men). This introduces a potential bias, as there are an extremely large number of returnees who spent more than a decade outside South Sudan.

Like so many South and Northern Sudanese –where one in five of the population has been displaced – many of those interviewed reported having been multiply displaced – within South Sudan, to the cities of Sudan and/or to Uganda, Kenya, Democratic Republic of Congo and Ethiopia. Three women who participated in key informant interviews had taken up third country resettlement in the United States and the United Kingdom.

More than half of the participants of the FGDs had attended an NRC ICLA training, thus making them more knowledgeable and aware of rights and laws relating to HLP.

APPENDIX 2.

INTERNATIONAL HUMAN RIGHTS LAW AND WOMEN'S HLP RIGHTS

International Law and Women's HLP Rights: Key Declarations and Instruments

The following international treaties and declarations are relevant:

- The **Universal Declaration of Human Rights** (UDHR)⁹³: Article 25(1) states that everyone has the right to an adequate standard of living including housing, and Article 17 provides that everyone has the right to own property without arbitrary interference.
- The **International Covenant on Economic, Social and Cultural Rights**⁹⁴ (ICESCR): Article 11(1) protects the right to adequate housing and Article 2(2) provides for non-discrimination.
- ICESCR General Comments No. 4 and 7 more precisely define the right to adequate housing.
- The **International Covenant on Civil and Political Rights**⁹⁵ (ICCPR): Article 17 protects persons from arbitrary or unlawful interference with their home. Articles 3 and 26 provide for non-discrimination and equal protection before the law.
- ICCPR General Comment No. 28 specifically addresses the equality of rights between men and women.
- The **Convention on the Elimination of Discrimination Against Women**⁹⁶ (CEDAW): Article 14(2) (h) obliges states parties to eliminate discrimination against women in respect of women in rural areas to ensure they enjoy adequate housing. Articles 15 and 16 provide for equality and for equality in property during and after marriage.
- CEDAW General Comment No. 21 provides for equality in marriage and family relations.
- The **International Convention on the Elimination of All Forms of Racial Discrimination**⁹⁷ (ICERD): Article 5(e) (iii) prohibits discrimination on account of race, colour or national or ethnic origin with respect to the right to housing.
- **The 1951 Refugee Convention**⁹⁸: Article 21 requires all State Parties to provide for access to housing on terms at least as favourable as that provided to all other aliens lawfully in the territory.
- **The International Convention on the Rights of the Child**⁹⁹ (CRC): Article 27(3) obliges states parties to provide assistance in the form of housing in cases of need.

93 <http://www.ohchr.org/en/udhr/pages/introduction.aspx>

94 <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>

95 <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>

96 <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CEDAW.aspx>

97 <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CERD.aspx>

98 <http://www.ohchr.org/EN/ProfessionalInterest/Pages/StatusOfRefugees.aspx>

99 <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>

- ▶ **The Hague Regulations:** Article 43 provides the occupying power must generally respect the laws in force in the occupied territory and is prohibited from destroying property except to the extent needed to maintain orderly governance of the territory and for military necessity.
- ▶ **The Fourth Geneva Convention¹⁰⁰ (GCIV):** Article 53 of the Convention, which applies during armed conflict and occupation, prohibits the destruction of private property unless “rendered absolutely necessary by military operations”. Extensive destruction and appropriation of property not justified by military necessity and carried out unlawfully and wantonly is a war crime (Article 147 GC IV).
- ▶ Article 49 of GCIV prohibits the transfer of the occupying Power's own civilian population into the territory it occupies.

Relevant resolutions, principles and guidelines include the following:

- ▶ **Beijing Declaration and Platform for Action¹⁰¹:** paragraphs 8 and 36 provide for equality, paragraphs 26 and 35 provide for equal access to productive resources, and paragraph 65(b) provides for equal inheritance rights.
- ▶ **Habitat II Agenda and Platform for Action** Paragraphs 25(a), 26, 27, 40 and 46 address: adequate housing; equal access to housing, land and inheritance; legal security of tenure and integrating gender into human settlements.
- ▶ **UN Commission on Human Rights Resolution 2005/25:** ‘Women's equal ownership of, access to and control over land and the equal rights to own property and to adequate housing’.
- ▶ The **UN Basic Principles and Guidelines on Development-based Evictions and Displacement¹⁰²** reaffirm the importance of exploring feasible alternatives to evictions with affected communities, and of adequate notice and stringent criteria for displacement.
- ▶ The **Guiding Principles on Internal Displacement¹⁰³** set out the rights and guarantees relevant to the protection of IDPs in all phases of displacement, in the context of equal access to rights and prevention of discrimination.
- ▶ The Inter-Agency Standing Committee (IASC) **Framework on Durable Solutions for Internally Displaced Persons¹⁰⁴** recognises the need to address obstacles faced by women in accessing and using HLP assets in durable solutions settling.
- ▶ The **Principles on Housing and Property Restitution for Refugees and Displaced Persons [generally known as the Pinheiro Principles]¹⁰⁵**. broadened the scope of restitution to include ‘housing, land and property’. Principle 3 provides for non-discrimination and Principle 4 for the right to equality between men and women.

¹⁰⁰<http://www.icrc.org/ihl.nsf/385ec082b509e76c41256739003e636d/6756482d86146898c125641e004aa3c5>

¹⁰¹<http://www.un.org/womenwatch/daw/beijing/platform/>

¹⁰²http://www.ohchr.org/Documents/Issues/Housing/Guidelines_en.pdf

¹⁰³<http://www.internal-displacement.org/guidingprinciples>

¹⁰⁴<http://www.brookings.edu/research/reports/2010/04/durable-solutions>

¹⁰⁵http://www.ohchr.org/Documents/Publications/pinheiro_principles.pdf



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