



January | 2014

# South Sudan Synthesis Report

## Findings of the Land Governance Assessment Framework (LGAF)

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# Executive Summary

From March 2013 to August 2013, the South Sudan Law Society (SSLS), with the support of the World Bank, conducted a comprehensive assessment of land governance in South Sudan. The research was structured around the Land Governance Assessment Framework (LGAF), a tool developed by the World Bank and its partners to evaluate the legal framework, policies and practices relating to land governance in a given country. The assessment focused on seven thematic areas:

1. Legal and Institutional Framework;
2. Land Use Planning, Land Management and Taxation;
3. Management of Public Land;
4. Public Provision of Land Information;
5. Dispute Resolution and Conflict Management;
6. Large-scale Acquisition of Land Rights; and
7. Forestry.

The seven thematic areas are subdivided into 28 indicators and 108 dimensions. The indicators and dimensions were assessed through a series of nine panel discussions with in-country experts.

This draft report summarizes the main findings of the LGAF study. After Chapter One's introduction to the economic, social and political context, Chapter Two provides an overview of the LGAF methodology. Chapter Three summarizes the LGAF results across the seven thematic areas along with the LGAF scores and associated findings for each of the 108 dimensions. The final chapter provides concluding remarks and a list of policy options for Government authorities and their development partners to consider in their attempts to build a more functional system of land governance in South Sudan.

## Legal and Institutional Framework (LGI-1 to LGI-6)

South Sudan's underdeveloped legal and institutional framework reflects the difficulties that the country has faced in establishing effective governance and rule of law institutions after decades of conflict. Although significant legislative reforms have been made since the end of the war in 2005—including the passing of the 2009 Land Act and the 2009 Local Government Act—the laws remain largely unimplemented. Most land governance institutions operate according to procedures developed in the colonial era, and there is a wide divergence between law and practice. Bridging this gap has been one of the most difficult challenges of the postwar period. Institutional arrangements are also undermined by poor coordination among formal institutions at each level of government (horizontal overlap), between the three levels of government (vertical overlap) and between the formal and customary systems.

The ambiguous and unpredictable legal framework makes it difficult to develop standardized approaches to tenure formalization. Rudimentary processes are in place to formally register landholdings in urban areas, but aside from a few pilot efforts, the registration process has not yet been extended to landholdings in rural areas. Demand for land in urban areas has increased sharply since independence, and the registration process has not kept pace. The expense and inefficiency of the system prevents many people who have lived in Juba for decades from formalizing their rights and pushes newcomers into informality. Corruption and misgovernance further undermine the integrity of the registration process. Women's access to land is severely restricted in both formal

and informal systems, though there is some regional variation and women with financial means have been able to obtain registered plots in some urban areas.

### Land Use Planning, Land Management and Taxation (LGI-7 to LGI-11)

Land use planning and land management processes are underdeveloped or non-existent throughout most of South Sudan. Land use plans in urban areas have reportedly been developed in some locations, but they are not made available for public review. Different institutions often develop their own land use plans independently from one another and without consultation. In several cases, political changes in institutions have caused one set of partially implemented land use plans to be exchanged for another. This leads to a great deal of uncertainty in planning and management processes and perpetuates a more general lack of confidence in land governance institutions. Somewhat paradoxically, timeliness of decision-making is not always a problem, as can be seen in the relatively short period of time it takes to obtain a building permit. However, this may reflect a lack of demand more than the efficiency of the system per se. In reality, many if not most new structures in South Sudan are built without building permits.

Land-related tax systems have not been established yet in South Sudan. The lack of progress on this front may be indirectly related to the abundance of oil wealth, in that when oil is flowing, state governments are able to survive on transfers from the national government and do not feel the urgent need to develop their own sources of revenue. Unfortunately, the converse is also true; when oil production is interrupted, as happened in January 2012, state governments have very little revenue to buffer them from the effects. The development of a property tax system based on land values could help to diversify revenue sources and moderate the government's dependency on oil. Devolving tax administration to the lower levels of government could also help to better link tax revenue to public services.

### Management of Public Land (LGI-12 to LGI-15)

Governance institutions in South Sudan suffer from a lack of accurate information, poorly defined roles and responsibilities relative to one another, and systematic financial and human resource constraints. These shortcomings are evident in the manner in which land expropriations have been conducted in recent years. The Government expropriates land for various purposes: to facilitate public and private investments in agriculture, forestry and other land-based sectors; to provide housing to newly arriving returnees and internally displaced persons (IDPs); to accommodate urban expansion and make land available for residential, commercial and industrial purposes; and to promote urban development.

Expropriations in urban areas are often accompanied by evictions and demolitions. Though the government has reportedly made some improvements in its procedures in recent years, when the urban development process began in 2009, demolitions were carried out with little or no notice and little or no compensation for affected individuals and groups. Tens of thousands of people were affected in the first few months alone. People without documents proving ownership over a particular plot of land are often not given compensation, regardless of how long they have resided in the area. Opportunities to challenge evictions are too expensive and out of reach for most of those affected. People also routinely complain that government officials managing the process engage in self-interested deals and other forms of corrupt activities. The demolitions started in Juba in 2009, but have since spread to most urban centers in the country and even to some rural areas. Neither the Government of South Sudan nor international organizations have been monitoring the issue in a comprehensive manner.

## Public Provision of Land Information (LGI-16 to LGI-19)

Land administration systems in South Sudan are confronted with huge challenges. Not only must they sort out the many overlapping claims resulting from the war, but they must also cope with rapidly increasing demand for land. Antiquated procedures and poor information management systems make the task all the more difficult. In many cases, information in the registry is out-of-date or otherwise inaccurate. Documents are handwritten and stored in poor conditions where they are subject to deterioration and damage from the elements. Only the most basic information about landholdings is recorded, such as the identity of the owner, the number of the plot, a sketch of the plot, and a standard lease agreement. Information regarding encumbrances, such as mortgages, liens or pending lawsuits, is not included in the registry. Nor are secondary rights recorded.

Land information systems also suffer from a severe lack of transparency. The registry is not open to the public and it is difficult to access information without hiring an intermediary. Access is only granted for information pertaining to people that can demonstrate ownership over the plot in question. The 2009 Land Act sought to remedy some of these failures by moving the registry from the Judiciary where it is currently housed to the RSS Ministry of Housing and Physical Planning (currently the RSS Ministry of Lands, Housing and Physical Planning), but four years after the Act came into force these changes have still not been implemented.

## Dispute Resolution and Conflict Management (LGI-20 to LGI-21)

Courts in urban areas of South Sudan are inundated with land disputes. Experts estimate that land disputes comprise as much as 80 to 90 percent of civil cases in the formal system. Typical disputes include allegations of land grabbing by security sector personnel, competing claims over ownership, double allotment of plots to individuals during the formalization process, land acquisitions for the purposes of urban expansion, and various disputes involving groups of IDPs and returnees. Appeals are not handled in a timely manner and judges often will adjudicate appeals based on the lower court's findings without notifying the disputing parties or giving them an opportunity to present their positions. Enforcement of court decisions can also present insurmountable obstacles, particularly when decisions are made against individuals who hold military or political power.

The problems are exacerbated by gaps between the statutory (more formal) courts and customary (more informal) courts. The formal Judiciary has not fully established itself and has limited reach in rural areas. While customary courts and other forms of dispute resolution are available in areas where statutory courts do not exist, there are serious concerns about the extent to which women and children's property rights are protected in the customary system. Forum shopping between the multiple overlapping mechanisms of dispute resolution is commonplace. On the one hand, the prevalence of forum shopping gives rise to a marketplace for justice, in which complainants are able to 'vote with their feet' and select the forum that best suits their purposes. But it also places defendant parties at a disadvantage, since they never can be fully assured that a final judgment has been issued or whether the case will be resurrected in another forum.

## Large-scale Acquisition of Land Rights (LSLA)

Since the end of the war in 2005 and independence in 2011, South Sudan has experienced a surge in private investment. Land-based sectors are seen as particularly desirable, in that they offer the country an opportunity to diversify its economy away from its dependency on oil. The land acquisition process, however, is poorly structured and there is little clarity on the applicable procedures. Investment agreements are signed at all levels of government, irrespective of the size of

the landholding. Rarely are affected communities consulted in any meaningful manner. Information tends to be asymmetrical; not only do community landholders not have the information necessary to properly vet investment proposals, but government institutions themselves also lack the necessary expertise to properly vet projects. This is particularly true for carbon credit and biofuel projects.

Although most of the investments initiated in the last eight years have not progressed much beyond the feasibility or trial stages, some disputes have already begun to surface. Communities that are aware of deals that have been made without their approval, tend to use whatever means are at their disposal to contest the land acquisition. Often, communities will leverage their networks to political leaders to argue for a more inclusive approach, though instances of court action have been documented as well.

### Forestry (FGI-1 to FGI-6)

The LGAF findings suggest some progress in the forest sector relative to other land governance sectors. The RSS Ministry of Agriculture, Forestry, Tourism and Animal Resources, Cooperatives and Rural Development has made steps towards ratifying many of the important treaties relating to forest conservation, is in the process of developing a new policy and law relating to forest governance, and has begun trial efforts to map South Sudan's forest resources.

However, much remains to be done. Forestry directorates at the national and state level lack resources and are unable to conduct activities in remote rural areas in a consistent and thorough manner. Forests face threats from multiple sources, including charcoal production, unrestrained forest fires and environmental degradation. Illegal logging, poaching and other forest crimes occur with some regularity, and the justice system has not proven effective at capturing and prosecuting wrongdoers. Customary rights to forests are recognized in law, but not sufficiently protected in practice.

### Conclusion and Recommendations

Land governance institutions in South Sudan are struggling to cope with the many challenges of the post-conflict period. Increasing land values, skyrocketing demand, economic development, urbanization, population growth, and the development of administrative units have contributed to the growing complexity of land issues. Since it was established in 2005, the South Sudan Land Commission (SSLC) has provided leadership on many of these issues, but as an independent commission without representation in the Council of Ministers, the SSLC does not have the mandate to execute the reforms called for in the Land Act.

To address this gap, the 2013 Land Policy proposed the creation of a new position of Deputy Minister of Lands in the RSS Ministry of Lands, Housing and Physical Planning. The Deputy Minister would be responsible for promoting the reforms called for in the Land Act and fostering greater coherence among land governance institutions at all levels. One of the early tasks of the new Deputy Minister will be to develop a roadmap for tackling challenges in the land sector, including a list of priorities and a timeframe for different activities. It is hoped that this study may provide some useful insights in this regard.

The following three policy priorities have emerged from the LGAF study in South Sudan:

#### 1. Clarify Principles Governing Community Landownership

The manner in which community landownership is defined under South Sudanese law is among the most contentious issues pertaining to land governance in South Sudan. The 2009 Land Act grants

customary land tenure equal force in law with freehold and leasehold rights. However, there is a great deal of uncertainty about what rights communities enjoy vis-à-vis the state and how the formalization of customary land rights is to be managed in practice.

At its most basic level, the definition of community landownership is a question of applicable law. The Land Act states that all land that is not community or private land shall be deemed to be public land. To the extent that there is no terra nullius ('no man's land') in South Sudan and communities claim ownership over virtually all parts of the country in the sense that they retain the right to regulate its usage under customary law, it is not clear to what land this provision in the Land Act applies. There is therefore a need to explicitly state the limits, if any, that the government will place on community ownership claims under customary law and the process that will be used to determine legitimate landholders.

Aside from the definitional question, reforms must also address the many related systems that will need to be created or reformed in order to provide formal recognition for customary land rights. A system for surveying, demarcating and registering community land rights will have to be established. Land use mapping processes will have to be developed to identify community landholdings. The process will need to incorporate a conflict management system to address the disputes that are bound to arise as a result of the formalization process. Mechanisms for protecting the rights of marginalized populations, including women and children, internally displaced persons (IDPs) and minority groups must also be provided for. Until these issues are sorted out, differing conceptions of community landownership will continue to present an obstacle to developing land governance systems.

## 2. *Pilot Initiatives to Develop Land Administration Systems*

Efforts to develop South Sudan's land administration system should focus on three key areas: (1) modernizing land registration processes and improving their transparency, accountability and sustainability; (2) establishing systems of land use planning at the national and local levels; and (3) clarifying the principles, rules and procedures governing land expropriation and improving institutional accountability in the process.

Land registries in South Sudan require urgent attention to limit potentials for self-interested dealings and corruption. A plan should be designed to modernize information management systems in the land registries, correct inaccurate and fraudulent information, promote greater transparency, and establish a national land register. The role that communities play in formalizing landholdings in urban and peri-urban areas must also be clarified. As a first step, the RSS Ministry of Lands, Housing and Physical Planning should work to build the necessary political will to implement reforms through direct engagement with state-level Ministries of Physical Infrastructure and State Secretariats. The reform of land registries can begin with pilot projects in preselected locations in which existing information in the registries is checked against bona fide landholders on the ground. The pilot projects can then inform efforts to upscale the exercise to cover registered lands in urban areas throughout the country.

Land use planning processes must also be strengthened. The development of the Town and Country Planning Act called for the 2013 Land Policy can help to galvanize efforts in this regard, but a first step would be to take stock of all the land use mapping activities that have taken place. Pilot initiatives should then be developed to test different land use planning systems at the national and local level.

With respect to land expropriation, additional oversight is required to ensure that people's rights are respected in the process. Linkages to the judicial system will be particularly important to ensure that

the applicable rules are being following, including the provision of adequate notice, fair and prompt compensation and alternative resettlement. Civil society organizations can help to raise awareness about people's rights under South Sudanese law and improve access to the justice system for affected individuals and groups. They should also make a concerted effort to monitor demolitions and forced evictions more closely and regularly report on the numbers of people affected.

### 3. Conduct Further Research on Priority Issues and Refine LGAF Findings

Since the end of the war in 2005, the Government of South Sudan and its development partners have implemented a variety of programs relevant to land governance. There is a need to compile the lessons learned from these past projects, determine where gaps arise and develop plans for up-scaling interventions to the national level. Additional research is also needed to better understand and document issues in the land sector. Issues that warrant additional attention from researchers include: comparative research on land in constitutional and legislative frameworks, the role of traditional authorities in land governance, typologies of land-related conflicts, existing land registration processes, and the circumstances in which expropriation takes place.

Additional research could also be conducted to refine the LGAF findings, promote the use of relevant LGAF indicators in the monitoring the implementation of law and policy, and provide baselines from which to assess the impact of development interventions. In order to more fully develop and substantiate the LGAF results, future LGAF studies could make a more concerted effort to gather regional data from the Greater Upper Nile and Greater Bahr-el-Ghazal regions. Studies could be conducted on areas designated for specific development projects, such as areas designated for oil pipelines or transit corridors. LGAF indicators could also be assessed in border areas to better understand and monitor the land issues that arise with respect to border demarcation and cross-border movement of transhumant populations.