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Land Governance in South Sudan: Policies for Peace and Development

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ACRONYMS AND ABBREVIATIONS

ADR	Alternative Dispute Resolution
ARD	Associates for Rural Development
AU	African Union
CES	Central Equatoria State
CPA	Comprehensive Peace Agreement
ESIA	Economic and Social Impact Assessment
ESW	Economic Sector Work
FAO	Food and Agriculture Organization
IDP	Internally Displaced People
IFAD	International Fund for Agriculture Development
IFPRI	International Food Policy Research Institute
ICLA	Information, Counseling and Legal Assistance Program
ICSS	Interim Constitution of Southern Sudan
IMF	International Monetary Fund
INGO	International Non-Governmental Organization
JICA	Japanese International Cooperation Agency
JIU	Joint Integrated Unit
LGAF	Land Governance Assessment Framework
LGI	Land Governance Indicator
LSLA	Large-Scale Acquisition of Land Rights Indicator
NSS	National Security Services
RSS	Republic of South Sudan
SIHA	Strategic Initiative for Women in the Horn of Africa
SPLA	Sudan People's Liberation Army
SSLC	Sudan Land Commission
SSLS	South Sudan Law Society
SSPS	Southern Sudan Police Services
UN	United Nations
UNMIS	United Nations Mission in Sudan
UNMISS	United Nations Mission in South Sudan
USAID	United States Agency for International Development

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EXECUTIVE SUMMARY

1. South Sudan is a new country of over 10.5 million people emerging from a long civil war and struggling to build institutions of governance. Challenges related to land governance contributed to the civil war, and intensified because of the conflict and also due to new developments, especially a surge in demand for land in urban and peri-urban areas and for large scale investments in agriculture and oil extraction, and the government's inability to reconcile customary land tenure and the need of individuals and groups to access land for investment and development purposes. Of greatest concern is a surge in land disputes driven by a rapid increase in demand for land. This is not surprising because post conflict countries often experience continuing tensions over land that pre-date the original conflict and may have even contributed to the conflict (Bruce, 2014). The current conflict - especially if prolonged - will undoubtedly exacerbate the tensions over land.

2. Experience from other post-conflict countries, including Cambodia, Mozambique, Rwanda and Liberia (Byamugisha, 2014), shows that South Sudan must decisively deal with land issues to not only break the vicious cycle of conflict but to also ensure post-conflict economic recovery by successfully leveraging the abundant land and natural resources to eradicate poverty and achieve shared prosperity.

3. The government is determined to address land issues and has, since the signing of the Comprehensive Peace Agreement (CPA) in 2005, made significant progress to improve land governance including the enactment of relevant laws and creation of necessary institutions. Despite this progress, many challenges still exist. The most binding include:

- *Building institutions of a new country.* Following autonomy in 2005 and independence in 2011, the country has remodeled old institutions and established new ones as provided for in the Interim Constitution of Southern Sudan and the Transitional Constitution, and produced the Land Act of 2009 and a new National Land Policy of 2013. But these institutions are struggling to take off, burdened by a lack of human and financial resources and faced with poor vertical and horizontal coordination among the different levels of government.
- *Overcoming post-conflict issues.* There are at least 4 post-conflict issues in South Sudan: (i) the spill-over tensions related to land and natural resources that caused the conflict especially competition for land and other natural resources; (ii) unmet demand for rural and urban land from an influx of returning refugees and Internally Displaced People (IDPs) who partly migrate to cities; (iii) erosion of statutory and traditional/customary institutions of land governance by many years of civil war, accentuated by the infusion of returning refugees and IDPs; and (iv) proliferation of arms fueling traditional conflicts over land, water and other resources.
- *Growing rural land tenure vulnerability.* Less than 10 percent of rural communal land is documented; the rest is undocumented, informally administered by traditional institutions (whose authority has been considerably eroded by the conflict). This is compounded by legal uncertainties surrounding communal landownership as defined under South Sudanese law where it is not clear what rights communities enjoy vis-à-vis the state and how the formalization of customary land rights is to be managed in practice. This renders vast amounts of communal land vulnerable to unlawful expropriation.

- *Urban informality.* It is estimated that more than 50 percent of the urban population currently resides on unregistered land and existing registration processes are not able to meet the demand and people continue to be pushed into informality. Re-zoning processes were meant to pave the way for more organized urban development and formalization, but the manner in which the evictions and resettlements in the rezoning process are conducted generates a considerable amount of resentment. In peri-urban areas, the tension between statutory and customary land tenure has become an additional source of instability.
 - *Managing large scale land acquisition.* A study conducted in 2011 found that 2.6 million hectares of land were sought or claimed by foreign investors between 2007 and 2010 and 3.1 million hectares by domestic investors (including pre-war period), but much of it was unused as of 2011 (Deng, 2011a). Given the weak governance, it is likely that these land claims are associated with violations of the principles for responsible agro-investment and the dispossession of local communities (Deininger et al., 2011; Cotula et al., 2009). It has been reported that many of the land deals did not involve any public disclosure, prior consultations with local communities or any significant payment for leases (Deng, 2011b).
4. Although the challenges are enormous, opportunities to address them are also considerable and these include:
- *Abundance of fertile land and water.* South Sudan is endowed with much fertile land, with enough water to support irrigation, enabling all year round agriculture. Much of this land—although under some kind of ownership—is not fully utilized, and where it is in use, productivity is low. Hence, the potential to expand area and increase productivity is great. Improved land governance and associated land tenure security could provide the necessary incentives for both smallholders and large-scale producers to invest in expansion of cropped area and productivity growth.
 - *Prevalence of resilient traditional institutions that administer land.* With less than 10 percent of community land documented and a very limited geographical coverage of formal land administration, the bulk of South Sudan’s land is being administered by traditional institutions. While these have been weakened by many years of civil war and an influx of returning refugees and IDPs, they have been able to withstand the conflict and are still the only institutions with a presence country-wide and, in many areas, the only institutions of choice. With support, they can continue providing services, in the short and medium term, especially in resolving land disputes, developing lease agreements with the private sector etc., while formal institutions of land administration are developed.
 - *Prevalence of NGOs with interest in land.* South Sudan has a strong presence of international and local NGOs that, in addition to emergency relief and resettlement services, also provided some land related services especially land dispute resolution. These include Norwegian Refugee Council, Norwegian People’s Aid, International Red Cross and "Land Alliances" which have been set up by civil society organizations in all the 10 states to organize civil society engagement with institutions of land governance. These organizations could play an important role in land administration, especially since formal institutions are still weak.
 - *Return of South Sudanese in Diaspora with skills.* About half a million of South Sudanese became refugees. Among them, some acquired skills that could help fill the skill gaps in land administration.

- *Financial resources available to address land issues.* About 70 percent of the oil resources of Sudan are now in the independent South Sudan. Revenue from these resources, when it becomes available together with development aid, could provide a strong base from which a major program of improving land governance could be funded. This is unlike many post-conflict countries, which do not have a potential pool of funding to draw from.
- *Availability of international experience and good practice.* South Sudan can learn ways of improving land governance from other countries that have gone through similar experiences. For example, Cambodia avoided a recurrence of conflict by basing land rights on occupancy, resettling displaced refugees, and permitting the military to use lands occupied in the war zone until they were demobilized and reintegrated. This contributed to post-war reconstruction as well as to peace (Zimmermann, 2002; Torhonen and Palmer, 2004). Similarly, Mozambique resettled 5 million people after its peace agreement, using local institutions to mediate and resolve conflicts that emerged, while also working on a new land law that provided a right of occupancy to rural families. These efforts contributed to the country's social and economic stability (Tanner, 2002). Rwanda moved more quickly on systematic registration of land rights while Liberia, arguably taking a more considered approach, focused on policy, law reform, and rebuilding government capacity (Bruce, 2014). These experiences if adapted to local context in South Sudan, can inform the government's efforts in improving land governance.

5. This report argues that, for South Sudan to break out of the vicious circle of conflict and leverage its abundant land and natural resources to achieve rapid post-conflict economic development, it must deal decisively with land issues to improve land governance. The report uses a Land Governance Assessment Framework (LGAF) methodology to assess the current status of land governance, and suggests 5 priority areas (as discussed below and summarized in a matrix in Table 1) where the government should focus attention to ensure sustainable peace and development.

6. ***Completing the development of basic land policy and legal reforms:*** Although significant legislative reforms have been undertaken 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, are incomplete and inconsistent. Finalizing and implementing the 2013 draft National Land Policy would go a long way to addressing the policy and implementation gaps, especially the enactment of the proposed Community Land Act, Land Registration Act, and Town and Country Planning Act.

7. In addition, policies and laws should be pursued for specialized priority areas such as women's property rights and housing. Implementation of the policies and laws should be systematic to enhance: (i) harmony especially between statutory and customary law, the Transitional constitution and the Land Act especially by clarifying the definition of community land and public land, and between the Land Act and the Local Government Act; and (ii) 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.

8. ***Developing land dispute resolution systems:*** Land disputes are placing a huge burden on South Sudan's justice system. Resolution of land-related disputes has been complicated 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 concerns about

the extent to which women and children's property rights are protected in the customary system; and they were weakened by the many years of civil war.

9. To better manage the land disputes and reduce their escalation into conflicts, it is important to develop both the formal and informal courts and the linkages between the two. This should include: increased training and resourcing of formal courts, increasing their geographical coverage and improving enforcement of their decisions particularly against parties that wield military or political authority; creating specialized land courts especially in urban areas; and formalizing alternative dispute resolution mechanisms and traditional systems to resolve disputes as a means to reduce the burden on the formal courts.

10. **Registering community lands:** This aims to register the more than 90 percent of communal land that remains undocumented in South Sudan. It would involve organizing communities into legal entities and demarcating and registering their land. While such documentation of land rights were previously unnecessary as they were secure and traditional institutions were easily able to allocate them to individuals within communities, recent developments including urban expansion and demand from investors in large scale agriculture and from returning refugees and IDPs have exceeded the capacity of traditional institutions to manage such situations and led to land grabbing and the erosion of community land rights.

11. Experience from African countries; i.e., Tanzania, Mozambique, Uganda and Liberia and Latin American countries; e.g., Mexico suggests that organizing communities into legal entities and registering their land is the best way to protect their land rights and manage them efficiently and effectively (Byamugisha, 2013). South Sudan's draft National Land Policy provides for the proposed organization of communities into formal groups and registering their land rights; the policy ought to be translated into law through a Community Land Act as advocated in the National Land Policy. In tandem, because communities currently claim ownership over virtually all parts of the country, there is a need to clarify the limits, if any, that the government will impose on community land ownership claims under customary law and the process that will be used to identify legitimate land holders. Mechanisms for protecting the rights of marginalized populations, including women and children, internally displaced persons (IDPs) and minority groups must also be provided for.

12. **Building and cleaning up the land registration systems:** There is urgency to build a national system of land registration that can ensure transparency and accuracy in the land information contained in the registries. Currently, registration of land takes place at state and lower levels of government and is grossly lacking in standards and quality control. Consequently, registries lack transparency and contain some inaccurate and fraudulent land information. A plan should be designed to establish a national land registration institution to set standards and provide quality control, modernize information systems and correct inaccurate and fraudulent information.

13. As a first step, federal 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. Once a national registration institution is in place to develop standards and undertake quality control, the institution can embark on cleaning up existing registration data starting with pilot projects in preselected locations in which existing information in the registries is checked against bona fide landholders on the ground.

14. The pilot projects can then inform efforts to upscale the exercise to cover registered lands in urban areas throughout the country. 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

vide landholders and any relevant encumbrances or restrictions could then be entered into a computerized registry based in the national registration institution.

15. **Promoting principles of responsible agro-investment:** Given the slow pace with which land-based investment is materializing in South Sudan, notwithstanding the huge chunks of land that have been claimed, it is a stark reminder that the regulatory framework is not working and provides an opportunity for the government to put in place one that works and maximizes benefits for South Sudanese, especially the local communities. International experience shows that for land-abundant countries that want to attract investment, improving land governance and transparency is important to attract qualified and responsible investors who have a long term outlook, but also highlights the scope to use investment demand as a means to justify reform, such as registration of community rights and facilitating land leases. Weak land governance increases the risks that large scale land-related investment may lead to loss of vital resources and livelihoods for local land users and that investors may face higher transaction costs and reputational risks. The regulatory framework including improved procedures and more effective arrangements for public disclosure and compliance, should ensure that land rights of local communities are respected and fully compensated, potential projects are screened for economic viability and should include the necessary environmental and social safeguards, free and informed consultations with local communities and benefit sharing mechanisms that enhance benefits for local communities.

16. The policy development process should include the following: (i) empowering land owning communities, through the proposed Community Land Act to clarify community land rights, providing for government oversight over the contracting process between local communities and investors, and laying out clear procedures by which companies could enter into legally binding contracts with community landowners; (ii) streamlining procedures for land acquisition to reduce the unreasonably long and uncertain acquisition processes that currently exist while ensuring that safeguards are included to ensure that companies abide by environmental and social obligations; (iii) requiring investors to work with local communities to put in place well-publicized grievance mechanisms to promote the prompt resolution of disputes at the local level; and (iv) organizing landowning communities into legal entities to register their land and to facilitate negotiations with investors and entering into contracts with them on behalf of the communities.

Table 1: Policy Actions for Peace and Development

Policy Action	Implementation Timeframe (Years)		
	1-2	3-5	6-10
Completing the development of basic land policy and legal reforms	X	X	
Developing land dispute resolution systems	X	X	X
Registering community lands	Pilot	X	X
Building and cleaning up the land registration systems	Pilot	X	X
Promoting principles of responsible agro-investment	X	X	X

17. Given the ubiquitous institutional capacity weaknesses in South Sudan, implementation of these priority actions would need be to buttressed with a sound and coherent capacity building and development program in the requisite areas including: (i) resource-based capacity (human resources, infrastructure and technology); (ii) administrative capacity (capacity to apply policies, laws and make decisions); and (iii) management capacity (e.g., coordination with other agencies or levels of government).

18. **Some Guiding Principles for Implementation.** There are at least three important things to take into account when implementing the proposed policy actions. First, implementation should include a monitoring and evaluation arrangement to track performance and correct errors on a timely basis, building on the baseline that has been developed in the LGAF assessment underpinning this report. Second, the suggested policy actions should be piloted and evaluated before they are scaled up. And third, implementation of the policy actions should be guided by best practices, drawn both from Africa and globally.

1. INTRODUCTION

1. South Sudan is a new country of 10.5 million people that has just emerged from conflict and still facing challenges with recovery and development. Although economic disparities, political exclusion and deprivation in the distribution of political and economic power between the northern and southern parts of then united Sudan were often tendered as the proximal causes of the conflict, at the center of the prolonged civil war was the struggle for ownership, control and use of land resources.

2. This contention over land could be traced to the colonial period when the Anglo-Egyptian regime, through the Land Settlement and Registration Ordinance of 1925, required all persons and entities with a claim in land to submit and register any such claims. Just like in most peripheries however, most of Southern Sudan never complied with this ordinance and, therefore in practice, land in Southern Sudan was not registered and continued to be under the control of communities through customary practices and principles.

3. In the post-independence period, the Unregistered Land Act “transferred” to the Government full ownership of unregistered lands, whether waste, forest, occupied or unoccupied, which had not been registered in accordance with the 1925 Land Registration and Settlement Ordinance. The Unregistered Land Act in effect expropriated all the land in South Sudan without regard to human security, land rights and livelihoods and was a major trigger of the civil war in 1983. In fact, during negotiations for the Comprehensive Peace Agreement (CPA), land was the main issue of contention and the resolution of issues surrounding land tenure, use and exercise of rights in land was always considered critical for the attainment of durable peace.

4. Understandably, after signing the CPA, when South Sudan became a semi-autonomous region with the right to govern and control its affairs, governance of the land sector virtually took off in a legal, policy and institutional vacuum. This is mainly because land related laws and policies enacted by successive governments in Khartoum (and which were major causes of the conflict) were largely never acquiesced to in Southern Sudan. Correspondingly, institutions founded on the basis of these contested laws and policies were never established in the south.

5. In 2006, the Southern Sudan Land Commission (SSLC) was established with a mandate to deal with land rights restitution, dispute resolution and compensation. The SSLC drafted a Land Act that seeks to promote equity in access to land, recognize customary law and practices related to land owned by communities, and facilitate the re-integration and resettlement of internally displaced persons (IDPs) among others. The Land Act was passed by Parliament in 2009. Other key pieces of legislation with implications for land governance are the Local Governance Act (2009) which reinforces the principle of devolution of power in land administration and the Investment Promotion Act (2009) which prescribes the conditions under which land for investment can be provided by the government and local authorities.

6. A land policy was approved by cabinet in February 2013 with a goal of strengthening land tenure security for all citizens. Key policy positions include: (i) the entrusting of government with the authority to administer land in public interest; (ii) government committing to working with traditional authorities to develop durable solutions for land restitution; and (iii) government committing to implementing laws and programs to expand awareness, recognition and protection of women’s rights in land. The policy also spells out the roles and responsibilities of various

institutions in the administration and allocation of land and for the various levels (national, state local government and customary authorities).

7. This progress on the institutional, policy and legal framework notwithstanding, significant challenges to governance of the sector still abound, including those related to land and natural resources related conflict, internally displaced persons and returning refugees, position of customary land governance institutions, urbanization, acquisition of large tracts of land by investors, and oil extraction.

8. Nearly all of the major inter-communal conflicts in South Sudan can be linked to conflict among pastoralists and farmers over migration routes and access to water and pasture or cattle raiding. Causes of these conflicts are reported to be a combination of threatened pastoral livelihoods, partly due to reduced access to land and natural resources, breakdown of traditional institutions for managing resources and conflicts, and distrust of evolving governmental institutions and the (perceived) role of ethnicity.

9. Tensions and frequent violence around ownership and access to rural and urban land and over housing are known to have increased following the influx of returning refugees and IDPs. These tensions are exacerbated in cases where returnees and IDPs are unable to return to their place of origin because of the political conflict and occupation by newcomers.

10. Decades of civil war, displacement and ethnic and livelihood-based rivalries have eroded the customary institutions which are the traditional sources of authority and foundations upon which customary tenure – the predominant system of land administration and management in the rural areas- is based. The scale and complexity of land related problems resulting from returning refugees and IDPs also cause severe stress to customary institutions. In addition, the integration of traditional leaders into government structures has further undermined the legitimacy of the customary institutions. The lack of clarity how traditional leaders are elected and the changing perceptions of their stewardship role underlie some of the complaints of illegal sales of customary land.

11. Women's access to land and property rights as espoused in the Land Act is a new and controversial concern in South Sudan, as women traditionally have no right to owning property, including land.

12. The interest of the international and local business sector to acquire large tracts of land for agriculture, forestry, conservation, and tourism creates additional pressure on land. A study conducted in 2011 listed 28 foreign and domestic investments and estimated that from 2007 to 2010, foreign interests sought or acquired a total of 2.64 million hectares of land, while domestic investments acquired 5.74 million hectares, some of which date back to the pre-war period. Some land deals are speculative with the parties involved waiting for rising land values or subletting. There is a risk that this trend will be at the expense of rural communities, and could become a source of environmental degradation, food insecurity, instability, and conflict.

13. Besides reflecting capacity and implementation bottlenecks, these continuing challenges in land management point to weaknesses in current land governance policies, laws, regulations and institutions. This report assesses the current status of land governance in South Sudan with a view of identifying areas for policy, regulatory and institutional change and priority interventions to improve land governance. Section 2 of the report briefly describes the diagnostic tool that was used to assess land governance. Section 3 through 8 present findings on six key land governance

themes: (i) legal and institutional framework; (ii) land use planning, land management, and taxation; (iii) management of public land; (iv) public provision of land information; (v) dispute resolution and conflict management; and (vi) large scale land acquisition. Section 9 concludes with policy recommendations and priority areas of action.

2. STUDY APPROACH: THE LAND GOVERNANCE ASSESSMENT FRAMEWORK

14. The tool underpinning this report is the Land Governance Assessment Framework (LGAF), a diagnostic instrument for rapid evaluation of various aspects of land governance¹. LGAF was developed through a collaborative effort between the World Bank, Food and Agriculture Organization (FAO), UN Habitat, International Fund for Agriculture Development (IFAD), the International Food Policy Research Institute (IFPRI) and the African Union (AU).

15. The LGAF adopts seven thematic areas for the measurement of performance in the field of land governance. These seven thematic areas are: Legal and Institutional Framework; Land Use Planning, Management and Taxation; Management of Public Land; Public Provision of Land Information; Dispute Resolution and Conflict Management; Large-scale Acquisition of Land Rights; and Forestry².

16. The theme on Legal and Institutional Framework 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 acceptable policy framework. The Land Use Planning, Management and Taxation theme assesses the enforceability of these processes and the extent to which they rely on a broad consensus. It assesses the justification of regulations for land use planning and management on the basis of public interest and also examines the transparency and cost-effectiveness of land-related tax systems.

17. 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 examines the extent to which government landownership is justified by the delivery of public goods, and whether compulsory acquisition procedures are justified and exercised only for clear public purposes. The theme also assesses the transfer of rights over government-owned land. The theme on Public Provision of Land Information assesses land information systems including the relevance, completeness and reliability of information in the land registry and the cost-effectiveness, sustainability and transparency of land administration services.

18. The Dispute Resolution and Conflict Management theme assesses the accessibility and coherence of mechanisms for resolving land-related disputes. It focuses on the affordability, clarity, transparency and objectivity of dispute resolution processes and also examines the efficiency of these mechanisms based on the number of land-related conflicts pending in the system. The Large-scale Acquisition of Land Rights assesses a range of land governance issues related to the process of public or customary acquisitions of large tracts of land for investment purposes. These include: process of acquisition, rights recognition, land use planning, benefit sharing arrangements, the transparency of negotiations and contracting, environmental and social safeguards among others.

¹ A detailed implementation manual and other support material can be found at: <http://go.worldbank.org/AYREZ423W0>

² The Forestry theme is not covered in this ESW.

19. In line with the LGAF approach³, these assessments were implemented through a three-tier process. First, investigations by in-country experts were conducted to gather data and information on various aspects and dimensions of the LGAF themes (see Annex 1). Findings and information from the expert investigations were then compiled into a background report. Second, the background report was synthesized into detailed thematic briefings to inform a series of eight expert panel discussions (see Table 2).

Table 2: Panel discussions and their 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

20. Each panel discussion brought together 3 to 7 South Sudanese experts, selected for their knowledge and experience in a given thematic area. Based on the briefing materials, the panels of experts conducted in-depth analysis on the various LGAF dimensions and proffered a collective assessment and scoring (ranking) for each of the dimensions using a set of four pre-coded alternatives. The pre-coded alternatives are discretized along a continuum ranging from best performance (based on best practice) to an extreme situation where there is total lack of any indication of good land governance (see Annex 2). Based on the assessments, the panels also suggested possible policy measures necessary to improve a given aspect of land governance. Panelists included representatives from the Government of South Sudan, private sector, civil society, Think Tanks, academia, South Sudanese experts working for national and international non-governmental organizations (NGOs), and United Nations agencies. Third, outcomes from the expert panels were documented in aide memoires. Subsequently, the various outputs were synthesized in a country report which was then reviewed in a technical validation workshop with stakeholders, with a focus on priorities and policy recommendations. All these LGAF processes were coordinated by the SSLS. This ESW is abstracted from the LGAF country report.

³ see: <http://go.worldbank.org/AYREZ423W0>.

3. LEGAL AND INSTITUTIONAL FRAMEWORK FOR LAND GOVERNANCE IN SOUTH SUDAN

21. This section summarizes findings on the current legal and institutional framework for land governance in South Sudan. Results are presented for the extent to which governance institutions in South Sudan recognize the range of existing land rights, allow enforcement and upgrading of those rights, and how the land rights are integrated into a realistic and accepted policy framework. The section also deals with the clarity of institutional mandates as well as issues relating to participation and equity in land policies.

3.1 Current land-related legislation

22. 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, state ownership of land was reinforced through the Unregistered Land Act, that declared 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.

23. 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.

24. 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.

25. 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.

26. Upon completion of the investment, the Land Act states that leased land “shall revert back to the community.”

3.2 Institutional framework

27. Responsibility for land governance in South Sudan is distributed across a range of institutions at all levels of government. Key among the institutions is the South Sudan Land Commission (SSLC), 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 since 2006. The SSLC has no representation in the Council of Ministers and has a limited presence at the state level, and this constrains its ability to execute its main mandate.

28. 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 (see

29. Table 3), but do not cover the whole range of governance challenges that arise with respect to land.

30. 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 as well as between institutions within each level of government, which undermines performance and gives rise to a considerable number of disputes among government institutions. The Land Act has created several new institutions at the local government level (e.g., the County Land Authorities- CLAs and Payam⁴ Land Councils - PLCs) that are meant to eventually take primary responsibility over land matters. The CLAs and PLCs have only been established in a handful of areas.

3.3 Recognition of rights to land

31. South Sudan is a new country with young and underdeveloped institutions. Although the then autonomous region of Southern Sudan had control over its legal framework for six years prior to independence in 2011, there are still major gaps in the land governance legislative framework. Despite the gaps and ambiguities in the legal framework, to varying extents, South Sudanese law recognizes individual and group land tenure rights both in rural and urban areas and also offers some opportunities for tenure individualization. Indeed, the study finds that the existing legal framework recognizes rights held by 50 percent to 70 percent of the rural population, and rights held by less than 50 percent of the urban population either through customary or statutory tenure regimes.

⁴ A Payam is the fourth level in the decentralized administrative hierarchy in South Sudan (i.e. National, State, County and Payam)

Table 3: Land governance institutional map for South Sudan

Institutions	Type of land	Responsibility / Mandate
<i>NATIONAL GOVERNMENT</i>		
South Sudan Land Commission	None	Advise government institutions on land law and policy development, Arbitrate land claims among willing parties
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
Ministry of Lands, Housing and Physical Planning	Government facilities	Town planning, Land registration, Land use planning
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
<i>STATE GOVERNMENT</i>		
State Secretariat	None	Manages state executive institutions
Ministry of Agriculture and Forestry	Agricultural schemes, Agro-industrial complexes, forest plantations, forest reserves	Agricultural development, Food security, Conservation, Land use mapping
Ministry of Physical Infrastructure	Government facilities, Urban lands (administered through private leases)	Town planning, Land registration, Land use planning
High Court	None	Adjudicating land disputes over registered lands, Maintaining the registry of land leases
<i>LOCAL GOVERNMENT</i>		
County Administration	Urban land in county headquarters	Manages interactions with communities
County Land Authority	None	Manages interactions with communities
Payam Land Council	None	Manages interactions with communities
Traditional Authorities	Communities in their collective capacity own most land in rural areas	Administer community lands

32. According to the 2009 Land Act, customary land rights including those held in common have equal force and effect in law with freehold or leasehold rights acquired through statutory allocation, registration or transaction. The Land Act also offers 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.*”

33. Land rights in urban areas are managed exclusively through leaseholds with the state governments and fall under the jurisdiction of statutory law (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.

34. Women's rights to own property and share in the estates of their deceased husbands together with any surviving legal heir of the deceased are also recognized by the Transitional Constitution.

35. However, even when rights are recognized in law, protection of those rights is often not guaranteed. 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 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.

36. Among others, failure to implement the Land Act can be attributed to the manner in which the legislation was introduced. Initially, there was a great deal of disagreement over whether a Land Act could precede 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.

3.4 Enforcement of rights

37. Enforcement of rights is assessed based on the extent to which: (i) communal land is surveyed and rights therein registered, (ii) individually held land in urban and rural areas is registered, (iii) women's rights (both in urban and rural areas) are recognized in practice by the formal system, (iv) whether there is a condominium regime that provides for appropriate management of residential common property, and (v) if compensation is paid when there are land use changes.

38. The study shows that: (i) less than 10 percent of the area under communal land in South Sudan has boundaries demarcated and surveyed and associated claims registered; (ii) less than 50 percent of individual land in both rural and urban areas is formally registered; (iii) less than 15 percent of land registered to physical persons is registered in the name of women either individually or jointly; (iv) residential common property under condominiums is not recognized; and (v) where people lose rights as a result of land use change outside the expropriation process, compensation is not paid.

3.4.1 Survey, mapping and registration of rights to communal land

39. Recognition of customary land rights by the Land Act as having equal force in law with freehold and leasehold rights is 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 commercial exploitation of natural resources, 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 procedures and implementation plans in place for how to go about it.

40. One central obstacle to the registration process lies in the definition of the term ‘community’. Whereas the Land Act appears to endorse a territorial definition of community (a group of families or individuals, living in a circumscribed territorial area at the level of a locality.....), in the South Sudanese context, ‘community’ can carry a number of different connotations. It can refer to tribal distinctions, such as the Dinka and Toposa communities; inter-sectional distinctions, such as the Dinka Bor and Dinka Twic; 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 problem then with using the term ‘community’ in the development of law and policy in South Sudan is that it implies a well-defined and cohesive unit, whereas in reality, communities are often fractured and ambiguously defined entities. Divisions may exist for example 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. Moreover, even if a semi-cohesive community can be identified, its customary institutions may have been undermined by the lengthy civil war.

3.4.2 Recognition of women’s rights in practice by the formal system

41. Even when the law affords women equal rights to own land as men, these protections in the law are routinely violated in practice. According to the text of the Land policy for example, *“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”*.

42. On the other hand, 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, it is common for land to be registered in the name of a woman, particularly unmarried women or professional women who have some educational background and financial wherewithal.

43. There are several reasons why women may be succeeding in getting land registered in their names in more cosmopolitan areas such as Juba. First, there is a semi-formal registration process in Juba that operates parallel to the more formal government registration process. Under this semi-formal process, individuals from within the community typically 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.

44. Outside of these examples, however, anecdotal evidence suggests that it is rare to find women who have land registered in their name in most urban areas and estimates indicate that in big cities such as Juba, Wau and Malakal, at most, 10 to 20 percent of land is registered in the name of women. In the smaller cities and towns, the numbers are undoubtedly far lower. 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.

45. 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.

46. 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 property. These changes are particularly apparent among the youth.

3.4.3 Compensation due to land use changes

47. Currently, the main form of land use change outside of the formal expropriation process occurs in the context of urban rezoning efforts. 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.

48. 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 spirit 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.

3.5 Mechanisms for recognition of rights

49. Mechanisms for recognition of rights are assessed based on: (i) the use of non-documentary forms of evidence for recognition of property claims, (ii) formal recognition of long-term, unchallenged possession, (iii) whether first-time registration on demand is not restricted by inability to pay the formal fees, and does not entail significant informal fees, (iv) whether formalization of urban residential housing is feasible and affordable, and (v) whether there is an efficient and transparent process to formalize possession.

50. The assessment reveals that: (i) non-documentary forms of evidence are almost never used to obtain recognition of claims to property in South Sudan; (ii) legislation exists to formally recognize long-term, unchallenged possession and this applies to both public and private land although different rules may apply; (iii) the costs for first time sporadic registration for a typical urban property do not exceed 5 percent of the property value; (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; (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; and (vi) there is a clear, practical process for the formal recognition of possession but this process is not implemented effectively, consistently or transparently.

51. **Formalization of land rights:** 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.

52. 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.

53. 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.

54. People whose applications are accepted are sent to the Survey Department and asked to pay a fee that ranges from US\$32 to US\$188, 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 4 provides an overview of the process for first-time formalization of residential land in Juba under the government process.

Table 4: 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.	US\$23 to US\$63	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 US\$250 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.	US\$8 to US\$13. Stamp duty costs US\$0.25	
3. Go to the survey department with the certificate of registry and make appointment for them to go and survey the land.	US\$32	

55. 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.

56. 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.

57. 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.

58. 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 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. 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.

59. 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 US\$750. 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 US\$20,000 to US\$22,500 or more for completely undeveloped plots of land.

60. 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 US\$750 for first-time registration of a first class plot, and administrative fees (formal and informal payments) of US\$250, then the costs of registration far exceed five percent of the purchase price of the land. Additional informal fees may also be required, including:

- facilitation fees to expedite the process;
- 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.

61. In order to have documents processed and the land surveyed and registered in a timely manner, the informal costs can reach US\$250 and more. The high levels of poverty in South Sudan, coupled with the convoluted and poorly publicized procedures, and 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. The formal and informal costs of registration in Juba can reach as high as US\$4,000 to US\$5,000, which is outside the reach of most South Sudanese.

3.6 Clarity of institutional mandates

62. Overlaps or gaps in mandates or actual functions performed by land administration institutions will typically allow for discretion, which may cause ambiguity and increase transaction costs for those who need to use these institutions, thereby pushing potential users into informality. They can also create confusion or parallel structures that can threaten the integrity and reliability of documents and information provided by land sector institutions, thus undermining confidence in property rights and creating threats to good governance. This section assesses the clarity of mandates of land institutions, the effectiveness of the land administration system in avoiding horizontal and vertical overlaps, and the ability to share land-related information.

63. The assessment concludes that: (i) 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; (ii) 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; (iii) division of land-related responsibilities between the different levels of administration and government is also unclear; and (iv) information related to rights in land is not available to interested institutions as a matter of policy or practice.

64. *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 of policy. 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.

65. 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 land that is ostensibly 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.

66. The poor coordination among the levels of government is evident in a number of other 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.

Box 1: Horizontal institutional 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 Central Equatoria State (CES). The Republic of South Sudan (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.

3.7 Participation and equity in land policies

67. 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.

68. 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.

69. ***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 5). 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 (divorced women, widows, orphans, or evicted urban population). 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.

Table 5: 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 decade's 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 people' 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.

4. LAND USE PLANNING, MANAGEMENT AND TAXATION

70. Good land governance requires regulations for land use planning, management and taxation that can be enforced and that rely on a broad consensus. Ideally, regulations for land use planning and management should be justified on the basis of public interest, while land-related taxation should be transparent and cost-effective. This section presents the LGAF findings on the enforceability of land use planning, management and taxation processes and the extent to which the processes rely on a broad consensus.

4.1 Transparency of land use restrictions

71. In a well-functioning system of land administration, land use and management regulations should generally be used only to prevent or limit undesirable externalities from land use activity. They should be reasonable enough so as not to drive large parts of the population into residential informality. Land use and management regulations should thus be created with the public's best interests in mind, making sure those individuals and groups play a participatory role when developing these policies.

72. ***Rural and urban land use planning:*** The assessment finds that in South Sudan, 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.

73. In urban areas, State and local governments conduct some land use planning activities, 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 but these plans are not available for public review and were not developed with significant input from the public. Changes in administration in the Ministries can render existing town plans obsolete, as new Ministers sometimes develop their own land use plans rather than working within the bounds of their predecessor's plans.

74. 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. As a consequence of the underdeveloped land use planning systems, government decisions regarding changes of land use take a long time to be implemented. The study estimates that most changes in land use take more than three years to implement and mechanisms that allow the public to capture benefits from changing land use, such as betterment taxes, levies for infrastructure or property tax, are nonexistent.

4.2 Efficiency of land use planning

75. In urban and peri-urban areas, it is important that local governments have up-to-date land use plans that efficiently and timely accompany the process of urbanization, including provisions for infrastructure (roads, drainage, utilities etc.) and that these be not outpaced by urban growth. Furthermore, to keep in line with actual demand, these plans and regulations should involve the participation of local stakeholders rather than being implemented in a discretionary manner.

76. However, as is evident from the preceding discussion, urban land use planning systems in South Sudan are still in their infancy. 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. 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, 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.

77. Rapid population growth in the postwar period has overwhelmed land administration systems in Juba and elsewhere in South Sudan. Housing supplies in urban areas are not sufficient to meet demand, and many residents have 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. This 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.

4.3 Speed and predictability of the enforcement of restricted land uses

78. The transparency and efficiency in the process for the delivery of permissions for restricted land uses is a key issue in land governance. Any obstacles to obtaining such permissions may not only lead to the arbitrary treatment of land users but can also lead to an inefficient allocation of land (if the users who would put the land to its best use do not obtain the permission to do so) and hinder investments and economic development given the uncertainty and costs associated with the procedure. Furthermore, an opaque and lengthy process may facilitate corruption and the rent seeking behavior of government officials at the detriment of land users.

79. Using the specific example of building permits as representative of a broader set of land use restrictions (as it is one of the documents most frequently needed by land users), the assessment reveals that in general, requirements to obtain a building permit are technically justified and affordable although they are not clearly disseminated (e.g., through leaflets, brochures, etc.), and all applications for building permits for residential dwellings receive a decision within 3 months.

80. 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. Nonetheless, there is a process for obtaining building permits in some areas (see Table 6). 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.

81. Time does not seem to be a major concern as 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 6: 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

82. 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.

4.4 Transparency of land valuation and tax collection efficiency

83. In areas where land values are high (e.g., urban areas), taxation of land can generate significant revenues for local government and generate important incentives against land speculation. The lack of revenue from property tax impacts on the ability of local governments to provide the needed services and in some cases the lack of realistic taxation on capital gains contribute to speculative bubbles in the land market. Uniform implementation of land taxation requires attention to both technical issues (clear principles for valuation to avoid arbitrariness, regular updating of valuation rolls, and capacity for efficient collection) and policies in order to generate appropriate incentives (retention by local governments, tax exemptions). To avoid distortions and guarantee fair treatment, it is important that taxation authorities base their valuation of land and property on market prices, that these valuations be regularly and frequently updated and made publicly accessible.

4.4.1 Land valuation for tax purposes

84. The assessment finds that currently, there is no system for land or property tax in South Sudan that is based on the market prices. Household taxes are probably the only taxes that most closely relate 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 US\$6 to US\$18 per square

meter, with larger plots and those located closer to urban centers typically taxed more heavily.

85. 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 legislations 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 and are not used for tax purposes.

4.4.2 Tax collection efficiency

86. In terms of efficiency of land/property tax collection, in general, less than 50 percent of property holders liable for land/property tax are listed on a tax roll, and less than 50 percent of assessed property taxes are collected. In most cases, the amount of property taxes collected is less than the cost of staff in charge of collecting the taxes.

87. 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 Solomon and Bell (2011) for example, alludes to "volunteer tax collectors," who did not have any clear authority to collect taxes. 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.

4.4.3 Exemptions from taxes

88. The manner in which exemptions are granted confounds the problem. 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).

89. 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.

5. MANAGEMENT OF PUBLIC LAND

90. Good governance of the land sector requires transparent and accountable management of public land for the public interest, including processes by which land is acquired and released by the State. It is important that the state ownership of land be justified on a public-good basis and that compulsory acquisition procedures are justified (e.g., where a comparable outcome cannot be achieved through private ownership or when private ownership is likely to lead to outcomes that have undesirable impacts on public welfare in general) and exercised only for clear public purposes and managed appropriately. It is also important that transfer of rights over State-owned land be transparent and monitored.

91. In summary, the consensus arrived at in this assessment is that: (i) public land ownership is not justified by the cost effective provision of public goods; (ii) less than 30 percent of public land is clearly identified on the ground or on maps; (iii) there is serious ambiguity in the assignment of management responsibility of different types of public land with major impact on the management of assets; and (iv) there are either significantly inadequate resources or marked inefficient organizational capacity leading to little or no management of public lands.

5.1 Clear identification and management of public land

92. There is considerable 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.

93. 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. There is an understanding by government officials that community lands only extend 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.

94. ***Institutional considerations:*** 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 gazettment process during the civil war.

95. 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.

96. 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.

97. ***Land inventory and maps:*** There is no comprehensive inventory of public lands in South Sudan and 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.

98. 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.

99. 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.

5.2 Justification and time efficiency of expropriation processes

100. Expropriation is an important tool for governments to enhance social welfare by providing public goods such as roads, airports, shopping centers, irrigation or by limiting negative externalities when private ownership is likely to lead to outcomes that have undesirable impacts on welfare. But expropriations should occur in the public's general interest. It is important that government exercise their authority for compulsory acquisition only with a well-defined and transparent procedure and by fairly compensating those adversely affected in a timely manner. Failure to do so or excessive resort to expropriation can create tenure insecurity that undermines incentives for investment while large tracts of land end up accumulated in the hands of the State. Inappropriate treatment of land expropriation can also lead to social unrest and protests.

101. *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, accounts for the majority of expropriated land. It typically takes an extended period of time for land to be transferred to its intended use.

102. *Expropriation and rezoning 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. The rezoning process was meant to address these issues and pave the way for more organized urban development initiatives. The process involved demolitions.

103. However, 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). There is evidence that 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.

5.3 Transparency and fairness of expropriation procedures

104. Precise data about compensation for expropriations is not available, but panel participants maintained that compensation was provided, at least in 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. 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.

105. 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.

106. Groups with secondary rights are rarely compensated in expropriations in either urban or rural areas. 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 et al, 2010).

107. When compensation is provided, it is usually given within a year. 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. Data is not currently available for the promptness of compensation for expropriations that occur outside of Juba.

108. **Appealing expropriation:** Independent avenues to lodge a complaint against an expropriation are only accessible to a small segment of the population. Individuals and groups with financial means may contest expropriations through judicial actions. 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 to stop expropriations.

109. Regarding the transparency of transfers of public land for private use, auctions or public tenders for land transactions are rare or nonexistent in South Sudan. 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.

6. PUBLIC PROVISION OF LAND INFORMATION

110. Good governance requires that land information systems provide relevant, accurate and affordable land-related information to the public and that land administration services are accessible, affordable and sustainable. This section presents results on completeness and reliability of information in the land registry and the cost effectiveness, sustainability and transparency of land administration activities.

6.1 Completeness of the land registry

111. *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. Other towns have started developing registration processes in recent years, but there is little information available on how these other registration processes function.

112. The 2009 Land Act introduced several changes to the administration of the registry. It called for the registry 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.

113. There is no single reason for the failure to implement the change called for in the Land Act and 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 at play. 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.

114. *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.

115. 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. In addition, restrictive covenants, easements or public land use restrictions are also not recorded in the registries.

116. A third shortcoming relates to the types of maps in the registries. The registries do not include comprehensive maps of registered landholdings. 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 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.

117. *Searchability and accessibility of documents in the registry*: The registry is searchable by plot number or landholder, 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. The process of obtaining information can take a prohibitively long time. 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.

118. 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. 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.

6.2 Reliability of registry records

119. The reliability of the information held by the registry (including the frequency at which it is updated) is an important factor when considering the public good value of the registry. Outdated ownership information, inconsistencies between what is recorded in the registry and reality, all decrease the value of the services that are provided by the registry and may cause interested parties to cease to use it altogether.

120. The assessment reveals that registry staff in South Sudan 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. 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.

121. In 2009 for example, 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.

122. Some of these problems 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.

6.3 Cost effectiveness and sustainability of land administration services

123. Efficient land administration requires resources to finance operations, and charging user fees is a primary source of funding. However, if users cannot afford the services available from the registry, there will be a tendency to avoid the registry completely. This encourages informality and failure to record transactions through formal channels, which erode the quality and credibility of the information held by the registry.

124. **Registering property transfers:** In South Sudan, the cost of registering a property transfer is much higher than first-time registration through the official government process. Fees for first-time registration are typically in the range of US\$100, 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. With undeveloped first class plots in Juba selling for approximately US\$20,000 or more, the costs of registering the transfer can reach US\$2,000. Similarly high fees were reported in Western Equatoria State.

125. Once a person has secured 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.

7. DISPUTE RESOLUTION AND CONFLICT MANAGEMENT

126. In many countries, property rights systems are changing rapidly, often creating significant tensions among different value sets and the individuals whose access to resources is affected by these changes. To prevent either large-scale opportunistic behavior and the erosion of authority or a high level of persistent conflict that can easily escalate into social unrest with very negative consequences, it is important to have institutions for conflict resolution that are legitimate, legally recognized, and accessible to the majority of the population. Such institutions facilitate the management of conflicts and their authoritative resolution. This section summarizes the findings on accessibility and coherence of existing mechanisms or resolving land-related disputes.

7.1 Accessibility of conflict resolution mechanisms

127. **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.

128. 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*”.

129. 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.

130. 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.

131. **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 however, 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. 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.

132. 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.

133. 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. 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:

- 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
- 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.

134. 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).

135. ***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".

136. 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.

137. **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 US\$1,250 to US\$2,500. 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 US\$750 to US\$1,000, 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.

138. **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. 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.

139. 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.

140. 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.

141. **Access in the customary system:** Customary courts are considered to be more accessible than statutory courts in several respects. 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.

142. 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 female-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).

143. 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.

144. *Alternative Dispute Resolution (ADR)*: In resolving land disputes, the 2009 Land Act gives priority to 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 ADR relation to land disputes is that the parties have a bit more flexibility in the type of evidence that they can provide.

145. 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. There are 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.

146. 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.

7.2 Share of land-related conflict in the formal system

147. Information regarding court caseloads and disposal rates is not readily available in South Sudan. 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.

148. 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.

149. The problem is pronounced in Northern Bahr-el-Ghazal, where there is only one statutory judge to cover the whole state. In other locations e.g., Kajokeji there may be very few land cases. 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.

150. Statutory court hearings for land disputes can drag on for up to six months, a year, or longer. 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 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.

151. 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.

8. LARGE-SCALE LAND ACQUISITIONS

152. Acquisition of use or ownership rights to large areas of land for production of agricultural commodities, forest, or provision of environmental amenities by large investors has recently attracted considerable interest. A combination of higher and more volatile global commodity prices, demand for bio-fuels, population growth and urbanization, as well as globalization and overall economic development are likely to imply that such investments will be of great importance in the future. This section summarizes findings on a range of land governance issues relating to land acquisitions. Also, this section covers land-based investments in agriculture, forestry, biofuels, carbon credits and ecotourism.

8.1 Rights recognition

153. *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.

154. 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).

155. Disputes over large-scale land acquisitions are relatively common in both urban and rural areas and 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, senior politicians will sometimes intervene to mediate disputes before they become too heated. Disputes can simmer for years without resolution and carry a high potential for violence.

156. 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.

8.2 Land acquisitions for the purposes of investment

157. *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.

158. In practice, however, the mechanisms for securing public benefits are not consistently applied and the nonperformance of investment obligations is a common problem. 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...”

159. 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”

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

161. **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 US\$12,500 per year (US\$0.07 per ha per year).

162. In another example from Unity State, a company agreed to pay US\$125,000 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.

163. **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.

164. 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).

165. **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.

166. Government actors and companies often refuse to share even basic information about investments. 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.

167. 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.

168. 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.

169. **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. 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.

170. 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.

171. 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.

172. The type of information that the Government requires from investors also varies by State. 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.

173. ***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 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.

174. 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.

175. ***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.

176. 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.

8.3 Environmental and social safeguards

177. Large-scale investments in land are likely to have important social and economic impacts for the host country. The adequate design and implementation of procedures for vetting investment proposals on social and environmental grounds, as well as compensation for existing resource rights, are thus key to ensure that land use rights of traditional users are adequately protected, or that externalities beyond the immediate project area (specifically on forests and other natural resources) are accounted for.

178. 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 however, companies rarely conduct environmental and social impact assessments (ESIAs); nor are they required to do so by government institutions.

179. 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's after the investment agreement was finalized and others outlined social and environmental concerns in feasibility studies, but none conducted prior ESIA's as required by the Land Act (Deng 2011b).

180. 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).

8.4 Institutional capacity and coordination.

181. **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 (Deng 2011a).

182. 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.

183. **Process for lodging complaints:** Aside from lawsuits in statutory courts, there are no clear processes for lodging complaints regarding investor compliance with safeguards. 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.

9. CONCLUSIONS /POLICY REFORMS AND ACTIONS

184. Challenges related to land governance were partly responsible for the protracted civil war in Sudan. Even after attaining independence, South Sudan is still struggling to cope with the many challenges in governing the land sector. Increasing land values, skyrocketing demand, economic development, urbanization, returning refugees, IDPs and population growth have contributed to the growing complexity of land issues. Moving forward, the manner in which the land sector is governed will be of importance to stability and will underpin equitable and sustainable growth in South Sudan. This study has benchmarked the status of land governance in South Sudan and reveals significant scope for improvement. This section summarizes possible options and policies that could inform the Government of South Sudan's efforts to improve governance in the land sector.

9.1 Legislative and regulatory reforms

185. The legislative reforms called for in the 2013 Draft Land Policy present an entry-point for a variety of initiatives in the land sector. 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. Additional policy options on legislative and regulatory reforms could include the following:

186. *Harmonizing Legislation and Implementing the Land Policy:* To proceed with the reforms called for in the Land Policy, the government could 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.

187. *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 could also incorporate a dispute resolution mechanism into the process to manage disputes that may arise between neighboring communities and within communities themselves.

188. *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.

189. **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.

190. **Condominium Regime:** Consider adding a condominium regime to the draft Housing Policy and any legislation that flows from it.

9.2 Women's Property Rights

191. Women's property rights are on the top of the development agenda 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.

192. 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:

193. **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.

9.3 Developing the Land Registry

194. Land registries in South Sudan require urgent attention to limit potential for mismanagement. 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.

195. 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:

196. ***Establishing a National Land Registry and Decentralized Registries:*** 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.

197. 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 and neighbors. 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.

9.4 Land Use Planning, Management and Taxation

198. Land use planning processes are severely underdeveloped in South Sudan. The development of the Town and Country Planning Act called for in 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:

199. ***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 taxation at different levels.

200. ***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.

9.5 Land-based Investment

201. 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:

202. ***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 contracts with community landowners.

203. ***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 considerations.

204. ***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.

205. ***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.

9.6 Dispute Resolution

206. 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:

207. ***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.

208. ***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.

209. ***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.

210. ***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.

211. ***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.

212. ***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.

213. Among these, priority should be accorded to Completing the development of basic land policy and legal reforms, developing land dispute resolution systems, registering community lands, building and cleaning up the land registration systems and promoting principles of responsible agro-investment.

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11. ANNEXES

Annex 1: LGAF thematic areas, indicators and dimensions

THEMATIC AREA 1. LEGAL AND INSTITUTIONAL FRAMEWORK
<i>LGI 1: Recognition of a continuum of rights. The law recognizes a range of rights held by individuals as well as groups (including secondary rights as well as rights held by minorities and women).</i>
i. Existing legal framework recognizes rights held by most of the rural population, either through customary or statutory tenure regimes.
ii. Existing legal framework recognizes rights held by most of the urban population, either through customary or statutory tenure regimes.
iii. The tenure of most groups in rural areas is formally recognized, and clear regulations exist regarding groups' internal organization and legal representation.
iv. Group tenure in informal urban areas is formally recognized, and clear regulations exist regarding the internal organization and legal representation of groups.
v. The law provides opportunities for those holding land under customary, group, or collective tenure to fully or partially individualize land ownership and use. Procedures for doing so are affordable, clearly specified, safeguarded, and followed in practice.
<i>LGI 2: Enforcement of rights. The rights recognized by law are enforced (including secondary rights as well as rights of minorities and women).</i>
i. Most communal lands have boundaries demarcated and surveyed or mapped and communal rights registered.
ii. Most individual properties in rural areas are formally registered.
iii. Most individual properties in urban areas are formally registered.
iv. A high percentage of land registered to physical persons is registered in the name of women, either individually or jointly.
v. Common property under condominiums is recognized, and there are clear provisions in the law to establish arrangements for the management and maintenance of this common property.
vi. When loss of rights occurs as a result of land use change not involving expropriation, compensation in cash or in kind is paid such that these people have comparable assets and can continue to maintain prior social and economic status.
<i>LGI 3: Mechanisms for recognition of rights. The formal definition and assignment of rights, and process of recording of rights, accords with actual practice or, where it does not, provides affordable avenues for establishing such consistency in a nondiscriminatory manner.</i>
i. Non-documentary forms of evidence are used alone to obtain full recognition of claims to property when other forms of evidence are not available.
ii. Legislation exists to formally recognize long-term, unchallenged possession and applies to both public and private land, although different rules may apply.
iii. The costs for first-time sporadic registration for a typical urban property is low compared to the property value.
iv. There are no informal fees that need to be paid to effect first registration.
v. The requirements for formalizing housing in urban areas are clear, straightforward, affordable, and implemented consistently in a transparent manner.
vi. There is a clear, practical process for the formal recognition of possession, and this process is implemented effectively, consistently, and transparently.
<i>LGI 4: Restrictions on rights. Land rights are not conditional on adherence to unrealistic standards.</i>
i. There is a series of regulations regarding urban land use, ownership, and transferability that are for the most part justified on the basis of overall public interest and that are enforced
ii. There is a series of regulations regarding rural land use, ownership, and transferability that are for the most part justified on the basis of overall public interest and that are enforced.
<i>LGI 5: Clarity of institutional mandates. Institutional mandates concerning the regulation and management of the land sector are clearly defined, duplication of responsibilities is avoided, and information is shared as</i>

needed.
i. There is a 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.
ii. The mandated responsibilities exercised by the authorities dealing with land administration issues are clearly defined and non-overlapping with those of other land sector agencies.
iii. Assignment of land-related responsibilities between the different levels of government is clear and non-overlapping.
iv. Information related to rights in land is available to other institutions that need this information at reasonable cost and is readily accessible, largely because land information is maintained in a uniform way.
LGI 6: Equity and nondiscrimination in the decision-making process. Policies are formulated through a legitimate decision-making process that draws on inputs from all concerned. The legal framework is nondiscriminatory, and institutions to enforce property rights are equally accessible to all.
i. A comprehensive policy exists or can be inferred by the existing legislation. Land policy decisions that affect sections of the community are based on consultation with those affected, and their feedback on the resulting policy is sought and incorporated in the resulting policy.
ii. Land policies incorporate equity objectives that are regularly and meaningfully monitored, and their impact on equity issues is compared to that of other policy instruments.
iii. Cost of implementation of land policy is estimated, expected benefits are identified and compared to cost, and there are sufficient budget, resources, and institutional capacity for implementation.
iv. Land institutions report on land policy implementation in a regular, meaningful, and comprehensive way, with reports being publicly accessible.
THEMATIC AREA 2. LAND USE PLANNING, MANAGEMENT, AND TAXATION
LGI 7: Transparency of land use restrictions. Changes in land use and management regulations are made in a transparent fashion and provide significant benefits for society in general rather than just for specific groups.
i. In urban areas, public input is sought in preparing and amending changes in land use plans, and the public responses are explicitly referenced in the report prepared by the public body responsible for preparing the new public plans. This report is publicly accessible.
ii. In rural areas, public input is sought in preparing and amending land use plans, and the public responses are explicitly referenced in the report prepared by the public body responsible for preparing the new public plans. This report is publicly accessible.
iii. Mechanisms to allow the public to capture a significant share of the gains from changing land use are regularly used and applied transparently based on clear regulation.
iv. Most land that has had a change in land use assignment in the past 3 years has changed to the destined use.
LGI 8: Efficiency in the land use planning process. Land use plans and regulations are justified, are effectively implemented, do not drive large parts of the population into informality, and are able to cope with population growth.
i. In the largest city in the country, urban development is controlled effectively by a hierarchy of regional and detailed land use plans that are kept up to date.
ii. In the four major cities, urban development is controlled effectively by a hierarchy of regional and detailed land use plans that are kept up to date.
iii. In the largest city in the country, the urban planning process or authority is able to cope with the increasing demand for serviced units and land as evidenced by the fact that almost all new dwellings are formal.
iv. Existing requirements for residential plot sizes are met in most plots.
LGI 9: Speed and predictability of applications for restricted land uses. Development permits are granted promptly and predictably.
i. The share of land set aside for specific use that is used for a non-specified purpose in contravention of existing regulations is low.
ii. Requirements to obtain a building permit are technically justified, affordable, and clearly disseminated.
iii. All applications for building permits receive a decision in a short period.
LGI 10: Transparency of valuations. Valuations for tax purposes are based on clear principles, applied

uniformly, updated regularly, and publicly accessible.
i. The assessment of land and property values for tax purposes is based on market prices with minimal differences between recorded values and market prices across different uses and types of users, and valuation rolls are regularly updated.
ii. There is a policy that valuation rolls be publicly accessible, and this policy is effective for all properties that are considered for taxation.
LGI 11: Tax collection efficiency. Resources from land and property taxes are collected, and the yield from land taxes exceeds the cost of collection.
i. There are limited exemptions to the payment of land and property taxes, and the exemptions that exist are clearly based on equity or efficiency grounds and applied in a transparent and consistent manner.
ii. Most property holders liable for land and property tax are listed on the tax roll.
iii. Most assessed property taxes are collected.
iv. The amount of property taxes collected exceeds the cost of staff in charge of collection by a factor of more than 5.
THEMATIC AREA 3. MANAGEMENT OF PUBLIC LAND
LGI 12: Identification and clear management of public land. Public land ownership is justified, inventoried, and under clear management responsibilities and relevant information is publicly accessible.
i. Public land ownership is justified by the provision of public goods at the appropriate level of government, and such land is managed in a transparent and effective way.
ii. The majority of public land is clearly identified on the ground or on maps.
iii. The management responsibility for different types of public land is unambiguously assigned.
iv. There are adequate budgets and human resources that ensure responsible management of public lands.
v. All the information in the public land inventory is accessible to the public.
vi. Key information for land concessions is recorded and publicly accessible.
LGI 13: Justification and time-efficiency of expropriation processes. The state expropriates land only for overall public interest, and this is done efficiently.
i. A minimal amount of land expropriated in the past 3 years is used for private purposes.
ii. The majority of land that has been expropriated in the past 3 years has been transferred to its destined use.
LGI 14: Transparency and fairness of expropriation procedures. Expropriation procedures are clear and transparent, and compensation in kind or at market values is paid fairly and expeditiously.
i. Where property is expropriated, fair compensation, in kind or in cash, is paid so that the displaced households have comparable assets and can continue to maintain prior social and economic status.
ii. Fair compensation, in kind or in cash, is paid to all those with rights in expropriated land regardless of the registration status.
iii. Most expropriated land owners receive compensation within one year.
iv. Independent avenues to lodge a complaint against expropriation exist and are easily accessible.
v. A first-instance decision has been reached for the majority of complaints about expropriation lodged during the past 3 years.
LGI 15: Allocation of public land is transparent. Transfer of public land to private use follows a clear, transparent, and competitive process, and payments are collected and audited.
i. Most public land disposed of in the past 3 years is through sale or lease through public auction or open tender process.
ii. A majority of the total agreed-upon payments are collected from private parties on the lease of public lands.
iii. All types of public land are generally divested at market prices in a transparent process irrespective of the investor's status (for example, domestic or foreign).
THEMATIC AREA 4. PUBLIC PROVISION OF LAND INFORMATION
LGI 16: Completeness. The land registry provides information on different private tenure categories in a way that is geographically complete and searchable by parcel as well as by right holder and can be obtained expeditiously by all interested parties.

i. Most records for privately held land registered in the registry are readily identifiable in maps in the registry or cadastre.
ii. Relevant private encumbrances are recorded consistently and in a reliable fashion and can be verified at low cost by any interested party.
iii. Relevant public restrictions or charges are recorded consistently and in a reliable fashion and can be verified at a low cost by any interested party.
iv. The records in the registry can be searched by both right-holder name and parcel.
v. Copies or extracts of documents recording rights in property can be obtained by anyone who pays the necessary formal fee, if any.
vi. Copies or extracts of documents recording rights in property can generally be obtained within one day of request.
LGI 17: Reliability. Registry information is updated and sufficient to make meaningful inferences on ownership.
i. There are meaningful published service standards, and the registry actively monitors its performance against these standards.
ii. Most ownership information in the registry or cadastre is up to date.
LGI 18: Cost-effectiveness, accessibility, and sustainability. Land administration services are provided in a cost-effective manner.
i. The cost for registering a property transfer is minimal compared to the property value.
ii. The total fees collected by the registry exceed the total registry operating costs.
iii. There is significant investment in capital in the system to record rights in land so that the system is sustainable but still accessible by the poor.
LGI 19: Transparency. Fees are determined and collected in a transparent manner.
i. A clear schedule of fees for different services is publicly accessible, and receipts are issued for all transactions.
ii. Mechanisms to detect and deal with illegal staff behavior exist in all registry offices, and all cases are promptly dealt with.
THEMATIC AREA 5. DISPUTE RESOLUTION AND CONFLICT MANAGEMENT
LGI 20: Assignment of responsibility. Responsibility for conflict management at different levels is clearly assigned, in line with actual practice; relevant bodies are competent in applicable legal matters; and decisions can be appealed.
i. Institutions for providing a first instance of conflict resolution are accessible at the local level in the majority of communities.
ii. There is an informal or community-based system that resolves disputes in an equitable manner, and decisions made by this system have some recognition in the formal judicial or administrative dispute resolution system.
iii. There are no parallel avenues for conflict resolution or, if parallel avenues exist, responsibilities are clearly assigned and widely known, and explicit rules for shifting from one to the other are in place to minimize the scope for forum shopping.
iv. A process and mechanism exist to appeal rulings on land cases at reasonable cost, with disputes resolved in a timely manner.
LGI 21: Low level of pending conflict. The share of land affected by pending conflicts is low and decreasing.
i. Land disputes in the formal court system are low compared to the total number of court cases.
ii. A decision in a land-related conflict is reached in the first-instance court within 1 year in the majority of cases.
iii. Long-standing land conflicts are a small proportion of the total pending land dispute court cases.
THEMATIC AREA 6. LARGE SCALE LAND ACQUISITION
i. Most forest land is mapped and rights are registered.
ii. Land acquisition generates few conflicts and these are addressed expeditiously and transparently.
iii. Land use restrictions on rural land parcels can generally be identified.
iv. Public institutions involved in land acquisition operate in a clear and consistent manner.
v. Incentives for investors are clear, transparent and consistent.
vi. Benefit sharing mechanisms for investments in agriculture (food crops, biofuels, forestry, game farm/conservation) are regularly used and transparently applied.

vii. There are direct and transparent negotiations between right holders and investors.
iii. Sufficient information is required from investors to assess the desirability of projects on public/community land.
ix. For cases of land acquisition on public/community land, investors provide the required information and this information is publicly available.
x. Contractual provisions regarding acquisition of land from communities or the public are required by law to explicitly mention of the way in which benefits and risks will be shared.
xi. The procedure to obtain approval for a project where it is required is reasonably short.
xii. Social requirements for large scale investments in agriculture are clearly defined and implemented.
xiii. Environmental requirements for large scale investments in agriculture are clearly defined and implemented.
xiv. 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.
xv. Compliance with safeguards related to investment in agriculture is checked.
xvi. There are avenues to lodge complaints if agricultural investors do not comply with requirements.
THEMATIC AREA 7. FORESTRY
<i>FGI 1: Commitments to sustainability and climate change mitigation</i>
i. Country signature and ratification of international conventions and treaties in support of forest conservation (CITES, CBD, CCD, Ramsar, UNFCCC).
ii. Implementation of incentives to promote climate change mitigation through forestry.
<i>FGI 2: Recognition of public goods aspects of forests and promoting their sustainable use</i>
i. Public goods aspects of forests (biodiversity, soil and water conservation, social and cultural values) recognized by law and protected.
ii. How well forest management plans and budgets address the main drivers of deforestation and degradation.
<i>FGI 3: Supporting private sector to invest sustainably in forest activities</i>
i. Country's commitment to forest certification and chain-of-custody systems to promote sustainable harvesting of timber and non-timber forest products.
ii. Country's commitment to SMEs as a way to promote competition, income generation and productive rural employment.
<i>FGI 4: Livelihood aspects of local, traditional and indigenous forest-dependent communities</i>
i. Recognition of traditional and indigenous rights to forest resources by law.
ii. Sharing benefits or income from public forests with local communities by law and its implementation.
<i>FGI 5: Forest land use, tenure and land conversion</i>
i. Boundaries of the countries forest estate and the classification into various uses and ownership are clearly defined and demarcated.
ii. In rural areas, forest land use plans and changes in these plans are based on public input.
<i>FGI 6: Controlling illegal logging and other forest crimes</i>
i. Country's approach to controlling forest crimes, including illegal logging and corruption.
ii. Inter and intra agency efforts and multi-stakeholder collaboration to combat forest crimes, and awareness of judges and prosecutors.

Annex 2: Land Governance Scorecard

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

LGI-Dim	Topic	SCORE			
		A	B	C	D
Recognition of Rights					
1	i				
1	ii				
1	iii				
1	iv				
1	v				
Enforcement of Rights					
2	i				
2	ii				
2	iii				
2	iv				
2	v				
2	vi				
Mechanisms for Recognition					
3	i				
3	ii				
3	iii				
3	iv				
3	v				
3	vi				
Restrictions on Rights					
4	i				
4	ii				
Clarity of Mandates					
5	i				
5	ii				
5	iii				
5	iv				
Equity and Non-Discrimination					
6	i				
6	ii				
6	iii				
6	iv				
Transparency of Land Use					
7	i				
7	ii	*	*	*	*
7	iii				
7	iv				
Efficiency of Land Use Planning					
8	i				
8	ii				
8	iii				
8	iv				
8	v	*	*	*	*
Speed and Predictability					
9	i				

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					
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					
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					
Assignment of Responsibility							
20	i	Accessibility of conflict resolution mechanisms					
20	ii	Informal or community based dispute resolution					
20	iii	Forum shopping					
20	iv	Possibility of appeals					
Low Level of Pending Conflicts							
21	i	Conflict resolution in the formal legal system					
21	ii	Speed of conflict resolution in the formal system					
21	iii	Long-standing conflicts (unresolved cases older than 5 years)					
Large-scale Acquisition of Land Rights							
LSLA	1	Most forest land is mapped and rights are registered					
LSLA	2	Land acquisition generates few conflicts and these are addressed expeditiously and					

		transparently				
LSLA	3	Land use restrictions on rural land parcels can generally be identified				
LSLA	4	Public institutions involved in land acquisition operate in a clear and consistent manner				
LSLA	5	Incentives for investors are clear, transparent and consistent.				
LSLA	6	Benefit sharing mechanisms regarding investments in agriculture are regularly used and transparently applied				
LSLA	7	There are direct and transparent negotiations between right holders and investors				
LSLA	8	Sufficient information is required from investors to assess the desirability of projects on public/communal land				
LSLA	9	For cases of land acquisition on public/community land, investors provide the required information and this information is publicly available				
LSLA	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				
LSLA	11	The procedure to obtain approval for a project where it is required is reasonably short				
LSLA	12	Social requirements for large-scale investments in agriculture are clearly defined and implemented				
LSLA	13	Environmental requirements for large-scale investments in agriculture are clearly defined and implemented				
LSLA	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				
LSLA	15	Compliance with safeguards related to investment in agriculture is checked				
LSLA	16	There are avenues to lodge complaints if agricultural investors do not comply with requirements				
Forestry						
Commitments to Sustainability and Climate Change Mitigation						
1	i	Country signature and ratification of international conventions				
1	ii	Implementation of incentives to promote climate change mitigation through forestry				
Recognition of Public Goods Aspects of Forests and Promoting their Sustainable Use						
2	i	Public good aspects of forests recognized by law and protected				
2	ii	Forest management plans and budgets address the main drivers of deforestation and degradation				
Supporting Private Sector to Invest Sustainably in Forest Activities						
3	i	Country's commitment to forest certification and chain-of-custody systems to promote sustainable harvesting of timber and non-timber forest products				
3	ii	Country's commitment to SMEs as a way to promote competition, income generation and productive rural employment				
Livelihood Aspects of Local, Traditional and Indigenous Forest-Dependent Communities						
4	i	Recognition of traditional and indigenous rights to forest resources by law				
4	ii	Sharing of benefits or income from public forests with local communities by law and implemented				
Forest Land Use, Tenure and Land Conversion						
5	i	Boundaries of the countries forest estate and the classification into various uses and ownership are clearly defined and demarcated				
5	ii	In rural areas, forest land use plans and changes in these plans are based on public input				
Controlling Illegal Logging and Other Forest Crimes						
6	i	Country's approach to controlling forest crimes, including illegal logging and corruption				
6	ii	Inter and intra agency efforts and multi-stakeholder collaboration to combat forest crimes, and awareness of judges and prosecutors				

* Dimension not ranked because of lack of data