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South Sudan Country Report

Findings of the Land Governance Assessment Framework (LGAF)

By David K. Deng

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About the SSLS

The South Sudan Law Society (SSLS) is a civil society organization based in Juba. Its mission is to strive for justice in society and respect for human rights and the rule of law in South Sudan. The SSLS manages projects in a number of areas, including legal aid, community paralegal training, human rights awareness-raising and capacity-building for legal professionals, traditional authorities and government institutions. For more information on the SSLS, visit www.sslawsociety.org.

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Acronyms

ARD.....	Associates for Rural Development
AU.....	African Union
BRIDGE.....	Building Responsibility for the Delivery of Government Services Program
CBD.....	Convention on Biological Diversity
CES.....	Central Equatoria State
CIA.....	United States Central Intelligence Agency
CITES.....	Convention on International Trade in Endangered Species of Wild Fauna and Flora
COREMAP.....	Community Resource Mapping Project
CPA.....	Comprehensive Peace Agreement
ESIA.....	Economic and Social Impact Assessment
FAO.....	Food and Agriculture Organization
FGI.....	Forest Governance Indicator
FSC.....	Food Security Cluster
ICLA.....	Information, Counseling and Legal Assistance Program
ICRAF.....	International Centre for Research in Agro-Forestry
ICSS.....	Interim Constitution of Southern Sudan
IMF.....	International Monetary Fund
INGO.....	International Non-Governmental Organization
JICA.....	Japanese International Cooperation Agency
LGAF.....	Land Governance Assessment Framework
LGI.....	Land Governance Indicator
LSLA.....	Large-Scale Acquisition of Land Rights Indicator
MDG.....	Millennium Development Goals
MOU.....	Memorandum of Understanding
NFG.....	Norwegian Forestry Group
NPA.....	Norwegian People's Aid
NRC.....	Norwegian Refugee Council
RSS.....	Republic of South Sudan
RVI.....	Rift Valley Institute
SAF.....	Sudan Armed Forces
SAS.....	Small Arms Survey
SIFSIA.....	Sudan Institutional Capacity Programme: Food Security Information for Action
SIHA.....	Strategic Initiative for Women in the Horn of Africa
SME.....	Small and Medium Enterprises
SPLA.....	Sudan People's Liberation Army
SSCCSE.....	Southern Sudan Centre for Census, Statistics and Evaluation
SSLC.....	South Sudan Land Commission
SSLS.....	South Sudan Law Society
UN.....	United Nations
UNCCD.....	United Nations Convention to Combat Desertification
UNDP.....	United Nations Development Programme
UNEP.....	United Nations Environment Programme
UNFCCC.....	United Nations Framework Convention on Climate Change
UNMIS.....	United Nations Mission in Sudan
UNMISS.....	United Nations Mission in South Sudan

UN-REDD.....United Nations Collaborative Programme on Reducing
Emissions from Deforestation and Forest Degradation in
Developing Countries
USD.....United States Dollars

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 followed, 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.

Chapter One:

Land Governance in South Sudan

Land is indispensable to livelihoods in South Sudan. Daily survival for the vast majority of South Sudanese depends on their ability to access land for smallholder agriculture, livestock rearing or residential purposes. Shifting population dynamics in the post-war period have heightened the importance of land. Millions of South Sudanese have returned to the country from elsewhere in Africa and the world since the end of the war in 2005. These returnees often arrive with few resources to provide for themselves and their families. Accessing residential land is among their first priorities. South Sudan also hosts hundreds of thousands of internally displaced persons (IDPs) who have had to flee their homelands due to insecurity or natural disaster. Their ability to access land from host communities is a primary concern.

Considering the importance of land in the new nation, institutions of land governance appear severely underdeveloped by comparison. Land administration systems are not able to satisfy user demand and people are increasingly being pushed into informality. The interface between customary and statutory systems of land tenure is unclear, generating conflict and undermining efforts to establish effective institutions. Land use planning activities are non-existent throughout much of the country. Land ownership is poorly defined and tenure insecurity is a systematic problem. Courts are inundated with land disputes and their ability to enforce judicial decisions are hampered by political interference and poor coordination with other government institutions. New and complex land issues have surfaced since the end of the war in 2005 and independence in 2011. Building strong and efficient institutions of land governance is an integral component of peace- and nation-building efforts.

The subsections below outline relevant aspects of the political, social and economic context and provide an overview of land governance in South Sudan.

1.1 Political, Social and Economic Context

The newly independent nation of South Sudan is a landlocked country in northeastern Africa. Among South Sudan's defining features is the Nile River, which cuts across the country on its way north to Sudan and Egypt. South Sudan has a geographical land area of 644,329 square kilometers, but it is sparsely populated, with population estimates ranging from 8.26 million to 10.84 million (SSCCSE 2010; World Bank 2012). South Sudan's population density of 12.82 people per square kilometer places it among the less densely populated countries in Africa. Compared to its southern neighbor Uganda, for example, South Sudan has about one-third the population spread across a land area that is almost three times as large.

Another defining feature of South Sudan is its long history of conflict, including two successive civil wars since Sudan's independence from British colonial rule in 1956. The second civil war (1983-2005) resulted in an estimated two million people killed and four million displaced (Haken and Taft 2013). The destruction to human lives and infrastructure, coupled with decades of neglect under colonial and postcolonial administrations, has left a legacy of underdevelopment, hunger and poverty. The statistics are sobering: There are only about 300 kilometers of paved roads spread across a country the size of France (Laessing 2013). Roughly half of the population is considered food insecure, with one million people severely food insecure (FSC 2013). Only 27 percent of the population age 15 or older is able to read and write.

According to the World Bank (2013), South Sudan's economy is the most oil dependent in the world. Ninety-eight percent of fiscal revenue is derived from oil. Oil accounts for almost all exports, and approximately 80 percent of gross domestic product (GDP) is directly or indirectly derived from oil. This oil wealth gives rise to a deceptively high per capita GDP. Preliminary estimates for 2011 indicate a GDP per capita of US \$1,858, which is much higher than South Sudan's East African neighbors. Very little of this wealth, however, trickles down to the average citizen. A 2009 survey by the Southern Sudan Centre for Census, Statistics and Evaluation (SSCSE 2010; Uma 2012), for example, found that more than half of the population lives below the poverty line, defined as those living on \$1.25 per day or less.

South Sudan's precarious economic situation became painfully apparent in 2012, when the Government of South Sudan halted oil production over a dispute with Sudan about oil revenues and fees associated with the use of Sudan's pipeline to the Red Sea. Overnight, the government of South Sudan lost 98 percent of its projected revenue, and the economies of both countries were sent into turmoil. The International Monetary Fund (De Waal 2013) estimated that South Sudan's GDP contracted by 55 percent in 2012, one of the largest contractions ever recorded. To compensate for revenue losses and inflation, the Government of South Sudan put in place a series of austerity measures in February 2012. Non-salary spending was cut by 50 percent and unconditional grants to state governments were eliminated. Civil servants also faced job cuts, incentive schemes were frozen, and housing allowances were trimmed by 50 percent.

Table 1 shows South Sudan's progress towards the United Nations Millennium Development Goals (MDGs) relative to the rest of Sub-Saharan Africa.

Table 1: South Sudan Selected MDGs

Statistic	South Sudan	Sub-Saharan Africa
Malnutrition prevalence, weight for age (% of children under 5)	48	25
Prevalence of undernourishment (% of population)	47	25
Proportion of seats held by women in national parliaments (%)	27	21
Infant mortality rate (per 1,000 live births)	104	98
Immunization, measles (% of children ages 12-23 months)	64	74
Maternal mortality ratio (modeled estimate, per 100,000 live births)	1,989	500
Births attended by skilled health staff (% of total)	19	46
Improved water source (% of population with access)	57	63

Sources: Sudan Millennium Development Goals Progress Report 2010; World Development Indicators.

Despite the poor development indicators, South Sudan has an abundance of untapped natural resources that can be used to promote development and post-conflict reconstruction efforts. Ninety percent of South Sudan's land area is considered to be suitable for agriculture, with 50 percent considered prime agricultural land. A land cover mapping exercise by the Food and Agriculture Organization (FAO) (2010) found that only four percent of South Sudan's land area is being actively used for crop production, suggesting an opportunity to increase food production by expanding land areas under cultivation, although the figure does not appear to take into consideration some less visible types of land use, such as the practice of shifting cultivation in which farmers cycle through plots of land over the course of several years.

South Sudan's forests—which are thought to cover 29 percent of the country's land area—provide a number of public goods for local populations, including land for grazing, hunting and gathering of forest products. They host a variety of valuable tree species, such as teak, mahogany and ebony, and protect important ecosystems that have relevance throughout the region. The *Sudd* (Arabic for 'barrier'), one of the world's largest wetlands, covers more than 8,000 square kilometers of South Sudan, and often extends to several times this area depending on seasonal and annual variations in

the river discharge and the intensity of rainfall (Ahmad 2008). These seasonal floods sustain vast grazing lands, which are essential to the livelihoods and economies of South Sudan's pastoralist communities and are of central importance to regional development programs, such as the Nile Basin Initiative. The thick vegetation in the *Sudd* also provides important habitats for an array of migratory animal species.

In terms of non-renewable natural resources, there are large oil deposits scattered across the country and considerable, though as yet unexplored, mineral resources, including copper, gold, tin, and uranium. Proven oil reserves, however, are rapidly diminishing. According to current estimates, oil production from existing fields is expected to reduce steadily in future years and become negligible by 2035 (World Bank 2013). Mineral resources could eventually provide an alternative source of revenue. Communities that trade gold in informal cross-border markets derive some benefits from artisanal mining, but the country is not yet generating substantial revenue from industrial mining (Deng 2013). In the short-term, land-based investments in non-extractive sectors such as agriculture, forestry and carbon credits provide the most attractive means to diversify South Sudan's economy away from its unhealthy dependence on oil.

The challenge is to attract capital to the country and promote responsible and sustainable investment without undermining livelihoods in the process. Seventy-eight percent of households rely on crop farming or animal husbandry as their primary source of livelihood (SSCCSE 2010)—access to secure supplies of land and water is indispensable to these populations. There is also evidence to suggest that smallholder farming and cattle-rearing activities themselves contain hidden economic potential. South Sudan has the world's highest number of livestock per capita, with approximately 11.7 million heads of cattle, 12.4 million goats and 12.1 million sheep. According to Martin Elia Lomuro (2012), the former Minister of Agriculture and Forestry in the pre-independence Government of Southern Sudan, this livestock wealth has an estimated asset value of roughly two billion U.S. Dollars (USD).

System of Governance

South Sudan has three levels of government: national, state and local. Local government is further subdivided into the county, payam and boma administrations, with the payam and boma corresponding roughly to the district and village levels, respectively. There are ten states and 79 counties in South Sudan.

The Government of South Sudan has aspects of both a unitary (or more centralized) and federal (or more decentralized) system of governance. Characteristics that suggest a unitary government include:

- The role that the national government plays in many public sectors that would be managed primarily at the state or local level in a federal system, such as health, education and law enforcement;
- The centralization of the Judiciary under the administration of the Supreme Court in Juba;
- The fact that state Governors report directly to the President;
- The President's power to remove elected Governors during states of emergency that threaten national security and territorial integrity;
- The national government's ownership of all subterranean natural resources and states' dependency on transfers from the national government for revenue.

Nonetheless, state governments do enjoy a degree of independence within what is otherwise a centralized system. With respect to land, for example, state governments have been able to use the principles of decentralization and subsidiarity in the Transitional Constitution to assert their rights

to control their own land and natural resources. This has been particularly apparent with regard to urban land issues. Although urban development, planning and housing is a concurrent competence over which power is to be exercised by both the state and national government, in practice, urban lands are managed primarily at the state level. This gives state governments and municipalities a considerable degree of power and influence in urban areas.

In rural areas, the situation is somewhat more ambiguous. The Transitional Constitution grants the national government power over land owned by the national government and the state governments power over land owned by the states. In practice, however, there is a great deal of disagreement about which level of government owns a particular area of land and disputes among the levels of government are commonplace.

Resource Constraints

The Government of South Sudan suffers from human resource gaps and chronic underfunding across all sectors and at every level of government. The Government was established in 2005 with a bloated civil service in which government positions were seen as an important peace dividend that could help to stabilize society and discourage spoilers from undermining the fragile peace. As a result, a disproportionate amount of public funds go towards salaries for public sector personnel and little is left over to fund operational activities. Public officials routinely complain that they do not have the vehicles and fuel necessary to effectively manage public land, particularly in remote rural areas.

These problems have been compounded by the government's austerity measures following the oil shutdown in 2012. According to the RSS Ministry of Roads and Bridges, for example, the Ministry's budget dropped from roughly \$50 million USD in 2012 to \$7.5 million USD in 2013. The Ministry has reportedly sought to fill the budget shortfalls through public private partnerships and loans from various sources, but with little success. Other Ministries have experienced similar constraints.

Government institutions are also sorely lacking in qualified staff. South Sudan has few specialists on land administration and the government is heavily reliant on international support to provide the necessary expertise in land matters. Government institutions are also using antiquated systems of land governance that are not able to accommodate the complex land issues that have arisen in the postwar era. The state-level Ministries of Physical Infrastructure, for example, the institutions with primary responsibility over land in urban areas, have not yet computerized their record-keeping systems and still maintain land information in handwritten records. The risk of damage resulting from exposure to the elements, fire or theft is high.

Internally Displaced Persons (IDPs), Returnees and Refugees

Large-scale population movements as a consequence of war, hunger and natural disaster have been a characteristic feature of South Sudan for many years. An estimated four million people were displaced by the civil war; some fled to live as refugees in other countries and others sought refuge in elsewhere in Sudan. Eight years after the end of the civil war, South Sudan continues to experience high levels of displacement. At the end of 2012, there were an estimated 111,000 IDPs, 203,000 refugees, and more than two million returnees living in the country (RI 2013).

Displaced populations face a complex array of land issues. Their survival depends on their ability to access land for residential and agricultural purposes, but they often come into competition with host populations over access to land and natural resources. The large-scale acquisition of land rights for private investment and development purposes also poses potential risks. A proactive urban planning

process could help to provide additional options for IDPs and returnees, but the failure to implement the Land Act and the delays in adopting the Land Policy have frustrated attempts to reform land governance institutions in urban areas. In the absence of viable options, displaced populations have no option but to settle in informal settlements in and around urban areas, where they are susceptible to repeated displacement as a result of land use changes and forced evictions.

1.2 Land Governance in South Sudan

The lengthy civil war and decades of neglect under colonial and post-colonial administrations have undermined land governance in South Sudan. More than eight years after the end of the war, food and human insecurity remain at conflict levels in parts of the country. The Government of South Sudan and its international partners continue to focus their time and resources on providing humanitarian relief. The more development-oriented aspects of land, including the development of systems of land administration and land use planning, have received less attention than issues relating to food security, land-related conflict and access to land for displaced populations. Certain reforms have been introduced to the institutional and legislative framework in recent years, but due to weak rule of law and human and financial constraints, they have had a limited impact on prevailing practice.

2009 Land Reforms

Pre-2005 national land legislation in Sudan was based on the colonial model, which strongly favored state ownership of land. The Anglo-Egyptian Condominium put in place laws creating a rebuttable presumption that unregistered land was state property. The 1905 Land Settlement Ordinance, and its successor, the 1925 Land Settlement and Registration Ordinance, both stipulated that, “waste, forest, and unoccupied land shall be deemed to be the property of the government, until the contrary is proved.” In 1970, the Nimeiri regime took the state ownership of land one step further with the Unregistered Land Act, declaring that all unregistered land of any kind, occupied or unoccupied, belonged to the state and was deemed to be registered in the name of the state. Since rural land areas in South Sudan were almost completely unregistered, the Unregistered Land Act effectively eliminated any legal claims that communities may have had to their ancestral homelands.

When the regionally autonomous Government of Southern Sudan was established in 2005, there was a degree of uncertainty as to whether these national laws that southern Sudanese considered to be oppressive would continue to be enforced in southern Sudan. To address the legal uncertainty and provide a legal foundation to the ideas espoused in the 2005 Comprehensive Peace Agreement (CPA) and the 2005 Interim Constitution of Southern Sudan (ICSS), the Southern Sudan Legislative Assembly passed three key pieces of legislation in 2009: the Land Act, the Local Government Act, and the Investment Promotion Act.

The Land Act reinforces the government’s recognition of customary land tenure in the CPA and the ICSS, stating, “Customary land rights including those held in common shall have equal force and effect in law with freehold or leasehold rights...” It allows community land to be allocated for investment purposes so long as the investment activity “reflect[s] an important interest for the community” and “contribute[s] economically and socially to the development of the local community.” The Land Act also requires that state authorities provide approval for land acquisitions above 250 *feddans* (105 hectares), and calls for regulations to be put in place that prescribe a ceiling on land allocations.

Both the Land Act and the Local Government Act require that the government consult with local communities and take into consideration their views on decisions related to community land. 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.” It also requires project proponents to conduct environmental and social impact assessments (ESIAs) prior to engaging in any activities that might affect the people or the environment. Upon completion of the investment, the Land Act states that leased land “shall revert back to the community.”

Though the Land Act allows for long-term leases of up to 99 years, the Investment Promotion Act explicitly limits foreign investments in agriculture and forestry to renewable terms of 30 and 60 years, respectively. Assuming that leases constitute investment property and can therefore be considered to be investments in their own right, any foreign-owned agricultural lease longer than 30 years and any foreign-owned forestry lease longer than 60 years would thus be inconsistent with this provision of the Investment Promotion Act. Due to the poor uptake of these laws, however, many government institutions in South Sudan are not aware of this restriction and 99-year leases for foreign investments in agriculture and forestry are not uncommon (see section 3.6 below).

Land Classifications in the Land Act

The 2009 Land Act classifies all land in South Sudan as public, private, or community land. Public land includes various forms of government property, including:

- Land for government facilities;
- Transport corridors;
- Urban parks and recreational areas;
- Forest reserves, wildlife reserves and national parks;
- Certain wetlands and waterways; and
- A number of pre-war agricultural schemes and agro-industrial complexes.

Private land includes land held by individuals in freehold or leasehold. Although the Land Act recognizes freehold as a valid form of ownership, there is currently no land held in freehold anywhere in South Sudan. As a result, private land consists entirely of leaseholds in which primary ownership rests with state governments. Most of these leaseholds are situated in urban areas for residential or commercial purposes.

Community land refers to land held under customary land tenure. There is no *terra nullius*, or ‘no man’s land’, in South Sudan. Communities, defined mainly in terms of ethnic groupings or subgroupings, own virtually all land in the country in the sense that they retain the right to regulate its usage according to their own particular customary land tenure system (Rolandsen 2009). South Sudan is home to about 65 ethnic groups whose territories span the entire country. Customary land tenure systems vary across the country. Some groups, such as the Shilluk, incorporate more centralized systems of land governance. The Shilluk are led by the *Reth* (Shilluk King), who has a greater deal of authority over decision-making on land issues than many other traditional authorities in South Sudan. Other customary land tenure systems adopt more decentralized structures, in which authority is distributed among several institutions of traditional authority in the community. Another line of distinction can be broadly drawn between groups that practice different livelihood approaches, such as groups that adhere to primarily agriculturalist or pastoralist lifestyles.

Under customary tenure, access to land is seen as a ‘social right’ and serves an important safety net for populations residing in rural areas. Land is typically assigned to families and their descendants in perpetuity. In that sense, identity plays a role in determining one’s land rights. People belonging to a certain ethnic group have a right to access land within that group’s territory. However, the fact that peoples’ land rights depend so heavily on their identity can also restrict individuals and groups

from outside the community from settling on community land. There is a long history of identity politics revolving around land issues being used as a tool of divide-and-rule in South Sudan. The role of identity in determining land rights also has implications for internally displaced persons (IDPs) and refugees. IDPs and refugees are commonly permitted to settle temporarily on community lands if they have a good reason for leaving their homelands, but there is usually an explicit condition that once the cause of their displacement subsides, they will return to their home areas.

Another concern with customary land tenure relates to the manner in which it treats women's rights. The Transitional Constitution and the Land Act include provisions that purport to protect women's land rights. Nonetheless, many customary systems continue to restrict women's ability to own land independently of their husbands or male relatives. The risks of landlessness are particularly acute for divorced women. Upon divorce, women are often denied a share of family wealth and property, even if that property was obtained after marriage. If the husband's family has paid the full bridewealth (typically in the form of cattle) to his wife's family, a divorced woman may also be denied custody over her children. When divorced women's birth families decline to accept them back into the family home, the women may be left with nowhere to go. This insecure tenure status may also make it difficult for women to flee abusive relationships, since if they divorce their husbands they often stand to lose all their property and can even be denied custody of their children. Most customary law systems include mechanisms to provide for widows, but in practice, the families of their deceased husbands often dispossess widows of their lands, even when doing so is not in accordance with customary law (SIHA 2013).

Land Tenure Typology

Table 2 below provides an overview of a Land Tenure Typology for South Sudan. The leftmost column indicates the three land classifications that are recognized in South Sudanese law: private land, public land and community land. These classifications are further broken down into various formal and informal tenure types that are found in urban and rural areas. The final column provides information on the characteristics of the tenure types, including the extent to which they are legally recognized, recorded and transferable.

Table 2: Land Tenure Typology

Classification	Tenure types	Area and Population	Legal Recognition and Characteristics	Overlaps with other tenure forms & Potential issues
<i>URBAN LAND*</i>				
Private	Leasehold	<p>Area: Unknown. An estimate would comprise the entire land area of the major towns and cities in South Sudan. These figures are not readily available.</p> <p>Population: Very rough estimate of 13% of the population, which is the percentage of the population residing in urban areas. The figure is likely over-representative, in that a significant amount of the urban population resides in informal settlements without legal recognition. There are also urban areas at the county level in which leasehold systems have not yet been adopted.</p>	<p>Legal recognition: Land Act, ch. II, § 7(2) (2009) (stating that land may be “acquired, held and transacted” through three tenure systems: customary, freehold, and leasehold).</p> <p>Registration/Recording: Leaseholds are registered in land registries managed by the state-level Ministry of Physical Infrastructure and the Judiciary. The system is loosely based on a series of colonial and post-colonial laws, though they are not strictly adhered to.</p> <p>Transferability: Leases are freely transferrable. They are available to both South Sudanese citizens and foreigners.</p>	<p>Private land in urban areas is managed through leaseholds with state governments. Public institutions may also lease land from private individuals, particularly in Juba, where they are faced with a severe shortage of available land. The government institutions can sublease the land from a private leaseholder, or else buy the lease and have it registered as an asset of the government institution.</p> <p>Urban residential leaseholds are typically issued for 20 to 30 year periods, although large-scale projects may obtain leases of up to 99 years. According to Deng (2010), individuals may lease residential plots in Juba for a maximum 49-year period. Officials say that many commercial leases, however, tend to be temporary in nature and can be withdrawn if the land is needed for a public purpose. Leases issued under the community registration process discussed in Section 3.1 below also tend to be revocable.</p> <p>Many people and organizations access land through subleases, as it can take a long time to acquire land through government allocation schemes. In some cases, however, the underlying lease period has already lapsed. In such circumstances, sublessees may be required to pay in arrears the costs for renewing the underlying lease.</p>
	Freehold	<p>Area: 0</p>	<p>Legal recognition: Land Act, ch. II, § 7(2) (2009). The Land Act defines freehold as “a form of land</p>	<p>Some people question whether a 99-year lease is really that much different than freehold.</p>

		Population: 0	<p>ownership held in perpetuity with the rights to transfer and dispose of such land.”</p> <p>Registration/recording: Freehold rights currently do not exist anywhere in South Sudan and there is no process for registering freehold rights.</p> <p>Transferability: In theory, freehold is freely transferable among South Sudanese. Foreigners, however, are not allowed to own land in freehold, though they may obtain long-term leases of up to 99 years.</p>	
Public	Regulation of government facilities, transport corridors, urban parks, and recreational areas	<p>Area: Unknown. The information required to make an estimate is not readily available.</p> <p>Population: Unknown. The information required to make an estimate is not readily available.</p>	<p>Legal recognition: The Land Act defines public land to include: land lawfully held, used or occupied by government institutions; all roads, railways, airports and thoroughfares; certain rivers, lakes, canals, haffirs and wetlands; and “land in respect of which no private ownership including customary ownership may be established by any legal process. Land Act, ch. III, § 10(2). Public land in urban areas is mostly comprised of government offices and residences, roads and other transport corridors, and small urban parks or recreational areas.</p> <p>Registration/recording: Unknown. There is supposedly a gazette process whereby the government asserts its claim to land and records public landholdings. However, none of the individuals or institutions interviewed for this study were able to produce a written gazette.</p> <p>Transferability: These areas are designated as public property and are not typically transferable.</p>	<p>There are two several areas of concern: First, due to the weak land administration in urban areas, people have settled on land that is designated for roads or other public purposes. In some cases, people have resided in these areas for generations. State governments around the country have engaged in demolition activities to open roads in accordance with urban land use plans. Tens or hundreds of thousands of people are being affected.</p> <p>Second, within the government itself, there is disagreement over which land areas belong to the national, state and local governments. This is particularly a problem in Juba, where the three levels of government must coexist in the same town.</p>
	Root ownership of leases with private individuals or organizations in urban areas	<p>Area: An estimate would comprise the entire land area of the major towns and cities in South Sudan. These figures are not readily available.</p> <p>Population: Very rough estimate of</p>	<p>Legal recognition: Since land in urban areas is distributed through leases with state governments, all land in urban areas could be viewed as public land. The basis for this system goes back to a series of colonial and post-colonial laws.</p>	<p>The existing land administration system in South Sudan is based on the colonial model in which the root interest in land resides with the state. In urban areas, land is transferred through leaseholds that individuals enter into with the state government. Technically, this</p>

		13% of the population. See comment in relation to private leaseholds in urban areas above.	<p>Registration/recording: See section above on registration of private leaseholds in urban areas.</p> <p>Transferability: Once the leases have been issued, they are freely transferable among private parties. Subleases are also available.</p>	land is owned by the state and individuals are merely granted usage rights for a period of time. Renewal of leases is typically not a problem for residential land, although commercial enterprises seem to have less secure tenure.
Community	Regulation of community land in peri-urban areas	<p>Area: For the most part, there is little or no land held under customary land tenure in urban areas, with the possible exception of some county headquarters, which may be designated as urban but where land is still governed by customary land tenure systems. The main tenure type in this category refers to customary lands in peri-urban areas that are converted to urban areas and distributed to individuals through leaseholds with the government. The estimated land area is therefore zero, because it refers to land converted from customary land to private leasehold.</p> <p>Population: Unknown. Most peri-urban land areas are held under customary land tenure. Urban expansion is converting these areas into private leaseholds distributed by the government.</p>	<p>Legal recognition: Land Act, ch. II, § 8(6) (stating, “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”). Typically, community land is not found in urban areas, but peri-urban lands are almost exclusively community land. Municipalities acquire community land in peri-urban areas to accommodate urban growth. The land is surveyed, demarcated and distributed to individuals through leaseholds with the government.</p> <p>Registration/recording: The registration of customary land rights is called for in the Land Act, but there is currently no registration process in place. Nor are there concrete plans to establish such a process. Land Act, ch. II, § 8(5) (stating, “Customary land shall be demarcated and registered in accordance with the provisions of this Act and any other law”).</p> <p>Transferability: Various levels of government have been acquiring land from communities in peri-urban areas across South Sudan to accommodate urban expansion. The terms of these arrangements vary in terms of whether compensation is provided and in what form. It is often not clear whether the acquisition of community land is considered to be an expropriation, a gift from communities, or some other kind of arrangement.</p>	According to the Transitional Constitution and the Land Act, government expropriation of community or private land must be accompanied by a court order and affected individuals and groups must be provided with notice and compensation. There are reports of community land being expropriated in various parts of South Sudan without proper consultation and without compensation being paid (most notably Juba, but most towns and cities are in a process of expansion in which community lands are being converted into urban lands), though the issue has not been thoroughly documented.
	Regulation of informal settlements on public land	<p>Area: Unknown. Not possible to estimate.</p> <p>Population: Unknown. Not possible to</p>	<p>Legal recognition: The Public Premises Eviction Act (2006), Land Act (2009) and Transitional Constitution (2011) lay out procedures for evicting people from public land. Most state authorities do</p>	The question of when expropriation is permitted and what procedural safeguards are required is mentioned in various laws (i.e. Public Premises Eviction Act, Land Act,

		estimate. Populations residing in these areas may number in the tens or hundreds of thousands.	<p>not consider compensation to be required when people have constructed their homes on public lands. Nonetheless, the land rights of groups occupying informal settlements on public land for more than 30 years since the start of the war in 1983 are recognized in the 2009 Land Act. <i>See</i> ch. XIII §§ 82(1), (4).</p> <p>Registration/recording: Though practices may vary between the states, in Juba the authorities in charge of demolitions said they would try to document all of the people who are being evicted and provide them with alternative places for resettlement. People who were residing in unregistered landholdings on public land, however, are not provided with compensation.</p> <p>Transferability: There is little data about the manner in which informal land rights are transferred in informal markets. If unregistered landholdings on public land are expropriated or otherwise extinguished, the land is either designated for its intended use (e.g. roads are constructed, etc.) or else the land is surveyed, demarcated, and distributed to private parties through leaseholds with the state government.</p>	Transitional Constitution, Mining Act). However, the issue must be better clarified, particularly as it relates to the expropriation of community land and informal settlements on public land in urban areas. This could be clarified in the proposed Community Land Act.
RURAL LAND*				
Public	Regulation of forest reserves, national parks, and game reserves	<p>Area: 1.21 million ha</p> <p>Population: Unknown. The information required to make an informed estimate is not available. Populations residing in these areas would likely number in the tens or hundreds of thousands.</p>	<p>Legal recognition: Many of these land areas were expropriated and underwent a gazette process in the colonial or post-colonial era. The gazette process is unclear and none of the officials interviewed for this study were able to produce a gazette of public landholdings. <i>See</i> Land Act, ch. III, § 10(2) (outlining the various forms of public land).</p> <p>Registration/recording: See comment above regarding the gazette process. The process does not seem to distinguish between rural and urban areas.</p>	Many of the land areas that the government purportedly gazetted in the 1970s and 1980s were never formally occupied. When the war broke out in the early 1980s, groups of internally displaced persons (IDPs) fled onto these government owned lands. In some cases, the government was prevented from occupying the land areas due to the outbreak of war and local residents were never evicted from the land in the first place. Now, in the postwar context, the government is seeking to develop many of its public landholdings in rural areas through public-private-partnerships. However, in many cases,

			<p>Transferability: The government has plans to enter into public-private partnerships to develop some of these landholdings. Examples include a joint venture with a UAE company Al Ain Wildlife to establish an ecotourism project in Boma National Park and a concession granted to a company called Equatoria Teak (partially owned by the investment firm Maris) to harvest teak from a number of government-owned timber plantations in Central and Western Equatoria States. Some of these arrangements are handled through leaseholds, other may involve other types of agreements, such as the granting of non-exclusive rights to land areas.</p>	<p>communities who have been living in the areas for decades contest the government’s ownership claims. There are also disputes among the various levels of governments over which level of government owns the land in question.</p> <p>First, if there is no terra nullius in South Sudan and community land includes all land under customary land tenure, communities should own virtually all rural land in the country and it is not clear to what the final catch-all provision in the definition of public lands should apply.</p>
<p>Regulation of relatively more developed areas in county and payam administrative headquarters</p>		<p>Area: Unknown. It is not possible to estimate the land areas covered by local government administrative headquarters.</p> <p>Population: Unknown. The information required to make an informed estimate is not available. Populations residing in these areas would likely number in the tens or hundreds of thousands.</p>	<p>Legal recognition: For many years since the end of the war in 2005, residents in rural areas have been requesting that the government develop warrants of establishment to legalize their status and clarify their geographical boundaries. <i>See</i> Local Gov’t Act, ch. IV, § 20(5) (stating that, “Each Local Government Council shall be established by a warrant showing its jurisdiction, type of authority, territorial boundary and a map of its area duly signed by the President and attached”). Local authorities are sometimes able to describe administrative boundaries with reference to various landmarks, such as mountains, rivers, trees, and streams. Disputes among groups residing along the boundaries between local government administrative units are common.</p> <p>Registration/recording: The process for providing warrants of establishment does not require individual registration in the sense of private leaseholds in urban areas. The Local Government Board at the national level and the Ministries of Local Government at the state level are the main institutions mandated to manage the process, though state governors and the president also play key roles.</p>	<p>There are usually small towns located at the county and payam administrative headquarters. Land in these areas is often more individualized than land in the surrounding areas, which is typically managed through customary land tenure.</p> <p>One concern relates to the proliferation of ethnically defined counties and payams. Many internal administrative boundaries are based on the colonial borders in which areas are delineated along tribal or sub-tribal lines. After the signing of the peace agreement, these units of local government became an important means of determining political constituencies. Minority groups began calling for their own separate counties, payams, and bomas, hoping to secure better representation in the national and state governments and to benefit from the creation of additional public positions in local governments.</p> <p>The concern is that the increasing number of ethnically defined local government administrations could rarify identities without taking into account the subtle shifts in identity</p>

			<p>In more developed counties, individuals lease land from county administrations (e.g. Yei, Lainya). These leaseholds may be recorded in land registries in much the same way that land is registered in state capitals (see information on private leaseholds in urban areas above). In other locations, local government officials may record landholders' names and associated plot numbers in some type of ledger, though the recorded information rarely stipulates the types of rights that are being recognized.</p> <p>Transferability: Land in county and payam headquarters is often freely transferable. Local government officials at the corresponding level of government maintain land registries and manage the registration process.</p>	<p>that occur over time. It could also undermine the creation of a national identity and exacerbate ethnic tensions in South Sudan.</p>
	<p>Regulation of agricultural schemes and agro-industrial complexes</p>	<p>Area: A series of mechanized agricultural schemes were established in Upper Nile during the 1970s, concurrently with schemes established in Southern Kordofan and Southern Blue Nile. The schemes in Renk, Manyo, and Melut counties of Upper Nile State cover 470,400 ha. Other agricultural schemes can be found in Jebel Lado on the outskirts of Juba or the Nzara scheme in Western Equatoria State.</p> <p>We do not have statistics for the cumulative land area covered by these projects. Some documents remain in the Ministry of Agriculture in Khartoum (e.g. agro-industrial complex in Mangala). For other areas, the land was gazetted just a few years before the war broke out and the government never had an opportunity to fully demarcate the land in question.</p>	<p>Legal recognition: Many South Sudanese worked on these schemes before the war and are familiar with their locations. However, many of the maps and other documents clarifying the status, ownership, and boundaries of these schemes were lost or destroyed during the war. Government ownership of these areas is recognized in the Land Act, but boundaries may be contested among between communities and the government. <i>See</i> ch. III, § 10(2).</p> <p>Registration/recording: Similar to legal statutes, government landholdings are meant to be published in a national gazette. We are not aware of any publicly accessible gazette currently in existence in South Sudan.</p> <p>Transferability: The government is seeking to develop its rural landholdings through public-private partnerships. For example, it is working with the Madhvani Group, one of the largest conglomerates in Uganda, to establish a sugar plantation and processing plant in Mangala, Central</p>	<p>The vast majority of farming is done through rainfed agriculture. There are very few farms that incorporate irrigation schemes. Even the large-scale mechanized schemes of Upper Nile employ rainfed farming techniques.</p> <p>One recent commercial farm in Unity State (i.e. Concord Agriculture), probably the only existing large-scale commercial farm in the country (105,000 ha), is in the process of building a canal to a nearby river. But the company has not yet started irrigating its farm. Even the mechanized farming schemes of Upper Nile are managed through rainfed farming.</p>

		<p>Population: Unknown. The information required to make an estimate is not available. Populations living on these areas would likely number in the tens or hundreds of thousands.</p>	<p>Equatoria State, where a defunct agro-industrial complex was once situated. In other cases, investors may prefer establishing ‘greenfields’ over revitalizing defunct projects.</p>	
Regulation of petroleum concessions	<p>Area: We do not currently have exact information on the land area covered by oil concessions in South Sudan. But judging from the available maps, the concessions appear to cover about half the country, or roughly 300,000 square kilometers.</p> <p>Population: Millions of people live in these areas.</p>	<p>Legal recognition: Aside from transferring ownership of subterranean resources to the new Republic of South Sudan, South Sudan’s independence did not fundamentally change the ownership over its oil fields. The same multinational enterprises that owned concessions prior to independence continue to own concessions. However, some changes have been proposed, such as breaking up large concessions into smaller units. Sudapet, the Sudanese oil company, was also divested from concessions in South Sudan.</p> <p>Registration/recording: The Ministry of Petroleum and Mining in the national government is responsible for regulating the petroleum sector.</p> <p>Transferability: The Petroleum Act (2012) states that all concession agreements should be made publicly available, but this has not been done yet. Without access to the oil contracts, it is difficult to know the terms and conditions attached to the transferability of concessions.</p>	<p>Given the economy’s overdependence on oil, as became painfully apparent following the government’s shutdown of oil production in 2012, there is an urgent need to develop other sources of revenue. Investments in agriculture, forestry, mining and other land-based sectors can help to diversify the economy and promote more equitable and sustainable economic development in South Sudan.</p>	
Mineral Titles	<p>Area: Unknown. The Ministry of Petroleum and Mining has not published precise figures for the land area under mining licenses. The Country Coordinator has obtained information that cites locations, but information regarding the land areas covered by the licenses is not available.</p> <p>Population: Unknown. The information required to make an estimate is not readily available. The populations residing in these areas likely number in</p>	<p>Legal recognition: The Mining Act (2012) lays out six types of licenses for mining: reconnaissance, exploration, small-scale mining, large-scale mining, retention, and artisanal mining. According to the Transitional Constitution and recognized in the Mining Act, all subterranean resources are the property of the national government.</p> <p>Registration/recording: A cadastre of mining licenses has been established in the Ministry of Petroleum and Mining. Some of the information in the cadastre is available for public review upon request from the Ministry.</p>	<p>The mineral content of the soil in South Sudan is almost completely undocumented. Industrial mining activities have not yet taken root in South Sudan. However, the country borders mineral rich regions in the Democratic Republic of Congo and Uganda, so it is likely that considerable mineral deposits are available, at least in the southernmost regions. Communities have also operated artisanal gold mines in various parts of the country for generations, providing additional clues as to the location of possible deposits.</p>	

		tens or hundreds of thousands.	<p>Transferability: Reconnaissance licenses are not transferable whereas exploration and mining licenses are transferable subject to approval by the Ministry of Petroleum and Mining and several other restrictions. <i>See</i> Mining Act (2012).</p>	Currently, mining activities by foreign companies are largely restricted to reconnaissance and exploration activities. It will likely take many years for an industrial mining industry to develop.
Private	Regulation of large-scale land leases for investments in agriculture, timber, carbon credit schemes, biofuels, and ecotourism	<p>Area: From the start of 2007 to the end of 2010, private interests sought or secured rights to an estimated 5.15 million hectares (ha) of land in the agriculture, biofuels, forestry, carbon credit, and ecotourism sectors. This is equivalent to more than eight percent of South Sudan’s total land area. Investments were concentrated in the Equatoria region, comprising the states of Central, Eastern and Western Equatoria.</p> <p>Population: The boundaries for many of the project areas have either not yet been decided or have not been made publicly available. It would also take many years for these projects to occupy their entire landholdings. This makes it difficult to estimate the size of the population that stands to be affected. A round estimate would be to add all the payam populations for areas where projects are planned. The figure is 745,650 people, though this estimate is of limited probative value. It could either be either overinclusive or underinclusive, since some project may not occupy the entire payam and other project may occupy land beyond the payam boundaries. The current status of many of the investments that have been announced is also not known. Since investments such as these typically have very low success rates, it is unlikely that</p>	<p>Legal recognition: The Land Act allows public, private and community land to be leased for up to 99 years for investment. The 2009 Investment Promotion Act, however, limits foreign investments in land to 30 and 60 years respectively.</p> <p>Registration/recording: The registration processes for these land leases vary. In some cases, the land is gazetted in the name of the government. In other cases, lease agreements may be made directly with government institutions without a formal registration process. The lack of clarity in the land acquisition process undermines tenure security for investors and landowning communities alike, as there are a lot of ad hoc requirements and it is very difficult to determine when all the necessary steps have been fulfilled.</p> <p>Transferability: Investment agreements may attach various conditions to leaseholds. In some cases, the lease is between communities and companies, in others it is between companies and government institutions. Some companies may be granted exclusive rights to particular land areas. In other cases, the rights may be non-exclusive. Once the lease is issued, the transferability of the rights depends on the provisions of the contract.</p>	<p>Since the signing of the peace agreement in 2005, private companies have increasingly begun leasing land in rural areas. In some cases, these companies acquire leases over public land. In other cases, the companies lease community land. In some cases, government institutions issue leases over community land. These agreements may or may not involve consultations with the affected communities. In other cases, community leaders have issued leases over exceedingly large areas without informing the government.</p> <p>Then there is also some uncertainty of the status of lease agreements that purport to grant leasehold rights over large areas to private companies. Several agreements appear to be little more than agreements with South Sudanese entities and foreign companies, neither of which has any land rights in the areas in question (e.g. Jarch Capital investment in Unity State, Nile Trading investment in Mukaya). In September 2011, the president said that they government would review all land leases from the interim period. Until now, no information has been released about whether this review has happened or will happen.</p> <p>Another potential issue concerns the prevalence of land mines in the country. The government and its international partners have been working to clear areas for many years, but they do not always pay attention to the</p>

		<p>this many people will be affected by the investments.</p>		<p>implications that this has on the land rights of populations residing in rural areas. Cases have been reported (e.g. Lainya County headquarters) of land being de-mined and concurrently being changed from community lands to private lands distributed to private individuals through leases with the local government. The rise in land value once land has been de-mined has implications for land rights. If not handled carefully, it has the potential to skew development patterns by focusing demining activities in areas designated for private investment.</p>
Community	Customary	<p>Area: Various experts maintain that there is no terra nullius, or ‘no man’s land’ in South Sudan. According to them, communities administer virtually all of the rural land in the country according to principles of customary land tenure. To the extent that this is true, almost all rural land in the country</p> <p>Population: A rough estimate would be to say that 87% of the population holds land under customary land tenure. This is the entire rural population.</p>	<p>Legal recognition: According to the Land Act, customary land rights, whether registered or unregistered, have equal force in law with freehold and leasehold rights. In practice, however, decision-makers do not always recognize these rights and community land is sometimes expropriated without providing compensation or alternative resettlement to community landholders.</p> <p>Registration/recording: See comment regarding planned registration of community lands above.</p> <p>Transferability: The transferability of land rights among individuals within the community are governed by that community’s principles of customary land tenure. Agreements with outsiders, such as the lease of community land to private interests or the expropriation of community land in the public interest, are also regulated by statute. The transfer of land rights among community members do not typically employ written agreements, whereas the transfer of rights to people from outside the community is often accompanied by written contracts with communities and/or government institutions.</p>	<p>People often reside on land that the government recognizes to be public land. During the war, government presence in South Sudan was restricted mainly to the ‘garrison towns’ of Juba, Wau and Malakal. The government had landholdings in rural areas that dated back to the colonial era, or land that was expropriated during the 11 years of peace (1972-83) between the two successive civil wars in Southern Sudan, but because of the conflict the government did not make active use of those rural landholdings. Groups of IDPs would seek refuge in forest reserves, national parks, and other public lands in rural areas during the war. In some cases, they never left the land in the first place. These groups continue to regulate access to the land through the principles of customary land ownership discussed in the text above.</p>

* The National Bureau of Statistics (NBS) has categorized all land in South Sudan as urban or rural for the purposes of the national census that was conducted in 2008. All state capitals are considered urban areas, as well as a number of the more developed county headquarters. The rest of the land in South Sudan is considered rural. Precise figures for the areas of urban and rural land are not available, but the 2008 census found that 87 percent of the population resided in rural areas and 13 percent resided in urban areas.

Institutional Framework

Responsibility for land governance is distributed across a range of institutions at all levels of government. The South Sudan Land Commission (SSLC) is an independent institution that was established in 2005. It has been the driving force behind the Land Act and Land Policy and has provided leadership on land issues over the past eight years. However, as an independent institution without representation in the Council of Ministers and with a limited presence at the state level, the SSLC does not have the mandate to execute the reforms called for in the Land Act.

Other national level institutions—such as the Ministry of Housing and Physical Planning, the Ministry of Agriculture, Forestry, Cooperatives and Rural Development, the Ministry of Wildlife, Conservation and Tourism, and the Ministry of Roads and Bridges—each deal with their own particular types of land issues, but do not cover the whole range of governance challenges that arise with respect to land.

The main locus of decision-making for most land issues resides at the state level. State Governors, Ministries of Physical Infrastructure, and Ministries of Agriculture and Forestry are key players in this regard. However, there is poor coordination between institutions at various levels of government (vertical overlap) as well as between institutions within each level of government (horizontal overlap), which undermines performance and gives rise to a considerable number of disputes among government institutions.

The Land Act has also created several new institutions at the local government level that are meant to eventually take primary responsibility over land matters. The County Land Authorities (CLAs) and Payam Land Councils (PLCs) have only been established in a handful of areas, but as discussed in greater detail in Section 3.1, competition among interest groups over the composition of the CLAs are already causing political squabbles to emerge in various locations.

2013 Ministerial Reshuffle

In July and August 2013, the President of South Sudan restructured the Ministries in the national government, introducing several changes relevant to land governance. The RSS Ministry of Housing and Physical Planning was changed to the RSS Ministry of Lands, Housing and Physical Planning. This restructuring would seem to be in line with the 2013 Land Policy, discussed in greater detail below, which identified the Ministry of Housing as the primary institution mandated to deal with land issues in South Sudan.

The Ministry of Agriculture, Forestry, Cooperatives and Rural Development also had animal resources and tourism added to its portfolio. This consolidation now makes the RSS Ministry of Agriculture, Forestry, Tourism and Animal Resources, Cooperatives and Rural Development a central institution for land-based investments outside of the extractives sector.

Until the new ministries have become better established it is not possible to determine exactly how the restructuring will impact on land governance in South Sudan. Since the LGAF was conducted before the reshuffle was announced, this study maintains references to the preexisting ministries, with cross-references to the new ministries, when appropriate.

Table 3 provides a summary of the major institutions of land governance in South Sudan.

Table 3: Institutional Map

Institutions (National, State and Local Government)	Type of land	Responsibility / Mandate	Overlapping Mandates / Other issues
NATIONAL GOVERNMENT			
South Sudan Land Commission (SSLC)	None	Advise government institutions on land law and policy development, Arbitrate land claims among willing parties	SSLC plays advisory role. Must work closely with other land governance institutions for implementation.
Ministry of Agriculture, Forestry, Tourism, Animal Resources, Fisheries, Cooperatives and Rural Development	Agricultural schemes, Agro-industrial complexes, Forest plantations, Forest reserves	Agricultural development, Food security, Conservation, Land use mapping, Administering parks and reserves, Develop tourism sector	Relationship to state level institutions is unclear and contested. Also must coordinate with other national ministries on land issues, such as Ministry of Environment.
Ministry of Lands, Housing and Physical Planning	Government facilities	Town planning, Land registration, Land use planning	Land Policy calls for a new Deputy Minister of Lands. Roles and responsibilities as they relate to state-level Ministries of Physical Infrastructure are unclear and contested. Land registration currently managed at state-level.
Ministry of Petroleum, Mining and Industry	None	Oversee management and development of extractives sector	
Ministry of Environment	None	Promote policies and activities to protect the environment	
Ministry of Transport, Roads and Bridges	Transport corridors	Develop legal framework and implement strategy for transport	
STATE GOVERNMENT			
State Secretariat	None	Manages state executive institutions	Governors have a great deal of de facto power at the state level and are typically the ultimate decision-makers on land issues.
Ministry of Agriculture and Forestry	Agricultural schemes, Agro-industrial complexes, forest plantations, forest reserves	Agricultural development, Food security, Conservation, Land use mapping	Ownership of public lands is often contested with national level institutions.
Ministry of Physical Infrastructure	Government facilities, Urban lands (administered through private leases)	Town planning, Land registration, Land use planning	Oversees urban land administration in conjunction with High Court. Land Act requires registry to be removed from the High Court and oversight responsibility to be put in the RSS Ministry of Lands.
High Court	None	Adjudicating land disputes over registered lands, Maintaining the registry of land leases	Land Act calls for the land registry to be taken away from the High Court and distributed among executive institutions at each level of government.

<i>LOCAL GOVERNMENT</i>			
County Administration	Urban land in county headquarters	Manages interactions with communities	County commissioners report to state governors, but at the county-level, they are often the ultimate decision-making authority.
County Land Authority (CLA)	None	Manages interactions with communities	Only a few pilot efforts are underway (see Section 3.1).
Payam Land Council (PLC)	None	Manages interactions with communities	No PLCs have been created yet.
Traditional Authorities	Communities in their collective capacity own most land in rural areas	Administer community lands	The relationship between customary and statutory institutions, e.g. between traditional authorities and local government institutions, is often unclear.

Land Policy Development

South Sudan is preparing a number of policies relating to land issues that are in varying stages of development, including a Land Policy, Housing Policy, Forest Policy and Environmental Policy. The South Sudan Land Commission (SSLC) began work on the Land Policy in 2006. Workshops and citizen dialogues were held in each of the 10 states to gather citizen input on the issues to be addressed in the policy. The policy provides for a number of legislative reforms to be conducted in tandem with institutional development efforts. The SSLC formally handed a draft of the Land Policy to the RSS Ministry of Justice in 2012, but the policy was not formally adopted by the Council of Ministers until February 2013. The policy now awaits final approval by the National Legislative Assembly (NLA).

One of the major institutional changes called for in the Land Policy is the creation of a new Deputy Minister of Lands to be housed within the RSS Ministry of Housing and Physical Planning. The Deputy Minister of Lands would be responsible for addressing the issue of land in its entirety and would help to counteract the piecemeal approach that flows from having land issues distributed across so many different ministries.

The Land Policy also calls for a series of new legislation to be passed to fill many of the gaps in the legal framework. Table 4 list the proposed legislation:

Table 4: Legislation Proposed in the 2013 Land Policy

Proposed Legislation	Description
Community Land Act	The Community Land Act would 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	The Town and Country Planning Act would 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.
Land Survey Act	The Land Survey Act would 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.
Land Valuation Act	The Land Valuation Act would set standards for land valuation.
Land Registration Act	The Land Registration Act would describe a land registration process that recognizes and protects all legitimate rights and interests in land in all categories.

Land Information Act	The Land Information Act would facilitate access to and management of land information.
Mortgage Act	The Mortgage Act would lay out a regulatory system for property mortgages.

Before passing the new legislation, the Land Policy calls for the existing laws to be reviewed and harmonized with one another and with the Transitional Constitution. Any such review would also have to take into consideration any relevant changes that might be introduced in the process of developing South Sudan's Permanent Constitution. There is currently no timeline in place for when these legislative reforms might take place.

Additional efforts are also required in developing implementing regulations for both the existing and proposed legislation. Whereas the legislation lays out the general framework of the law, the implementing regulations provide detailed guidance for institutions on how to apply the law. The delay in finalizing the regulations for the Land Act may be one reason for the confusion about how to proceed with implementing the changes called for in the legislation.

The adoption of the Land Policy is a sign of progress after many years of delay, but one document alone cannot exhaustively address the myriad of land issues in South Sudan. There is a need for additional more targeted policies—such as a policy on women's land rights, land acquisition and land information management—to more clearly describe the status quo with regard to these issues and the government's plans to remedy any shortcomings.

Constitutional Development Process

The manner in which the issue of land is treated in the constitutional development process will be a central factor in determining how South Sudan's legal framework tackles land issues in the years to come. At independence in 2011, South Sudan put in place a Transitional Constitution, replacing the Interim Constitution of Southern Sudan, which had been in force since the end of the war in 2005. At the end of a transitional period, the country is meant to adopt a permanent constitution. The length of the transitional period is not explicitly defined, but it can be inferred from several provisions of the Transitional Constitution to last for four years, from July 9, 2011 to July 9, 2015.

On January 9, 2012, the President of South Sudan established the National Constitutional Review Commission (NCRC), a body of 55 individuals with the mandate to review the 2011 Transitional Constitution, carry out civic education on constitutional issues, and collect the views and suggestions of South Sudanese on what they would like to see in their new constitution. After the NCRC submits the draft constitutional text to the President, he will then convene a National Constitutional Conference (NCC) to deliberate on the draft text and endorse it by a simple majority vote. Once the NCC has passed the draft text, the President will table the text before the National Legislature for adoption. Under the current schedule, the NCRC should complete its work by December 31, 2014, and a new constitution should be adopted by 2015.

Chapter Two: Methodological Note

2.1 What is the LGAF?

The Land Governance Assessment Framework (LGAF) is a diagnostic tool developed by the World Bank and its partners to help evaluate the legal framework, policies and practices relating to land governance in a given country. The assessment is based on a recognition of the increasingly important role that land governance plays in helping countries address the challenges posed by climate change, urbanization, disaster prevention and increased demand for land. The LGAF assesses these issues in an integrated manner and provides a basis for monitoring progress in the land sector over time.

The core of the LGAF focuses 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.

These seven thematic areas are subdivided into 28 indicators and 108 dimensions. The indicators and dimensions are assessed through panel discussions with in-country experts.

2.2 LGAF in South Sudan

The LGAF in South Sudan began in March 2013. The South Sudan Law Society (SSLS) coordinated the study with support from World Bank staff in Juba and Washington, D.C. The process began with a series of investigations into various land governance issues. Information compiled over the course of these investigations was used to develop detailed briefings to inform a series of nine panel discussions (see Table 5).

Table 5: List of Panel Discussions and Corresponding Themes

Panel Discussion	Corresponding Thematic Area(s)
1. Land Tenure	<ul style="list-style-type: none"> • Legal and Institutional Framework
2. Urban Land Use Planning and Development	<ul style="list-style-type: none"> • Land Use Planning, Land Management and Taxation • Legal and Institutional Framework
3. Rural Land Use and Land Policy	<ul style="list-style-type: none"> • Land Use Planning, Land Management and Taxation • Legal and Institutional Framework
4. Land Valuation and Taxation	<ul style="list-style-type: none"> • Land Use Planning, Land Management and Taxation • Legal and Institutional Framework
5. Public Land Management	<ul style="list-style-type: none"> • Management of Public Land
6. Public Provision of Land Information	<ul style="list-style-type: none"> • Public Provision of Land Information
7. Dispute Resolution	<ul style="list-style-type: none"> • Dispute Resolution and Conflict Management
8. Large-scale Acquisition of Land Rights	<ul style="list-style-type: none"> • Large-scale Acquisition of Land Rights

9. Forestry	• Forestry
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Each panel discussion brought together 3 to 7 experts on the particular issue to assess the relevant dimensions, arrive at a consensus score for each dimension and brainstorm potential policy options. Panelists included representatives from the Government of South Sudan, donor countries, private sector, civil society, think tanks, academia, national and international non-governmental organizations (NGOs), and United Nations agencies. A list of the experts that participated in the LGAF panel discussions is included in Annex III.

In September 2013, a workshop was held with stakeholders in Juba to validate the LGAF findings and discuss potential policy options. The report was then revised taking into account stakeholder viewpoints and feedback from a panel of external reviewers prior to publication.

2.3 Understanding the Results

In order to organize expert input and ensure a comprehensive and consistent analysis across indicators, the LGAF uses a scorecard to summarize South Sudan's performance in each area of land governance (see Annex II). Scores for the 108 LGAF dimensions were determined as consensus decisions by panels of experts. These scores supplement the more detailed and contextualized findings compiled during the expert investigations, panel discussions and the stakeholder workshop.

The LGAF scores are arranged on a four-point scale from A to D. Each score is assigned a color. A (green) indicates that South Sudan has met the requirements for good land governance, B (yellow) indicates that South Sudan has mostly met the requirements for good land governance, C (orange) indicates that South Sudan is struggling to meet the requirements for good land governance, and D (red) indicates that there has been no progress or limited progress in meeting requirements for good land governance.

In evaluating South Sudan's current situation, the panel of experts selected from among the four available options as presented in a 'scoring box'. Table 6 provides a generic example of how the scoring boxes frame each dimension. The experts then provided their analysis of the issue, relevant sources to substantiate their analysis, the reliability of the data and a commentary on policy options.

Table 6: General Presentation of a 'Scoring Box'

LGI-X, Dimension i	Assessment
Brief description of dimension	<p>A – Dimension description is the best option towards a good land governance scenario.</p> <p>B – Dimension description is generally the second best set of options that make progress towards good land governance.</p> <p>C – Dimension description generally struggles to meet the criteria for good land governance however some attempts are being made.</p> <p>D – There are no attempts in this area that indicate good land governance operates.</p>
Comments for LGI X (i)	
<p>1. <i>Analysis:</i> <i>Provide....</i></p> <p>2. <i>Data source:</i></p> <p>3. <i>Data reliability:</i></p>	

4. Rank this dimension and provide policy commentary:

2.4 Limitations

In interpreting the results, several limitations should be borne in mind. First, the LGAF includes both quantitative and qualitative indicators. In some cases, particularly with respect to the quantitative indicators, the information necessarily to generate a precise finding is not available, either because the data is scattered across different institutions and not readily accessible, it is treated as confidential information as a matter of government policy or practice, or it simply does not exist. Where precise quantitative data was not available, researchers made an informed estimate in consultation with the panel of experts. To the extent that LGAF is a longitudinal study that is meant to assess governance institutions as they develop over time, attention should be paid to developing more precise measurements in future iterations of the LGAF.

Second, the research for this study was done entirely from Juba. Juba is somewhat unique among urban centers in South Sudan in that it houses several levels of government all in the same location: the national government, the Central Equatoria State (CES) government, the Juba County government, and the Juba City Council. Whenever possible, the researchers tried to broaden their inquiries to include data from other urban areas in South Sudan, but there may nonetheless be some bias towards urban land governance issues as they arise in Juba.

Finally, researchers had difficulty securing participation from women experts on land issues. Two of the researchers were women and several women were interviewed for the study, but only two women participated as experts in the panel discussions. A consultant was brought in to try to deepen the analysis pertaining to gender and land rights, but it may be necessary in future studies to think about how to secure better representation from female experts on land issues.

Chapter Three: LGAF Results

The LGAF results across the seven themes reflect the toll that decades of war have taken on South Sudanese society and the difficulties that the Government has faced in establishing effective and accountable institutions in the post-war period. Weaknesses in the rule of law, bureaucratic failures, widespread corruption and a host of other challenges have frustrated efforts to develop land governance systems that are responsive to user needs. The subsections that follow provide a summary of the LGAF results across each of the 28 indicators and 108 dimensions.

3.1 Legal and Institutional Framework

The Legal and Institutional Framework theme assesses the extent to which governance institutions recognize the range of existing land rights, allow enforcement and upgrading of those rights, and are integrated into a realistic and accepted policy framework. It covers six indicators that are assessed using 27 dimensions. The first four indicators (LGI-1 to LGI-4) examine the recognition, enforcement and restriction of existing rights. The other two indicators (LGI-5 to LGI-6) focus on the clarity of institutional mandates and issues relating to participation and equity in land policies.

Recognition of a Continuum of Rights (LGI-1)

Table 7 presents the LGAF results for the five dimensions relating to the recognition of rights.

Table 7: LGAF Results for LGI-1

LGI	Dimension Description	Score				Dimension
		A	B	C	D	
1 i	Land tenure rights recognition (rural)					Existing legal framework recognizes rights held by 50%-70% of the rural population, either through customary or statutory tenure regimes.
1 ii	Land tenure rights recognition (urban)					Existing legal framework recognizes rights held by less than 50% of the urban population, either through customary or statutory tenure regimes.
1 iii	Rural group rights recognition					The tenure of most groups in rural areas is formally recognized but ways for them to gain legal representation or organize themselves are not regulated.
1 iv	Urban group rights recognition in informal areas					Group tenure in informal urban areas is not formally recognized but groups can gain legal representation under other laws.
1 v	Opportunities for tenure individualization					When desirable, the law provides opportunities for those holding land under customary, group, or collective tenures to fully or partially individualize land ownership/use. Procedures are not affordable or clear, leading to widespread discretion or failure to apply even for cases where those affected desire to so.

Rights Recognition in Rural Areas and Discrepancies Between Law and Practice

South Sudan is a new country with young and underdeveloped institutions. Although the autonomous region of Southern Sudan had control over its legal framework for six years prior to independence in 2011, major policies relating to land remain unfinished, including the Land Policy, Forest Policy and Environmental Policy. There are also major gaps in the legislative framework. The Southern Sudan Legislative Assembly (SSLA) passed the Land Act in 2009, but the legislation is broad in scope and does not provide the level of detail necessary to govern the many complex

land issues facing the country. Implementing regulations could help to clarify applicable rules and procedures, but almost five years after the promulgation of the Land Act, the implementing regulations have yet to be adopted. The Land Act is also inconsistent with other legislation, such as the 2009 Local Government Act, which lays out an entirely different institutional framework for land governance.

Despite the gaps and ambiguities in the legal framework, South Sudanese law does recognize the land rights of rural populations (see LGI-1, Dim. iii). 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.” Women’s inheritance rights are also recognized. According to the Transitional Constitution, “Women shall have the right to own property and share in the estates of their deceased husbands together with any surviving legal heir of the deceased.”

However, a distinction must be drawn between rights that are recognized in law and the protection of those rights in practice. Since the Land Act was signed into force in February 2009, it has remained almost completely unimplemented. For several years after the Land Act was passed, no one outside of a small group of policy-makers in Juba had access to the legislation. The Government of South Sudan has since partnered with several international organizations to disseminate the Land Act throughout the country, but these dissemination activities have not had noticeable effects on institutional practice. 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. To the extent that the term ‘legal recognition’ requires the recognition of people’s land rights in law as well as their protection in practice, South Sudanese law at best only partially recognizes the land rights of rural populations (see LGI-1, Dim. i).

The failure to implement the Land Act can be attributed to a number of factors, the foremost of which is the manner in which the legislation was introduced. Initially, there was a great deal of disagreement over whether a Land Act could be passed in the absence of a Land Policy, the idea being that the policy had to first be developed to lay out the key issues that would be addressed in the law. After several years of wrangling, it was decided to enact the Land Act as a provisional piece of legislation, with the understanding that it would be amended after the Land Policy was adopted. As a result, many policy-makers view the Land Act as non-binding and choose not to apply it, despite the fact that it went through the formal legislative process and should carry the full weight of law.

[Rights Recognition in Urban Areas](#)

Land rights in urban areas are managed exclusively through leaseholds with the state government. As such, they fall under the jurisdiction of statutory law and customary law does not apply—there is no community land in urban areas. While the legal framework recognizes the rights of people with formally registered leases, there is far less protection for those residing in informal settlements, or residential areas in which landholders have not registered their rights through any formal process.

Statistics are not currently available about the number of registered (or formal) landholdings in urban areas compared to the number of unregistered (or informal) landholdings, but panel experts estimate that more than 50 percent of the urban population resides on unregistered land (see LGI-1, Dim. ii). Existing registration processes such as those discussed in relation to LGI-3 below are able

to formalize some urban landholdings, but the processes are not able to meet the demand and people continue to be pushed into informality.

Enforcement of Rights (LGI-2)

Table 8 presents the LGAF results for the six dimensions relating to the enforcement of rights.

Table 8: LGAF Results for LGI-2

LGI	Dimension Description	Score				Dimensions
		A	B	C	D	
2 i	Surveying/mapping and registration of rights to communal land					Less than 10% of the area under communal or indigenous land has boundaries demarcated and surveyed and associated claims registered.
2 ii	Registration of individually held land in rural areas					Less than 50% of individual land in rural areas is formally registered.
2 iii	Registration of individually held land in urban areas					Less than 50% of individual land in urban areas are formally registered.
2 iv	Women's rights are recognized in practice by the formal system (urban and rural areas)					Less than 15% of land registered to physical persons is registered in the name of women either individually or jointly.
2 v	A condominium regime provides for appropriate management of common property					Common property under condominiums is not recognized.
2 vi	Compensation due to land use changes					Where people lose rights as a result of land use change outside the expropriation process, compensation is not paid.

Survey, Demarcation and Registration of Community Lands in Rural Areas

By recognizing customary land rights as having equal force in law with freehold and leasehold rights, the Land Act makes a first step towards the formalization of customary land tenure. The Act recognizes customary land rights whether or not they have been formally registered, but it also lays out a process for surveying, demarcating and registering community lands. If followed through upon, the registration of customary land rights can help to improve tenure security for rural communities as they struggle to cope with new pressures on community lands, such as those associated with urban expansion, increasing land values, the exploitation of natural resources, environmental degradation and the large-scale acquisition of land rights for public or private purposes. However, as is the case with most of the changes called for in the Land Act, the survey, demarcation and registration of community lands has not yet begun and there are no plans in place for how to go about it (see LGI-2, Dim. i and Dim. ii).

Aside from the non-implementation of the Land Act discussed above, one central obstacle to the registration process lies in the definition of the term 'community'. 'Community' can carry a number of different meanings in the South Sudanese context. It can refer to tribal distinctions, such as the Dinka, Toposa, Azande or Jurchol communities; inter-sectional distinctions, such as the Dinka Bor and Dinka Twic or the Lou Nuer and Jikany Nuer; inter-clan distinctions, such as the distinctions among the various subgroups of Lango in Ikotos county; or geographical distinctions, such as between the Pojulu living in Kenyi payam and the Pojulu living in Mukaya payam. The Land Act appears to endorse a territorial definition of community:

[Local Community] means a group of families or individuals, living in a circumscribed territorial area at the level of a locality, which aims at safeguarding their common interests through the protection of areas of habitation, agriculture, whether cultivated or fallow, forests, sites of cultural importance, pastures, and area of expansion.

The main problem with using the term ‘community’ in the development of law and policy is that it implies a well-defined and cohesive unit, whereas in reality, communities are often fractured and ambiguously defined entities. Communities may host displaced populations or minority groups who have lived on community land for generations. Divisions may exist between recent returnees and people who remained in the community during the war, host communities and neighboring communities who enjoy rights of access for grazing, fishing or gathering forest products, or permanent residents and economic migrants. Even if a semi-cohesive community can be identified, customary institutions have been undermined by the lengthy civil war. Community leaders are often ill equipped to manage new and complicated land governance issues and the system may be susceptible to self-interested decision-making, elite capture and misgovernance. This greatly complicates efforts to develop law and policy for community lands.

Registration of Individually Held Land in Urban and Rural Areas

As in relation to LGI-1, Dim. ii, panel experts estimated that less than 50 percent of individually held land in urban areas was registered (see LGI-2, Dim. iii). In the smaller towns, this figure is even lower. For example, in Terekeka, a small town on the banks of the Nile about 85 kilometers north of Juba, small-scale demarcation activities were carried out in 1997, 2008 and 2013, but the majority of individual landholdings are not registered.

In rural areas, communities own almost all land in their collective capacity. This land is not registered. However, there are often small marketplaces and slightly more developed residential landholdings that may be registered in some form. This registration process is far less developed than that found in bigger towns and cities and usually consists of little more than a ledger book recording the landowners name and an associated plot number.

Women’s Rights in the Registration Process

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

Despite the existence of legal provisions recognizing the equal rights of women to land, widespread knowledge, recognition and protection of those rights, remains limited throughout South Sudan. Women’s land rights remain largely conditional, derived through their marital or childbearing status and dispossession of widows, daughters, and divorced women is common. There is tension between competing notions that customary rules and practices should adapt to changing socioeconomic circumstances and those who resist change, fearing its impact on tradition and cultural identity, leading to a significant gap between the law and practice, particularly in rural areas.

Panel participants maintained that land administration systems in urban areas allow for land to be registered in the name of women, though the forms that are used do not appear to allow for joint registration. In Juba, for example, several panel participants said that it was not unusual for land to be registered in the name of a woman, particularly unmarried women or professional women who have some educational background and financial means. Women’s ability to purchase land in Juba was also reflected in a study by Tiernan Mennen (2012):

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

There are several reasons for why women may be having more success getting land registered in their names in more cosmopolitan areas such as Juba. As discussed in more detail in relation to LGI-3 below, there is a semi-formal registration process in Juba that operates parallel to the more formal government registration process. Individuals from within the community may therefore have more control over how the registration process operates and more confidence that the rights of their female relatives will be protected. Furthermore, in circumstances in which communities divide land that was collectively owned into individual parcels that are distributed upon request to members of the community, the costs of allocating land through the semi-formal process may be less than through other more formal registration processes. Males in the family may therefore be more willing to allocate land to their female family members.

Outside of these examples, however, government officials in the Central Equatoria State (CES) Ministry of Physical Infrastructure and representatives of INGOs active in the land sector report it is rare to find women who have land registered in their name in most urban areas. According to estimates from a legal adviser with the RSS Civil Service Commission, in big cities such as Juba, Wau and Malakal, at most 10 to 20 percent of land is registered in the name of women (see LGI-2, Dim. iv). In the smaller cities and towns, the numbers are undoubtedly far lower. Panel participants also noted that officials in the registry are sometimes reluctant to register land in a woman's name for fear of reprisal from her male relatives. Disgruntled husbands, brothers or in-laws have been known to threaten officials who register land in women's name without the knowledge of their families.

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

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

Text Box 1: Difficulty of Protecting Women's Inheritance Rights

A panel participant narrated an incident in Terekeka County, in which a woman's husband fell terminally ill. He wrote a will for his wife to sell a plot of land that they had registered in Juba to get money that would help her to cater for their kids. When the husband died, however, the woman decided not to sell the land. Her in-laws insisted that she must, but the woman refused, saying that she owned the land by virtue of the will and that it was her decision. After a protracted dispute, the woman acquiesced and agreed to sell the plot. When she was traveling back to Terekeka, however, her in-laws intercepted her and took the money.

Compensation Due to Land Use Changes in Urban Areas

The main form of land use change outside of the formal expropriation process occurs in the context of urban rezoning efforts (see LGI-7 below). People who lose their land rights as a result of this process are mainly those who reside in unregistered plots on public land, whether that land was designated as public land during the war or whether it is unregistered land that was rezoned as public land in the post-war period. These people's land rights are not recognized in practice and the Government may reclaim the land without paying compensation and without providing alternative resettlement. For people who have been residing on public land for more than 30 years, the expropriation of their land without compensation is contrary to the terms of the Land Act, which states that anyone who has resided in an urban area for 30 years or more since the start of the war in May 1983 shall be granted legal rights to that area. However, due to the high levels of displacement caused by the war, the large numbers of people who have settled in a disorganized fashion in urban areas and the urgent need to improve urban planning processes, this provision of the Land Act is not being implemented and people residing on public land in urban areas are afforded little protection against the loss of rights due to land use changes (LGI-2, Dim. vi).

Mechanisms for Recognition of Rights (LGI-3)

Table 9 presents the LGAF results for the six dimensions relating to the mechanisms for recognition of rights.

Table 9: LGAF Results for LGI-3

LGI	Dimension Description	Score				Dimension
		A	B	C	D	
3	i					Non-documentary forms of evidence are almost never used to obtain recognition of claims to property.
3	ii					Legislation exists to formally recognize long-term, unchallenged possession and this applies to both public and private land although different rules may apply.
3	iii					The costs for first time sporadic registration for a typical urban property does not exceed 5% of the property value.
3	iv					There are informal fees that need to be paid to effect first registration and the level of informal fees is significantly higher than the formal fees.
3	v					The requirements for formalizing housing in urban areas are not clear, straight-forward, or affordable but many applicants from informal areas are managing to satisfy the requirements.
3	vi					There is a clear, practical process for the formal recognition of possession but this process is not implemented effectively, consistently or transparently.

Government and Community Formalization Processes

There are two main processes by which land is formalized in urban areas: a more formal government process and a less formal community process. The government process starts with one of two scenarios: either the state government identifies an existing informal settlement where they would like to pursue survey, demarcation and registration activities, or else it negotiates with communities living in peri-urban areas to gain access to a parcel of land for the government to develop and distribute to interested applicants. Statistics on the area of land that has been registered through the government processes are not currently available, but in Juba, the registered landholdings are mostly found in the central part of town. Panel participants estimate that more than 50 percent of the landholdings in Juba have not been registered (see LGI-2, Dim. iii).

In registering individual landholdings in existing informal settlements, state authorities typically establish a committee to travel to the area to consult with local residents. Sometimes the county administration or the city council, rather than the state government, will take the lead in organizing the registration activities. The committee begins by conducting a social assessment to find out who resides in the area. After the assessment, the Survey Department in the Ministry of Physical Infrastructure conducts a spatial survey to determine the number of plots and the plot sizes. For people that are living on areas designated for a public purpose, such as roads, schools or health clinics, the government asks them to voluntarily relocate elsewhere. If they do not move, the government can forcibly evict them. As evidence of ownership, the Ministry of Physical Infrastructure gives the landholder a written lease and other associated documents. The lease is then registered in the land registry in the High Court. These documents provide prima facie evidence of ownership, and non-documentary forms of evidence are rarely used to obtain recognition of claims to property.

In addition to registering rights in existing urban settlements, government registration processes can also be conducted in peri-urban areas, thereby converting land from customary land tenure to individual urban leaseholds. To acquire community lands in these circumstances, the government must first negotiate with the community concerned. If the community agrees to make the land available, the government surveys the land and develops plans for roads and housing. They then advertise the residential plots and invite people to apply. Demand usually far outstrips supply. People whose applications are accepted are sent to the Survey Department and asked to pay a fee that ranges from \$32 USD to \$188 USD, depending on the class of the plot. This amount covers: the survey fee; a token that is issued by the community in the applicant's name designating which plot he or she is to receive; a service fee; a transport fee; and a stamp duty. The surveyors will also often require other informal fees when they arrive in the field. Table 10 provides an overview of the process for first-time formalization of residential land in Juba under the government process.

Table 10: Process for First-time Formalization of Residential Land in Juba

Steps	Fees	Additional Costs
1. Submit application to CES Ministry of Physical Infrastructure and get a land lease.	Reported fees ranged from \$23 USD to \$63 USD.	Costs are calculated from an application for a third class plot through the government distribution scheme. Many people hire intermediaries such as advocates to assist with the process. This cost is additional and can reach \$250 USD or more. Informal payments may also be required.
2. Apply for a certificate of registry with the Land Registrar at the Judiciary. Register the land with the Land Registrar at the Judiciary.	Reported fees ranged from \$8 USD to \$13 USD. Stamp duty costs \$0.25 USD.	
3. Go to the survey department with the certificate of registry and make appointment for them to go and survey the land.	\$32 USD	

The community process follows a somewhat different approach. Community registration can be conducted in urban areas where community leaders seek to formalize individual landholdings in existing settlements or in peri-urban areas where land that is under customary land tenure is converted into individual landholdings. The process for community registration in these circumstances is similar to the government process, except that it is done without government oversight, or with only the support of the lower levels of local government (i.e. the payam level). Community leaders will often establish a committee to make decisions regarding pricing and who will be eligible to apply for plots. The revenue accrues to community leaders or payam officials and with little or no accountability for how the funds are to be used.

There are a number of differences between the government and community registration processes. The community process is usually more expensive than the government process. Decisions about who will be given land are more likely to exclude certain groups, such as people who come from what are perceived to be rival ethnic groups. Tenure security tends to be weaker in community process. Often the community will only provide residents with a document authorizing temporary use of the land, whereas the government issues leases for terms of 25 years or more. The community process also tends to be less transparent and more prone to corruption and self-interested transactions.

Despite these shortcomings, the existence of the parallel community registration process shows that there is a high demand for land registration in South Sudan. If properly managed, this demand could lead to rapid tenure formalization and improved tenure security for populations in urban areas. The challenge would be to do so without undermining the tenure security and livelihoods of peri-urban communities and people residing in informal settlements within urban centers. In recent years, the CES government has given tacit approval to community registration processes. According to panel participants, the state government has learned from its past mistakes and is now trying to maintain more of a presence whenever land is formalized. But inequities and a lack of oversight over the process continue to present serious challenges and there is a need for more systematic monitoring of registration processes that occur outside of government control.

Whether seeking to formalize landholdings through the government or community process, most applicants are confronted with a number of obstacles. The registration procedures are not clear, nor are they being properly communicated to applicants. People can be made to wait for years to get their documents as the land is surveyed and demarcated. Complaints of discrimination based on gender or ethnicity are commonplace. Information about fees is not made publicly available, amounts can vary widely depending on who is doing the asking, and receipts are often not provided. According to one interviewee, when he went to confirm that his name was in the registry he was made to pay \$75 USD for the information without a receipt. Practices such as these put the formalization process outside the reach of most people. Certain practices on the demand side also complicate the formalization process. When people hear that a certain area will be demarcated, they often move to the area and erect informal settlements in the hopes that they will be recognized as legitimate owners when the formalization process starts.

Text Box 2: The Risks of an Unregulated Formalization Process

In July 2012, an incident took place on the outskirts of Juba that demonstrated how violent and contentious the land formalization process could become. The situation started when a senior politician reportedly approached a community in place called Mia U Saba (107 in Arabic) in Northern Bari Payam and asked for a parcel of land to establish a farm. The politician reached an agreement with the community that he would be given the land in exchange for a number of benefits, including priority access to employment opportunities and academic scholarships for community members.

After the agreement was made, settlements started surfacing around the farm. Various individuals and groups took advantage of the politician's agreement to obtain land for themselves. They brought in surveyors and began demarcating plots and distributing tokens. Soon more people started seeing this area as a land market and they were distributing tokens freely.

The chiefs and other community leaders reacted against the distribution scheme. Fighting broke out between a small group of people and quickly took on ethnic overtones. A number of people were killed and the Legislative Assembly called for investigations into the incident (Sudan Trib. 2012d).

Affordability of Registration Processes

Land prices through the formalization process are far lower than prices in the open market. In instances where the government has acquired a parcel of land and is distributing it to people on a first-come, first-serve basis, first class plots can sell for as little as \$750 USD. Once the lease is obtained from the government, it must be annually renewed, but it is freely transferable. Costs in the open market, on the other hand, can reach as high as \$20,000 to \$22,500 USD or more for completely undeveloped plots of land.

After an individual's application for land through the government distribution scheme has been accepted, he or she must pay a number of administrative fees to process the transaction. At the Survey Department, applicants pay a fee that ranges from \$43 USD (for third class plots) to \$188 USD (for first class plots), which covers: the survey fee; a token that is issued by the community in the applicant's name designating which plot he or she is to receive; a service fee; a transport fee, and a stamp duty. The amounts required in fees are not typically made available to applicants in the form of an official schedule of fees, so applicants are forced to rely on whatever information is provided by the authorities in the Survey Department.

Obtaining land through the community process can also be problematic. In several instances, forms were distributed to people residing in the areas designated for formalization so that they could register their claims. People who filed the forms were given tokens as evidence of their claim to a particular plot of land. Fee amounts in the community process vary widely, but one interviewee said that had to pay \$663 USD for the token, followed by a \$250 USD registration fee, a \$250 USD demarcation fee, a service fee and a payment to the payam authorities. The total cost was approximately \$1,250 USD. Revenue from these transactions accrued to community leaders, though it may also be shared with local government authorities. Additional fines may also apply for people who fail to pay for the tokens. If residents choose not to participate in the process, community leaders can sell the tokens to other applicants. This sometimes leads to problems when the people residing on the land are asked to vacate to make the area available to the newcomers.

The costs associated with registering land under either the government or community process comprise a large percentage of the costs associated with accessing land in urban areas. Assuming a property value of \$750 USD for first-time registration of a first class plot, and administrative fees (formal and informal payments) of \$250 USD, then the costs of registration far exceed five percent of the purchase price of the land (see LGI-3, Dim. iii). Additional informal fees may also be required, including:

- Facilitation fees to expedite the process;

- Paying transport costs or providing a ‘foot fee’ for officials to visit the plot in question;
- Payment for forms and other documents;
- Payments to facilitate the survey activities, which are often negotiated on the ground with members of the survey department; and
- Costs for ‘tea’ and ‘lunch’ that officials require prior to carrying out their activities.

In order to have documents processed and the land surveyed and registered in a timely manner, the informal costs can reach \$250 USD and more (see LGI-3, Dim. iv). The high levels of poverty in South Sudan, coupled with the convoluted and poorly publicized procedures, the costs of the process place formalization outside the reach of many if not most people in the country. There can be a lot of harassment in the process and women tend to be more victimized than men. The cost of the process also has a disproportionate impact on displaced populations. There is little planning being done for how to accommodate IDPs and returnees into the system. According to interviewees, most IDPs and returnees in Juba have settled in an area called Gudele. The formal and informal costs of registration in Juba can reach as high as \$4,000 to \$5,000 USD, which is outside the reach of most South Sudanese.

Text Box 3: Irregularities in the Formalization Process

One panel participant recounted an incident associated with a formalization process in a neighborhood of Juba called Hai Zenda. The state authorities required that he pay \$25 USD every month to retain the right to his land. They said that when they were ready to demarcate the plots, he would be given a lease document as proof of ownership. The man paid every month from 2008 to 2013 and did not receive any receipts for the payment. He then left town for a weeklong trip outside the country and when he returned he found that his house had been demolished to make way for a road.

Restrictions on Rights (LGI-4)

Table 11 presents the LGAF results for the two dimensions relating to the restrictions on rights.

Table 11: LGAF Results for LGI-4

LGI	DIMENSION DESCRIPTION	SCORE				Dimensions
		A	B	C	D	
4 i	Restrictions regarding urban land use, ownership and transferability are justified					There are a series of regulations [regarding urban land use] that are generally not justified on the basis of overall public interest but are not enforced.
4 ii	Restrictions regarding rural land use, ownership and transferability are justified					There are a series of regulations [restricting rural land use] that are generally not justified and are enforced.

Land Use Restrictions

Land governance in South Sudan is comprised of parallel and overlapping systems of statutory and customary land tenure. For the most part, statutory land use restrictions have limited reach in rural areas, where traditional authorities are responsible for prescribing land use restrictions. In urban areas, the state, municipal and county-level institutions are responsible for regulating land use. Due to the underdeveloped legal framework, land use restrictions are typically only enforced when they overlap with existing norms and practices. As the gaps in the legislative framework are filled with new laws and the existing statutes are brought into accordance with one another, greater attention must be devoted to ensuring that land use restrictions in the law are applied consistently in practice. Table 12 provides an overview of land use restrictions in urban and rural areas:

Table 12: Land Use Restrictions in Urban and Rural Areas

Type of Restriction	Description
Land transactions	Aside from the fact that foreigners cannot buy land in freehold and are usually excluded from the process for formalizing landholdings, there are no formal restrictions on land transactions in urban areas. In rural areas, land is understood to belong to communities in perpetuity, which in theory should restrict third parties from permanently alienating people from their land. In practice, however, land acquisitions for public and private purposes often amounts to a permanent transfer of rights.
Land ownership	The 2009 Land Act lists freehold as one of the tenure types available in South Sudan, but in practice, there is no land that is held in freehold anywhere in the country; nor are there any serious discussions underway to make land available in freehold. Although not a formal restriction per se, in practice, the Government is restricting the forms of land ownership available in South Sudan.
Owner type	Leaseholds in urban areas are technically available to both South Sudanese and foreign applicants, but due to the high demand for land and the scarce supply, most leases for new residential areas are allocated to South Sudanese. Foreigners typically gain access to land through subleases with the primary leaseholders.
	Many customary systems do not permit women to own land, or restrict women's ability to own land independently of their husbands or male relatives. The risks of landlessness are particularly acute for divorced women. Customary land tenure may also restrict people from outside of the community from acquiring community land. Internally displaced persons (IDPs) and refugees are commonly permitted to settle temporarily on community lands if they have a good reason for leaving their homelands, but there is usually an explicit condition that once the cause of their displacement subsides, they will return to their home areas.
	South Sudanese law restricts foreigners from owning land in freehold, although they may obtain leases for up to 99 years.
Use	In Juba, land use plans have been developed for Old Juba, which is a small area at the city center. However, the city has expanded far beyond this area and the land use planning has not kept up. Land use designations are not enforced in any concerted or meaningful manner, though certain areas are known to be designated for markets, schools, residences and other purposes.
	In rural areas, restrictions on land use are applied according to principles of customary land tenure. For example, chiefs, landlords or other traditional authorities may designate which land can be used for agricultural purposes, which land is allocated as a buffer zone through which people and their livestock may pass, and which land has ritual or spiritual significance. These restrictions under customary law are largely adhered to in most circumstances.
Size of holding	Land in urban areas is categorized according to the colonial system in which there are three classes of plots. First class plots are typically about 900 square meters, second class are about 625 square meters, and third class plots are about 400 square meters. The size restrictions are not followed strictly, and plot sizes may vary from neighborhood to neighborhood and in different locations in the country. In Western Equatoria State, for example, third class plots are often 900 square meters. Surveyors have also been accused of introducing changes to the plans when they are surveying plots on the ground to make additional plots available to distribute for their personal use. This causes discrepancies to surface between what is contained in the official map and what exists on the ground.
	The Land Act includes several provisions limiting the size of landholdings that can be acquired for various purposes. According to Section 15(5): "Any allocation of a piece of land beyond 250 feddans (105 ha) 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." Traditional authorities may transfer landholdings smaller than 105 hectares with the consensus of the community. Land transfers are also subject to a ceiling "that shall be prescribed by regulations." However, the government has not yet enacted regulations for the Land Act and in practice, there are few if any limits on the size of landholdings.

	As a result, exceedingly large land investments have been documented of hundreds of thousands of hectares or more.
Price	There are few controls on property prices in South Sudan. In Juba, individuals can charge up to \$20,000 per month or more with 6 months rent paid up front for residential housing. Typically, these arrangements are made through subleases with the primary leaseholder, which allows the sub-lessee usage rights to the land and housing. Leasing land itself without any structures can be done more cheaply through the government system, but as discussed above, there are also community-driven processes that are not subject to government price control.

Clarity of Institutional Mandates and Practice (LGI-5)

Table 13 presents the LGAF scores and the findings associated with those scores for the four dimensions relating to the clarity of institutional mandates.

Table 13: LGAF Results for LGI-5

LGI	Dimension Description	Score				Dimension
		A	B	C	D	
5 i	Separation of policy formulation, implementation, and arbitration					In situations that can entail conflicts of interest or abuse (e.g. transfers of land rights) there is no clear separation in the roles of policy formulation, implementation of policy through land management and administration and the arbitration of any disputes that may arise as a result of implementation of policy.
5 ii	Avoidance of institutional (horizontal) overlap					The mandated responsibilities of the various authorities dealing with land administration are defined poorly, if at all, and institutional overlap and inconsistency is a serious problem.
5 iii	Avoidance of administrative (vertical) overlap					Division of land-related responsibilities between the different levels of administration and government is unclear.
5 iv	Information sharing					Information related to rights in land is not available to interested institutions as a matter of policy or practice.

Horizontal and Vertical Administrative Overlap

In theory, institutions at the national level are meant to be primarily responsible for policy-making and the state governments are to be the main implementers. In practice, however, there is little coordination between the various levels of government (i.e. vertical overlap) and among institutions within each level of government (i.e. horizontal overlap).

The 2005 Interim Constitution of Southern Sudan and its successor, the 2011 Transitional Constitution both recognized land administration to be a concurrent power shared between the national and state governments. As these powers are interpreted, however, state governments retain the bulk of decision-making authority for land issues. As a result the national government often finds it difficult to access state and community land even for public purposes, such as the construction of roads and office space for national institutions. Accessing land for private investment is similarly contentious. A number of instances have been documented in which the national government pursues a national development project (e.g. commercial farm, timber plantation, etc.) on what is ostensibly land owned by the national government only to have state governments and communities assert their contradictory claims to the land (e.g. forestry projects in Western Equatoria and Central Equatoria). The ensuing disputes have undermined efforts to promote rural development and stimulate local economies.

The poor coordination among the levels of government is evident in a number of areas. Typically, state ministry personnel report to their minister only and not to the national ministry. State ministers report to their respective state governor who reports to the president. These reporting lines make it difficult for the national government and state government to coordinate activities. Other contradictory practices contribute to the problem. According to the RSS Ministry of Agriculture, Forestry, Cooperatives and Rural Development, for example, state-level authorities supervise the activities state forestry personnel but salaries are paid directly by the national Ministry. This creates confusion among civil servants as to who are their appropriate supervisors. The lack of human and financial resources, corruption and misgovernance also contribute to the problem.

Text Box 4: Horizontal Overlap in Mangala

One example of poor coordination among executive institutions can be seen in a proposed investment in a sugar farm and processing facility in CES. The RSS Ministry of Agriculture and Forestry reportedly allocated a parcel of public land along the Nile River to a Ugandan firm without consulting the communities residing in the area or other Ministries. As it happens, the area was an important transit route for wildlife crossing the river from Bandingilo National Park. This caused a dispute between the Ministry of Agriculture and the Ministry of Wildlife. The county administrations of Juba and Terekeka were simultaneously involved in a dispute over where the border would lie between the two counties, with both claiming ownership over the area. The wrangling among government institutions has considerably delayed the beginning of the project.

County Land Authorities (CLAs) and Payam Land Councils (PLCs)

The 2009 Land Act calls for two new land governance institutions to be created at the local government level: the County Land Authority (CLA) and the Payam Land Council (PLC). Among the main functions of these institutions are to coordinate activities and mediate relationships between the three levels government and the communities residing within their areas. Other functions include the following:

- Hold and allocate lands vested in the local government;
- Make recommendations to state Ministries on planning for gazetted lands;
- Facilitate the registration and transfer of interests in land;
- Support and assist cadastral operations and survey activities;
- Advise the local community on issues related to land tenure, usage, and exercise over land rights;
- Protect customary land rights and communal grazing land, forest, wetlands and water resources; and
- Oversee consultation processes between community and State Government.

Almost five years after the Land Act was passed, the CLAs and PLCs have not yet been established. Several pilot efforts are underway to establish CLAs in Bor and Yambio, and other CLAs have been established in Central Equatoria, but the institutions are not yet fully operational and most states do not have plans to create the new institutions.

Aside from the technical difficulty of creating these institutions where none existed before, political challenges are beginning to surface as well. For example, according to a panel participant, when a CLA was established in Terekeka County, a group of people in the area felt as though the CLA narrowly represented only one group of interests in the county and state government. This group responded by establishing their own CLA. The competition between the two institutions caused a considerable degree of confusion in the area and the latter CLA has since disbanded. In other locations, CLAs have complained that institutions created under the Local Government Act have preempted their decisions. Indeed, the discrepancies between the Land Act and the Local Government Act have been cited as a source of concern in the 2013 Land Policy, which calls for a

review of legislation in the land sector to bring the various laws into conformity with one another and with the Transitional Constitution.

Concerns have also been voiced about the composition of the CLAs. According to the Land Act, the CLAs are to be comprised of six members: The County Commissioner serves as chairperson, and a number of other representatives appointed by the state and local government, traditional authorities, civil society, and women's groups. In practice, however, the state and local government plays a dominant role in determining who is represented in the CLAs.

The problems that South Sudan has faced in establishing CLAs and PLCs are indicative of a lack of attention to land governance issues at the national level. In the absence of clear directives from the national government, state and local governments have sought to address land issues in a piecemeal fashion without sufficient coordination among institutions. The divorcing of institutions from national development plans renders institutions more susceptible to political squabbling at the local level and hinders efforts to establish new institutions in a more concerted fashion across the country.

Equity and Non-Discrimination in the Decision-Making Process (LGI-6)

Table 14 presents the LGAF results for the four dimensions relating to equity and non-discrimination in land-related policies.

Table 14: LGAF Results for LGI-6

LGI	Dimension Description	Score				Dimension
		A	B	C	D	
6 i	Clear land policy is developed in a participatory manner					Policy exists or can be inferred by the existing legislation but it is incomplete (some key aspects are missing or only covers part of the country such as only urban or only rural areas) or land policy decisions that affect some sections of the community are made without consultation with those affected.
6 ii	Meaningful incorporation and monitoring of equity goals					Land policies incorporate some equity objectives but these are not regularly and meaningfully monitored.
6 iii	Policy for implementation is costed, matched with benefits and adequately resourced					The implementation of land policy is not costed and there is inadequate budget, resources and capacity to implement the land policy.
6 iv	Regular and public reports indicating progress in policy implementation					Formal land institutions report on policy implementation only in exceptional circumstances or not at all.

Transparency Concerns in Developing Policy Drafts

In developing land-related policies, there is often considerable emphasis placed on obtaining public input into the policy documents. In preparing the Land Policy, for example, workshops were held in each of the ten states and a team of South Sudanese specialists in land issues was invited to comment on the draft. When the 2007 Forest Policy was presented to the Southern Sudan Legislative Assembly, the Ministry of Agriculture and Forestry was asked to conduct additional consultations with state governments. The United States Agency for International Development (USAID) and FAO then assisted the Ministry to conduct workshops with state and county authorities. The Environmental Policy involved consultations with state authorities and a stakeholder's conference. The Ministry also conducted study tours to different countries in Africa to see how they developed their environmental policies.

While these policies have demonstrated a degree of transparency in the development phase, once the policy text is prepared, there is no guarantee that members of the public will be able to access it. Often government institutions and their international partners will restrict access to policy documents as they try to lobby for their endorsement by the Council of Ministers or the Legislative Assembly. Officials routinely refuse to share draft texts until the relevant authorities have officially endorsed the policy. As a result, it can be difficult for interest groups to lobby for policy changes before the policy is formally adopted and people who have participated in the consultative process cannot easily determine whether their views were incorporated into the policy drafts.

Representation of Marginalized Groups in Policy Documents

Land policies in South Sudan include provisions addressing a number of marginalized groups, including women, IDPs and returnees (see Table 15). There is scant reference, however, to other groups who are often targeted in land policies in other contexts, such as indigenous peoples and landless populations. Indeed, the term ‘indigenous peoples’ is rarely encountered in discussions about land in South Sudan and there is no consensus on how the term applies in the South Sudanese context.

For those marginalized groups that are mentioned, implementation of government policy remains a serious problem. Aside from the fact that most land-related policies have not yet been formally adopted and as such, it is too early to evaluate their implementation, some fundamental shortcomings are already evident in the policy drafts. The policies are not costed, they do not include timelines for implementation, and there is little agreement on the indicators that will be used to monitor changes over time.

Table 15: Representation of Marginalized Groups in Policy

Group	Extent to Which Group is Represented in Law or Policy
Women	Women’s land rights feature prominently in public consultations and workshops on land rights and to a significant extent women’s rights have been streamlined into existing policy. However, the issue warrants greater attention and a more detailed analysis of the problem than what is included in existing policies. The Land Policy, for example, makes a number of general assertions about the difficulties that women face in accessing land without providing empirical evidence or more nuanced discussions about the specific difficulties that women face in accessing land through market transactions, government distribution schemes, inheritance, gifts, etc.
IDPs, Returnees and Refugees	The rights of displaced persons and returnees are a central issue in South Sudan. Throughout the decades long humanitarian intervention in South Sudan a number of actors have addressed this issue in great detail. Humanitarian aid continues to receive a disproportionate amount of attention as compared to more development-oriented programming. As a result, the rights of these populations often feature prominently in government policy.
Indigenous Peoples	Indigenous peoples are not explicitly mentioned in any of the existing policies. Nor is South Sudan a signatory to the Universal Declaration on the Rights of Indigenous Peoples. There is a reference to ‘indigenous knowledge’ in the Environmental Policy, but the term is not used to denote the heightened land rights that indigenous peoples are afforded under international law. There is little understanding among South Sudanese about the technical aspects of indigenous people’s land rights or about how the term ‘indigenous peoples’ would apply in the South Sudanese context.
Migrants	Urban centers in South Sudan are experiencing a large influx of economic migrants from elsewhere in South Sudan and from neighboring countries. The rights of these populations are rarely considered in government policies. To a certain extent, the interests of migrants may be overshadowed by the large numbers of IDPs, returnees and refugees in South Sudan.
Landless	The issue of landlessness is rarely considered in government policy. There is a general sense that with the low population density in South Sudan, there is enough land for everyone. However, certain populations are at increased risk of landlessness, such as divorced women, widows and orphans. Large government campaigns of evicting people from public spaces have contributed to the problem in recent years.

3.2 Land Use Planning, Land Management and Taxation

The Land Use Planning, Land Management and Taxation theme assesses the enforceability of these processes and the extent to which they rely on a broad consensus. It covers five indicators that are assessed using 17 dimensions. The first three indicators (LGI-7 to LGI-9) focus on the justification of regulations for land use planning and management on the basis of public interest. The last two indicators (LGI-10 and LGI-11) examine the transparency and cost-effectiveness of land-related tax systems.

Transparency of Land Use Restrictions (LGI-7)

Table 16 presents the LGAF results for the four dimensions relating to the transparency of land use restrictions.

Table 16: LGAF Results for LGI-7

LGI	Dimension Description	Score				Dimension
		A	B	C	D	
7 i	In urban areas, land use plans and changes in these plans are based on public input					Public input is not sought in preparing and amending land use plans.
7 ii	In rural areas, land use plans and changes in these plans are based on public input	*	*	*	*	
7 iii	Public capture of benefits arising from changes in permitted land use					Mechanisms to allow the public to capture significant share of the gains from changing land use (e.g. betterment taxes, levies for infrastructure, property tax) are not used or not applied transparently.
7 iv	Speed of land use change					Less than 30% of the land that has had a change in land use assignment in the past 3 years has changed to the destined use.

Land Use Planning in Urban and Rural Areas

Land use planning processes in rural areas are still in their very early stages of development. The RSS Ministry of Agriculture, Forestry, Cooperatives and Rural Development is conducting several pilot projects in partnership with a number of international organizations that involve land use planning and mapping components, but the Ministry has not yet progressed to the point of implementing national land use plans. Table 17 lists several current and past projects relevant to land use planning.

Table 17: Pilot Projects with Land Use Planning Components

Government Institution	Development Partner	Project Description
RSS Ministry of Agriculture, Forestry, Cooperatives and Rural Development	JICA	JICA is working with the Ministry to develop a Agricultural Master Plan for South Sudan (Nakimangole 2013).
RSS Ministry of Agriculture, Forestry, Cooperatives and Rural Development	FAO	From 2006-10, in a project entitled the Sudan Institutional Capacity Programme: Food Security Information for Action (SIFSIA), FAO supported the Government of Southern Sudan in collecting, analyzing and disseminating information on food security in South Sudan. The project covered several issues relevant to land use planning, including information on crop production and rangeland

		and maps of land cover and usage across South Sudan.
RSS Ministry of Agriculture, Forestry, Cooperatives and Rural Development	NPA, UNEP	NPA's Community Resource Mapping Project (COREMAP) program generates maps of community resources in specific locations in consultation with people on the ground. In the past, NPA has mapped natural resources throughout most of Lakes State. The organization is now extending its efforts to parts of Central and Eastern Equatoria to complement a pilot community forestry management program in partnership with UNEP.
State Governments in Western Equatoria and Jonglei, CLAs in Yambio and Bor	ARD	Associates for Rural Development (ARD) is working with state governments in Western Equatoria and Jonglei to develop land governance institutions at the county level, map land-related conflicts and The existing land use mapping projects, however, are limited in scope and have not yet progressed to the point where they enable the government to develop and implement official land use plans.

State and local governments conduct some land use planning activities in urban areas, but their effectiveness is hampered by top-down, non-participatory approaches and a lack of transparency. For example, several different town plans have been created for Juba since 2005. JICA is also working with the Upper Nile State Ministry of Physical Infrastructure to develop a town plan for Malakal (Atekit 2013). These town plans are not available for public review and were not developed with significant input from the public. The town plans have been the subject of occasional reports in local media, but no one outside of a few key personnel in the state-level Ministries of Physical Infrastructure are given access to the plans. Changeovers in administration in the Ministries can make existing town plans obsolete, as new Ministers will sometimes develop their own land use plans rather than working within the bounds of their predecessor's plans. Although state and local governments are in charge of most town planning activities, there is also a degree of competition between the national government and state governments over control of the urban planning process.

An example of top-down approaches to land use planning that are lacking in public participation can be seen in the Government's decision to relocate the capital city from Juba to a place called Ramciel, an undeveloped area located at the intersection of the Greater Equatoria, Greater Bahr-el-Ghazal and Greater Upper Nile regions. The idea of relocating the capital had been discussed even before the signing of the CPA in 2005 as a way of bringing the three regions of the country together through a shared capital city. It gained traction during the interim period following the end of the war when land disputes ballooned in Juba and began to frustrate plans to attract investment and develop the city. In August 2011, the President signed an executive order declaring the Government's intent to relocate the capital city from Juba to Ramciel (Sudan Trib. 2012b). The decision was made without parliamentary approval or consultations with the communities living in the area.

There has been a lot of speculation on all sides about whether the planned relocation is feasible, given the many constraints with which the Government is operating. Nonetheless, the Government's actions in recent years suggest that they are committed to the decision. In 2011, the Ministry of Housing and Physical Planning hired a company called the South Korean Land and Housing Corporation to carry out an aerial survey of the proposed area (Sudan Trib. 2012a; Sudan Trib. 2012c). By October 2012, the company was meant to complete the ground survey, including mapping, feasibility studies, environmental and social impact assessment, city structure framework and demarcation of zones. If these activities have been concluded, their findings have not been shared with the public.

[Changes to Land Use](#)

As a consequence of the underdeveloped land use planning systems, government decisions regarding changes of land use take a long time to be implemented. Panel participants estimated that most changes in land use take more than three years to implement (see LGI-7, Dim. iv). Mechanisms that allow the public to capture benefits from changing land use, such as betterment taxes, levies for infrastructure or property tax, are nonexistent (see LGI-7, Dim. iii).

Efficiency in the Land Use Planning Process (LGI-8)

Table 18 presents the LGAF results for the five dimensions relating to the efficiency of land use planning.

Table 18: LGAF Results for LGI-8

LGI	Dimension Description	Score				Dimension
		A	B	C	D	
8 i	Process for planned urban development in the largest city in the country					In the largest city in the country a hierarchy of regional/detailed land use plans may or may not be specified by law and in practice urban spatial expansion occurs in an ad hoc manner with little if any infrastructure provided in most newly developing areas.
8 ii	Process for planned urban development in the four largest cities in the country, excluding the largest city					In the four major cities in the country a hierarchy of regional/detailed land use plans may or may not be specified by law and in practice urban development occurs in an ad hoc manner with little if any infrastructure provided in most newly developing areas.
8 iii	Ability of urban planning to cope with urban growth					In the largest city in the country, the urban planning process/authority is struggling to cope with the increasing demand for serviced units/land as evidenced by the fact that most new dwellings are informal.
8 iv	Residential plot size adherence in urban areas					Existing requirements for residential plot sizes are met between 50% and 70% of plots.
8 v	Use plans for specific rural land classes (forests, pastures, etc) are in line with use	*	*	*	*	

Land Use Planning and Urban Growth

As is evident from the preceding discussion, urban land use planning systems in South Sudan are in very early stages of development. Land use planning activities have only been conducted in a small number of urban areas and most new settlements are being constructed without any formal land use planning process (see LGI-8, Dim. i and ii). An example of the state of land use planning that has been done in South Sudan can be seen in a proposed plan from the national government to develop capital cities in each of the ten states in the shape of animals and fruits. The plan was quietly abandoned while still in its early stages, after being criticized in the press (VOA News 2010).

When coupled with the rapid population growth and expansion that urban centers in South Sudan have experienced since the end of the civil war in 2005, the lack of formal planning processes results in large informal settlements with little infrastructure, whether in the form of roads, water or electricity. The poorly planned urban growth is particularly evident in Juba. Returnees, internally displaced persons (IDPs), economic migrants, security sector personnel, expats working in the international aid industry, and people coming to work for the new government have flocked to the city in recent years. Precise population statistics are not available, but it has been estimated that

when the Comprehensive Peace Agreement (CPA) was signed in 2005, Juba was home to about 250,000 people, including 163,000 residents and 87,000 IDPs (Martin and Mosel 2011). A 2009 land use survey by the Japanese International Cooperation Agency (JICA) estimated Juba's population at 406,000, with a 12.5 percent growth rate (*Id.*). Other estimates place the population at 500,000 to 600,000 for 2010. Table 19 provides figures on population growth in Juba from 1956 to 2010.

Table 19: Estimates of Juba's Population

Year	Population
1956	10,600
1973	56,737
1983	83,787
1993	114,980
2005 (estimate)	250,000
2010 (estimate)	500,000

Source: Martin and Mosel 2011

The rapid population growth in the postwar period has overwhelmed land administration systems in Juba and elsewhere in South Sudan (see LGI-8, Dim. iii). Housing supplies in urban areas were not sufficient to meet demand, and many residents had no option but to construct their homes on unregistered landholdings. Urban expansion has put additional pressure on peri-urban lands, but the process of converting those areas from customary land tenure to individualized landholdings has been slow and plagued by disputes. As discussed above in Section 3.1, the increased demand has created parallel formalization processes, in which local residents have taken it upon themselves to organize the survey, demarcation and registration of urban plots outside of the formal government process.

Speed and Predictability of the Enforcement of Restricted Land Uses (LGI-9)

Table 20 presents the LGAF results for the two dimensions relating to the speed and predictability with which land use restrictions are enforced.

Table 20: LGAF Results for LGI-9

LGI	Dimension Description	Score				Dimension
		A	B	C	D	
9 i	Applications for building permits for residential dwellings are affordable and processed in a non-discretionary manner					Requirements to obtain a building permit are technically justified and affordable but not clearly disseminated.
9 ii	Time required to obtain a building permit for a residential dwelling					All applications for building permits receive a decision within 3 months.

Building Permits

Much of the residential housing in urban areas of South Sudan is built without government oversight and without first obtaining a building permit. Individuals who occupy a plot of land will often develop their own building plans independently and proceed directly to construction. *Tukuls* (mud hut dwellings), which do not require building permits, also comprise a sizeable portion of the housing in urban areas.

Nonetheless, there is a process for obtaining building permits in some areas (see Table 21). In Juba, the CES Ministry of Physical Infrastructure manages the process, though in some cases the payam authorities or the Juba City Council may also play a role. The process is not well advertised and

most people are not aware that they should first obtain a permit before constructing a residential dwelling. There is no set cost for the permit. Rather, the cost varies according to the type of building and the area where the project is proposed. After the permit is issued, there is little or no inspection of the construction process to ensure that it adheres to the applicable regulations. As a result, there is little incentive for residents to obtain a building permit prior to constructing housing, as not having a building permit carries limited.

Time does not seem to be a major concern (see LGI-9, Dim. ii). Most permits are processed within a week or so. This probably reflects a lack of demand as much as anything else. Juba still has a relatively small population compared to other large cities in East Africa and the demand for residential housing, while large when compared to supply, is still small enough that it does not impose a huge administrative burden on institutions. Also, the fact that most people construct houses without first obtaining a permit also translates into less work for the Ministry.

Table 21: Procedures for Obtaining a Building Permit

Steps	Responsible Institution
1. Develop building plans in consultation with accredited engineer and submit plans to Town Planning Unit for review.	State-level Ministry of Physical Infrastructure
2. After approval, the application is sent to a separate unit in the Town Planning Department to check that the name on the application matches with the name associated with the plot in the land registry.	State-level Ministry of Physical Infrastructure
3. From there, the applicant is sent to the state-level Revenue Authority to pay a processing fee.	State-level Revenue Authority
4. The applicant brings the receipt back to the Town Planning Department for approval. Once approved, the applicant receives a certificate that serves as a permit.	State-level Ministry of Physical Infrastructure

Although enforcement of building codes is limited, instances have been reported in which people who build structures without a permit faced harsh sanctions from various government institutions. In one example, a company built an office space in Juba without first obtaining a building permit. A representative of the state government showed up on the building site one day accompanied by a contingent of police officers and military personnel. The site supervisor was told to pay a \$5,000 USD fine or else he and all the workers would be taken to jail. In another example, there was a large construction project in central Juba opposite the police station that the state government threatened to demolish because it was constructed without first obtaining building permits. While these incidents relate primarily to buildings constructed for commercial purposes and not residential dwellings, they nonetheless point to a need to candidly assess what approach to take towards building without permits in a context where the process is so poorly understood and the government's capacity to monitor and inspect construction activities is so limited.

Transparency of Land Valuation (LGI-10)

Table 22 presents the LGAF results for the two dimensions relating to the transparency of land valuation for tax purposes.

Table 22: LGAF Results for LGI-10

LGI	Dimension Description	Score				Dimension
		A	B	C	D	
10 i	Clear process of property valuation					The assessment of land/property for tax purposes is not clearly based on market prices.

10	ii	Public availability of valuation rolls					There is no policy that valuation rolls be publicly accessible.
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Land Valuation for Tax Purposes

There is no system for land or property tax based on market values in South Sudan. The most significant taxes at the state and local level are business-related taxes, taxes on interstate and international trade, and household taxes. Household taxes are probably revenue source most closely related to a property tax. However, household tax rates are calculated according to the size, class and location of the plot in question and do not take into consideration the property value as would a land or property tax. Rates typically range from \$6 USD to \$18 USD per square meter, with larger plots and those located closer to urban centers typically taxed more heavily. Such taxes are generally considered to be regressive and limited in their ability to mobilize revenues at the local level.

As noted in the 2013 Land Policy, the absence of a functioning property tax system undermines good governance in the land sector:

A clear fiscal framework for land management has the potential to raise much needed revenue for use in land acquisition and infrastructure development. Land taxation also discourages land speculation and provides incentives for efficient and appropriate land utilization.

The 2013 Land Policy calls for the adoption of a Land Valuation Act to help determine how property might be valued for tax purposes and the RSS Ministry of Finance is reportedly considering the development of a Local Government Property Tax Act, but neither legislation has yet been developed. The only institutions that currently conduct land valuation can be found in the Judiciary. Land values in this context are used to determine court fees, which are calculated as a percentage of property value (see Section 3.5 below). They are not used for tax purposes.

Tax Collection Efficiency (LGI-11)

Table 23 presents the LGAF results for the four dimensions relating to the efficiency of tax collection.

Table 23: LGAF Results for LGI-11

LGI	Dimension Description	Score				Dimension
		A	B	C	D	
11	i					It is not clear what rationale is applied in granting an exemption to the payment of land/property taxes and there is considerable discretion in the granting of such exemptions.
11	ii					Less than 50% of property holders liable for land/property tax are listed on the tax roll.
11	iii					Less than 50% of assessed property taxes are collected.
11	iv					The amount of property taxes collected is less than the cost of staff in charge of collection.

Legal Basis for Tax Collection

The legal framework for tax collection is found mainly in the Transitional Constitution (2011), the Taxation Act (2009) and the Local Government Act (2009). The Taxation Act sets out a basic administrative machinery in the RSS Ministry of Finance and Economic Planning to implement the new tax system. The Act includes a number of provisions relating to business and income taxes, but it does not mention property taxes.

The constitutional and statutory basis for property taxes can be found in the Transitional Constitution and the Local Government Act. The Transitional Constitution recognizes the levying of taxes as a concurrent power that is exercised by the central, state and local governments. Section 179 allows states to legislate for revenue generation from a number of sources, including “land and property taxes and royalties,” and Section 166 recognizes the power of local governments “to levy, charge, collect and appropriate fees and taxes in accordance with the law.” The Local Government Act also provides a list of local tax sources, which includes a property tax and a land tax. Despite these constitutionally- and statutorily-recognized powers, as noted above, the government has not yet started collecting property taxes.

Problems in Tax Collection

There is a general lack of clarity about which institutions at which levels of government are responsible for collecting taxes from different sources. Individuals and businesses are often made to pay taxes to a number of different governmental actors who often do not recognize each other’s authority. A study by David Solomon and Michael Bell (2011) for the USAID-funded Building Responsibility for the Delivery of Government Services (BRIDGE) Program, for example, encountered frequent references to “volunteer tax collectors,” who did not have any clear authority to collect taxes. In other circumstances, when salaries of local officials went unpaid, they would sometimes “withhold” revenue collections as informal “staff loans”.

Problems associated with multiple taxation are most pronounced in Juba, since the three levels of government are all situated in the city. An example can be seen in the manner in which hotels are taxed in Juba. In order to generate revenue from the profitable hotel industry, the central government imposes a business profit tax on the hotels and the personal income tax of 10 percent on all hotel employees. States also levy their own hotel tax. Public officials at both the state and central government have admitted that overlapping taxes gives rise to a confusing “labyrinth of taxes” in which there are “too many hands in people’s pockets.” The BRIDGE assessment also found that the logistical and administrative capacity of tax collectors was severely lacking. Communication with collectors in the field was very poor, financial reports of revenue collected were generally not available, and revenue personnel were poorly trained in the specifics of their jobs.

The manner in which exemptions are applied introduces additional confusion into the system. According to Solomon and Bell (2011), there are a large number of de facto exemptions, none of which are formalized in written law. In some instances, states have waived the entire household tax in bad years. In others, household taxes are demanded without regard to the hardships they impose on local populations. In April 2013, for example, Sudan Tribune reported that more than 150 people were imprisoned in Northern Bahr-el-Ghazal State for failing to pay household taxes (Sudan Trib. 2013b). According to a local resident interviewed at the time, “Some people are being arrested not because they did not want to pay but because they do not have anything to pay. They are poor to the true meaning of being poor. They have nothing to give. Their survival is through kinship. Others depend on assistance from the relatives.”

In addition to the legal and administrative difficulties, certain social attitudes also complicate efforts to generate revenue from taxes. During the civil war, individuals and communities would often be

subject to taxes by various armed groups, which had little accountability for the manner in which the revenue would be used. These experiences undermined people's confidence in the system and make them less likely to view the payment of taxes as an obligation that citizens have towards their country. South Sudanese also continue to receive considerable amounts of free service delivery in the form of humanitarian aid, which may obscure people's understandings of the link between taxes and public service delivery.

Text Box 5: Reduced Incentives to Collect Taxes at the State Level

State governments in South Sudan receive revenues from two primary sources: (1) transfers from the central government (RSS); and (2) own-source revenues, which include both tax and non-tax revenue. National revenue is almost entirely derived from oil production. When the Government of South Sudan halted oil production in January 2012, transfers to the state governments reduced dramatically. But the loss in revenue was offset by an increase in revenue from taxes and customs duties. According to the RSS Deputy Finance Minister, as of April 2013, the government was collecting approximately \$19 million USD a month in taxes and customs duties, compared with \$3.5 million USD before the country halted oil production (The Age 2013).

An assessment by the BRIDGE program showed how dependent states are on oil revenue and transfers from the central government. The assessment was carried out in five states: Eastern Equatoria, Jonglei, Northern Bahr-el-Ghazal, Warrap and Unity. Transfers from the Government of South Sudan accounted for more than 93 percent of total state revenues in the first four states. In Unity State, transfers account for just 39.5 percent of total revenues, due to the substantial revenue that Unity state receives from oil production. State dependency on oil revenues discourages the development of a robust system of own-source revenues, including property taxes.

3.3 Management of Public Land

The Management of Public Land theme assesses the transparency and accountability of public land management, including the processes by which government institutions acquire and release land. It contains four indicators that are assessed using 16 dimensions. The first indicator (LGI-12) examines the extent to which government landownership is justified by the delivery of public goods. The next two indicators (LGI-13 and LGI-14) focus on compulsory acquisition procedures to see whether they are justified, exercised only for clear public purposes and managed appropriately. The last indicator (LGI-15) assesses the transfer of rights over government-owned land.

Identification of Public Land and Clear Management (LGI-12)

Table 24 presents the LGAF results for each of the six dimensions relating to the identification of public land.

Table 24: LGAF Results for LGI-12

LGI	Dimension Description	Score				Dimension
		A	B	C	D	
12 i	Public land ownership is justified and implemented at the appropriate level of government					Public land ownership is not justified by the cost effective provision of public goods.
12 ii	Complete recording of publicly held land					Less than 30% of public land is clearly identified on the ground or on maps.
12 iii	Assignment of management responsibility for public land					There is serious ambiguity in the assignment of management responsibility of different types of public land with major impact on the management of assets.
12 iv	Resources available to comply with responsibilities					There are either significantly inadequate resources or marked inefficient organizational capacity leading to little or no management of public lands.

12	v	Inventory of public land is accessible to the public				All the information in the public land inventory is only available for a limited set of public property and there is little or no justification why records are not accessible.
12	vi	Key information on land concessions is accessible to the public				The key information for land allocations (the locality and area of the land allocation, the parties involved and the financial terms of the land allocation) is recorded or partially recorded but is not publicly accessible.

Defining Public Land and Community Land

There is some uncertainty regarding the definitions of community land and public land in South Sudanese law. The Land Act defines community land to include all land “held, managed or used” by a given community. Public land, on the other hand, includes land for which “no private ownership including customary ownership may be established by any legal process.” To the extent that there is no *terra nullius* in South Sudan and the Land Act formally recognizes all land administered under customary land tenure, then communities should own nearly all the rural land in the country. If this reading of the law is correct, then public landholdings in rural areas should be limited to a few forest reserves, game reserves, national parks and agro-industrial schemes, and it is not clear to what the catch-all provision in the above definition of public land refers.

Whatever the intent of the drafters of the Land Act, it is clear that many policy-makers do not interpret the law in this manner. Several panel participants, for example, were of the understanding that community lands only extended for a certain distance outside of villages (e.g. to a 20 kilometer radius around a given village). This viewpoint is in accordance with (northern) Sudanese law, which recognizes community rights within a set perimeter but not more extensive customary rights to forests, grazing areas and buffer zones. Public officials also commonly interpret the provision of the Land Act that states, “All land in Southern Sudan is owned by the people of Southern Sudan and its usage shall be regulated by the Government,” to mean that land belongs to the Government and that the Government has ultimate decision-making authority over community lands, thus conflating the distinction between public and community land. The ambiguity in the law further obscures the official government position on land ownership in rural areas.

Institutional Considerations

As noted in relation to LGI-5, there are major ambiguities in the manner in which responsibility for public land is assigned among government institutions and between the government and communities (LGI-12, Dim. iii). Post-war legal reforms have sought to strengthen the extent to which communities control and benefit from their land and natural resources. The government policy that ‘land belongs to the community’ has raised expectations among people residing in rural areas that they will be involved in development efforts, even those situated on public land. Their expectations are supported by the fact that the war prevented the Sudanese Government from effectively establishing control over many public landholdings in rural areas. In many cases, communities have resided for generations on what is ostensibly public land. From the viewpoint of these communities, the land is theirs, even if the government technically expropriated it through a statutory decree or gazettelement process during the civil war.

Nonetheless, the degree to which responsibility is unambiguously assigned appears to vary somewhat by sector. For example, according to the RSS Ministry of Roads and Bridges, management responsibility for roads is clearly assigned between the national, state and local governments. International and interstate roads are the responsibility of the national government, roads within the state are the responsibility of the state government, and roads within towns are the responsibility of the local government. Ministry representatives maintain that there is a publicly

available master plan for the nation, which is given to state and local governments such that they can structure their plans accordingly, though they were not able to provide researchers with a copy.

Government-owned forest concessions provide a contrasting example. Since its establishment in 2005, the Government of Southern Sudan has sought to generate revenue from its teak plantations through public-private partnerships with various foreign investors and development funds. The two most prominent examples involve forest reserves in Western and Central Equatoria and investments made by British and Finnish Development funds (Deng 2011a). Shortly after the agreements were signed in 2007, disputes arose between the various levels of government and between the government and communities residing in and around the plantations, reflecting a more general ambiguity with the legal framework regarding management responsibility over public lands.

Land Inventory and Maps

There is no comprehensive inventory of public lands in South Sudan (LGI-12, Dim. v). Records of public landholdings are spread across many different institutions and are often inaccurate or out-of-date; in many cases, the records simply do not exist. The Ministry of Agriculture, Forestry, Cooperatives and Rural Development has mapped a number of teak plantations in Central, Western and Eastern Equatoria States. Concessions covering approximately 30,250 hectares of teak forests in these two states have been allocated to foreign companies since 2007. Aside from these teak reserves, however, most maps for the public forests in South Sudan are either out-of-date or nonexistent. Several interviewees for this study believed the maps to be contained in a government gazette; none, however, were able to produce a copy of the gazette.

Government officials maintain that maps exist for many of national parks and game reserves. However, they are often inaccurate and boundaries have not been demarcated on the ground. According to the RSS Ministry of Wildlife, Conservation and Tourism, the maps were mostly developed during the colonial era and reserve areas created since then are less well mapped. Boundaries are typically indicated with reference to natural landmarks, such as roads, rivers and mountains, but most have not been formally surveyed and demarcated according to the boundaries that exist on the maps. A few posts demarcating boundaries were placed during the colonial or post-colonial period, but they were few and far between. In some cases, they have been destroyed or washed away by the elements (Johnson 2010). The social upheaval and large-scale displacement during Sudan's successive civil wars have further complicated the issue, as many populations sought refuge in reserve areas during the war and have been residing there for decades. Many of the maps that do exist are also stored in poor conditions and highly susceptible to damage from the elements.

Justification and Time-Efficiency of Expropriation Processes (LGI-13)

Table 25 presents the LGAF results for the two dimensions relating to the incidence of expropriation.

Table 25: LGAF Results for LGI-13

LGI	Dimension Description	Score				Dimension
		A	B	C	D	
13 i	Transfer of expropriated land to private interests					More than 50% of land expropriated in the past 3 years is used for private purposes.
13 ii	Speed of use of expropriated land					Less than 30% of the land that has been expropriated in the past 3 years has been transferred to its destined use.

Circumstances of Expropriation

Expropriations occur in both rural and urban settings in South Sudan. In urban areas, most expropriations occur when state and local governments acquire community land in peri-urban areas to convert into individual residential leaseholds. Within town limits, some unregistered landholdings may also be expropriated if people have constructed on land designated for a public use, such as roads, hospitals or schools. In rural areas, land may be expropriated to establish settlements for returnee or displaced populations or to make land available for development projects or investments. Land that is acquired for private interests, such as the expansion of urban residential areas or for large-scale land-based investments in rural areas, account for the majority of expropriated land (see LGI-13, Dim. i). It typically takes an extended period of time for land to be transferred to its intended use (see LGI-13, Dim. ii).

Rezoning and Expropriation in Urban Areas

Shortly after the end of the war in 2005, state and local governments in southern Sudan began an extensive urban rezoning process. As a consequence of the large-scale displacement during the war and the influx of people after the signing of the CPA, towns and cities across South Sudan had been growing in a haphazard and disorganized manner. Most landholdings in urban areas were comprised of informal settlements whose poor planning undermined efforts to develop formal land governance systems and presented a number of risks to health and security. Police and firefighters could not easily penetrate the labyrinth of streets in many areas and sanitation services were virtually non-existent. The rezoning process was meant to address these issues and pave the way for more organized urban development initiatives.

At the start of the process, the Governor of CES issued an executive order in January 2009, authorizing demolitions in a list of twenty-nine areas in Juba. The demolitions targeted informal settlements on roads and other public spaces and were supervised by a demolition committee that included the CES Governor, Juba County Commissioner, and a number of security advisors. According to the Southern Sudan Relief and Rehabilitation Commission (SSRRC), 27,896 people were displaced by the demolitions between January and March 2009. At that point, the authorities stopped keeping track of the numbers, but the United Nations Mission in Sudan (UNMIS) estimated that an additional 30,000 to 40,000 people were affected from March to June 2009 (Deng 2010). UNMIS voiced concern about the process in a report from 2009 (Wheeler):

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

The manner in which the demolitions were conducted generated a considerable amount of resentment among local populations. Evictions were carried out with little or no notice and involved heavy security contingents, sometimes as large as 500 men, comprised of soldiers from the SPLA, Joint Integrated Units (JIU), military police, Southern Sudan Police Service (SSPS), wildlife rangers, fire brigades, prison guards, and National Security Service (NSS). According to panel participants, the government's approach to urban rezoning has improved in recent years, but there are still lingering concerns about a lack of adequate notice and compensation.

Since 2009, urban rezoning activities have spread to other state capitals and several county headquarters. In February 2012, for example, the county administration in Rumbek (capital of Lakes State) demolished a number of shops and houses to make space for roads. According to Radio Miraya (2012), the Rumbek County Commissioner said there would be no compensation for the owners because the area they occupied was not meant for construction of houses or shops. Demolition activity has also spread to rural areas. Five hundred homes were reportedly demolished

in Kuerlonga Village in Unity State in April 2013. Demolitions have also been carried out in Akobo and Chukudum (towns in Jonglei and Eastern Equatoria States, respectively) in order to build roads and implement new town plans. Aside from a few isolated media reports, recent rezoning activities have remained mostly undocumented and neither government actors nor international agencies are actively monitoring the numbers of people affected.

Text Box 6: Social Unrest Associated with Demolitions

In some cases, displaced groups have reacted violently to demolition activities. Researchers from the Overseas Development Institute (ODI) (Martin and Mosel 2011) documented an incident in an area called Hai Miskin (meaning 'poor neighborhood' in Arabic) in Juba. Residents of the area said that they were informed overnight that the land they were staying on had been sold and that they would have to vacate their homes. When they refused they were reportedly assaulted by the police and threatened with further violence if they did not quit the area immediately. In a more recent incident, after a demolition process was carried out on the outskirts of Juba in May 2013, a mob formed and attacked two officials from the Archdiocese of Juba (Comboni Missionaries 2013).

Transparency and Fairness of Expropriation Procedures (LGI-14)

Table 26 presents the LGAF results for the five dimensions relating to the transparency of expropriation procedures.

Table 26: LGAF Results for LGI-14

LGI	Dimension Description	Score				Dimension
		A	B	C	D	
14 i	Compensation for expropriation of registered property					Where property is expropriated, compensation, in kind or in cash, is paid but the displaced households do not have comparable assets and cannot maintain prior social and economic status.
14 ii	Compensation for expropriation of all rights					No compensation is paid to those with unregistered rights of use, occupancy or otherwise.
14 iii	Promptness of compensation					Less than 50% of expropriated land owners receive compensation within one year.
14 iv	Independent and accessible avenues for appeal against expropriation					Avenues to lodge a complaint against expropriation exist but are somewhat independent and these may or may not be accessible to those affected.
14 v	Timely decisions regarding complaints about expropriation					A first instance decision has been reached for between 30% and 50% of the complaints about expropriation lodged during the last 3 years.

Fairness and Promptness of Compensation

Precise data about compensation for expropriations is not available, but panel participants maintained that compensation was provided, at least certain circumstances. According to representatives of the Juba City Council, for example, compensation is almost always provided to individuals evicted from registered plots in Juba. Compensation typically takes the form of alternative land in another area. However, officials admit that there are issues about the suitability of the land given in compensation, in that there is no guarantee that the alternative land is equally valuable or has access to the same services as the land that was expropriated (see LGI-14, Dim. i). People who have constructed informal settlements on public lands are not compensated, although if they have constructed on land designated for residential use they may be given an opportunity to formalize their landholding through the registration processes discussed in relation to LGI-3.

For the expropriation of community land in rural areas, communities are often compensated by providing them with a number of plots in the newly demarcated areas or with direct compensation

in the form of cash or building materials. According to the Ministry of Roads and Bridges, communities often provide land for road construction without requiring the government to pay compensation, particularly when there are no structures on the land. In other cases, the community may ask for schools or health clinics to be built in return for the land. The Ministry also acquires land from communities in order to extract the necessary materials for road construction, such as sand and gravel. In these cases, road contractors pay royalties for the construction materials to the communities, the cost of which is passed on to the government.

Groups with secondary rights are rarely compensated in expropriations in either urban or rural areas (LGI-14, Dim. ii). For example, cases have been reported in which people were renting property when their house was demolished. Even after the demolition, the landlords reportedly continued to charge them rent (Deng 2010). In rural areas, the situation is similar. The Land Act requires pastoralists and other groups with secondary rights of access to be consulted in any decision that may affect their rights. In practice, however, groups with secondary rights are often excluded from negotiations and when land is expropriated and transferred to private interests, their secondary rights are often not adequately taken into account (Deng, Johansson and Narula 2010).

When compensation is provided, it is usually given within a year. Representatives of the Ministry of Roads and Bridges, for example, said that compensation for people whose land was expropriated to build a new bridge over the Nile got their land within one year. Representatives of the Juba City Council also noted that compensation is typically quite prompt. However, the shortage of available land around Juba causes numerous difficulties in finding alternative land to provide as compensation, and as a result compensation is often delayed indefinitely (see LGI-14, Dim. iii). Data is not currently available for the promptness of compensation for expropriations that occur outside of Juba.

Appealing Expropriations

Independent avenues to lodge a complaint against an expropriation are only accessible to a small segment of the population (LGI-14, Dim. iv). Individuals and groups with financial means may contest expropriations through judicial actions. In February 2013, for example, a group of traders in Nimule, along the South Sudan-Uganda border, took the Government of South Sudan to court in order to stop a demolition ordered by the Deputy Minister of the Interior (Sudan Trib. 2013d). The land was being expropriated to establish offices for the customs department, but the traders complained that they were not given adequate notice and the compensation had not been provided for. Another example can be seen in a planned expropriation in a neighborhood in Juba called Hai Kassava, where people's land was being expropriated in order to transfer it to a private investor. According to panel participants, residents of the area filed a complaint in court and convinced a judge to grant an injunction stopping the eviction. The investor, however, appealed the decision and the appeals court overturned the lower court ruling, allowing the project proponents to proceed with the demolition.

For most populations, contesting expropriations in court is inaccessible either in terms of cost or geographic proximity. Statutory courts have only been established in a fraction of the 79 counties of South Sudan and are not geographically accessible to populations in many rural areas. Other possible avenues of complaint include the submission of complaints through administrative processes, such as complaining directly to the Ministry of Physical Infrastructure. Government officials acknowledge, however, that the chances of such complaints succeeding are fairly low. Communities also sometimes try to leverage their networks to the government by submitting letters to senior politicians seeking in an effort to stop expropriations. As discussed in Section 3.6, communities opposing agreements made without their consent have had some notable success at stopping land deals in recent years.

Transparency and Economic Benefit of Transfer of Public Land for Private Use (LGI-15)

Table 27 presents the LGAF results for the three dimensions relating to the transparency of transfers of public land for private use.

Table 27: LGAF Results for LGI-15

LGI	Dimension Description	Score				Dimension
		A	B	C	D	
15 i	Openness of public land transactions					The share of public land disposed of in the past 3 years through sale or lease through public auction or open tender process is less than 50%.
15 ii	Collection of payments for public leases					Between 50% and 70% of the total agreed payments are collected from private parties on the lease of public lands.
15 iii	Modalities of lease or sale of public land					Public land is rarely or never divested at market prices in a transparent process.

Public Land Transactions

Auctions or public tenders for land transactions are rare or nonexistent in South Sudan (LGI-15, Dim. i). The vast majority of companies seeking to do business on public land negotiate agreements in a bilateral manner directly with the government institutions. Aside from a few isolated examples, information on the extent to which payments for public leases are collected is not available (LGI-15, Dim. ii and iii). In one example, discussed further in relation to LSLA-6 below, a company investing in a timber plantation promised to pay \$100,000 USD to a social fund for affected communities. The company only paid \$79,000 of this amount before selling the venture to a subsequent investor (Deng 2011a). At this writing, the community had still not received the remaining amount.

3.4 Public Provision of Land Information

The Public Provision of Land Information theme assesses South Sudan's land information systems. It covers four indicators that are assessed using 13 dimensions. The first two indicators (LGI-16 and LGI-17) focus on the relevance, completeness and reliability of information in the land registry. The other two indicators (LGI-18 and LGI-19) address the cost-effectiveness, sustainability and transparency of land administration services.

Completeness of the Land Registry (LGI-16)

Table 28 presents the LGAF results for the six dimensions relating to the completeness of the land registry.

Table 28: LGAF Results for LGI-16

LGI	Dimension Description	Score				Dimension
		A	B	C	D	
16 i	Mapping of registry records					Less than 50% of records for privately held land registered in the registry are readily identifiable in maps in the registry or cadastre.

16	ii	Economically relevant private encumbrances					Relevant private encumbrances are not recorded.
16	iii	Economically relevant public restrictions or charges					Relevant public restrictions or charges are not recorded.
16	iv	Searchability of the registry (or organization with information on land rights)					The records in the registry can be searched by both right holder name and parcel.
16	v	Accessibility of records in the registry (or organization with information on land rights)					Copies or extracts of documents recording rights in property can only be obtained by intermediaries upon payment of the necessary formal fee, if any.
16	vi	Timely response to a request for access to records in the registry (or organization with information on land rights)					It is not unusual that an extract or copy of a record cannot be produced in response to a request as the original record cannot be located.

Land Registries

Land registries vary from location to location in South Sudan. The most developed registries are found in the three regional centers of Juba, Wau and Malakal. In these three locations, state-level Ministries of Physical Infrastructure and High Courts share joint responsibility over the registration process: the Ministries conduct survey activities and issue land leases and the Courts register leaseholders. Information in the registry is recorded in handwritten documents and there are no efforts underway to computerize the system. Data regarding the number of documents in the registries is not currently available. According to panel participants, other towns have begun developing registration processes in recent years, but there is little information available on how these other registration processes function.

The 2009 Land Act introduced several changes to the administration of the registry. It called for the registry is meant to be housed in the executive branch and administered by the RSS Ministry of Housing and Physical Planning in coordination with the state-level Ministries of Housing and the County Land Authorities at the local government level. Despite the change in law, however, the land registry still remains at the High Court and there are no immediate plans to relocate it to the RSS Ministry of Housing and Physical Planning.

There is no single reason for the failure to implement the change called for in the Land Act. To a certain extent, the reluctance to move the registry may reflect the weak rule of law in South Sudan and the skepticism many people hold towards the Land Act. It may also point towards a paralysis that governance institutions are experiencing in the face of skyrocketing demand for land and widespread disputes. Senior officials from the Ministry of Physical Infrastructure have maintained that they do not want the registry to be housed with them because of all the disputes that are arising with respect to land. It is also possible that institutional power dynamics are playing a role. Control of the land registry carries with it control over the land distribution process, and individuals who are benefiting from the status quo may not be eager to change the institutional framework.

Completeness of the Land Registry

There are several fundamental information gaps in the land registries. The first concerns the lack of a registry at the national level, which would maintain information about registered landholdings in the country as a whole. Without a national registry, it is difficult for the Government to monitor the performance of the system and enforce national regulatory standards.

A second shortcoming relates to the type of information recorded in the registry. According to the Land Act, the registry should include “all current encumbrances, charges, restrictions, conditions

and other interests whether benefiting or burdening the land to which the certificate of title relates.” This information is not being recorded in the existing registries. As a result, there is no way to easily identify whether a particular parcel of land is subject to mortgages, loans, liens, subleases, lawsuits or other encumbrances (LGI-16, Dim. ii). Nor are restrictive covenants, easements or public land use restrictions recorded (LGI-16, Dim. iii).

A third shortcoming relates to the types of maps in the registries. According to panel participants, the registries do not include comprehensive maps of registered landholdings (LGI-16, Dim. i). Sketches showing the dimensions of individual plots are sometimes attached to the land leases, but most registered land in Juba has not yet been surveyed and demarcated and many registered plots do not even have sketches attached. Community formalization processes outside of the formal government process (see LGI-3 above) are often done without creating maps. When maps are developed, they are typically maintained at the community level with only a small number of people granted access. State authorities have discussed the possibility of developing the individual sketches into a proper cadastral map with geo-reference points and information on plots and owners, but concrete plans for doing so have not yet been agreed upon.

[Searchability and Accessibility of Documents in the Registry](#)

The registry is searchable by plot number or landholder (LGI-16, Dim. iv), but access to this information is tightly guarded. If an individual has documents showing that he or she has rights to a particular plot of land, the staff at the land registry will allow the person to access information about their plot only. Information is not accessible to the public or to other government institutions.

Time is also a concern. The process of obtaining information can take a prohibitively long time (LGI-16, Dim. vi). Registry staff face high demands for information from leaseholders and they are poorly trained. According to public officials and INGO representatives, the process of obtaining information only proceeds quickly when bribes are paid. Without bribes, the process can drag on for months. As noted above, the problems include a high demand for information, poorly trained staff, missing documents, and documents that are distributed among many different offices. As a result, people usually hire a lawyer or another intermediary to expedite the process (LGI-16, Dim v). This can significantly raise the cost of accessing land information and restrict access for people who do not have the means to hire a lawyer.

[Reliability of Records in the Registry \(LGI-17\)](#)

Table 29 presents the LGAF results for the two dimensions relating to the reliability of records in the registry.

Table 29: LGAF Results for LGI-17

LGI	Dimension Description	Score				Dimension
		A	B	C	D	
17 i	Focus on customer satisfaction in the registry					There are no meaningful service standards set and no attempt to monitor customer service.
17 ii	Registry/ cadastre information is up-to-date					Less than 50% of the ownership information in the registry/cadastre is up-to-date.

[Condition of the Registry and Service Standards](#)

According to panel participants, registry staff suffer from a chronic inability to produce land records, suggesting a high degree of clerical errors in the registry and discrepancies between the

information recorded in the registry and realities on the ground (LGI-17, Dim. ii). Documents in the registry are also poorly maintained and subject to deterioration from dust and exposure to the elements.

There are no service standards governing the performance of land registry staff and complaints about a lack of professionalism are common (LGI-17, Dim. i). In 2009, a clerk in the land registry department was caught illegally issuing plots in collaboration with individuals in the Ministry of Physical Infrastructure and the Land Survey Department (Deng 2010). The individual was reportedly transferred to another department but not prosecuted. In another example from Wau in 2010, an administrator in the Western Bahr-el-Ghazal Ministry of Physical Infrastructure reportedly burned a sizeable portion of the registration documents out of frustration with all the land disputes that were coming to his office. These examples are indicative of a more general failure to monitor customer service in the registry.

Part of the problem can be traced to a lack of human resources. Registry staff have not been trained on how to maintain information and manage interactions with the public. More fundamentally, there is no culture or practice of recording this type of land information. During the colonial era and after Sudan's independence in 2005, the main landholdings that were registered were those belonging to British and northern Sudanese administrators. Previous national governments in Sudan did not devote much attention to land administration in southern Sudan and most South Sudanese residing in informal settlements in and around urban areas paid little attention to recording their rights. Economically relevant encumbrances did not exist in any formal way so there was no need to record them.

Cost-Effectiveness and Sustainability of Land Administration Services (LGI-18)

Table 30 presents the LGAF results for the three dimensions relating to the cost-effectiveness and sustainability of land administration services.

Table 30: LGAF Results for LGI-18

LGI	Dimension Description	Score				Dimension
		A	B	C	D	
18 i	Cost of registering a property transfer					The cost for registering a property transfer is equal to or greater than 5% of the property value.
18 ii	Financial sustainability of the registry					The total fees collected by the registry are between 50% and 90% of the total registry operating costs.
18 iii	Capital investment					There is investment in capital in the system to record rights in land but it is insufficient to ensure that the system is sustainable in the short-term.

Registering Property Transfers

The cost of registering a property transfer is much higher than first-time registration through the official government process. As noted in Table 10, fees for first-time registration are typically in the range of \$100 USD, excluding any informal payments that might be required. The typical fee to process a land transfer in Juba, by contrast, is 10 percent of the property value (LGI-18, Dim. i). With undeveloped first class plots in Juba selling for approximately \$20,000 USD or more, the costs of registering the transfer can reach \$2,000 USD. Similarly high fees were reported in Western Equatoria State.

Once a person has purchased leasehold rights to a particular plot of land, they must renew their lease annually and pay a fee. If they fail to renew, they are made to pay 50 percent of all the years that have been missed. The rules governing renewal of leases have raised problems with property transfers as many property transfers involve leases that have not been renewed for many years. When new lessees seek to have the transfer registered, they are sometimes asked to pay the 50 percent fine for all the years of missed renewal. Data regarding the percentage of leases that people fail to renew is not currently available.

Sustainability of the Land Registry

According to officials in the CES Ministry of Physical Infrastructure, revenue generated through fee collection in the land registry in Juba follows a similar pattern to revenue collection in other sectors. Forty percent of the revenue is retained within the registry and 60 percent is sent to the CES Ministry of Finance. The registry seems to rely on disbursements from the state and central government to function (LGI-18, Dim. iii), but it also remits some revenue to the higher branches of government, suggesting that some amount of budgetary surplus is generated from fees (LGI-18, Dim. ii). For the registration of leases and the conduct of survey activities, budgets fall under the CES Ministry of Physical Infrastructure. The budgets of the land registry in the High Court fall under the Judiciary. Neither institution was able to make budgetary information available to researchers.

Transparency of Land Administration (LGI-19)

Table 31 presents the LGAF results for the two dimensions relating to the transparency of land administration.

Table 31: LGAF Results for LGI-19

LGI	Dimension Description	Score				Dimension
		A	B	C	D	
19 i	Schedule of fees is available publicly					A clear schedule of fees for different services is not publicly accessible and receipts are not issued for all transactions.
19 ii	Informal payments discouraged					Mechanisms to detect and deal with illegal staff behavior are largely non-existent.

Schedule of Fees and Mechanisms to Detect Illegal Behavior

It is not clear whether a schedule of fees for different land administration services exist or not. Several government and INGO representatives interviewed for this study maintained that a schedule of fees exists, but that it is not readily available to the public in any written form (LGI-19, Dim. i). At the land registry in Juba, an official interviewed for this study was able to narrate the fees for different classes of land, though he was not sure about the fees charged by other institutions.

As noted in relation to LGI-17, Dim. i, there are a large number of fraudulent transactions in the land administration system and government staff or intermediaries are sometimes complicit in the wrongdoing. Mechanisms to detect and deal with illegal staff behavior are largely non-existent (LGI-19, Dim. ii).

3.5 Dispute Resolution and Conflict Management

The Dispute Resolution and Conflict Management theme assesses the accessibility and coherence of existing mechanisms for resolving land-related disputes. It covers two indicators that are assessed using seven dimensions. The first indicator (LGI-20) focuses on the affordability, clarity, transparency and objectivity of dispute resolution processes. The second indicator (LGI-21) examines the efficiency of these mechanisms based on the number of land-related conflicts pending in the system.

Assignment of Responsibility for Conflict Management (LGI-20)

Table 32 presents the LGAF results for the four dimensions relating to the assignment of responsibility for conflict management.

Table 32: LGAF Results for LGI-20

LGI	Dimension Description	Score				Dimension
		A	B	C	D	
20 i	Accessibility of conflict resolution mechanisms					Institutions for providing a first instance of conflict resolution are accessible at the local level in less than half of communities but where these are not available informal institutions perform this function in a way that is locally recognized.
20 ii	Informal or community based dispute resolution					There is an informal system or community-based that makes decisions that are not always equitable but have recognition in the formal judicial or administrative dispute resolution system.
20 iii	Forum shopping					There are parallel avenues for dispute resolution and cases can be pursued in parallel through different channels but sharing of evidence and rulings may occur on an ad-hoc basis.
20 iv	Possibility of appeals					A process exists to appeal rulings on land cases but costs are high and the process takes a long time.

Dispute Resolution Mechanisms

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

Statutory courts are only geographically accessible in and around urban areas. In rural areas, where 87 percent of the population resides, customary courts are the main institutions of dispute resolution. As Tiernan Mennen (2012) notes:

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

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

In addition to the relatively more standardized system of statutory and customary courts, local authorities in certain areas sometimes use ad hoc complaint mechanisms to address different types of land disputes. For example, Mennen (*Id.*) cites an example from Northern Bahr-el-Ghazal and Warrap States where chiefs formed a community committee to resolve disputes where returnees were claiming family land that was occupied by someone else. The committees were composed of elders from the community, appointed by the chiefs, that knew the history of the area and could verify claims of family inheritance to land. Disputants were encouraged to bring witnesses to the committee and customary court that could testify on their behalf as rightful, longtime owners of the land. The decisions from the committees would then inform the chiefs' decision in the customary court. In some urban areas, local authorities known as *sheikh al hilla* also play a role in dispute resolution.

Text Box 7: Formality and Informality in Statutory and Customary Courts

Formality and informality are fluid concepts in South Sudan. While customary courts are less formal than their statutory counterparts, they nonetheless have a legal foundation in the 2011 Transitional Constitution and the 2008 Civil Procedure Act. Customary court decisions are based primarily on the unwritten customs and traditions of people within their jurisdiction, but they can also apply criminal statute to certain matters. Similarly, statutory courts can apply customary law, particularly to those disputes involving divorce, elopement and marriage. As such, South Sudan's justice system does not easily lend itself to the clear conceptual distinction between formal and informal institutions.

Assignment of Responsibility for Dispute Resolution

The jurisdictions of statutory and customary courts are described in the 2008 Judiciary Act and the 2009 Local Government Act, in practice, responsibility for dispute resolution is distributed across many different forums, court rulings are shared in an ad hoc manner, if at all, and the entire process is poorly coordinated (see LGI-20, Dim. iii). The problems are particularly pronounced as disputing parties move between the statutory and customary systems.

To a certain extent, the uncertainties in the allocation of responsibility over land disputes in the judicial system can be traced to legislative ambiguities in the administrative structure of customary and statutory courts. Whereas statutory courts lie firmly within the national Judiciary, customary courts fall under the Ministry of Local Government at the state level, an executive institution. This mixture of centralized statutory courts and decentralized customary courts serves to widen the gulf between the two systems. Chiefs also play both executive and judicial roles, which raises separation of powers issues. Furthermore, Ministries of Local Government are often under resourced and do not have the expertise to monitor and regulate the legal aspects of customary courts.

For family disputes, such as those relating to inheritance or the distribution of property upon divorce, custom is often applied to the suit whether it is brought in customary or statutory courts (see LGI-20, Dim. ii). According to Section 6 of the 2007 Code of Civil Procedure Act:

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

- (a) Any custom applicable to the parties concerned; provided that, it is not contrary to justice, equity or good conscience and has not been by this, or any other enactment, altered or abolished or has not been declared void by the decision of a competent Court; or,
- (b) The Sharia Law in cases where the parties are Muslims except so far as it has been modified by such custom as is above referred to.

The application of customary law to these types of disputes makes it difficult for women to enforce

their constitutional or statutory rights, even in statutory courts. The poor coordination among the systems also causes additional complications, in that women who receive favorable decisions in customary or statutory courts may find that their husbands or male relatives resurrect the dispute in another court that does not recognize the initial court's ruling (SIHA 2012).

Constraints on the Enforcement of Judicial Decisions

Both customary and statutory courts face serious constraints in enforcing their decisions. In urban areas, this enforcement gap is most apparent in the unlawful appropriation of land by individuals who wield political or military authority. According to Sara Pantuliano (2009):

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

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

Courts in rural areas also face certain intractable disputes. For example, a number of county administrations have begun implementing plans to redevelop and redesign towns in the county headquarters. Citizens routinely protest the expropriation of their land without prior consultation or compensation to affected individuals and communities, and these development initiatives have greatly affected tenure security for populations in rural areas who have been subject to seizure of their property for the purposes of building roads and marketplaces.

Court Fees

The amount charged in court fees in the formal system is a major barrier for many people involved in land-related disputes. Court fees vary according to the size of the claim at hand and there is no uniform schedule of fees available at most statutory courts. Typical court fees can range from five to ten percent of the value of the land and can reach as high as \$1,250 to \$2,500 USD. Other informal fees may be required to expedite the process. Litigants must also pay for the services of an advocate, typically in the range of \$750 to \$1,000 USD, though courts can force the other party to pay those costs in damage awards. Customary courts are more affordable, but they typically do not have jurisdiction over disputes involving registered lands.

Appeals Process

South Sudanese procedural law provides the parties to a dispute with fourteen days to appeal a ruling. However, there are numerous ambiguities and inefficiencies in the appeals process (see LGI-20, Dim. iv). This is particularly true of the customary courts where traditional authorities do not always abide by decisions reached by other customary and statutory courts. This practice leaves room for parties to resurrect decisions in alternative forums if they are not content with a court decision. As mentioned above, this often has a disproportionate impact on women who may decide to pursue a case through one court only to find that a disgruntled spouse or family member has summoned her to another hearing in a different court. Although, South Sudanese law proscribes statutes of limitations and time periods for appeals, these laws are not consistently enforced.

Ultimately, these problems translate into a long drawn out and poorly coordinated appeals. For example, it is not uncommon for parties to a dispute to wait several years for their cases to be heard in appeals courts. In other instances, an appeals court judge will reach a decision based on the lower

court transcripts, without even notifying the parties involved or allowing them to submit arguments. Court fees for land disputes, whether for cases being heard in the first instance or those being heard on appeal, vary according to the value of the land. For example, according to a representative of an INGO familiar with the court system in Yambio, the judges charge the complainant party 10 percent of the amount that the party is asking for in his or her complaint as court fees. These fees often result in prohibitive costs for parties seeking to resolve their disputes in the formal system.

Corruption within the Judiciary can also cause delays in the appeals process, particularly for people who are unable to pay bribes. According to an advocate working in Juba, the only way to hasten the appeals process is to pay informal fees, which often exceed the costs of court fees and legal representation combined.

Text Box 8: Challenges in the Judiciary

Much of the courts' failure to resolve land-related disputes in a timely manner can be attributed to certain weaknesses in the Judiciary itself. The Judiciary is severely understaffed, not having hired any new judges over a seven-year period from 2006 to 2013. Corruption is also a systematic problem. In March 2013, Justice John Clement Kuc announced that he was resigning from the Judiciary due to nepotism and a lack of transparency, citing both a hostile working environment and interference from the executive branch, which hindered him from carrying out his work effectively (Sudan Trib. 2013).

[Access in the Customary System](#)

Customary courts are considered to be more accessible than statutory courts in several respects (LGI-20, Dim. i). Whereas statutory courts are mainly accessible only in urban areas, customary courts are found in urban and rural areas throughout the country. Customary courts are also more affordable than statutory courts. Fees in customary courts are not closely monitored and amounts can vary widely, but they are nearly always several orders of magnitude cheaper than statutory courts. In locations where chiefs are paid a salary by the government, customary court fees tend to be a bit lower. In locations where chiefs do not receive salaries from the government, court fees are often higher, because they serve as a primary source of revenue for chiefs. In some circumstances, customary court fees may be perceived as prohibitive, particularly for marginalized or disadvantaged populations such as women-headed households, IDPs or returnees, but for the most part, market forces and opportunities for forum shopping keep fees in customary courts within the realm of affordability for most South Sudanese (Leonardi *et al.* 2010).

Customary courts are also more culturally accessible to the majority of South Sudanese. Since customary courts base their decisions primarily on local norms, their reasoning tends to be more predictable for people who are less familiar with statutory court proceedings. Customary court hearings can also be conducted in the vernacular, whereas statutory court hearings are often conducted in Arabic or English, which are unfamiliar languages for many people residing in rural areas. That being said, access to conflict resolution mechanisms at both the statutory and customary levels is often hampered by a lack of awareness amongst citizens about the formal and informal procedures for managing land disputes.

[Alternative Dispute Resolution \(ADR\)](#)

In resolving land disputes, the 2009 Land Act gives priority to alternative dispute resolution (ADR) and traditional dispute resolution mechanisms. It also lays out basic standards governing mediations and arbitrations and how these dispute resolution mechanisms relate to the other local institutions of land governance. One of the benefits of alternative dispute resolution (ADR) in relation to land disputes is that the parties have a bit more flexibility in the type of evidence that they can provide. Whereas formal courts are focused almost exclusively on documentary forms of evidence, in

mediations or arbitrations people can draw on all different sorts of evidence to prove their claims. There are also benefits in terms of reduced cost, more timely resolution and the maintenance of social relationships that might otherwise be damaged through adversarial court proceedings.

Panel participants recounted a number of ad hoc dispute resolution processes that make use of ADR techniques, albeit without explicit reference to the Land Act. In Munuki, Rajaf and Kator payams of Juba, for example, committees of three to five members sit every Friday to mediate land disputes. In Maridi, there is a county land committee chaired by the County Commissioner that sits to resolve land disputes on a regular basis. Another example can be seen in a dispute between the Acholi and Madi in Magwi. A group of elders convened a forum that sat in Torit for a week to address the issue and came out with a series of their own resolutions. Initiatives such as these perform an important function in areas where the statutory or customary court system is unable to effectively manage land disputes.

Text Box 9: Evidentiary Standards

Many land documents were lost or destroyed during the war, and those who took refuge in other countries have returned home to find secondary or tertiary occupants settled on their land. Without documentation to substantiate their claims, hearings can drag on for years. In one example recounted by a panel participant, an individual who was displaced from his home in 1987 returned in 2004 to find that someone else had inhabited his land. Immediately thereafter, the individual brought a complaint in court; the complaint it is still pending to this day.

Another panel participant recounted a case in which a man did not have documents to his land, but he had been residing in that place for a long time. During the war, the man had been given a token to process the documents for his land. He gave the token to his brother who was an alcoholic and unstable. The brother gave the token to a friend who proceeded to register the land in his name, saying that the brother had sold the land to him. When the case went to the high court, the judge did not accept any non-documentary evidence. The man's grandparents and parents were buried in the land, he had constructed a house, and the neighbors were available to testify on his behalf. But the court only based its decision on the documents, which were in the other man's possession.

Share of Land-related Conflicts in the Formal System (LGI-21)

Table 33 presents the LGAF results for the three dimensions relating to the share of land-related conflicts in the formal system.

Table 33: LGAF Results for LGI-21

LGI	Dimension Description	Score				Dimension
		A	B	C	D	
21 i	Conflict resolution in the formal legal system					Land disputes in the formal court system are more than 50% of the total court cases.
21 ii	Speed of conflict resolution in the formal system					A decision in a land-related conflict is reached in the first instance court within 1 year for less than 50% of cases.
21 iii	Long-standing conflicts (unresolved cases older than 5 years)					The share of long-standing land conflicts is greater than 20% of the total pending land dispute court cases.

Caseloads and Disposal Rates

Information regarding court caseloads and disposal rates is not readily available in South Sudan. Part of the difficulty of obtaining this information can be attributed to a general lack of transparency in the Judiciary. Since the Government of South Sudan was established in 2005, the Judiciary has not published a single judicial opinion. To the extent that the Judiciary monitors statistics on types

of cases that are heard and how long it takes to dispose of different types of cases, that information is not made available to the public.

With respect to land disputes, some government and civil society actors have provided estimates that help to shed light on the frequency with which land disputes arise in certain areas. For example, according to an assessment carried out by the South Sudan Land Commission (SSLC), between 2008 and 2010, 80 to 85 percent of the cases arising in the statutory courts in Yei involved land disputes. A representative of the Information, Counseling and Legal Assistance (ICLA) Program of the Norwegian Refugee Council (NRC) estimate that approximately 60 to 70 percent of the cases arising in statutory courts in Juba involve land disputes. Greater Bahr-el-Ghazal, Wau and Aweil have also experienced a dramatic increase in land disputes associated with populations of returnees and refugees. The problem is pronounced in Northern Bahr-el-Ghazal, where there is only one statutory judge to cover the whole state. In other locations, there may be very few land cases. For example, according to panel participants, Kajokeji has very few land disputes other than matters having to do with the demarcation of administrative boundaries.

The most prevalent disputes are those involving IDPs and returnees that reside in informal settlements in Juba. Issues relating to demolitions and forced evictions, in addition to disputes over competing claims and documentation are also commonplace. Matters relating to inheritance arise with less frequency. These issues are typically addressed within the family or sometimes in customary courts, but do not typically make it into the formal system. This can have adverse effects on women and children who may be disadvantaged within family mediation or customary courts which tend to be male-dominated arenas.

Statutory court hearings for land disputes can drag on for up to six months, a year, or longer (LGI-21, Dim. ii). Many disputes date back to the civil war period. When people were displaced from their homes as a result of the conflict, secondary occupants would often move on to the land. Oftentimes, state and local government officials were transferred title to new owners without providing notice to the original inhabitants. Disputes in which both parties have valid documents tend to be very difficult to resolve. The courts have found it particularly difficult to resolve disputes involving military personnel that have unlawfully settled on other people's land. At one point, the Judiciary had solicited the support of the Military Justice system in enforcing its decisions on military personnel, but according to the Chief Justice of the Supreme Court, Military Justice no longer assists in enforcing decisions from civilian courts.

3.6 Large-scale Acquisition of Land Rights

The Large-scale Acquisition of Land Rights theme assesses a range of land governance issues relating to land acquisitions. The theme covers land-based investments in agriculture, forestry, biofuels, carbon credits and ecotourism, but it does not directly address investments in the oil and mining industries. The theme has 16 indicators. The first four indicators (LSLA 1 to LSLA 4) focus on issues pertaining to rights recognition, land conflicts and land use planning. The next seven (LSLA 5 to LSLA 11) indicators address various issues relating to land investments, including incentives, benefit sharing arrangements, the transparency of negotiations and contracting. The next two indicators (LSLA 12 and LSLA 13) focus on environmental and social safeguards. The final three indicators (LSLA 14 and LSLA 16) assess institutional capacity and coordination.

Rights Recognition, Conflicts and Land Use Planning (LSLA 1-4)

Table 34 presents the LGAF results for the four dimensions relating to rights recognition, conflicts and land use planning for land acquisitions.

Table 34: LGAF Results for LSLA 1-4

LSLA	Dimension Description	Score				Dimension
		A	B	C	D	
1	Most forest land is mapped and rights are registered.					Less than 10% of the area under forest land has boundaries demarcated and surveyed and associated claims registered.
2	Land acquisition generates few conflicts and these are addressed expeditiously and transparently.					Conflicts related to use or ownership rights and directly or indirectly related to land acquisition are relatively frequent (more than 5% of rural land area affected) and the inability to address these conflicts expeditiously and in a transparent manner results in long pending disputes.
3	Land use restrictions on rural land parcels can generally be identified.					The land use restrictions applying to any given plot of rural land can be unambiguously determined on site for land occupied by less than 10% of the population.
4	Public institutions involved in land acquisition operate in a clear and consistent manner.					Institutions that promote, channel or acquire land for purposes of interest to this study have clear standards of ethical performance but implementation is variable and accounts are not subject to regular audits.

Post-CPA Land Investments

South Sudan experienced an influx of large-scale land-based investment following the signing of CPA in 2005. Many of these investments in commercial farms, plantation forestry, biofuel projects, carbon credit schemes and ecotourism projects went largely unnoticed by the government and civil society. Companies seeking first-mover advantages secured leasehold rights in some of the most fertile and water-rich regions of the country. For the most part, however, they held off investing large amounts of money into developing the property, preferring to wait until the political uncertainty of the interim period and South Sudan's 2011 referendum on self-determination had passed. As a result, although large areas of land were sought or secured by private actors—more than eight percent of South Sudan's total land area, according to a 2011 study—there was relatively little evidence of investment activity on the ground (Deng 2011b).

Disputes over large-scale land acquisitions are relatively common in both urban and rural areas (see LSLA 2). There is no clear process for managing these disputes. In some cases, communities have opened cases in statutory courts, either locally in the state where the acquisition took place or in Juba. In other cases, such as those described above, senior politicians will sometimes intervene try to mediate disputes before they become too heated. Disputes can simmer for years without resolution and carry a high potential for violence. In Kapoeta, for example, a group of Didinga reportedly shot above the heads of a group of investors that were coming to the area to explore opportunities for gold production (Nakimongole 2012). As the political and economic situation in South Sudan stabilizes, infrastructure begins to develop, and the country becomes a more attractive destination for capital, investments will become far more visible. If the increased investment is not tied to tangible benefits for local populations, there is a risk that it could lead to further disputes.

Text Box 10: Dispute Over An Investment in Lainya

In 2008, an American company acquired rights to 600,000 hectares of land in Mukaya Payam about 70 kilometers from Juba, through a deal with a small number of community leaders and the CES government. The project was focused mainly on agriculture, timber and biofuel production. People residing in the area did not learn of the deal until 2011. After learning of the lease agreement, the community sent a committee comprised of parliamentarians, payam officials, chiefs, and government officials to Juba to meet with the CES governor and the President. According to the committee spokesperson (Wudu 2011): “This land lease was done in the absence of the community. It has taken three years since its deal started in 2008 for the Community to learn. Influential natives of Mukaya Payam who claimed to be the community representatives of the people of Mukaya carried out the deal.”

Land Acquisitions for the Purposes of Investment (LSLA 5-11)

Table 35 presents the LGAF results for the seven dimensions relating to land acquisitions for the purposes of investment.

Table 35: LGAF Results for LSLA 5-11

LSLA	Dimension Description	Score				Dimension
		A	B	C	D	
5	Incentives for investors are clear, transparent and consistent.					There are written but unclear provisions in law or regulations regarding incentives for investors and their applicability has to be negotiated on a case by case basis in a way that is often discretionary.
6	Benefit sharing mechanisms regarding investments in agriculture (food crops, biofuels, forestry, livestock, game farm/conservation) are regularly used and transparently applied.					Mechanisms to allow the public to obtain benefits from the investment (or investing party) other than compensation (e.g., schools, roads, etc.) are not used or not applied transparently.
7	There are direct and transparent negotiations between right holders and investors.					Expropriation of land by the state is required and the process is murky.
8	Sufficient information is required from investors to assess the desirability of projects on public/communal land.					Information required from investors is not consistently required and generally insufficient to assess viability and benefits from the project.
9	For cases of land acquisition on public/community land, investors provide the required information and this information is publicly available.					Investors provide some or all the information required from them but this information is not publicly available.
10	Contractual provisions regarding acquisition of land from communities or the public are required by law to explicitly mention the way in which benefits and risks will be shared.					Contracts do not have to specify either risk sharing or benefit sharing arrangement.
11	The procedure to obtain approval for a project where it is required is reasonably short.					In most cases, investment application related documents are reviewed and receive a response within greater than 9 months from date of submission.

Benefit Sharing Mechanisms

The Transitional Constitution and Land Act include several broad provisions that recognize the right of communities to benefit from investments on their land. According to the Transitional Constitution:

Communities and persons enjoying rights in land shall be consulted and their views duly taken into account in decisions to develop subterranean natural resources in the area in which they have rights; they shall share in

the benefits of that development.

The Land Act states that investment activities must reflect an “important interest” for the affected community and should contribute to the community’s economic and social development.

In practice, however, the mechanisms for securing public benefits are not consistently applied and the nonperformance of investment obligations is a common problem (see LSLA 6). In many cases, benefits for the people residing in the area come in the form of infrastructure, services or employment opportunities. Often, company obligations are put in vague and non-binding contract provisions, such as the following provision from an agreement between the RSS Ministry of Wildlife and an Emirati company:

The Company undertakes, as far as is practically possible and financially feasible, to ensure that local community interests are considered in full. A Joint Liaison Committee will be established with the local communities and existing community based organizations (CBOs) which will meet on a quarterly basis. Local communities will be the primary beneficiaries of employment opportunities and they will receive other economic benefits. The Company intends to establish a structure and/or support the existing not-for-profit organizations together with third parties which will focus on the establishment of small businesses and the creation of wealth in the surrounding communities...

Another example of more direct benefit sharing can be found in several teak concessions that the Government of South Sudan provided to a number of foreign-owned companies. The following provision is similar to one found in a number of government agreements with timber companies:

The concessionaire will pay an amount of USD 100,000 into a social fund account. The money will be spent on community development projects as will be determined with stake holding communities at the second stakeholders meeting not later than 6 months after the signing of this agreement. ...A further social fund contribution will be paid by the Concessionaire into a community fund at a rate of USD 5 per cubic meter (m³) of sawn board exported.

According to a member of a local development committee, the company only paid \$79,000 USD out of the \$100,000 USD that it owed to the community before selling the venture to another firm (Deng 2011a).

Lease Amounts

Lease amounts vary considerably across projects and across business sectors. In some cases, land may be provided to investors at little or no cost, the assumption being that people will benefit from employment opportunities if the investment materializes. For example, a foreign company obtained a 99-year lease for 179,000 hectares in order to establish a timber plantation and conservation project in Central Equatoria for just \$12,500 USD per year (\$0.07 USD per ha per year). In another example from Unity State, a company agreed to pay \$125,000 USD per year to the state government for a 25-year lease of 105,000 hectares land for commercial agriculture (Deng 2011a). Information about land leases for industrial purposes in urban and peri-urban areas is not readily available, but it can be reasonably assumed that the prices are higher than those encountered in rural areas.

Text Box 11: Juba’s Special Economic Zone (SEZ)

In June 2013, the Government of South Sudan announced that it would be starting the construction of a Special Economic Zone (SEZ) on a 625 square kilometer parcel of land in a place called Lokiri, approximately 30 kilometers from Juba (Sudan Trib. 2013^a). The SEZ is meant to serve as an industrial area for business and investment activities. Speaking at the ground breaking ceremony, the Minister of Commerce, Industry and Investment remarked:

“Provision of these kind of infrastructure and availability of others such as tax incentive, non-tariff barriers, power, roads and access to finance will pave the way for more investments to consider South Sudan as one of best investment destinations in the region if not the world.”

While most of the community supported the project and hoped it would help to bring goods and services to the area, at least one group complained that proper consultations were not done and that the community was not compensated for the land.

Investment Negotiations

The Land Act is a very broad piece of legislation that purports to establish rules and procedures across a wide range of issues. In relation to land investments, the Land Act states that upon completion of an investment project, the leased land must revert back to the community. Expropriation is not explicitly required in law, but often the process is one in which the government, often at the state level, negotiates agreements in closed-door discussions with companies, only notifying affected populations after the agreement has been concluded (see LSLA 7). The examples provided in relation to LSLA 2 are indicative of many investments in South Sudan (Deng 2011b).

A central difficulty in negotiations between companies and communities is defining the ‘community’ and those who are able to make legally binding promises on its behalf. In several circumstances, companies and government institutions have reached agreements with a few community leaders residing in urban centers far away from the land in question, and then claimed that they have consulted the community. Negotiations are rarely done before agreements are signed and most do not devote special attention to securing the participation of women, minority groups, displaced persons, pastoralists, or other marginalized groups (Deng 2011c).

Information Disclosure

Transparency is a central concern for large-scale land investments in South Sudan. According to the Transitional Constitution:

Every citizen has the right of access to official information and records, including electronic records in the possession of any level of government or any organ or agency thereof, except where the release of such information is likely to prejudice public security or the right to privacy of any other person.

In practice, however, access to documents associated with investment agreements is largely subject to the discretion of the people involved. Government actors and companies often refuse to share even basic information about investments (LSLA 9). A new Right of Access to Information Bill tabled before the National Legislative Assembly in 2012 could help to give meaning to the right to information that is expressed in the Transitional Constitution. However, given the weaknesses in the rule of law in South Sudan, any such legislation would likely require a great deal of support to effect any meaningful changes in government practice.

To a certain degree, the lack of oversight and monitoring of government institutions involved in land investments is a consequence of the decentralization of land governance in South Sudan. Most land investments are negotiated and signed at the state level. Sometimes the national government itself is not aware of leases—some of which involve exceedingly large areas of land—that are

entered into at the state level. State governors have entered into agreements with foreign companies for agricultural ventures without making public the terms and conditions of the agreement. Without any pressure from the national executive to make this information public, state governors are able to restrict information about investments that could affect land use patterns for tens of thousands of people (Deng 2011b).

In this non-transparent environment, there are serious concerns of corruption in relation to large-scale land investments. The Government of South Sudan has struggled with widespread corruption and impunity since its creation in 2005. A few high profile scandals have surfaced in the eight years since the signing of the peace agreement, but the issue has not been rigorously documented and it is difficult to obtain credible information on the scale or type of corruption, especially as it relates to land investments.

Government Vetting of Investment Proposals

In addition to the lack of transparency discussed above, government institutions themselves do not always obtain the necessary information to assess the viability and benefits from projects (LSLA 8). To a certain extent, the inability to acquire and process the information is a product of human resource constraints in government institutions. In this respect, there is a degree of variability across business sectors. For example, the Government of South Sudan has more technical expertise in forestry than in carbon credits or biofuels. South Sudan's teak plantations date back to the colonial era and there are a sizeable number of foresters in the country, some of whom have degrees from universities in Khartoum or elsewhere in East Africa.

Carbon credit and biofuel markets, however, are unfamiliar terrain to most South Sudanese and the public sector personnel lack the expertise to adequately assess investments in these sectors. The imbalances of information between the public and private sector complicate efforts to secure good faith negotiations. For example, a foreign company hoping to implement a carbon credit project in Central Equatoria negotiated an agreement in which the company pledged to provide 10 percent of revenue from its venture into projects in the local community. This benefit sharing arrangement was in line with company policy but it was not the subject of negotiations with the CES Ministry of Agriculture and Forestry or the affected communities. Nor did company representatives disclose to any of the other signatories the amount of revenue that they expected to receive from carbon credits.

There is also a degree of geographical variation in the type of information that the Government requires from investors. As of 2010 in Western Equatoria State, for example, government teak concessions were subject to debate in the state legislative assembly prior to approval (*Id.*). This additional level of oversight required the government to produce additional information on the types of benefits that the Government expected to receive from the investment. Parliamentary oversight was required by a state legal adviser; there was no clear regulatory standard requiring it by law.

Delay in Transferring Land to its Destined Use

Expropriations for private investments in rural areas can take an exceedingly long time to be transferred to their destined use. To a certain extent, the delay can be traced to a reluctance on the part of investors to devote capital towards developing their newly acquired landholdings. Given the high levels of political, economic and social risk associated with investments in South Sudan, investors often avoid devoting much capital towards immovable assets in the country. As a result, even though the government may have signed lease agreements purporting to transfer large parcels of community land to private interests, very little evidence of investment activity is apparent on the ground (Deng 2011a). Representatives of the Ministry of Agriculture and Forestry provided an

example of a company that completed the tender process three years ago but had still not begun construction activities.

Time Taken to Obtain Approval

Due to the ambiguity of the legal framework, the procedure for acquiring land is excessively long. Company representatives commonly complain that after they have reached an agreement with one government institution, another institution nullifies the deal. Companies can wait for years before obtaining approval for the investment. Even after receiving approval, government institutions may still back out of agreements.

The Government's failure to fulfill investment obligations can be partly attributed to resource constraints. However, it is also a product of the government's underdeveloped international legal personality. The Government of South Sudan has not signed any international investment treaties, which would provide companies with a legal recourse to international arbitration if they feel that they have had their property unlawfully expropriated. Since governments typically enjoy sovereign immunity in foreign jurisdictions it can be difficult or impossible for companies to sue the Government of South Sudan and achieve enforceable remedies outside of the country.

Environmental and Social Safeguards (LSLA 12-13)

Table 36 presents the LGAF results for the two dimensions relating to environmental and social safeguards.

Table 36: LGAF Results for LSLA 12-13

LSLA	Dimension Description	Score				Dimension
		A	B	C	D	
12	Social requirements for large-scale investments in agriculture are clearly defined and implemented.					Social safeguard requirements for investors are not clearly documented and defined.
13	Environmental requirements for large-scale investments in agriculture are clearly defined and implemented.					Environmental safeguard requirements for investors are not clearly documented and defined.

Social and Environmental Protections

South Sudanese law requires that companies investing in South Sudan meet a number of social and environmental standards. According to the Land Act:

Any allocation of land for investment purposes shall be subject to a social, economic and environmental impact assessment to ensure that the social, economic and environmental implications of the activities on the land are taken into account before any decision is made thereon.

In practice, companies rarely conduct environmental and social impact assessments (ESIAs); nor are they required to do so by government institutions (LSLA 12 and 13). Of 28 investments discussed in a 2011 report on land-based investment in South Sudan, none of the companies conducted an ESIA prior to finalizing its agreement with the government. Some companies conducted ESIA after the investment agreement was finalized and others outlined social and environmental concerns in feasibility studies, but none conducted prior ESIA as required by the Land Act (Deng 2011b).

Requirements for prior consultation with affected communities are also routinely ignored. Both the Land Act and the Local Government Act (2009) require prior consultation with affected

communities. The Land Act also requires that government officials and company representatives consult pastoralist groups with secondary rights of access before making any decision that would affect their grazing rights. Of the 17 foreign investments examined in a 2011 study on land-based investment, only two companies conducted prior consultations with affected populations (Deng 2011b).

Institutional Capacity and Coordination (LSLA 14-16)

Table 37 presents the LGAF results for the two dimensions relating to institutional capacity.

Table 37: LGAF Results for LSLA 14-16

LSLA	Dimension Description	Score				Dimension
		A	B	C	D	
14	For transfers of public/community lands, public institutions have procedures in place to identify and select economically, environmentally, and socially beneficial investments and implement these effectively.					Procedures provide at best partial coverage of economic, social, and environmental issues and are not implemented effectively.
15	Compliance with safeguards related to investment in agriculture is checked.					Responsible government agencies follow up on the agreements to check for compliance and but do not take reasonable actions in cases of non-compliance.
16	There are avenues to lodge complaints if agricultural investors do not comply with requirements.					There is no clear process by which affected parties or the public at large can lodge complaints regarding investor compliance with safeguards.

Government Oversight

The responsibility for identifying beneficial projects is distributed across various institutions at each level of government, including the Ministry of Agriculture and Forestry, the Ministry of Commerce, Industry and Investment, the Ministry of Wildlife, Conservation and Tourism, and the Ministry of the Environment. Some areas, such as the Greater Equatoria region in the south of the country, tend to be better connected to international markets and therefore attract greater investor interest. In other areas, particularly those prone to insecurity, investments are few and far between and state officials are often less willing to turn away investments, even if the benefits are sharply skewed in favor of the investor. Regardless of the amount of investor interest, the procedures for assessing investment plans tend to be ad hoc and subject to a high degree of political interference (see LSLA 14) (Deng 2011a).

Investment monitoring is severely lacking, but government institutions do make an effort to monitor investor compliance in some cases. As mentioned above, the effectiveness of these activities is hampered by weak agreements, human and resource constraints, and the logistical difficulties of monitoring investments in distant rural areas. The Government of South Sudan is also desperate to attract sorely needed foreign capital to the country, and officials are often reluctant to take decisive action in instances of non-compliance.

Process for Lodging Complaints

Aside from lawsuits in statutory courts, there are no clear processes for lodging complaints regarding investor compliance with safeguards (LSLA 16). People that have complaints against

companies typically leverage their relationships with government officials to seek redress for harm that is done to them. The process is ambiguous and varies depending on identity of the complainant and the type of conduct in question.

Text Box 12: Non-Inclusive Investment Negotiations

In 2008, an Emirati company signed a 30-year agreement with the RSS Ministry of Wildlife to manage and develop a 1.68 million hectare national park in an area called Boma, in the southeastern portion of Jonglei State (Deng 2011a). Boma—located in Pibor county—is home to a number of minority groups, including the Murle, Jie and Suri, and has experienced high levels of insecurity in the postwar period. In their discussions with community leaders, company representatives reportedly promised to deliver a number of benefits to the people residing in the area, including “modern” villages, educational and health services, boreholes, roads and three strategically placed airstrips. None of these obligations were formalized in a legally binding manner. Profits from the venture were to be split between the government (30 percent) and the company (70 percent).

In 2011, three years after entering into the agreement with the government, the company had not yet provided any of the agreed upon benefits to the communities. The company’s failure to deliver on its promises prompted several political leaders from the Murle community—the community that stands to be most directly affected by the investment in Boma—to issue a letter to the Ministry of Wildlife and the Office of the President. The August 2009 letter states that community participation in decision-making with regard to the project “was completely excluded and ignored.” According to the letter:

Al Ain National Wildlife Company has violated article 6(12) which stipulates clearly that local community is the primary beneficiaries of employment opportunities. The company has appointed [a] manager who is not son of the Murle community based in Juba. This appointment is completely rejected and the Murle community will not tolerate it. The community has capable and qualified people who can fill this post. The Ain Company must take it seriously, putting this into effect; removing the so called manager that has been imposed on us through political motives, and should appoint the Murle community’s son fill this post so as to create a healthy working atmosphere with the local community.

The letter proposes a number of changes to the investment agreement to align it with community interests. For example, the letter proposes that the revenue sharing provision of the agreement be adjusted to include a 10 percent share for the local community. The letter also asks for the project period to be reduced from 30 to 20 years, and for more specific details concerning the company’s obligations to provide health, education, and water services to the local community. As of December 2011, the government had not responded to the community’s letter.

3.7 Forestry

The Forestry theme assesses various issues relating to forest governance. It covers six indicators that are assessed using 12 dimensions. The first indicator (FGI-1) examines South Sudan’s commitment to sustainability and climate change mitigation. The second indicator (FGI-2) looks at the public goods aspects of forests and the degree to which governance institutions promote their sustainable use. The third indicator (FGI-3) focuses on South Sudan’s support to private sector initiatives to invest sustainably in forest activities. The fourth indicator (FGI-4) addresses the livelihood aspects of forest-dependent communities. The fifth indicator (FGI-5) assesses land use, tenure and land conversion in forests. The sixth indicator (FGI-6) examines illegal logging and other forest crimes.

Commitments to Sustainability and Climate Change Mitigation (FGI-1)

Table 38 presents the LGAF results for the two dimensions relating to commitments to sustainability and climate change mitigation.

Table 38: LGAF Results for FGI-1

FGI	Dimension Description	Score				Dimension
		A	B	C	D	
1 i	Country signature and ratification of international conventions					The country has committed to follow most or all of these treaties, but its implementation needs improvement.
1 ii	Implementation of incentives to promote climate change mitigation through forestry					A few incentive mechanisms are available, including for PES and REDD+. Funding is often not available and the programs are not considered cost effective.

Initiatives to Promote Responsible Forest Use

As of May 2013, South Sudan has only signed a handful of international covenants, including the Geneva Convention and the Mine Ban Treaty. As a new state, it has taken some time for the Government to determine the appropriate procedures for undertaking these international obligations. However, South Sudan is further along the path towards ratification for international covenants relating to forest conservation and climate change than it is for other international treaties, such as those relating to human rights (see FGI-1, Dim. i). On January 12, 2012, for example, South Sudan acceded to the Vienna Convention on Substances that Deplete the Ozone Level (UNEP 2012). The Ministry of Foreign Affairs has reportedly sent out letters of accession to the Convention on Biological Diversity (CBD), the Ramsar Convention, the UN Framework Convention on Climate Change (UNFCCC) and the UN Convention to Combat Desertification (UNCCD), and South Sudan is now recognized as an observer state to the UNFCCC (2013). South Sudan is also a member of the UN-REDD Programme, a collaboration between RSS Ministry of Agriculture, Forestry, Cooperatives and Rural Development, FAO, UNDP and UNEP.

Representatives of the Ministry of Justice give two main reasons for why the government has been slow to sign on to international agreements. First, officials are uncertain of the cost implications of these international obligations. This is a particular concern due to the on-going period of austerity prompted by the shutdown of oil production in January 2012. The second reason concerns a lack of clarity regarding the appropriate procedures for signing, ratifying and domesticating international covenants. South Sudanese law does not clearly state whether South Sudan is a monist state or a dualist state; in other words, whether international treaties become justiciable in South Sudan upon signature and ratification or whether they must first be domesticated through legislation passed by the National Legislative Assembly.

The 2013 Forest Policy states that the government will make a “sustained commitment to regional and international forest-related agreements and conventions.” The Policy also states that the government will explore bilateral and regional arrangements for knowledge and skill sharing with neighboring countries. The Policy identifies the RSS and State governments as having primary responsibility for implementing international agreements, and a proposed South Sudan Forest Commission (SSFC) would play a role in coordinating with relevant authorities in the development and implementation of policies, regulations, and practices. It will take some time, however, for the government to build capacity in these areas and for the benefits to become apparent. Without qualified personnel at its disposal, the government is forced to rely on expensive assistance from foreign experts.

Table 39: South Sudan’s Signature and Ratification of Conventions in Support of Forest Conservation

Treaty/Convention	Signatory	Ratification/ In force	Accession Pending
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Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)	No	No	No
Convention on Biological Diversity (CBD)	No	No	Yes
UN Convention to Combat Desertification (UNCCD)	No	No	Yes
Ramsar Convention	No	No	Yes
UN Framework Convention on Climate Change (UNFCCC)	No	No	Yes
Vienna Convention for the Protection of the Ozone Layer	No	Yes	No
World Heritage Convention	No	No	No

Text Box 13: History of Plantation Forestry in South Sudan

According to forestry expert Abdalla Gafaar (2012), the first plantation in South Sudan was established in 1919, at Kagelu, Central Equatoria. Planting activity intensified in the 1940s, across the Equatorias and Bahr el Ghazal. In 2004, thirteen teak plantations were found and mapped by satellite, and in 2007, a further five plantations, covering a total of 7,680 hectares (76.8 km²), were found with different satellite technology. Most of the mature trees standing today are between 35 and 50 years old.

Recognition of Public Goods Aspects of Forests and Promoting Sustainable Use (FGI-2)

Table 40 presents the LGAF scores and the findings associated with those scores for the two dimensions relating to the recognition of public goods aspects of forests and promoting their sustainable use.

Table 40: LGAF Results for FGI-2

FGI	Dimension Description	Score				Dimension
		A	B	C	D	
2 i	Public good aspects of forests recognized by law and protected					The law recognizes a few public goods and services, but there is no effective protection.
2 ii	Forest management plans and budgets address the main drivers of deforestation and degradation					Addressing the drivers of deforestation and degradation appears to be given the same level of priority as other activities in forest development plans and budgets.

Deforestation and Loss of Biodiversity

Prior to the outbreak of civil war in 1983, South Sudan had an abundance of both natural forests and plantations. It was estimated that South Sudan had plantations covering 1,879 square kilometers prior to the war. Natural forests and woodlands are thought to cover approximately 191,667 square kilometers, or 29 percent of South Sudan's total land area. During the war, however, the resource base was severely degraded as a result of wild fires, overgrazing and overcutting. The impact was particularly felt in government-owned teak plantations. According to Abdalla Gafaar (2011):

The plantations in Central Equatoria are currently in a degraded state with most of the best quality teak logs removed by concessionaires. Most of the plantations in Bahr el Ghazal are in a similar condition. The best option for those degraded plantations is to clearfell and regenerate. The plantations in Western Equatoria are generally fully stocked but due to lack of thinning they are slow growing and relatively small in size, but they are of good quality due to the slow growth rate.

An estimated 45 percent of forest cover in South Sudan and a large proportion of its biodiversity was lost during the 22-year conflict. According to the International Centre for Research in Agro-

Forestry (ICRAF), between 1973 and 2006, South Sudan lost an average of two percent of its forests to deforestation every year. If this trend were to continue, it could lead to a near total loss of forest cover within 50 years. The 2013 Forest Policy highlights deforestation as a central concern (see FGI-2, Dim. ii):

[T]here are no sustained afforestation and reforestation programmes to offset accelerating deforestation. The budgets allocated for forestry activities at the RSS and State Government levels fall far short of actual requirements. ...Unless the country reforms its forestry sector, the future is bleak for its wood and non-wood forest products.

High rates of deforestation have continued in the postwar period. People cut trees for charcoal production or to use as construction material. Forest fires are used to prepare land for shifting cultivation or to rejuvenate grazing areas and can burn uncontrollably. Rapid urban growth and the influx of returnees are putting additional pressure on forest resources. Demand for wood for the purposes of industrialization is expected to grow, and the production base is already below demand levels. The 2013 Forest Policy acknowledges that government regulation has not kept pace with the changes that the country has experienced in recent years:

Several policies and regulations involving biodiversity conservation have not been promulgated, so authorities with jurisdiction to manage and protect biodiversity lack the legal framework to prosecute illegal activities. Moreover, the existing legislation no longer reflects the current reality in South Sudan. The policies and legislation that do exist adopt a command-and-control approach with little reliance on civil society as partners in conservation.

Despite the Ministry's concerns, budget allocations for forestry are small compared to those for agriculture, and the budget for the RSS Ministry of Agriculture and Forestry is also smaller than that of other ministries. Government austerity policies in the wake of the January 2012 shutdown of oil production have introduced further constraints. In April 2013, the RSS Ministry of Finance and Economic Planning issued a Planning and Budget Call Circular for 2013-14 to provide guidance for government institutions in developing their annual budgets. The Circular sets the budget ceiling for the RSS Ministry of Agriculture, Forestry, Cooperatives and Rural Development at roughly \$34 million USD, compared to \$71 million USD for the Ministry of Wildlife Conservation and Tourism and \$903 million USD for the Ministry of Defence and Veteran Affairs.

In addition to financial constraints, the government must also cope with human resource constraints. Generally speaking, there is more forestry expertise in South Sudan than in many other sectors. This is, in part, because South Sudan has a relatively large supply of valuable trees, such as teak, mahogany, and ebony, which have been sources of revenue for various groups in South Sudan for many generations.

[Public Goods Aspects of Forests](#)

The public goods aspects of forests—including the benefits they provide in terms of biodiversity, soil and water conservation, and social and cultural values—are recognized in the Forest Policy as well as under customary law. Protection of these public goods, however, is lacking. The Forest Policy has not yet been formally adopted and will not begin to have a tangible impact on the forest sector until the Forest Act is passed. Customary legal systems have been undermined by decades of conflict and struggle to cope with the challenges facing the country in the postwar context, including rapid urban development, large returnee and refugee populations, and an influx of foreign and domestic investors. The existing legal protections are insufficient to protect the public goods aspects of forests (FGI-2, Dim. ii).

Supporting Private Sector to Invest Sustainably in Forest Activities (FGI-3)

Table 41 presents the LGAF scores and the findings associated with those scores for the two dimensions regarding support to the private sector to invest sustainably in forest activities.

Table 41: LGAF Results for FGI-3

FGI	Dimension Description	Score				Dimension
		A	B	C	D	
3 i	Country's commitment to forest certification and chain-of-custody systems to promote sustainable harvesting of timber and non-timber forest products					The government does not require certification but supports and encourages it and chain-of-custody systems; the area under certification in the country is growing but only slowly.
3 ii	Country's commitment to SMEs as a way to promote competition, income generation and productive rural employment					There is support, [to SMEs] but the government could do much better.

SME Opportunities in South Sudan's Forests

The RSS Ministry of Agriculture, Forestry, Cooperatives and Rural Development encourages small- and medium-enterprises (SMEs) as a way to promote income generation and rural development. Forest-based industries, including saw mills, furniture, and construction materials, provide significant sources of off-farm employment for rural South Sudanese. The Ministry of Agriculture and Forestry also encourages private companies investing in timber production to support local SMEs. The importance of forests in this regard were recognized by President Salva Kiir Mayardit in his 2006 opening address to the first National Assembly, in which he said, "Improved agriculture and forestry services shall become a driving force for our national socio-economic development. We shall work to improve the rural South Sudan without compromising the sustainability of its natural resources for future generations."

The 2013 Forest Policy requires the RSS and State Governments to "promote and support community forestry and agroforestry to help communities achieve rapid and sustainable socio-economic development." According to the Policy:

Under the previous government-controlled management system, communities gained few direct benefits from forests besides employment. This policy introduces a radical shift in promoting active community participation in forest management using formal collaborative forest management (CFM) schemes throughout [South] Sudan.

SMEs are also emphasized in pilot community forestry projects that are being implemented in several locations in South Sudan. It is expected that communities in the project areas will generate commodities from forest resources, such as charcoal, carpentry, and non-timber forest products.

Despite these positive policy statements and strong rhetorical commitment from the government, translating the rhetoric into tangible benefits for rural communities is still lacking. Table 42 lists additional opportunities for SMEs:

Table 42: Market Opportunities for SMEs

Commodity	Market Opportunities
Honey	Honey production provides opportunities on both domestic and international markets. Economic migrants are currently known to buy honey locally in South Sudan and bring it to neighboring countries to process it and package it for commercial sale. If these value-added activities were done in South Sudan, it could help to better capture benefits for South Sudanese communities. No

	certification or chain-of-custody programs are currently being used in this sector.
Charcoal	Fuelwood and charcoal comprise approximately 80 percent of the South Sudan's energy supply and provide an attractive economic opportunity to rural populations throughout the country. There is also a growing demand of fuelwood for brickmaking. No certification or chain-of-custody programs have been documented in this sector.
Gum Africa (a.k.a. Gum Arabic)	In 2008, according to the Forest Policy, South Sudan was the fourth largest producer of gum Africa in the world after Sudan, Chad, and Nigeria. Eight of the ten states in South Sudan can produce gum Africa. However, most residents of rural areas in South Sudan are unaware of its economic potential and unable to access international markets where the product is commonly traded. In the absence of organized action by South Sudanese producers, Sudanese are purchasing gum Africa in South Sudan and selling it across the border as an export product of Sudan.
Shea butter	Although shea butter is in high demand worldwide, only about 0.2 percent of South Sudan's total sheanut production is currently being exported. Most shea production is consumed in domestic markets. There are no certification or chain-of-custody programs for shea butter, but the Ministry of Agriculture and Forestry provides some limited support to small producers in Western Equatoria, Western Bahr-el-Ghazal and Lakes States.

Forest Certification and Chain-of-Custody Programs

Regarding forest certification and chain-of-custody programs, the RSS Ministry of Agriculture, Forestry, Cooperatives and Rural Development is supportive of private sector efforts to sign on to such programs, but the process has not yet formalized (see FGI-1, Dim. ii). Aside from a few isolated examples, commercial producers of wood and non-wood forest products do not participate in certification or chain-of-custody programs. Were the government to promote the use of these programs more widely, it could help to lower costs associated with the programs and make them more accessible to private sector actors. Certification could also attract additional capital, as many investors are wary of investing in timber production in post-conflict settings and certification programs would provide them with some assurances that the companies they invest in are meeting some minimum standards for conflict sensitivity.

Livelihood Aspects of Local, Traditional and Indigenous Forest-Dependent Communities (FGI-4)

Table 43 presents the LGAF scores and the findings associated with those scores for the two dimensions relating to the livelihoods aspects of forest-dependent communities.

Table 43: LGAF Results for FGI-4

FGI	Dimension Description	Score				Dimension
		A	B	C	D	
4 i	Recognition of traditional and indigenous rights to forest resources by law					The law often recognizes traditional and indigenous rights and guarantees security of access to forest dependent communities.
4 ii	Sharing of benefits or income from public forests with local communities by law and implemented					The law has clear provisions on sharing benefits from some forest uses, but not from all uses, and implementation is weak.

Ownership of Forests

According to officials at the RSS Ministry of Agriculture, Forestry, Cooperatives and Rural Development, prior to the CPA, the ownership and management of forest resources in South Sudan was clearly defined. The central government in Khartoum owned all of the National Forest Reserves (NFRs) and the provincial governments owned all of the Provincial Forest Reserves

(PFRs). The establishment of the autonomous Government of Southern Sudan in 2005, however, introduced a degree of uncertainty into the legislative framework. Initially, the regional Government said it would enforce all the preexisting national laws in postwar South Sudan. This caused a backlash, because most South Sudanese considered the national laws, particularly those relating to state ownership over unregistered lands, to be oppressive and unjust.

To clarify the Government's position on the matter, the Ministry of Legal Affairs and Constitutional Development issued an opinion letter in August 2006 stating that national land laws such as the Unregistered Land Act would no longer be applicable in the South. However, the 2007 Framework Forest Policy maintained that the Ministry of Agriculture and Forestry would continue to apply the Forests Act of 1989. For the Ministry of Agriculture and Forestry, recognition of the Forest Act was seen as means of asserting government ownership and control over the preexisting reserves. According to the 2007 Policy:

The net effect of this lack of control and responsibility [during the war] is that NFR [the same as CFRs] and other public forests have been under the siege of claims from various stakeholders—local communities, State Government and others. Since the establishment of the GoSS, the MAF took drastic measures to put on hold any claims of ownership and to stop illegal activities in all forests. Through this policy, GoSS is restoring a common understanding on responsibility and ownership of NFR and other forests on public or communal lands such as PFR that should revert to the States. This policy is based on the spirit that GoSS will henceforth take responsibility for all existing NFR in Southern Sudan and for others to be gazetted in the future.

While the recognition of the Forests Act of 1989 helped the Government of Southern Sudan to buttress its claims to NFRs, it also raised certain ambiguities in relation to non-gazetted forests. The 1989 Forest Act considers all “waste, forest and unoccupied land” to be at the disposal of the government. This conflicts with the terms of the 2009 Land Act, which states that community lands shall include “land lawfully held, managed or used by specific community as community forests, cultivation, grazing areas, shrines and any other purposes recognized by Law.” The ambiguity in law and policy relating to non-reserved forests is identified as a cause of concern in the 2013 Forest Policy:

The ongoing development of a new land policy and law creates uncertainty around forest and land ownership; hence this will cause serious limitation to any investment in forestry development. Land reforms are particularly critical to forest sector development strategies and plans. In some cases, like the planned large-scale forest land concessions, land reform becomes a prerequisite. The effect of the ambiguity regarding the current policy and legal framework governing land is that NFRs and other public forests have been under siege of claims by various stakeholders.

Despite these on-going efforts to clarify the matter, ownership over forests has become contentious in the post-CPA period. Due in part to provisions in the CPA, Interim Constitution, and Transitional Constitution that afford legal recognition to customary land rights, state governments and rural communities are demanding that they be consulted and share in the benefits of the natural resources in their areas, even if those resources are the property of the national government. In claiming their share of benefits, communities often engage in uncontrolled cutting of natural and plantation forests for sale of charcoal, poles and timber.

Text Box 14: Costs of Timber Production in South Sudan

As this policy statement acknowledges, timber production is a costly endeavor in South Sudan. The 2013 Forest Policy estimates that timber-related taxes, fees, and transport costs constitute 71 percent of the total costs of production and processing of timber, and teak in particular. Poor transport infrastructure, the difficulty of accessing international markets, degraded and obsolete machinery, a shortage of skilled labor, and the prevalence of landmines in many forests introduce additional costs.

Although a handful of companies have been exporting teak for several years, teak production in South Sudan has not yet fully taken root. According to statistics quoted in the Forest Policy, conservative estimates put the amount of teak that has been exported annually in South Sudan in recent years at less than 2,500 cubic meters. Teak typically sells for \$300 to \$400 USD on international markets and it has been estimated that if the teak plantations reach full production, they could generate over US \$100 million per year in revenue.

The RSS MAF views public-private partnerships to be a key driver of growth in the forest sector. The 2013 Forest Policy states that, “Investment will be promoted through fair, transparent, equitable, and legally secure long-term planting and harvesting concessions in public and community lands.” The primary business sectors for this investment are plantation forestry and ecotourism. According to the Policy:

RSS will work with State Governments to operate a system of land concessions for plantation development, based on long-term land lease agreements to be negotiated at national, state and county levels. This system will be fully transparent and it will ensure that the Governments receive the proper royalties for timber extracted while also making sure that the returns to investors are fair and equitable, given the level of investment, the anticipated returns and the risks borne.

Among the more contentious issues in plantation forestry relate to revenue sharing. The Transitional Constitution requires, “National wealth [to be] equitably shared among all levels of government for the welfare of the people,” and “all states, localities and communities are entitled to equitable development without discrimination.” Annex II to the 2013 Forest Policy states how royalties from forest products will be shared among the different levels of government. It states:

- (a) Revenues from National Forest Reserves (NFRs)
 - (i) RSS will collect all revenues from NFRs
 - (ii) 70% of the revenue will go to the RSS Treasury.
 - (iii) 20% will go to the respective State Government Treasury.
 - (iv) 10% will go to the National Forest Fund
- (b) Revenues from State Forest Reserves (SFRs)
 - (i) State Governments will collect all revenues from SFRs
 - (ii) 60% of revenue will go to the State Government Treasury.
 - (iii) 30% will go to the RSS Treasury.
 - (iv) 10% will go to the National Forest Fund.
- (c) Revenues from County Forest Reserves (CFRs)
 - (i) County councils will collect all revenues from CFRs.
 - (ii) 70% of the revenue will go to the County Treasury.
 - (iii) 20% will go to the State Government Treasury.
 - (iv) 10% to the National Forest Fund.
- (d) Revenues from community forests
 - (i) Boma and Payam administration will collect revenues from community forests as may apply.
 - (ii) 60% of revenue will support community development projects.
 - (iii) 30% will support Payam and Boma development projects.
 - (iv) 10% will go to the National Forest Fund.
- (e) Revenue from other natural forest and woodlands
 - (i) The State Governments, County Councils, and Payams are to collect royalties from forest products such as building poles, fuel wood, bamboos, grass, dahashi food, and non-wood forest products.

- Royalty rates will be uniform in all the states and will be determined by RSS as provided for in the Forest Act and implementing regulations.
- (ii) 40% of revenue collective will be retained by the State Government. 40% of revenue collected will go to the County Council/Payam. 20% of revenue collected will go to the National Forest Fund to support national efforts in afforestation, environmental rehabilitation, technical support, and training.
- ...
- (h) Supervision fees for private plantations and woodlots
 - (i) At the time of harvesting private plantations and woodlots in all public holdings (gazetted forest lands), 2.5% of the value will be remitted to State Government treasury and another 2.5% will be remitted to RSS treasury. This will cover technical supervision and oversight charges.
 - (ii) At the time of harvesting private plantations and woodlots in all public lands, 1% of total value will be remitted to the National Forest Fund.

Private sector investments also include revenue sharing arrangements. For example, several teak plantations in Western Equatoria provide a lump sum payment, typically in the range of US \$100,000 to \$200,000, for affected communities. Communities are also provided with US \$5 for every cubic meter of teak that is exported. Employment opportunities provide another source of potential benefits for communities and companies alike. According to Aly Verjee, as of January 2013, the Equatoria Teak Company, one of several companies investing in teak production in Western Equatoria, employed about 150 workers in the Nzara area, and anticipated that figure would rise to 200 by the second quarter of 2013. In 2009, he says Equatoria Teak employed 246 staff.

In addition to formal benefit sharing arrangements, there are also additional informal fees that are often demanded by communities living on and around government forest reserves. In Eastern Equatoria, for example, communities often ask for a percentage of the timber being harvested, sometimes up to 10 percent or higher, in cash or in kind. Although these are technically government forest reserves, communities often feel that the forests belong to the communities and they enjoy rights to the reserves as well. They often make these demands of anyone seeking to harvest timber, government representatives included. The revenue is typically paid to a local chief, youth group, or local government official. However, there is little transparent accounting in the project and it is likely that some of the revenue accrues to self-interested individuals.

Regarding benefit sharing within communities, the 2013 Forest Policy observes that women often enjoy less benefits than men due to restrictions on their access to and use of forest resources. Women have limited property rights compared to those of men and also enjoy fewer employment opportunities in the collection, production and sale of timber, wood, charcoal, and other forest products. The Policy cites this as a contributor to rising poverty rates among women.

Text Box 15: South Sudanese Teak on International Markets

A planned export ban on unfinished teak logs from Myanmar from April 2014 will likely push up world prices and possibly intensify demand for South Sudanese teak. In January 2013, Equatoria Teak Company (ETC), a private company that has been investing in teak production in South Sudan since 2007, estimated that the processed timber would sell for \$750-\$1500/m³ on international markets. A 2007 study by the United Nations Environmental Programme (UNEP) estimates that teak exports could produce \$50 million USD per year.

Forest Land Use, Tenure and Land Conversion (FGI-5)

Table 44 presents the LGAF scores and the findings associated with those scores for the two dimensions relating to forest land use, tenure and land conversion.

Table 44: LGAF Results for FGI-5

FGI	Dimension Description	Score				Dimension
		A	B	C	D	
5 i	Boundaries of the country's forest estate and the classification into various uses and ownership are clearly defined and demarcated					Forest boundaries are generally not clearly surveyed and demarcated and ownership is highly contested.
5 ii	In rural areas, forest land use plans and changes in these plans are based on public input					Public input is sought in preparing and amending land use plans and the public responses are used by the public body responsible for finalizing the new public plans, but the process for doing this is unclear or the report is not publicly accessible.

Boundary Demarcation

The boundaries of forest reserves in South Sudan are poorly demarcated. During the war and into the postwar period, people encroached onto forest reserves seeking refuge from conflict or for easier access to forest resources. In some places, unplanned urban growth has transformed forests in and around urban centers into residential settlements.

There are currently plans in place to survey and demarcate all the natural forests, timber plantations, and forest reserves in South Sudan. The RSS Ministry of Agriculture and Forestry started the process shortly after the signing of the CPA. An INGO called the Norwegian Forestry Group (NFG) assisted the Ministry in its efforts to assess the resource value of South Sudan's teak reserves and to demarcate the boundaries of the teak plantations. According to the Forest Policy:

RSS [the national government] will take ownership of all previous Central Forest Reserves (CFRs) and will ensure their effective management and protection as National Forest Reserves (NFRs). In addition, the RSS ministry responsible for forests will delineate and gazette other forests as NFRs toward achievement of the country's development goal of 20% of land area being covered by forests.

The policy calls for the creation of a South Sudan Forest Commission (SSFC) to be responsible for compiling and updating information on all forest reserves to inform forest management planning and revenue sharing. The RSS Minister responsible for forests would be the only actor with authority to make any changes in boundaries of NFRs and protection forests. All changes would require the approval of the National Legislative Assembly. Changes to State Forest Reserves (SFRs), County Forest Reserves (CFRs), and Community Forests would have to be approved by the RSS Minister as well.

Controlling Illegal Logging and Other Forest Crimes (FGI-6)

Table 45 presents the LGAF scores and the findings associated with those scores for the two dimensions regarding the control of forest crimes.

Table 45: LGAF Results for FGI-6

FGI	Dimension Description	Score				Dimension
		A	B	C	D	
6 i	Country's approach to controlling forest crimes, including illegal logging and corruption					The government monitors forest crime only infrequently and makes no significant investments in efforts to control it.

6 ii	Inter and intra agency efforts and multi-stakeholder collaboration to combat forest crimes, and awareness of judges and prosecutors				Officials inside the forest agency occasionally work together to combat forest crime, but there is weak coordination with other agencies; government rarely collaborates with civil society organizations and representatives of local communities, and; few judges and prosecutors are knowledgeable about the effects of forest offences.
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Forest Crimes and Corruption

There is rampant unlawful entry into forests in South Sudan. Efforts to investigate and prosecute people who are involved with illegal logging activities are difficult. Perpetrators are often armed and sometimes forest guards themselves are implicated in the crimes. Although the Penal Code includes a number of provisions that could be applied to forest crimes, judges rarely punish timber smugglers and poachers to the full extent of the law. The forestry department also lacks the financial and human resources to monitor the forests in any meaningful way.

In addition, there is a lack of clarity over who has responsibility for policing the forests, both in terms of horizontal and vertical federalism. Forest departments are established in most counties where there are significant timber resources. However, they report mainly to the county and state levels; rarely do they report to the national level. As a result, it is difficult to determine the status of all of the forests from a single location. There is also poor communication among the many concerned institutions, including the RSS Ministry of Agriculture and Forestry, RSS Ministry of Wildlife, and RSS Ministry of Water and Irrigation.

Sometimes disputes over illegal logging are solved at the local level without the formal involvement of the justice system. People who illegally cut trees may be held in detention for several days before being released without legal proceedings. There is no record of anyone ever being sentenced to a criminal sanction for forest-related crimes.

There are also very serious problems of poaching in forests. An executive order banning poaching activities was issued shortly after the signing of the CPA, but it is not being consistently enforced. For the most part, people engage in poaching activities for bush meat, which is sold in regional centers throughout South Sudan. However, there have also been documented cases of killing animals for other animal products, such as elephant ivory and rhino horn.

On the issue of corruption, little hard data is currently available, but the issue is acknowledged as a concern by most government institutions involved with forestry. In some cases, forest guards are known to have colluded with people who come to illegally cut timber. In one case, according to a report by the Oakland Institute, the manager of a concession in Central Equatoria called police to apprehend a number of security sector personnel who were illegally harvesting teak from the company's concession. Rather than arresting the perpetrators, however, the police instead arrested the manager. He was held in detention for several days before being released, at which point he left the country.

Concluding Remarks and Policy Options

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. For South Sudan to transition from a country that is heavily dependent on humanitarian aid and foreign assistance to one that is development-oriented and self-sufficient, the Government of South Sudan must invest time and effort into developing institutions of land governance that are suited to modern realities.

Since it was established in 2005, the South Sudan Land Commission (SSLC) has provided leadership on land 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 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 of Lands 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 policy options are meant to inform the Government of South Sudan's efforts to build rule of law and good governance in the land sector:

On Legislative and Regulatory Reforms

The legislative reforms called for in the 2013 Draft Land Policy present an entry-point for a variety of initiatives in the land sector. Legislative reforms provide achievable, medium-term goals that can help focus efforts on particular issues of interest. Among the major pieces of legislation called for in the Land Policy are a Community Land Act, Land Registration Act and Town and Country Planning Act. In order to prepare South Sudan for the larger-scale interventions that are required to implement legislation, proposed reforms should incorporate detailed timelines, estimated costs and institutional responsibilities to ensure timely implementation. Indicators should also be identified and regularly reported on to monitor progress towards policy goals. Additional policy options on legislative and regulatory reforms could include the following:

- **Harmonizing Legislation and Implementing the Land Policy**: To proceed with the reforms called for in the Land Policy, the government should begin by identifying the gaps in current legislation and the areas where the existing laws are inconsistent with one another and with the Transitional Constitution. The institutional framework for land governance at the local government level must be harmonized between the Land Act and the Local Government Act. The Government must also clarify the definition of community land and public land in the Transitional Constitution and the Land Act.
- **Registration of Community Lands**: Whereas in the past, unwritten customary land systems may have been able to manage most of the land issues that arise in rural areas, new land uses in the post-war period, including land acquisitions for the purposes urban expansion, private investment or use by the military, are putting added pressures on community lands. The registration of community land rights could help to protect landholding communities from having their lands alienated without their consent. The RSS Ministry of Lands, Housing and Physical Planning could design the process in consultation with the SSLC, the state-level Ministries of Physical Infrastructure and Local Governments.

The process could then be formalized in a Community Land Act and a Land Registration Act. The Government should also incorporate a dispute resolution mechanism into the process to manage disputes that may arise between neighboring communities and within communities themselves.

- **Legal Recognition of Land Rights in Informal Settlements:** In its legislative reforms, the Government should clarify the rights of individuals and groups residing in informal settlements. If the Land Act's provision recognizing the land rights of people who have resided on unregistered land for 30 years or more is to be maintained, it should be applied consistently. For those who have not resided in an area for that length of time, the law should clearly stipulate who's rights will be recognized.
- **Roadmap for Implementing Policy Changes:** The RSS Ministry of Lands, in consultation with the SSLC, should develop a roadmap for implementation of the 2013 Land Policy. This roadmap should take into account the existing human and financial resources of the institutions and the length of time that would be required for different interventions.
- **Addressing Disputes Among Government Institutions:** Resolving the internal disputes that arise between the three levels of government will be an integral component of institutional development in the land sector. The new Deputy Minister of Lands can provide leadership in overcoming the differences and charting a way forward for government institutions. The initial posture of the Deputy Minister should be one of reconciling the competing views within government such that she or he is not perceived to be imposing national interests on the state and local governments.
- **SSLC Legislation:** Eight years after it was established by a presidential decree, the SSLC is still without legislation detailing its mandate. This legislation should be passed immediately and plans should be developed to extend the Land Commission to the state level. The legislation should clearly articulate the reporting lines between the state-level Land Commissions and the national Land Commission.
- **Specialized Policy-Making:** The development of law and policy should be geared towards increased specialization so as to fully address the unique issues that arise in each area. Priority issues and issues that are not addressed in sufficient detail in the existing policy, such as women's land rights, could be the focus of specific policy and legislative initiatives. This would go a long way towards addressing the prevailing gaps in law and policy and providing institutions with concrete steps that can be taken to address specific issues of concern. For example, if the Government has determined that women are facing difficulties in obtaining rights to land through the formal registration process, it could provide data to substantiate this finding in a stand-alone policy on women's property rights. To address the problem, the policy could require land registries to promote the joint registration of landholdings for married couples in the names of both spouses. Other issues of concern to women's property rights could also be detailed in such a policy document.
- **Streamlined Policy-Making:** Parliamentary approval of the Land Policy and the Forestry Policy has helped to ensure broad support for these very important policies. Now that these policies have been endorsed, the government should consider empowering the relevant government institutions to enact policies unilaterally without requiring parliamentary approval. This would help to streamline policy-making and alleviate some of the burden on the National Legislative Assembly.
- **Simultaneous Development of Policy, Law and Regulation:** The new legislation should

be developed simultaneously with policies that detail the challenges confronting the government and the government's plans to address those challenges. Regulations could be developed along with the legislation and the policies such that once the law is passed, implementation proceeds immediately. This will avoid limit the potential for disagreements to arise about whether policy should precede law or whether law can be passed in the absence of policy.

- **Strategic Implementation of Law and Policy**: Where possible, intermediate steps should be considered, such as the pilot testing combined with rigorous monitoring and impact evaluation of institutional development initiatives in strategic locations, such as is now being done with state and local government institutions in Yambio and Bor (see LGI-7). Another example of a transitional arrangement could be to assign a land registry in a strategically located CLA responsibility for land registration in neighboring counties.
- **Reporting on the Implementation of Law and Policy**: The RSS Ministry of Lands, Housing and Physical Planning and the SSLC should develop a system for periodically reporting on the implementation of land-related laws and policies. The system should include indicators to help determine progress towards policy goals. For example, the implementation of policies relating to women's property rights in urban areas could track how much land is registered in the name of women and monitor any changes that occur over time.
- **Restatements of Customary Law**: In order to clarify the rules and practices of customary land tenure regimes, the government could develop restatements of the customary laws of different communities. The goal of the restatements would be to provide some clarity about the rules that apply to different areas of community land and to facilitate the formalization of customary land tenure. Restatements should be clearly distinguished from codification. Experience in other African countries has shown that codification of customary law 'freezes' it in time and negates the advantages that living customary law has in terms of flexibility and ability to change. As practice outpaces the codified law, the latter loses legitimacy in the eyes of the people and they stop following the outdated rules. Restatements, on the other hand, do not need to pass through the legislative process and can be easily amended to reflect changing norms. Furthermore, since they are merely persuasive authority and not legally binding per se, they can assist institutions in determining prevailing norms without superseding the customary law as applied by people in their day-to-day lives.
- **Legal Personality for Communities**: Establishing a process for formally recognizing the legal personality of landholding communities would provide communities with a means of representing themselves (e.g. the ability to sue or be sued, enter into contracts, etc.) and designating their legally authorized representatives.
- **Clarifying Freehold Tenure**: The RSS Ministry of Lands and the SSLC must decide whether freehold is indeed a tenure type that is available in South Sudan and if so, how to operationalize it. In order to allow time for property rights to stabilize, the government could consider introducing a 'delayed freehold' concept, in which long-term leasehold rights are granted that would convert into freehold at some future date.
- **Condominium Regime**: Consider adding a condominium regime to the draft Housing Policy and any legislation that flows from it.
- **Coherence with the Constitutional Development Process**: Any legal reforms undertaken now could be made redundant by changes in the permanent constitution. Policy-makers

should therefore coordinate activities with the National Constitutional Review Commission (NCRC) to minimize the potential for inconsistencies between legislative reforms and the permanent constitution.

On Women's Property Rights

Women's property rights are on the top of the agenda for development actors in South Sudan, but insufficient attention is paid to women's rights in the development of policies and laws. As a first step, the Ministry of Lands, in consultation with the Ministry of Gender, could develop a more detailed policy framework pertaining to women's property rights. The policy should explain the challenges that women face in South Sudan in retaining property after divorce, the death of their spouse, market transfers and through government distribution schemes. Such a policy could be developed in tandem with legislation that provides detailed mechanisms to give meaning to the rights enshrined in the Transitional Constitution and the Land Act. The legislation could provide a statutory alternative to marriages under customary law and detail minimum standards for how women's property rights may be treated in customary law marriages. Other policy options include the following:

- **Mandatory Registration of Married Parties:** In order to increase the percentage of women with registered rights to land, the government could consider mandatory registration of all married parties (including polygamous unions) in the formalization process. This would allow for property to automatically pass to men's wives upon their death, bypassing the probate process.
- **Awareness Raising:** Legal empowerment efforts should be designed to educate people about the benefits of improving security of tenure for women and how women and girls may assert their rights under existing laws.
- **Affirmative Action:** In line with national quotas for women's participation in governance, government institutions in the land sector should be encouraged to adopt affirmative action initiatives to address gender imbalances in their staffing.
- **Civic Education:** The SSLC, RSS Ministry of Lands, and state-level Ministries of Physical Infrastructure could develop guidelines to explain basic principles of land rights. These guidelines could be used to inform people about their rights and to raise awareness about new reforms.
- **Highlighting Good Practice:** Attention should be focused on identifying examples of good practice in how South Sudanese are approaching women's property rights issues. By highlighting local innovations, policy-makers can identify practices that can be scaled-up and incorporated into programming activities in other locations. A similar approach could be used in other areas, such as issues relating to the large-scale acquisition of land rights, dispute resolution or tenure formalization.

On Improving Transparency

Transparency is an indispensable element of good governance. Without information about government activities, people may misinterpret problems that arise from circumstances that are no one's fault as indicative of corruption or incompetence.

- **Information Dissemination**: All governmental and non-governmental projects that compile land information should devote sufficient resources to publicizing the information that is compiled and making it available to the public.
- **Information Sharing within Government**: The government must develop a better system for sharing information on land acquisitions among the levels of government and across sectors to ensure that areas are not designated for contradictory uses. As the lead institution mandated with addressing land issues in the 2013 Land Policy, the RSS Ministry of Housing and Physical Planning should take the lead in developing and monitoring this system. The process will also require close coordination between the state-level Ministries of Physical Infrastructure and the RSS Ministry of Housing.
- **Land Records**: Government institutions should be supported to develop systems of record keeping such that it is easier to identify what information exists and to organize data retrieval. Developing online presences for government institutions could be a good starting place and would help to dramatically improve access to information for practitioners.
- **Institutional Responsibility for Information Sharing**: The National Bureau of Statistics or the Ministry of Information could play a role in ensuring access to public information by developing information sharing systems and gathering important documents from government institutions and storing them in a public library or other central location.
- **Right to Access Information**: The government should strengthen legal provisions recognizing the right of citizens to access information about public landholdings as a matter of public interest. Mechanisms for people to access information could be detailed in the forthcoming Right to Access Information Act or accompanying regulations. To facilitate the process, land information could be maintained at a central location and available for public review. The government should take advantage of modern information management technologies to facilitate information sharing within government and with members of the public.
- **Parliamentary Review of Land Acquisitions**: Mandatory parliamentary review for public land allocations above a certain size can also help to improve transparency for land transfers. Requirements for parliamentary approval can be stipulated in the Land Acquisition Act proposed in the 2013 Land Policy.

On Developing the Land Registry

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. 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. Other initiatives that can help to strengthen the registry include:

- **Assessment of Existing Land Information Systems**: Assess the systems and procedures currently being used in managing the land registry. Developed detailed plans, including timelines and cost estimates, for incorporating modern information technology. Plans

should be accompanied by a needs assessment of registry staff to determine what would be required to operate a computerized land registry. The assessment should also examine why the administrative changes in the assignment of responsibility for the land registry (i.e. moving the registry from the Judiciary to the Ministry of Housing) called for in the Land Act have not been implemented and lay out a roadmap and timeline for how to implement the changes.

- **Establishing a National Land Registry and Decentralized Registries:** Establish a national land registry in the RSS Ministry of Lands, Housing and Physical Planning. While most registration activities would still take place at the state and local level, the national registry would link with registries at the lower levels of government and provide a comprehensive listing of landowners in South Sudan in a single location. The establishment of a national level land registry must be approached carefully to avoid recognizing any inaccurate or illegitimate land claims that may currently be present in the state land registries. The RSS Ministry of Lands could begin with pilot registration processes that target specific urban areas. Staff could cross-check data in the state registries with information drawn from field visits and interviews with landholders. The process could incorporate a dispute resolution component to provide a first instance adjudication of any disputes that arise in the course of registration. The bona fide landholders and any relevant encumbrances or restrictions could then be entered into a computerized registry based in the RSS Ministry of Lands. Once the system has been fine-tuned, the Ministry could explore options for expanding the registration process to other urban areas.
- **Improving Public Relations:** Establish a public relations office in the RSS Ministry of Lands, Housing and Physical Planning and the state-level Ministries of Physical Infrastructure. The functions of this public relations office could be spelled out in the proposed Land Registration Act at the national level to foster some uniformity in how states approach the public provision of land information at the state level. The Land Registry should also develop and publish service standards detailing how staff are meant to relate to the public.
- **Information Sharing Within Government:** Develop information sharing policies to govern how information is shared among government institutions for various purposes. To the extent that the land registry is meant to exist at all levels of government, the policies should describe how the information will be shared among the various institutions involved.
- **Developing a Publicly Accessible Schedule of Fees:** Increased transparency in the process of land registration can help to improve service delivery in land registration. Staff administering the process should have a schedule of fees that is publicly accessible which lays out all fees that are required for registering a parcel of land.
- **Awareness Raising and Civic Education:** The institutions involved could also engage in simple awareness raising activities, such as the development of brochures that explain the process, posting information about the process outside the respective offices, or providing official information about the land registration process online, in order to educate people about the process. A more intensive civic education process could include personnel stationed at the various departments of the land registry whose sole task is to answer people's questions about the process and point them towards the appropriate offices.
- **Reducing Cost in the Registration Process:** The Government should explore mechanisms for reducing the cost of the registration process and to make it available to a larger segment

of the population. It should also reexamine its policies on arrear payments for expired leases to ensure that people are not priced out of renewing their expired leases.

On Land Use Planning, Management and Taxation

Land use planning processes are severely underdeveloped in South Sudan. 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. The government and its development partners should make all information associated with these mapping activities readily available to the public. Other policy options include the following:

- **Assess and Compile Existing Maps:** The projects involving land use mapping components that are underway in several parts of the country should be assessed in order to determine opportunities for up-scaling and strategically extending activities to other areas. For rural land matters, peri-urban land would make a good location to focus efforts given the sharp increase in demand for land to accommodate urban expansion.
- **Town and Country Planning Act:** Legislative reforms can help to support urban planning processes in South Sudan. The Town and County Planning Act should clarify the government's approach to urban planning at the national, state and local levels. This legislation should protect the public's right to participate in the process and detail processes for how public input will be sought and incorporated into urban planning. While developing this legislation, the relevant government institutions could also develop a land use planning policy to clarify the current state of land use planning, where the problems are occurring, and what the reform process will look like.
- **Development of a Property Tax System:** The RSS Ministry of Finance should coordinate its efforts to develop a Local Government Property Tax Act with the other legislative reforms called for in the Land Policy, such as the Land Valuation Act. Property tax systems should also be designed at the state and national levels. In establishing a property tax system, the Ministry should take into consideration the challenges that have been encountered with other types of taxes. The level of government with responsibility for tax collection should be clearly stipulated to avoid multiple taxation by different levels of government.
- **Land Valuation:** Legislation is required to clarify a mechanism for determining land values. This can help to better control the real estate market, determine appropriate compensation when expropriation occurs, and develop a functioning property tax system. The Land Policy calls for a Land Valuation Act, which could also include information about how property taxes would be determined.
- **Disseminate Information about Building Permits:** The first step in promoting adherence to building codes is to disseminate information about the building permit application process. Information about the process should be posted at the state-level Ministries of Physical Infrastructure. Information brochures and other civic education activities could also help to raise awareness about the process.
- **Develop Systems for Building Inspections:** The Government should allocate resources should towards building the capacity of staff in the state-level Ministries of Physical Infrastructure to inspect building sites. Inspectors may need to take some security

precautions, but inspections should not be used as covers to extort money from people that have constructed without first obtaining permits.

- **Streamline and Modernize the Building Permit System**: If the authorities are successful at getting more people to construct their dwellings in accordance with building codes, they will find it more difficult to process permits in a timely manner. Efforts to streamline and modernize the process and computerize the system should start therefore immediately, before the demands increase.
- **Enforcement of Urban Plot Sizes**: The Ministry of Lands, Housing and Physical Planning should draft regulations stipulating plot sizes in consultation with Ministries of Physical Infrastructure at the state level. The regulations should establish systems for monitoring the actions of surveyors and taking action against the intentional manipulation of plot sizes for personal gain.

On the Formalization Process in Urban Areas

In order to foster coherence in the formalization process, there is an urgent need for the government to clarify its position on the role that landholding communities play in the process. Whether led by the Government or by landholding communities, formalization procedures must meet minimum standards of fairness, accountability and accessibility. Additional policy options include the following:

- **Bottom-up Formalization**: All formalization efforts should be approached as bottom-up processes that require a careful examination of the local context. Every stage of the process should be documented using a public process and those documents should be available for public review. A similar approach should be used for first-time registration of land rights.
- **Legislative Development**: The processes through which land is formalized should be clarified through a Land Registration Act. In order to develop such legislation, additional research must be conducted to better understand how formalization processes function in Juba and other urban areas.
- **Revisiting Fees**: Institutions involved in formalizing landholdings and registering land transfers should assess the applicable fees to determine where they might be excessive. Fees should simply offset administrative costs and should not be seen as a major source of revenue for government institutions.
- **Managing Disputes**: Develop a grievance management system to address disputes that arise in the course of formalization efforts. The process should allow for dispute resolution through administrative processes. It should also safeguard people's right to pursue remedies through the judicial system.
- **Improved Land Use Planning**: Prior to embarking on formalization efforts, the government should develop master plans and land use plans in consultation with affected populations. These plans should be available for public review. Procedures and institutional responsibilities for land use planning should be detailed in the proposed Town and Country Planning Act.
- **Formalizing Community Lands in Areas Experiencing High Demand**: The government should extend its formalization efforts to land held under customary land tenure in rural areas, with a priority placed on areas that are experiencing high demand, such as peri-urban

areas and land designated for investment. By formalizing these landholdings, communities can help to protect themselves from the encroachment of urban lands. Policy-makers should also consider establishing processes for recognizing individual land rights in areas under customary land tenure. Any such process require careful designing and a full understanding of the underlying customary land tenure system to ensure that the recording of individual rights does not undermine the broader customary system.

- **Legal Empowerment Activities**: In areas where first-time registration is being done for a large group of people at once, non-governmental organizations could send paralegals or other individuals who are trained in the rules and practices surrounding land allocation and registration to inform people about their rights and monitor the process for misconduct.
- **Public-Private Partnerships**: Examine opportunities for partnerships with private sector actors to improve the efficiency of the process.

On Public Land Management

In order to better justify public landownership, the Government of South Sudan should develop ways of distributing profits of public lands to people residing around public lands. Some efforts are already underway with the benefit sharing arrangements for teak plantations. These efforts should be reviewed and plans should be developed for formalizing benefit-sharing arrangements in other sectors. The government should also review its land management procedures to identify where gaps arise and where resources should be channeled to promote a more efficient and accountable system. Additional policy options include the following:

- **Public Goods Aspects of Public Lands**: In order to create a more direct link between public ownership of agricultural schemes, forest reserves, game reserves and national parks, a portion of revenue generated from these public projects should be devoted towards providing resources and infrastructure development for affected communities. Revenue allocation should incorporate transparent and accountable systems of financial management and should take into consideration the specific priorities of local populations.
- **Land Inventory**: The Government should develop a land inventory that clearly lists government landholdings and the benefits derived thereof. Developing an official gazette, a written version of which could be made available to interested parties upon request could provide a basis upon which to develop a more comprehensive land inventory. The institutions that oversee different categories of public lands should conduct regular auditing of proceeds from those lands. The reports should be made available for public review.
- **Catalogue of Maps**: The existing maps should be catalogued and assessed to determine the extent to which public landholdings as they exist on the ground correspond with the maps. Existing maps should digitized and stored in a central institution.
- **Modernizing Mapping**: The Government should explore possibilities for incorporating modern satellite technology or open source mapping software into its mapping efforts. These formats could provide alternative options for people who are not able to access the official maps.

On Demolitions, Forced Evictions and Compensation

Additional oversight is needed to ensure that people's rights are respected in the process of urban rezoning. Development actors should monitor demolitions and forced evictions more closely and regularly report on the numbers of people affected. Other policy options include the following:

- **Monitoring Demolition Activity**: Establish a mechanism including government officials, representatives of South Sudanese civil society, and international agencies to monitor demolition activity and document the numbers of people affected, the manner in which the evictions are carried out and the provision of compensation.
- **Establishing National Standards**: The government should ensure that all demolition activity complies with the requirements of the 2011 Transitional Constitution, the 2009 Land Act, and minimum standards of international law. A first step towards this end would be to develop national guidelines for expropriation. These guidelines should be promoted at the state and local government level as well.
- **Increased Transparency**: The Government should also devote attention to strengthening transparency and participation in urban planning. This could help to reduce some of the confusion and uncertainty associated with expropriations and evictions.
- **Regulatory Framework**: The implementing regulations for the Land Act should detail the process by which people whose land has been expropriated are to be compensated, including the process for calculating the value of the expropriated land and the manner in which the compensation process is to be monitored.
- **Complaint Management System**: The government should establish a complaint management system to accompany all acts of expropriation. The process should be instituted well before any eviction orders are issued and it should be fully publicized among affected populations. Peoples' right to pursue redress through the judicial system should be maintained as an option throughout the process.
- **Legal Empowerment Programming**: Legal empowerment programming could supplement the formal complaint mechanisms. Paralegals could be trained and deployed in areas where land is being expropriated to help to raise awareness about people's rights in the process of expropriation. Such programming could also help to facilitate people's access to the justice system if they feel as though their rights have been violated.

On Land-based Investment

The slow pace with which land-based investment is materializing in South Sudan offers certain opportunities for the government to put in place a proper regulatory framework beforehand. Any such efforts must prioritize the development needs of South Sudanese and take into consideration the risks that poorly planned investments carry for populations in South Sudan. Policy options include the following:

- **Review of Investment Agreements**: In 2011, the president announced that the government would undertake a review of land sales during the interim period to determine whether or not they complied with existing laws. No such review has taken place. The government should fulfill its prior commitment and undertake a review of existing land leases. The investigation should be conducted in an open and transparent manner and the findings should be published.
- **Presumption in Favor of Disclosure**: The government should adopt a presumption in favor

of disclosure, meaning that project proponents must make information associated with investments publicly available unless there is a compelling reason to do otherwise. Memorandums of understanding (MOUs), investment agreements, contracts, leases and environmental and social impact assessments (ESIAs) would be kept in easily accessible locations at the central, state, and local levels and be open to public review. This presumption could be included in the proposed Right of Access to Information Bill.

- **Empower Landowning Communities:** The Community Land Act proposed in the 2013 Land Policy can help to clarify the ambiguity surrounding the ownership rights of communities. If customary land rights are given equal force with freehold and leasehold rights, then presumably communities or their legally authorized representatives must be primary signatories to any investment agreement on community land. The Community Land Act could clarify these rights, support the government's oversight over the contracting process, and lay out clear procedures by which companies could enter into legally binding contacts with community landowners.
- **Streamlined Procedures:** The Ministry of Commerce, Industry and Investment is making efforts to streamline procedures for land acquisition, in coordination with the International Finance Corporation. Streamlined procedures could help to reduce the unreasonably long and uncertain acquisition processes that currently exist. However, safeguards must be included in the process to make sure that it does not allow companies to sidestep environmental and social protections.
- **Parliamentary Approval:** To improve transparency and accountability with respect to investments, the approval of land-based investments above a certain size should be subject to parliamentary oversight.
- **Grievance Management:** Government policy should encourage companies to put in place grievance mechanisms to promote the prompt resolution of disputes at the local level. Any such mechanism should be designed in consultation with affected populations and its rules and procedures must be well publicized. In order to protect people's rights to a free trial under the 2011 Transitional Constitution and international human rights law, grievance mechanisms should not preempt legal redress through the formal justice system.
- **Pre-Investment Community Planning:** Communities could also develop community protocols, or documents that describe community expectations for people who wish to implement programs on community land. In addition to information about the form of engagement that the community finds acceptable, a community protocol could also list different forms of land use restrictions that apply to different areas.
- **Improved Contracting:** The government should explore methods of improving contracting for land-based investments. Possible approaches could include developing model contracts to distribute among relevant institutions at the appropriate level of government or capacity-building activities for legal advisers in government institutions.
- **Clarifying Grounds for Expropriation for Public Interest or Purpose:** Government policy should clarify what types of investments qualify as a public interest or public purpose that would justify an expropriation. The 2012 Mining Act, for example, declares mining to be a public interest that would justify expropriation. However, there is less clarity about whether the government would consider an agricultural investment to be in the public interest.

- **Corruption**: The Anti-Corruption Commission should devote attention to examining corruption in relation to land sales.
- **Project Monitoring**: The proposed Land Acquisition Act could include provisions relating to project monitoring, which could be used to improve oversight over investments. Contracts should also include specific predefined sanctions for the nonperformance of contractual obligations and mechanisms by which these sanctions would be enforced.
- **Community Financial Management**: Government institutions, companies or third parties, such as NGOs or academic institutions, could work with communities in areas where investments are planned to develop their capacity with regard to financial management.
- **Benefit Sharing**: More clear requirements of benefit sharing could be included in the Land Acquisition Act, which is called for in the 2013 Land Policy.
- **Institutional Development**: In developing its institutions of land administration, the Government should develop the capacity of the County Land Authorities and Payam Land Councils to monitor investment commitments and promote good faith prior consultations and negotiations between companies and affected populations.
- **Managing Environmental and Social Impacts**: To take advantage of local knowledge and promote constructive relationships between companies and communities, ESIA's should be done in a participatory manner with affected populations. The results should be communicated to affected communities and the wider public. Mechanisms should also be put in place to monitor impact and mitigation measures and adjust impact mitigation plans as needed.
- **Moratoriums**: Targeted and time-bound moratoriums can also help the Government to avoid entering into long-term commitments until the governance institutions have had an opportunity to mature.
- **Legal Personality for Communities**: One way to help facilitate negotiations with investors is to establish a legally recognizable entity that has legal personality to enter into contracts on behalf of the community. Such institutions already exist in some parts of the country. Any such institution must be established with the full participation of people residing in rural areas. Standards for developing community organizations or cooperatives should be clearly articulated in law and should have a strong foundation in consensus decision-making processes.

On Forestry

Plantation forestry provides South Sudan with an accessible source of revenue that can help to diversify the economy and give other land-based investment sectors time to take root. However, a focus on plantation forestry to the exclusion of other important issues such as community forest management and REDD+ initiatives would hamper the future development of the forestry sector. Policy options include the following:

- **Recognition of Traditional Land Rights in Forests**: Until a new Forest Act is passed, the Government should make clear that the 1989 Forest Act, which deems unregistered forests to be state property, does not apply to the extent that it is inconsistent with the Land Act.

- **Treaty Ratification**: The Government of South Sudan should move ahead with ratifying international treaties relating to forest conservation and combating climate change. The RSS Ministry of Agriculture and Forestry should also develop detailed plans for implementing its commitment to these conventions. The proposed Forestry Commission could take the lead in these efforts.
 - **Mapping**: The Ministry should develop a timeline and associated costs for up-scaling its mapping efforts to all of the forests of South Sudan. Maps should be made publicly available in various formats, including a searchable online database. The Ministry should also consider how the survey, demarcation and registration of community forests might be incorporated into the community land registration process. Mapping activities should be conducted in conjunction with dispute resolution and conflict mitigation activities to address any disagreements that arise in the process.
 - **Forest Land Use Plans**: The Ministry should prepare formal written land use plans for forests and publish them on their website. Once the SSFC is created, it can be given responsibility for compiling and managing information relating to forests.
 - **Benefit Sharing**: Once the Forest Policy is passed, the benefit sharing mechanisms must be incorporated into law and enforced. The Ministry should review the existing contractual benefit sharing schemes to determine how they match with industry practice.
 - **Certification and Chain-of-Custody Systems**: The RSS Ministry of Agriculture and Forestry should consider the benefits that a requirement to sign on to such programs could have. If desirable, it should develop a plan to work towards a system in which certification is mandatory.
- Conflict Management**: Government efforts to map forests and register the associated rights should be done in conjunction with dispute resolution and conflict mitigation activities to address any disagreements that arise in the process.
- **Support to SMEs**: The RSS Ministry of Agriculture and Forestry should move ahead with plans to create the SSFC and mobilizing support for SMEs should be included in its mandate. The Ministry should identify areas in which opportunities for SMEs currently exist, conduct case studies to generate credible data and publicize success stories. For example, the Ministry could research gum acacia production in South Sudan and support efforts to streamline production and encourage the introduction of South Sudan gum acacia to the international market.
 - **Combating Forest Crimes**: The new Forest Act could include provisions addressing forest crimes and laying out specific punishments for different types of crimes. Implementation plans for the new legislation should include mechanisms to promote its use in courts.

On Dispute Resolution

Land disputes are placing a huge burden on South Sudan's justice system. In order to better manage these disputes and reduce potentials for conflict, the Judiciary should explore options for creating specialized courts to manage land disputes in urban areas. Any such initiative could begin with a comprehensive assessment of the various forms of administrative and judicial mechanisms that are currently being used to resolve disputes. Additional policy options include the following:

- **Alternative Dispute Resolution (ADR)**: ADR can help to resolve disputes in an efficient manner before they reach court. The government should formalize its position on ADR and traditional dispute resolution as a means of reducing the burden on the formal system.
- **Non-documentary Evidence**: The Judiciary should clarify its position on the use of non-documentary evidence during land disputes. Provision should be made for witness testimony and other evidence showing ownership, such as the presence of family graves or other evidence of long-standing occupancy.
- **Institutional Linkages**: The Judiciary should establish better linkages with other land governance institutions, such as the state-level Ministries of Physical Infrastructure and the Survey Department. Improved information sharing can help to strengthen judicial processes and would lead to more efficient dispute resolution.
- **Increasing Geographical Coverage in the Formal System**: Developing of court circuits where one court travels between counties can help to increase access while additional statutory courts are being built.
- **Promoting Better Coherence Between the Statutory and Customary System**: Referrals of cases from statutory courts to customary courts could include instructions on applicable law, especially for cases involving women and children's property rights. The Supreme Court could also issue an advisory opinion that makes clear that customary laws that are inconsistent with the constitution cannot be applied in statutory or customary courts.
- **Revisiting Court Fees and Lawyer Fees**: The Judiciary should revisit the manner in which court fees and lawyer fees are assessed to see if they are presenting barriers to access.
- **Case Reporting**: The Judiciary should establish a case reporting system that publishes decisions in a systematic manner. This is an important public service and could help to strengthen the common law system and better contribute to rights recognition through the courts.
- **Specialized Land Courts**: The Judiciary should examine the use of specialized courts for land disputes. It could explore options for operationalizing those courts along the lines of what is detailed in the Land Act.
- **Improving Enforcement of Judicial Decisions**: The Judiciary should examine methods of improving the enforcement of judicial decisions, particularly against parties that wield military or political authority. Military justice has in the past assisted the civilian courts in enforcing decisions on military personnel that have grabbed plots. This relationship should be formalized in an official agreement between the institutions.

On Innovation, Impact Evaluation and Further Research

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. Specific research opportunities include the following:

- **Comparative Research on Land in Constitutional and Legislative Frameworks**: In

developing the constitutional and legislative framework for land governance in South Sudan, law-makers should first examine how similar land issues are treated in other contexts. Research should be conducted on the manner in which different countries treat different types of land issues. Since community land rights have been identified as a particular source of contention in South Sudan, the research should devote attention to examining how community land rights are managed in other contexts. The comparative research could also put forward sample legal provisions that could be incorporated into the proposed legislative reforms and the constitutional review process. Regional dialogues with stakeholders throughout South Sudan could help to tailor the research to the South Sudanese context and generate support for proposed legal reforms.

- **Research on the Role of Traditional Authorities in Land Governance:** Additional research is required to understand the role of traditional authority and how community institutions vary among groups. Research should also examine the relationship between community institutions and local government.
- **Research on Land Registration Processes:** There is a need for additional research to better understand existing land registration processes. Research could be geared to capture the range of registration processes that current exist in the regional centers of Juba, Wau and Malakal, the state capitals and larger counties, and the less developed county and payam headquarters. This research could feed into efforts to develop a unified land registration system.
- **Research on Expropriation:** Additional research should be conducted on the circumstances in which land is being expropriated in South Sudan, particularly in relation to investments in the extractives industry. The RSS Ministry of Lands, Housing and Physical Planning could use this research to inform the development of guidelines on expropriation. Once developed, these guidelines should be disseminated at the state and local levels and a process should be established to monitor and enforce their use.
- **Research on Forest Crimes:** Additional research about the circumstances in which forest crimes arise and their links with international black market trade in forest and animal products could help in the design of policies to combat forest crimes.
- **South-South Learning:** Government institutions should maximize opportunities for South-South learning by soliciting advice from other developing nations that have faced similar challenges. Many government institutions are already involved in such capacity-building initiatives. The Ministry of Petroleum and Mining, for example, has solicited advice from the Government of Botswana on developing its regulatory framework for mining. Other institutions, however, have been reluctant to engage with experts from other African countries. By taking stock of different approaches that have been taken to South-South learning across government institutions, the Government can identify those programs that have yielding positive results and promote them in a more systematic manner.
- **Future LGAF Studies:** In order to more fully develop and substantiate LGAF results for South Sudan, LGAF studies could be conducted regionally in Malakal (for Greater Upper Nile Region) and Wau (for Greater Bahr-el-Ghazal region). These studies could focus on the indicators that provided the most useful findings in the national LGAF. Studies could also be conducted on areas designated for specific development projects, such as areas designated for oil pipelines or international transit corridors. The LGAF could also be conducted 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.

Annex I: Map of South Sudan

[To be inserted here.]

Annex II: LGAF South Sudan Scorecard

Table 46 below lists the consensus LGAF scores for South Sudan as determined by the panels of experts. The 108 dimensions are grouped into 43 indicators and seven themes.

Table 46: LGAF South Sudan Scorecard

Legal and Institutional Framework						
LGI	DIMENSION DESCRIPTION		SCORE			
			A	B	C	D
Recognition of Rights						
1	i	Land tenure rights recognition (rural)				
1	ii	Land tenure rights recognition (urban)				
1	iii	Rural group rights recognition				
1	iv	Urban group rights recognition in informal areas				
1	v	Opportunities for tenure individualization				
Enforcement of Rights						
2	i	Surveying/mapping and registration of rights to communal land				
2	ii	Registration of individually held land in rural areas				
2	iii	Registration of individually held land in urban areas				
2	iv	Women's rights are recognized in practice by the formal system (urban and rural areas)				
2	v	A condominium regime provides for appropriate management of common property				
2	vi	Compensation due to land use changes				
Mechanisms for Recognition						
3	i	Use of non-documentary forms of evidence for recognition of property claims				
3	ii	Formal recognition of long-term, unchallenged possession				
3	iii	First-time registration on demand is not restricted by inability to pay the formal fees				
3	iv	First-time registration does not entail significant informal fees				
3	v	Formalization of urban residential housing is feasible and affordable				
3	vi	Efficient and transparent process to formalize possession				
Restrictions on Rights						

4	i	Restrictions regarding urban land use, ownership and transferability are justified				
4	ii	Restrictions regarding rural land use, ownership and transferability are justified				
Clarity of Mandates						
5	i	Separation of policy formulation, implementation, and arbitration				
5	ii	Avoidance of institutional (horizontal) overlap				
5	iii	Avoidance of administrative (vertical) overlap				
5	iv	Information sharing				
Equity and Non-Discrimination						
6	i	Clear land policy is developed in a participatory manner				
6	ii	Meaningful incorporation and monitoring of equity goals				
6	iii	Policy for implementation is costed, matched with benefits and adequately resourced				
6	iv	Regular and public reports indicating progress in policy implementation				

Land Use Planning, Management and Taxation						
LGI	DIMENSION DESCRIPTION		SCORE			
			A	B	C	D
Transparency of Land Use						
7	i	In urban areas, land use plans and changes in these plans are based on public input				
7	ii	In rural areas, land use plans and changes in these plans are based on public input	*	*	*	*
7	iii	Public capture of benefits arising from changes in permitted land use				
7	iv	Speed of land use change				
Efficiency of Land Use Planning						
8	i	Process for planned urban development in the largest city in the country				
8	ii	Process for planned urban development in the four largest cities in the country, excluding the largest city				
8	iii	Ability of urban planning to cope with urban growth				
8	iv	Residential plot size adherence in urban areas				
8	v	Use plans for specific rural land classes (forests, pastures, etc) are in line with use	*	*	*	*
Speed and Predictability						

9	i	Applications for building permits for residential dwellings are affordable and processed in a non-discretionary manner					
9	ii	Time required to obtain a building permit for a residential dwelling					
Transparency of Valuation							
10	i	Clear process of property valuation					
10	ii	Public availability of valuation rolls					
Tax Collection Efficiency							
11	i	Exemptions from property taxes are justified and transparent					
11	ii	Property holders liable to pay property tax are listed on the tax roll					
11	iii	Assessed property taxes are collected					
11	iv	Property taxes correspondence to costs of collection					

Management of Public Land							
LGI	DIMENSION DESCRIPTION		SCORE				
			A	B	C	D	
Identification of Public Land							
12	i	Public land ownership is justified and implemented at the appropriate level of government					
12	ii	Complete recording of publicly held land					
12	iii	Assignment of management responsibility for public land					
12	iv	Resources available to comply with responsibilities					
12	v	Inventory of public land is accessible to the public					
12	vi	Key information on land concessions is accessible to the public					
Incidence of Expropriation							
13	i	Transfer of expropriated land to private interests					
13	ii	Speed of use of expropriated land					
Transparency of Procedures							
14	i	Compensation for expropriation of registered property					
14	ii	Compensation for expropriation of all rights					
14	iii	Promptness of compensation					

14	iv	Independent and accessible avenues for appeal against expropriation				
14	v	Timely decisions regarding complaints about expropriation				
Transparent Processes						
15	i	Openness of public land transactions				
15	ii	Collection of payments for public leases				
15	iii	Modalities of lease or sale of public land				

Land Information						
LGI	DIMENSION DESCRIPTION		SCORE			
			A	B	C	D
Completeness of Registry						
16	i	Mapping of registry records				
16	ii	Economically relevant private encumbrances				
16	iii	Economically relevant public restrictions or charges				
16	iv	Searchability of the registry (or organization with information on land rights)				
16	v	Accessibility of records in the registry (or organization with information on land rights)				
16	vi	Timely response to a request for access to records in the registry (or organization with information on land rights)				
Reliability of Records						
17	i	Focus on customer satisfaction in the registry				
17	ii	Registry/ cadastre information is up-to-date				
Cost Effective and Sustainable						
18	i	Cost of registering a property transfer				
18	ii	Financial sustainability of the registry				
18	iii	Capital investment				
Transparency						
19	i	Schedule of fees is available publicly				
19	ii	Informal payments discouraged				

Dispute Resolution and Conflict Management					
LGI	DIMENSION DESCRIPTION	SCORE			
		A	B	C	D
Assignment of Responsibility					
20	i				
20	ii				
20	iii				
20	iv				
Low Level of Pending Conflicts					
21	i				
21	ii				
21	iii				

Large-scale Acquisition of Land Rights					
LSLA	Dimension Description	Score			
		A	B	C	D
1	Most forest land is mapped and rights are registered.				
2	Land acquisition generates few conflicts and these are addressed expeditiously and transparently.				
3	Land use restrictions on rural land parcels can generally be identified.				
4	Public institutions involved in land acquisition operate in a clear and consistent manner.				
5	Incentives for investors are clear, transparent and consistent.				
6	Benefit sharing mechanisms regarding investments in agriculture (food crops, biofuels, forestry, livestock, game farm/conservation) are regularly used and transparently applied.				
7	There are direct and transparent negotiations between right holders and investors.				
8	Sufficient information is required from investors to assess the desirability of projects on public/communal land.				
9	For cases of land acquisition on public/community land, investors provide the required information and this information is publicly available.				
10	Contractual provisions regarding acquisition of land from communities or the public are required by law to explicitly mention the way in which benefits and risks will be shared.				
11	The procedure to obtain approval for a project where it is required is reasonably short.				

* The panels did not score these indicators either because they were not relevant in the South Sudanese context or due to a lack of information.

Annex III: List of Panel Experts

Table 47 below lists the experts that participated in the LGAF Panel Discussions.

Table 47: List of Panel Experts

Panel 1: Land Tenure		
No.	Name	Position
1	Gabriel Sostein Bathuel	Land and Property Specialist, Norwegian Refugee Council (NRC)
2	William Biong Deng	Advocate / Country Director, International Institute for Democracy and Electoral Assistance (International IDEA)
3	Emmanuel Gumbiri	Conflict Management Specialist, Associates for Rural Development (ARD)
4	Morris Ladu	Director, Legal Research Institute (LRI)
5	Robert Ladu Loki	Chairperson, South Sudan Land Commission (SSLC)
6	Taban Romano	Advocate

Panel 2: Urban Land Use Planning and Development		
No.	Name	Position
1	Butrus Apollo	Coordinator, SSLC
2	Gabriel Sostein Bathuel	Land and Property Specialist, NRC
3	Emmanuel Gumbiri	Conflict Management Specialist, ARD
4	Francesca Marzatico	Land Rights and Mine Action Advisor, NRC
5	Amal Rajab	Northern Bari Payam

Panel 3: Rural Land Use and Land Policy		
No.	Name	Position
1	Wani James	Natural Resource Officer, Food and Agriculture Organization (FAO) of the United Nations
2	Benueth Bojo Nicholas	Director Research, Republic of South Sudan (RSS) Ministry of Wildlife, Conservation and Tourism
3	Ayo Peter	Research Assistant, Japanese International Cooperation Agency (JICA)
4	Tauga Emmanuel	Program Coordinator, South Sudan Land Alliance (SSuLA)
5	Ajo Samuel Wani	Director Planning and Statistics, Central Equatoria State (CES) Ministry of Agriculture and Forestry
6	Michael Roberto	Minister, CES Ministry of Agriculture and Forestry

Panel 4: Land Valuation and Taxation		
No.	Name	Position
1	Emmanuel Gumbiri	Conflict Management Specialist, ARD
2	James Malula	Manager, Building Responsibility for the Delivery of Government Services (BRIDGE)
3	Nelson Marongwe	Land Tenure Specialist, BRIDGE
4	Ahmed A. Morgan	Lecturer, Juba University

5	John Joseph Ucin	Acting Director, Directorate of Taxation
6	Edmund Yakani	Executive Director, Community Empowerment for Progress Organization (CEPO)

Panel 5: Public Land Management

No.	Name	Position
1	Gabriel Sostein Bathuel	Land and Property Specialist, NRC
2	Tiondi Francis Madara	Land and Property Officer, NRC
3	Tauga Emmanuel	Program Coordinator, SSuLA

Panel 6: Public Provision of Land Information

No.	Name	Position
1	Morris Ladu	LRI
2	Matthew Pritchard	Research Fellow, Sudd Institute
3	Edmund Yakani	Executive Director, CEPO

Panel 7: Dispute Resolution

No.	Name	Position
1	Gabriel Sostein Bathuel	Land and Property Specialist, NRC
2	Ruei Hoth	Researcher, AECOM
3	James Malula	Manager, BRIDGE
4	Ladu Morris	LRI
5	Matthew Pritchard	Research Fellow, Sudd Institute
6	Taban Romano	Advocate
7	Adel Sandrai	Director for Communications, Sudd Institute

Panel 8: Large-scale Acquisition of Land Rights

No.	Name	Position
1	Butrus Apollo	Coordinator, SSLC
2	Ladu Morris	LRI
3	Matthew Pritchard	Research Fellow, Sudd Institute
4	Adel Sandrai	Director for Communications, Sudd Institute
5	Edmund Yakani	CEPO
6	Samuel	South Sudan Investment Authority (SSIA)

Panel 9: Forestry

No.	Name	Position
1	Coco Ferguson	Founding Partner, Maris Capital
2	Jamus Joseph	Program Manager, Land and Natural Resource Rights Program, Norwegian People's Aid (NPA)
3	Angelo Langalanga	Forester, RSS Ministry of Agriculture, Forestry, Cooperatives and Rural Development

4	Stans Philemon	RSS Ministry of Agriculture, Forestry, Cooperatives and Rural Development
5	Timothy Thwol	Director General of Forestry, RSS Ministry of Agriculture, Forestry, Cooperatives and Rural Development
6	Chado Tshering	Programme Officer, United Nations Environmental Programme (UNEP)

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