



UPHOLDING PEACE FOR A PROSPEROUS AND INTEGRATED REGION SINCE 1986
AU SERVICE DE LA PAIX POUR UNE REGION PROSPERE ET INTEGREE DEPUIS 1986

LAND GOVERNANCE IN IGAD REGION



SOUTH SUDAN

Country Profile

Assessment of Land
Governance Framework,
Training & Research Land
Governance Institutions

Contents

1.1.1	Country Context	3
1.1.2	Policies and Laws Relevant to Land Governance in South Sudan	4
1.1.3	Land tenure Systems	11
1.1.4	Land Administration and Institutions	13
1.1.5	Gender concerns in South Sudan land governance	14
1.1.6	Land tax in South Sudan	15
1.1.7	Summary of challenges, Gaps, conflicts and Duplications	15
1.1.8	Lessons from Kenya's experience in land management	16
1.1.9	Recommendations	17

1.1 South Sudan

1.1.1 Country Context

South Sudan is the newest states in the IGAD region that gained its independence from Sudan in 2011. It is a landlocked country bordered by is bordered by Sudan in the north, Ethiopia in the east, Kenya and Uganda in the south, the Democratic Republic of Congo in the southwest and the Central African Republic in the west. As of 2015, the total population in South Sudan was estimated at 12.3 million people. More than 90 percent of South Sudan's land is arable but only four percent of the land is cultivated. It is in agricultural land and has one of the largest populations of pastoralists in the world.

Background on South Sudan land governance

South Sudan is still haunted by the laws formulated before it's secession such as the Unregistered Land Law of 1970. In essence, that law provided that all land that is not registered shall be owned by the state/government. This law went against the interest of the south as all the rural land is not registered and so it would by that law be taken over by the state. Under the Transitional Constitution of the Republic of South Sudan 2011, the people of South Sudan own all the country's land and its usage is regulated by the government in accordance with the Constitution and Law. The applicable law in this case is the Land Act of 2009.

Constitution prescribes a three-category land tenure system divided in to public land, community land, and private land. Public land means all land owned, held or otherwise acquired by any level of government. This classification includes land owned by Bomas, Counties, States and federal government or administration and all land that is not otherwise designated as community or private. Hence there is no such thing as no-mans' land in South Sudan because land unclaimed by an individual or community belongs to the government by default.

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

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

Sudan's transitional constitution gave the People the right to own the land by one hand and took that right away by the other. It explains that land belongs to the people yet one can only own a lease from the government. The reality is that the government owns the land and the citizens hold leasehold titles over their plots. This is because most of the land in South Sudan is unregistered yet the law provides that all unregistered land vests in the government thus leaving the citizens with no land rights in perpetuity.

1.1.2 Policies and Laws Relevant to Land Governance in South Sudan

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

Article 3 of the Constitution requires that the authority of government at all levels shall derive from it and the states' constitutions and all laws shall conform to it.

The Constitution recognizes the right of women to own property and share in the estates of their deceased husbands together with any surviving legal heir of the deceased (Art. 16). The right to own property is further confirmed in Art.28 which states that every person shall have the right to acquire or own property as regulated by law and no private property may be expropriated saves by law in the public interest and in consideration for prompt and fair compensation.

The Constitution has a chapter on land ownership, tenure and natural resources. Under Article 170 all land in South Sudan is owned by the people of South Sudan and its usage shall be regulated by the government in accordance with the provisions of this Constitution and the law. It classifies the land tenure system in South Sudan shall consist of public land b. community land and private land. The rights in land and resources owned, held or otherwise acquired by the

Government shall be exercised through the appropriate or designated level of government which shall recognize customary land rights under customary land law.

Under Article 172 establishes the Land Commission as an independent commission composed of persons of proven competence, experience, integrity and impartiality.

(b) The Land Act 2009

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

According to the 2009 Land Act, “Customary land rights including those held in common shall have equal force and effect in law with freehold or leasehold rights acquired through statutory allocation, registration or transaction.” The Land Act gives special protection to pastoralists, stating that, “no person shall without permission... carry out any activity on the communal grazing land which may prevent or restrict the residents of the traditional communities concerned from exercising their grazing rights.”

The Land Act reiterates the Constitutional provision that the people own all land in South Sudan and its usage shall be regulated by the Government and land may be acquired, held and transacted through the following tenure systems customary; freehold; and leasehold.

The Land Act protects land rights. It states that every person shall have the right to acquire or own property as regulated by law and as stipulated the Constitution and land

cannot be expropriated or confiscated save by law in the public interest and in consideration for a prompt and fair compensation.

It ensures security of occupancy of land rights under customary tenure. However, the Land Act tenure system is quite different from that of the Constitution.

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The Land Act provides for the registration of Land Rights. It states that land collectively or individually owned in Southern Sudan shall be registered and given a title in accordance with this Act and land owned by different levels of government in Southern Sudan shall be registered.

The Land Act permits community land community Land Registration. It states that upon demarcation, the title relating to community land or other deeds registered in respect of such land shall be endorsed by the registration office in the prescribed form. The community land may be registered in the name of the following a community; a clan or a family in accordance with the customary practices applicable; a community association in accordance with the document constituting the association; or a traditional leader in trust for the community and with the consent of the members of the community.

The Act specifies rights of citizens to land. Under the Act, right to land shall not be denied by the Government of Southern Sudan, State Government or community on the basis of sex, ethnicity or religion and every person shall have access to land for housing, cultivation, pasture, grazing, or fishing as shared resources as by the law.

The Land Act reiterates the Constitutional provision on women's right to own and inherit land together with any surviving legal heir or heirs of the deceased.

The Act provides rights of non-citizens to Land. Under the Act individual or collective foreign entities may acquire leasehold or other interest in land for a specified period and

not freehold in land in South Sudan, for residential or investment purposes or for any other reasons in conformity with the interest of the people of South Sudan and in accordance with the provisions of the Investment law or any other law.

Under the Act a Traditional Authority within a specific community may allocate customary land rights for residential, agricultural, forestry, and grazing purposes. In consultation with other members of the community, the Traditional Authority shall determine the size and the boundaries of the portion of land in respect of which the right is allocated in accordance with the customary law and practices. Any allocation of a piece of land beyond 250 feddans for commercial, agricultural, forestry, ranch, poultry or farming purposes shall be approved by the Concerned Ministry in the State after transmission by the County Land Authority or the Payam Land Council. If the size of the land is over 250 feddans, the Concerned Ministry in the State or its duly designated representatives shall verify the following the purpose for which land is to be used and its compliance with rules and regulations in the State; compatibility of such an activity with the land use system in the area; consensus on the allocation between members of the community; allocation does not exceed such a size that the Minister finds against principles of equity and fairness; and the social and environmental impact that activity may cause.

The Act provides specific protection of Pastoral Lands. Under the Act pastoral lands in South Sudan shall be delineated and protected by the appropriate level of land administration and management based on a comprehensive land use planning system. Customs and practices related to land used by pastoral communities shall be taken into consideration as long as they comply with the provisions of this Act and any other applicable law.

Restrictions are imposed on communal Grazing Land. Thus no person without permission is allowed to obstruct the approaches to any water point in the communal grazing land or to other appurtenances installed or constructed at such a watering place; or carry out any activity on the communal grazing land which may prevent or restrict the residents of the traditional communities concerned from exercising their

grazing rights; and take any other measure that the community land users find appropriate to take in order to protect such an area.

The Act permits expropriation of land for Public Interests. The Government of Southern Sudan, State Governments and any other Public Authority may expropriate land for public purposes subject to compensation and upon agreement as prescribed by this Act or any other law. The compensation shall be just, equitable, and shall take into account the purpose for which the land is being utilized; the land market value and the value of the investment in it by those affected and their interest.

Under section 91 the Act provides disputes Resolution Mechanisms. In resolving disputes related to land, priority shall be given to alternative dispute resolution which includes dispute resolution processes and mechanisms that fall outside the government judicial process; and traditional dispute resolution mechanisms. Customary law and practice of the locality shall apply to resolve disputes related to land.

(c) Local Government Act

The Act has provisions that apply to land management. Sections 88, 89, 90 and 92 provide the mandate of the Local Government Councils to include the following mandates:

- Administer and regulate territorial land which is demarcated and gazette by the Government of South Sudan;
- Administer land surveys and land master plans developed by the State authorities;
- Administer the procedure for acquiring community land within a Local Government Council;
- Enact bye laws to regulate land management on land use control and protection systems, land acquisition, allotment and withdraw systems, land lease and land rights transfer systems and pastoral and agricultural land to guarantee land safety;

- Administer processes and procedures for the maintenance of ownership and derivatives rights of access to land; registration of land rights, cadastral administration, acquisition of land for investment purposes and pastoral land.

Section 91 provides for the establishment of Council Land Committees or Authorities to ease the processes of land management and administration within its jurisdiction. The Land Council Committee shall have the following functions:

- Protection of the Council land;
- Organisation of Council Land Development Plans in Consultation with the State Government authorities and the Committee concerned;
- Preparation of local policy guidelines for the development of Council physical and social infrastructure;
- Preparation of policy guidelines for land use rights and the maintenance of Council cadastral systems for keeping up to date records of land registration, allotment, title deeds and statistics;
- Preparation of housing, shelter, human settlement, urban renewal or slum upgrading plans and projects for Council land use;
- Development of land registration, distribution and allocation schemes and schedules for Council land management;
- Mediation of consultation processes of land lease between the community and other investors;
- Supervision of operational processes of land survey, valuation and statistical data collection by government and non-government organizations;
- Establishment of dispute resolution mechanisms;

- Representation of the council during the process of urban and rural planning, land use planning and Land Master Plan development initiated or undertaken by state government of South Sudan; and
- Any other functions assigned to the Council concerned by the State government and or/the Government of South Sudan.

The Council is required to form sub-committees to perform the same functions of the Council Land Committees at Payam or Block Council level and Boma or Quarter Council level.

(d) Proposed Legislation

- *The Community Land Act*: This Act intends to clarify the distinction between public and community land, describe the rules and procedures governing the expropriation of community lands, describe applicable standards of women's rights under customary land tenure, and describe land administration systems for community lands;
- *Town and Country Planning Act*: This Act intends to provide an appropriate framework for preparation and implementation of national, regional and local area land use plans and ensure the planning process is integrated, participatory and meets stakeholder needs;
- *The Land Survey Act*: This Act intends to clarify rules, procedures and institutional roles for land survey and mapping activities. The Act would also provide for the use of modern technology, such as Global Navigation Satellite Systems (GNSS) and Geographical Information Systems (GIS), and streamline survey authentication procedures;
- *The Land Valuation Act*: This Act intends to set standards for land valuation
- *The Land Registration Act*: This Act intends to describe a land registration process that recognizes and protects all legitimate rights and interests in land in all categories
- *The Land Information Act*: This Act intends to facilitate access to and management of land information.

- *The Mortgage Act*. This Act intends to lay out a regulatory system for property mortgages.

1.1.3 Land tenure Systems

The Land Act recognizes three general types of land in South Sudan: public, private and community.

(a) Public Land

Public land is land owned collectively by all people of South Sudan and held in trust by the appropriate level of government. Public land includes:

- Land lawfully held, used or occupied by any government ministry, department or agency or local authority, except where such land is occupied under a private lease;
- Land transferred to the Government of South Sudan, State Government or local government by way of reversion or surrender;
- Land in respect of which no private ownership including customary ownership may be established by any legal process;
- Land in respect of which no heir may be identified by any legal process;
- All roads, railways airports, and thoroughfare as specified by law; and
- All rivers, lakes, canals, haffirs, wetlands and other areas of water for which no customary or other ownership may be established; or which has been voluntarily surrendered for public benefit as land which has been compulsorily acquired for special protection, benefit or use of the community; land for investment; or land as agreed by any international treaty.

(b) Community land

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

managed, or used by communities based on ethnicity, residence, or interest. Community land can include land registered in the name of a community, land transferred to a specific community, and land held, managed, or used by a community.

(c) Private land

Private land includes registered land held by any person under leasehold tenure, investment land acquired under lease from the government, and any other land designated as private land in accordance with the law. It includes any registered land held by any person under a freehold tenure; or land held by any person under leasehold tenure; or any other land that may be declared private land by law.

Any person owning land in South Sudan may lease this right to another person or persons for a fixed period of time in accordance with the law. A long term lease shall not be more than 99 years and a short term lease is a lease for one year or less and includes a tenancy for a year renewable every year. A holder of a registered lease may in accordance with the terms of the contract of lease sub-lease her or his right for any period that is equal to or less than the remainder of the period of the lease

With the consensus between members of the community, Traditional Authority may recommend the grant to a person or company, whether national or foreigner, a right of leasehold in respect of a portion of community land to the appropriate land administration. A Land size of not more than 250 feddans shall be granted by the Traditional Authority in consultation with the County Land Authority and the Payam Land Council.

1.1.4 Land Administration and Institutions

(a) Ministry of Housing, Physical Planning and Environment

This is the lead agency of the Government of Southern Sudan charged with planning and development of the programmes in the infrastructure sector as well as the mobilization of resources and designing of program implementation and supervision. Its functions include formulation of policy, standards and regulations on urban planning and urban land management, surveying and mapping of Southern Sudan and safe keeping of maps and documents and establishing and oversee the operation of urban land titling and registration.

The following institutions are to be established under the Ministry:

- A National Land Registry and Decentralized Registries;
- A national land registry to conduct registration activities at the national level; There shall be established at the County Level a body to be known as “the County Land Authority” that shall consist of such persons appointed by the Governor in accordance with provisions of section 45 below and the recommendation of the Concerned County Commissioner in the State as the case may be.
- Registration offices at each level of land administration in Southern Sudan.

(b) South Sudan Land Commission (SSLC)

The South Sudan Land Commission came into being following the Presidential Decree No.52/2006. The basis for its establishment is enshrined in the CPA signed between the Government of Sudan and the Sudan People’s Liberation Movement. The legal framework that provided for its establishment is outlined in the Interim Constitution of Southern Sudan 2005. The SSLC became a legal entity as from June 27th 2006, with

autonomous powers and a clearly defined mandate. Thus, it was set-up as an independent body, with a broad mandate that covers three main areas namely arbitration of land claims and assessment of appropriate compensation where applicable, coordination of GOSS land policies and undertaking studies on land use practices in areas where natural resource exploitation is taking place. Article 188 of NIC establishes a Southern Sudan Land Commission whose functions include carrying out certain functions of the National Land Commission including collection of data and research.

It is prescribed in the Interim Constitution that the SSLC should be representative of all levels of government in South Sudan.

The above Land Commissions is not yet operational and moreover the rights of representation of pastoralists and farmers in the Land Commissions are not reflected in the Interim Constitution.

(c) Other institutions

- *South Sudan Land Alliance (SSLA)*: SSLA works to enhance access and ownership of land for all people of South Sudan, particularly the marginalized men, women, and children by advocating to influence land policy and legal frameworks. SSLA envisions that South Sudan will be a state where citizens and non-citizens have equal rights to access, own and use land and natural resources for ensuring lasting food and livelihood securities as well as sustainable development under secured land tenure systems.
- *The Payam Land Council*: Responsible for the management and administration of land in the different Bomas composing the Payam.

1.1.5 Gender concerns in South Sudan land governance

The GOSS 2009 Land Act states that women shall have the right to own and inherit land together with any heirs of the deceased. However, women rights are at present

highly insecure. Obstacles abound widows when trying to claim inherited leasehold rights from the government. As such, much as the law protects women's rights to land, enforcing the same is far from reality in the presence of armed conflicts.

1.1.6 Land tax in South Sudan

Under the Taxation Act of 2009, individuals are subject to capital gains tax included as part of gross income. There is no stamp duty payable in South Sudan. Rental income is levied at the rate of 10% withheld at the source by the person paying such rent to the individual or legal entity. In a nut shell the tax regime of South Sudan still leaves a lot to be desired mainly because of the fact that it is a new state and also characterized by civil unrest making it difficult to put in place and enforce tax laws.

1.1.7 Summary of challenges, Gaps, conflicts and Duplications

- Despite the degree of legal recognition provided by the Land Act and Constitution, there is lack of clear implementing policies and regulations and judicial interpretation of provisions which has undermined the implementation of the Land Act and Constitution;
- There is a general lack of enforcement mechanisms at the community level (including awareness of the Constitution and the Land Act);
- People are not aware of their rights, courts do not apply the Land Act, community lands are not being registered and changes that the Land Act calls for in the roles and responsibilities of institutions are not being adhered to;
- There is limited capacity of the land administration due to political instability;
- Little is known about the status of the geodetic network.
- Land register information is transcribed mainly in Arabic. Records are not available for public consultation.
- There is absence of legal framework and transparent procedures: For a number of land administration tasks, a legal framework, regulations and norms still need

to be developed. These include the identification of town boundaries, procedures for acquisition of land, plot allocation, compensation, land taxes, dealing with property claims. Existing procedures are a mixture of practice and precedent, which reflect what is generally understood to be 'how things are done', rather than being based systematically on statutory regulations or responding to all the needs of Southern Sudan.

- Requirements and procedures to be followed are little known. There is evidence that any paper, form or sketch map is used by some to establish unrightfully a claim overland. There is also a lack of clarity on the future of property that is registered in the name of people who fled Southern Sudan.

1.1.8 Lessons from Kenya's experience in land management

South Sudan can learn the following from Kenya's land governance experience:

- Develop a comprehensive land use and management policy to guide the government by providing for land-use planning, resource allocation and resource management for sustainable development, environmental management and sustainable production initiatives in the utilization of land resources, a comprehensive, efficient and affordable computer based land use information management system, appropriate accountable and democratic institution, mainstreaming of gender and special interest groups in land use planning and management among others
- Enacting clear laws that stipulate in whom the rights in land vest and operationalize them. Kenya's new Constitution in August 2010 marked the turning point. It declared that 'All land in Kenya belongs to the people of Kenya collectively as a nation, as communities and as individuals' and announced classes of public, community and private land (Article 61). As such South Sudan should in its Constitution clearly state who owns the land and operationalize the ownership of the land as opposed to the state of confusion where de jure ownership of land is vested in the citizens when de facto, the citizens merely

have leasehold interests which do not confer ownership of land in perpetuity as provided under the law. This shall give clear rights to the citizens of South Sudan in respect to the land governance and rights in the country.

- Kenya's Community Land Act focuses firmly upon formalizing provisions elevating the status of customary land holding to have equal force and effect with freehold and leasehold interests under community title. It asks communities to define and register themselves and await adjudication, survey and registration. This should be emulated by South Sudan by passing a similar Act and incorporating the provisions within the laws of the country.

1.1.9 Recommendations

- *Community legal education and information dissemination on land rights.* It is important that have community education on land rights on the customary and statutory systems so that people understand their land rights under each of the system;
- *Strengthen and Professionalize Customary Justice Systems:* The customary justice system is often excluded in the formal process of surveying and titling land. It is important strengthen the system to address land disputes;
- *Strengthened Women's Land Rights.*
- It is important that the government makes itself clear in terms of the policy that shall influence the question of the land ownership.
- South Sudan is in the process of putting up the permanent Constitution and it should be able to clearly define whether land belongs to the government or the people. This basic definition will lay the foundation for a strong Land Act and land policy that will propel economic growth. Laws like the Transitional Constitution must be avoided. A law that fails to clearly define what the government policy on land is not sound.



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Swiss Agency for Development
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