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Land Policy in South Sudan



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## Land Policy in South Sudan

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### Abstract

**Purpose:** This study was aimed at examining land policy in South Sudan in relation to land rights, land management, land administration and governance among South Sudanese. The study identified what government and citizens must do to achieve this goal, including adopting various legal reforms; clarifying the roles of government institutions with respect to land administration; building the capacity of land administrative institutions, including civil and traditional authorities; taking steps to ensure these institutions were transparent and accountable; providing guidance on good land use planning practices; strengthening the rights of women to land. The objectives of the study were to examine the land policy framework and its extent in delivery of services in relation to land tenure systems land ownership, governance and challenges experienced for redress.

**Methodology:** Qualitative research method was applied. Using purposive sampling techniques, a sample of 500 respondents were sampled. Data gathering included Focus Group Discussions (FGDs), extended interviews. Informants for the interviews and the FGDs and the subjects for the observations included government officials, representatives of civil society, chiefs, traditional leaders, elders, and communities. These were selected based on their knowledge and experience on land matters and majority having taken part in the liberation of the country.

**Findings:** The study findings revealed that there was lack of clarity on the roles of different levels of governance in conflict mitigation and resolution, confusion on the body of laws to be applied in land conflicts, and the increasing involvement of traditional leaders in conflicts have all laid the groundwork for violence around land.

**Unique Contribution to Theory, Practice and Policy:** The study recommended for involvement of all the stakeholders in-depth debates on the opportunities for formalisation, informing these discussions with solid empirical analysis, mobilizing all stakeholders and enabling civil society actors to understand the issues on land ownership.

**Keywords:** *Land policy, land management, Land ownership, Land administration, Land governance*

## **Introduction**

The land policy question facing many African countries including South Sudan according to the African Development Bank report, (ADK 2010) has its origins in geo-political, economic, social and demographic factors more recently compounded by emerging global and strategic imperatives. These include different forms and modes of colonization experienced in various regions, the diversity and degree of persistence of indigenous cultural and normative systems and forms of economic organizations. These factors have, in turn, given rise to a variety of legal regimes relating to land tenure, use, management and environmental governance. In addition, contemporary processes of social organization and mobilization including those derived from class, gender, region, culture, ethnicity, nationality and generational cleavages now predominate in shaping access to, control and utilization of land, resulting in a complex basis of claims and conflicts over land resources. Many independent African states have shed blood for the struggle over land from the colonial masters. In contrast, divergences continue to dominate land policy and law to this day. Rather than restructure land relations in accordance with new development imperatives, most developing countries, instead, simply re-entrenched and sometimes expanded, the scope of colonial land policy and law.

Land in South Sudan for example, is central to individual and household livelihoods security as well as national socio-economic development. More than 80 percent of the population live in rural areas and derive their livelihoods directly from the land as subsistence farmers, livestock keepers, fisheries, beekeepers and hunter-gatherers thus, land forms the basis of the country's socio-economic development due to its agricultural and natural resources potential. As a result a framework for land governance that secures rights to acquire, access, use, and transfer land and associated productive resources is essential for the well-being of citizens and overall national development.

## **Background overview**

Land in Sudan was classified under government-owned and customary tenure. The Unregistered Land Act of 1970 and the Civil Transaction Act of 1984 designated all unregistered land as state land. There were two main types of tenure within the statutory land tenure system in Sudan; registered freehold and registered leasehold. Section 4 of the Unregistered Land Act (1970) transferred to the Government in full, ownership of unregistered lands, whether waste, forests, occupied or unoccupied, which had not been registered before the commencement of the Act on 6 April, 1970. The Unregistered Land Act further legitimized expropriation by expressly authorizing government eviction of occupants on unregistered lands, through the use of reasonable force. Thus under those two laws all 90% unregistered land in Sudan was owned by the government. Individuals and entities could obtain leasehold interests of various durations and terms. (UNEP 2012). The customary land tenure was to govern the practices of pastoralists in the north, the feudal systems that developed along the land near the Nile and the Southern and western tribes. The law was opposed and challenged by communities, and was never fully implemented. Nevertheless, it was invoked by the government to justify dispossession and displacement of communities in the Nuba Mountains and the Funj Region of Central and South Eastern Sudan from their ancestral lands,

which were then sold to unscrupulous multinationals. Community disaffection and grievances over land dispossession ultimately became a major factor underpinning the civil war between the people of South Sudan and the successive Khartoum regimes. But even as the civil war raged, the Khartoum government continued to enact laws aimed at taking over control of land from the communities of South Sudan. In 1998, the Sudan government enacted a new law declaring all land in the Sudan to belong to Allah (God) and giving the Islamic State, as the representative of Allah on Earth, the power to dispose of land owned by non-Muslims. But just as with land laws enacted in the past, this law did not change the reality on the ground, as communities in South Sudan continued to govern their land through customary norms, practices and institutional arrangements.

As a result, land became a major point of contention in the negotiations between the SPLM and the Khartoum regime leading to the signing of the CPA in 2005. In the Wealth Sharing Protocol, the parties agreed to the formation of two Land Commissions, one at the national level and the other in the South. The Protocol also acknowledged the reality of two different legal systems over land in Sudan, with customary land law applying in the South Sudan. The functions specified for the Southern Sudan Land Commission included making recommendations to appropriate levels of government about land reform policies and recognition of customary land rights and/or law. Land was considered to belong to the people. As averred by Deng (2017) most groups distinguished between land used for grazing and hunting and land used for farming and residences, and different rules applied to the various land categories. Local leaders determined who had rights to land and other natural resources and who must seek permission for use of land (Deng 2017).

### **Statement of the problem**

The current land reforms programme in South Sudan is not only a contributor to conflicts, but also lacks adequate conflict-resolution mechanisms. This to a great extent explains the rapid increase in ethnic and tribal conflicts during the interim period and after independence. Lack of clarity on the roles of different levels of governance in conflict mitigation and resolution, confusion on the body of laws to be applied in conflicts, and the increasing involvement of traditional leaders in conflicts have all laid the groundwork for violence around land. While the Land Act gives the state the authority to regulate community land in rural areas, it does not explicitly specify the extent to which the state can do so, nor does it delineate the state the role of conflict mitigation and resolution. The same Act limits the authority of the state vi-a-vis land regulation is limited to registered land in urban centres.

Contrary to the SPLM's wartime articulation that consolidating land rights was its priority, what surfaced was clearly that the government was increasingly interfering with the land rights of rural communities perhaps in an even more detrimental way than the predecessor, the government of Sudan. Following the footsteps of the predecessor, the SPLM government has tended to develop policies easy for it to interfere with the land rights of rural communities and reframing the slogan *the land belongs to the communities to all land in South Sudan is owned by the people of South Sudan and its usage shall be regulated by the government* has for example given the state the legal basis to interfere with community land under the

guise of land regulation. The land Act of 2009 strengthen this further by giving the state the right to convert community or un-owned land to public land (GoSS 2009). Struggles over land between communities of South Sudan and formal government throughout the country's pre-independence history have been shaped by contesting visions of land ownership and governance.

In relation to the authority of chiefs, the local government Act gives chiefs the authority on land regulation but limits their power to the resolution of non- criminal conflicts within their jurisdictions. These contradictions seem to have made county authorities distance themselves from land related conflicts in rural areas. At the same time, this has made chiefs unable to resolve criminal cases even if they are related to land. It is in this retrospect that my interest as a scholar developed in land policy and in particular land governance and ownership in South Sudan.

### **Objectives**

The major objective of this study is to provide a framework on which the land policy issues can be anchored on land acquisition, land use, governance and development. Other objectives include:

The examination of the existence of a legal framework on land ownership, governance and use and whether the land policy encompasses all communities and other stakeholders; Find out challenges faced by communities in relation to land and provide Suggestions to address the challenges.

### **Research Questions**

The following questions will be a guiding factor in achieving the above objectives of study

1. What legal framework does the government of south Sudan have on Land policy?
2. Who owns land and who has land rights in South Sudan
3. What are the challenges facing land policy and land use in South Sudan?
4. What are possible suggestions to address the land governance challenges

### **Related literature review**

#### **Land law in South Sudan**

There is limited legal infrastructure to properly allocate land rights and ensure that they are respected. South Sudan's post-independence land law is extremely underdeveloped. The country's pre-independence constitution allowed ethnic communities to possess land through customary practice rather than holding legal land tenure. Today, this land can be leased by government institutions to foreign investors as there is no formal legal recognition of the rights of many current landowners to their land (Laws of South Sudan, 2009). No law has been passed since South Sudan's independence from Sudan in 2011 to address the gaping hole in land rights. Moreover, land authorities tasked with reformation of land policies are non-existent or ineffective – some states in South Sudan do not have an operational county land authority, to deal with such issues. There are also contradictions within existing land law: the 2009 Land Act stipulates that land leases are to last for a maximum of 99 years, whilst the 2009 Investment Promotion Act only allows a land lease of 30–60 years. What little legal infrastructure there is concerning land rights is rife

with discrepancies; overall, there is minimal legal protection for local landowners as their right to land is often unrecognised by the state government. Okoth, (1999) in his paper on land policy in East Africa averred that customary land tenure was merely a stage in the historical evolution of societies from status to contract. Fuelled by conclusions of legal anthropologists, colonial administrators did indeed believe that customary land relations would wither away as Western civilization became progressively dominant in African social relations. There was, therefore, no need to acknowledge, leave alone develop customary land law as a viable legal system. Indeed it was even thought that by simply enacting a new system of land law usually based on Western property notions; customary land law would simply atrophy and die (Okoth, 1999). Consequently, customary land tenure and land law was systematically misinterpreted even undermined by the judiciary, ignored by legislatures and constantly manipulated by administrators to support ideological experiment as and when this became necessary, a scenario experienced, currently in South Sudan.

The cases of land policy in East African countries that got their independence long time ago is still a quagmire. The administrative infrastructure that accompanied state presence in land matters in time became a serious impediment to land development throughout the region. For while it tended to strengthen the already enormous powers of the state, it passed on all the costs of the inefficiencies of that organ to ordinary land users. First, ordinary land users found themselves subjected to administrative decisions emanating from a whole host of offices and political functionaries all of which had some sort of jurisdiction over land matters. As a result conflicts and contradictions were often endemic in land use decision-making. Second, inefficient management by that bureaucracy tended to further frustrate proprietary decision-making. And as that bureaucracy grew, abuses became routine and entrenched. Indeed throughout Eastern and Southern Africa land bureaucracy became corrupt, inefficient and largely insensitive to the ordinary land using public which they were designed to serve. The land policy drafted many years ago after independence in South Sudan has not been passed by the National Legislative Assembly as most issues of land touch on the same bureaucracy.

### **Land conflicts overview**

According to African Development Bank report, (ADB, 2010) liberal political reforms and especially the demise of military and authoritarian rule and the return to multiparty politics in most Africa countries have led to changes in state-society relationships and in turn created opportunities for new approaches to land policy development. More specifically the overbearing role of the state as owner regulator and user of land resources is being increasingly challenged as land rights communities, non-state regulatory and administrative structures, organs of civil society and other public sector groups demand involvement in land policy development.

Despite efforts at the liberalization of political space, the struggle for land and natural resources remains one of the key factors fuelling instability in Africa (ADB, 2010). In the former settler colonies such as Kenya, Zimbabwe and South Africa, the failure to resolve historical claims arising from colonial expropriations compounded by unequal re-distribution of land after independence, remains a primary

source of conflict. In other parts of Africa such as the mineral rich countries of Angola, the DRC, South Sudan, Sierra Leone and Liberia, conflicts over land spurred by global commercial interests have been intense. In yet others such as Uganda, Rwanda, Burundi, Somalia the Central African Republic, the Republic of Congo (Brazzaville) and Ivory Coast, persistent conflicts over the last two decades have led to large numbers of internally displaced persons (IDPs) raising complex issues about access to land, resettlement and rehabilitation. Moreover, these conflicts have, in many countries, led to forced evictions and horrific atrocities including genocide against non-combatants, mainly women and children. Thus apart from dealing with issues relating to the redress of historical injustices and the attainment of social equity, land policy development and reform should address the problem of conflict prevention and restoration of peace and security in South Sudan and other African nations( Justin, 2015).

These efforts have not, in consequence, adequately restructured the dualistic land holding systems resulting from colonization, nor have they improved government support for the development of the disadvantaged indigenous land tenure systems. Land continues to be a major source of conflict, civil wars, and underdevelopment. Past attempts to consolidate land rights through private ownership of land have not only failed to achieve results, but also contributed to social inequality and conflicts (Stewart, 2016; Peters, 2004). Because of the increasing levels of social inequality and conflict resulting from the private ownership of land, the debates on land reform in South Sudan and Africa had shifted substantially to focus more on the consolidation of land rights of rural communities through customary landholdings based on communal land ownership. This model is favoured because a great number of people in Africa continue to have access to land through their membership in landowning communities (Leonardi, 2013; Peters, 2009). This is also because of the advantages individuals derive from a clan and ethnic-based networks (Sikor and Müller, 2009). Yet, land continues to be a challenging aspect of state-building in Africa, particularly in post-conflict settings like South Sudan. The reason for these challenges is linked to the contemporary approach to state-building in post-conflict settings, which is largely top-down. As a result, land reform programmes linked to this approach to state-building have tended to produce land regimes that do not correspond to realities on the ground. In South Sudan, the post-CPA land reform had tended to ignore changes in society and regarding land brought about by the British colonial administration, postcolonial governments and SPLA's wartime governance during the North-South civil war. This paper suggests that a bottom-up approach to state-building on land policy can enhance our understanding of those changes, and might contribute to the development of realistic approaches to land reform. Understanding these dynamics requires (1) revisiting the relations between state-building and land reform, (2) taking a critical look at the changing property of land resulting from changes in local governance, and (3) unpacking some of the misconceptions around land rights

### **Land Governance**

Land governance according to Deng, (2019) refers to the rules, processes and structures through which decisions are made about access to land and its use, the manner in which the decisions are implemented and enforced, and the way that competing interests in land are managed. Land governance frameworks

include statutory, customary and religious institutions, and encompass policy and legal instruments as well as traditional and informal practices of communities for access, use, transfer and control of land rights.

At the national level, the post-CPA government introduced the South Sudan Land Commission (SSLC) as the highest land governing institution in the country. This commission was tasked with the development of land policies and laws in coordination with national institutions that are connected to land tenure such as the Ministry of Land and Physical Infrastructure and the Ministry of Agriculture and Forestry (GOSS, 2005). Based on the decentralisation policy adopted by the SPLA-led government, SSLC was to be decentralised to the sub-national (state) and local levels of the government as a way of extending its services to all sectors of the society. Each state obtained a State Land Commission (SLC), which were further decentralised into County Land Authorities (CLA), Payam Land Councils (PLC), and Boma Land Administrations (BLA). A CLA is headed by the County Commissioner who is appointed by a state governor, a PLC by the Payam director appointed by the County Commissioner, and a BLA by the Boma administrator who is also a staff of the County. Chiefs also played roles on local land governance sometimes formally and in some cases informally. As part of the formal institutions, chiefs discuss land issues in their areas with Payam Directors and Boma Administrators who are the heads of PLC and BLA. At the same time, they (chiefs) engage non-state actors on local land governance on land issues in their areas as they are also considered part of the informal institutions. Like the other staff of the local government, chiefs are appointed to their positions, usually by the County commissioner. Those appointments became the practice though the existing laws suggest individuals holding those positions should be elected by and become answerable to the constituencies they serve (GOSS, 2005). As part of the process of land reform, the SSLC developed the Land Act of 2009, which introduced a new regime of landownership by distinguishing land rights as public, private and community land; respectively owned by the state, private entities and communities (GOSS, 2009a). This is notable, as pre-CPA land laws gave ownership of land in rural areas in South Sudan to the state.

It is worth noting that Land and property policies are an important part of the state-building process, and are thus shaped by the configuration and political history of the country concerned. Yet a significant proportion, if not most of the land in developing countries including South Sudan still retains its informal status, even in Latin America, which is very different from other continents.

### **Importance of land policy**

Land policy development is a prerequisite for economic growth and sustainable human development; land is a highly sensitive political issue and as such the process of land policy development, implementation and evaluation, needs to be as inclusive and participatory as possible. The national ownership in the development of land policy is critical for engendering broad grass roots endorsement which is more likely to lead to successful implementation including a range of indigenous principles and emerging innovative local practices that can inform sound national land policy development and implementation. There must be deliberate steps taken to ensure the full and informed participation of women who are Africa's primary



land users in policy development and successful implementation of land policies will contribute to improved governance, environmental management and the consolidation of peace.

Most developing countries are facing new challenges as demographic growth intensifies the pressure on land throughout their territory. Population densities are increasingly concentrated around urban areas, where there are insufficient jobs to provide full employment and natural resources (especially water) are becoming increasingly scarce due to worsening climatic crises. Large-scale land appropriations are undermining local people's rights to resources, compromising both their individual means of subsistence and national food security. Problems with governance lead to political crises and sometimes to violence, destabilising what may be already a fragile socio-political situation. Finding effective solutions to these pressing and complex problems will involve ambitious public policies that address a range of interrelated issues at several levels and in various sectors (World Bank Report, 2015). Land policies are a key element of these public policies. They have huge political, economic and social implications because they define the way that people relate to each other around land and natural resources. They may be inclusive or exclusive, make access to land, housing and natural resources more flexible or more rigid, and help consolidate peace or exacerbate tension and conflict. Land policies have long been a source of exclusion rather than inclusion. Now, as land inequalities increase, it is more important than ever for the South Sudan government to take concerted action to balance the complex and often potentially explosive mix of land-related matters.

## **Challenges of land policy**

### **Inclusivity**

Since Independence and before, there has been growing controversy over ultimate control of land. The Land Act 2009 affirms the rights of communities to land and natural resources and stipulates that these rights “*shall have equal force and effect in law with freehold or leasehold rights acquired through statutory allocation, registration or transaction.*” The question on who owns the land in South Sudan is very difficult to be understood. The relation between the community and the people, and more precisely on how the people are represented as members of a community is unclear. In addition, the nature of the land right held by communities and/or their members is not clarified in the Act. Section 8(3) of the Land Act (2009) refers to a right of occupancy, whereas section 7 acknowledges that customary land, which includes community land, is equal to ownership rights. Sector policies and laws such as those on forests do not make clear linkages with community rights to land and natural resources as articulated in the Land Act 2009.

Article 170 (1) of the TCSS 2011 (as amended) declares that “*All land in South Sudan is owned by the people of South Sudan and its usage shall be regulated by the government in accordance with the provisions of this Constitution and the law*”. In this, the TCSS echoes the Land Act 2009, which was enacted in conformity with the CPA 2005. Most elites have challenged Sections of this Act and assert that the land belonged to the communities as it was a preamble to the civil war

The controversy reflects the challenge of managing expectations and reconciling competing demands of the State, communities and individual citizens on land and land-based resources. The tension has been exacerbated by competition for access to land in urban and peri-urban areas of Juba and other major cities due to the absence of a policy framework and in a fluid institutional context characterized by weak enforcement mechanisms as averred by Justin (2022)

### **Displacement due to conflicts**

Resettlement of returnees and IDPs has been a major challenge for South Sudan. At the end of the civil war, it had been hoped that returnees would go back to their places of origin, where the process of their resettlement would be handled effectively by traditional institutions. However, many returnees have not shown a willingness to return to their ancestral lands but have chosen to settle in urban and peri-urban areas where the majority of them either live in informal settlement or illegally occupy the land of others. The situation has been further complicated by insecurity and lack of social services in rural areas. Managing the resettlement of returnees and IDPs in urban and peri-urban areas has been much more challenging, as authorities and competitions between traditional institutions, local authorities and the Government of South Sudan (GOSS) come into conflict (UNHCR 2022). Moreover, many years of conflict have blurred rights to land in both territorial and production unit terms, so that when, at the end of the conflict, individuals sought to assert prior rights, where these existed, these efforts tended to generate further and more intense internal conflict

### **Inadequate land tenure administrative system**

Land administration according to UNECE (1996) is a processes of recording and disseminating information about the ownership, value and use of land and its associated resources. Land administration encompasses ascertainment, demarcation, survey, registration, and documentation of land rights, systematic tracking of land rights transactions, establishment and enforcement of performance standards for the management of land resources, assessment of land resources for fiscal development and revenue collection, and efficient and accessible mechanisms for resolution of land disputes. A properly functioning land administration system is essential to tenure security, which is critical for productive use of land and natural resources to support livelihoods, create wealth, and promote peace and security.

The unique reality of land administration in South Sudan is that it consists of two systems operating in parallel to each other. The indigenous system commonly referred to as *customary* or traditional applies to land held by communities and administered through their customary norms and practices. This includes mostly rural and peri-urban land, but in the period since 2006, many urban areas have expanded into community land, with the result that traditional institutions are increasingly administering land in urban areas. This context of legal pluralism lends itself to the phenomenon of forum shopping, where individuals choose the forum to use in addressing their land issues according to where they consider they have the best chance of success. This works to the disadvantage of the poor and vulnerable groups, but also engenders uncertainty in land administration.

The multiplicity of public institutions carrying out land administration functions poses a major threat to tenure security in South Sudan as a result of overlapping mandates with no effective coordination. There is inadequate clarity about the distribution of land administration functions between the national MLHUD, the State Ministries of Housing Lands and Public Utilities, the local government and traditional authority. This creates confusion as state organs at different levels respond to different incentives and are subject to often competing interests, creating a situation where conflicting interests of powerful elites at the different levels of the State and between them and communities create tensions and undermine effective functioning of the land administration system.

Land registration functions are still performed by the Judiciary in spite of the clear provisions of section 54 of the Land Act 2009 to the effect that the land registry shall be domiciled in the MLHUD. Moreover, state governments and even municipalities are known to register land. This state of confusion engenders conflict between the institutions and among groups and individuals, particularly with regards to land in urban and peri-urban areas, where all the levels of government are active. Negative manifestations of this confusion and chaos include multiple allocations of land, temper with land documents, and disappearance of documents from the land registry. The lack of clear institutional mandates and inadequate technical capacity combine to create incentives for corruption in land administration. The situation is further exacerbated by the crisis of governance that prevailed in the country since 2013.

### **Inadequate clear policy Action**

Uncontrolled urban expansion and spread of informal settlements, land use conflicts, and environmental degradation are direct consequences of the failure of policy action. Degradation of forests, wildlife habitats, wetlands and other fragile ecosystems has increased since independence. Pollution of land and water is another major problem across the country. These problems are driven in large measure by the absence of policies, laws and institutional capacity for enforcement of sustainable land use approaches, including waste management. Informal settlements in urban and peri-urban areas and live in generally crowded and unsanitary conditions. The increase in numbers has put more pressure on the administration of towns and cities, already constrained in resources and capacity to effectively manage their environments. The settlers engage in unsustainable land use, including through over-exploitation of natural resources, especially through the cutting of wood for building purposes and fuel. The resulting environmental degradation impacts negatively on women and girls as they are forced to spend more time and energy fetching water and firewood

### **Methodology and methods for data collection**

This study, based on a qualitative methodology, used ethnography based on a case study approach and interviews. These were drawn primarily on empirical data gathered from 500 respondents from different communities in South Sudan. Purposive sampling methodology was used for this analysis. Purposive sampling is where researchers choose who to include in the survey on purpose. The primary data was complemented by data from secondary sources comprising of the analysis of policy documents, publications by various governmental and non-governmental organisations and historical records. The

methods for gathering the data included Focus Group Discussions (FGDs), extended interviews. Informants for the interviews and the FGDs and the subjects for the observations included government officials, representatives of civil society, chiefs, traditional leaders, elders, and communities. These were selected based on their knowledge and experience on land matters and majority having taken part in the liberation of the country.

Ethnography as the basic methodology used guided this research project and followed a constructivist's philosophical principle, which allowed researchers to gather data by studying people in their daily settings, or in situations where researchers participate in the social interactions of their research subjects to understand their world (Williamson, 2006). Through such interactions, researchers link narratives of respondents obtained through interviews, group discussions to their daily lives, which will contribute to the development of an accurate description of the group under study (Geertz, 1973). The strength of ethnography in gathering reliable data was rooted in its ability to combine the different research methods used for collecting the data under a case study approach. A case study by itself is a powerful research tool in qualitative research which can also be used independently for gathering data (Noor, 2008; Krusenvik, 2016). In this research, I used the case study approach to produce context-specific data to describe the land policy on governance, ownership and land use in South Sudan

## Results of study and discussion

### Demographic data of respondents

This section presents data on the demographic profiles of respondents, who participated in the study which sought to examine land policy issues in South Sudan in terms of governance, ownership and land rights.

**Table 1**

#### Sex distribution of respondents

| No | Distribution | Number | Percentage % |
|----|--------------|--------|--------------|
| 1  | Male         | 400    | 80           |
| 2  | Female       | 100    | 20           |
|    | Total        | 500    | 100%         |

Table 1, shows the sex distribution of respondents in this study. It showed that approximately eighty per cent of respondents (80%) were male and that twenty per cent (20%) were female. This indicates that the majority of the participants who were respondents in this study were males. There was thus a small percentage of 20% female respondents. The higher percentage of males in the sample was indicative of the fact that they dominate in land issues as opposed to females due to gender imbalance in land

governance and land rights in South Sudan; despite them being victims of land conflicts as averred by Deng (2016).

### **Inadequate policy on Land ownership**

The respondents were asked on who owns land in South Sudan, 75% of the respondents said that land belonged to the government (National, State, County, Payam and chiefs administration). A small percentage of 25% said that the land belonged to the communities and clans. On further prodding why they thought the land belonged to the government, majority were of the opinion that since independence, the government has been taking their land forcefully and in most cases selling to foreigners against the struggle for liberation where land belonged to the communities. This is in concurrence with the findings of Justin (2019) on land rights where he found that there is limited legal infrastructure to properly allocate land rights and ensure that they are respected. South Sudan's post-independence land law in itself is extremely underdeveloped. The country's pre-independence constitution allowed ethnic communities to possess land through customary practice rather than holding legal land tenure (Land Act 2009). Today, this land can be leased by government institutions to foreign investors as there is no formal legal recognition of the rights of many current landowners to their land.

### **Lack of Legal framework**

Majority of the respondents 90% opined that there was no legal framework on land policy as many cases remain unresolved over land grabbing, conflicts and land ownership and governance. A paltry 10% who were from the Ministry of land and Housing said there was a legal framework. On further inquiry why majority thought there was no land policy framework was because the land in most cities or in urban and peri urban has resulted in mass displacement of communities leading to casualties by the same government which is meant to protect them. The increase in foreign investors and demand for land has resulted in land grabbing by those in high positions. The conflicts in rural areas has seen in rise of urban population exacerbating pressure on land ownership and land use. These findings concur with the African Development Bank (2010) report that the current land reforms programme in South Sudan is not only a contributor to conflicts, but also lacks adequate conflict-resolution mechanisms. This to a great extent explains the rapid increase in ethnic and tribal conflicts during the interim period and after independence. Lack of clarity on the roles of different levels of governance in conflict mitigation and resolution, confusion on the body of laws to be applied in conflicts, and the increasing involvement of traditional leaders in conflicts have all laid the groundwork for violence around land. While the Land Act gives the state the authority to regulate community land in rural areas, it does not explicitly specify the extent to which the state can do so, nor does it delineate the state the role of conflict mitigation and resolution. The same Act limits the authority of the state vi-a-vis land regulation is limited to registered land in urban centres

### **Lack of central authority for Land administration**

Land administration system guarantees ownership and security of tenure, support land and property taxation, provide security credit and reduce disputes. Respondents were asked about land administration

in South Sudan. Majority 80% of the respondents averred that they were confused on really which level of government has administration to land. A properly functioning land administration system is essential to tenure security, which is critical for productive use of land and natural resources to support livelihoods, create wealth, and promote peace and security.

The unique reality of land administration in South Sudan is that it consists of two systems operating in parallel to each other. The indigenous system commonly referred to as customary or traditional applies to land held by communities and administered through their customary norms and practices. This includes mostly rural and peri-urban land, but in the period since 2006, many urban areas have expanded into community land, with the result that traditional institutions are increasingly administering land in urban areas. This context of legal pluralism lends itself to the phenomenon of forum shopping, where individuals choose the forum to use in addressing their land issues according to where they consider they have the best chance of success. This works to the disadvantage of the poor and vulnerable groups, but also engenders uncertainty in land administration (UNENE 1996)

### **Kind of land policy preferred**

The respondents were asked what kind of land policy they prefer in easing land conflicts. 90 % opined that they preferred land to belong to the communities under their chiefs and clan elders. 10% said they preferred land to belong to the government for economic development. This is in contrast with the findings of Okoth (1999) in his paper on land policy in East Africa where he averred that customary land tenure was merely a stage in the historical evolution of societies from status to contract. Fuelled by conclusions of legal anthropologists, colonial administrators did indeed believe that customary land relations would wither away as Western civilization became progressively dominant in African social relations. There was, therefore, no need to acknowledge, leave alone develop customary land law as a viable legal system. Indeed it was even thought that by simply enacting a new system of land law usually based on Western property notions; customary land law would simply atrophy and die (Okoth 1999). Consequently, customary land tenure and land law was systematically misinterpreted even undermined by the judiciary, ignored by legislatures and constantly manipulated by administrators to support ideological experiment as and when this became necessary. Therefore, Land policy development as a prerequisite for economic growth and sustainable human development is a highly sensitive political issue and as such its process of development, implementation and evaluation, needs to be as inclusive and participatory as possible. The national ownership in the development of land policy is critical for engendering broad grass roots endorsement which is more likely to lead to successful implementation including a range of indigenous principles and emerging innovative local practices that can inform sound national land policy development and implementation. There must be deliberate steps taken to ensure the full and informed participation of women who are Africa's primary land users in policy development and successful implementation of land policies will contribute to improved governance, environmental management and the consolidation of peace.

### **Major Challenges of land policy**

On major challenges facing land use, land ownership and governance, 30% (150) of the respondents said the major challenge facing land governance and land ownership is corruption as small farmers and pastoralists have become vulnerable to be ousted from communal land by wealthier investors. 40% (200) attributed it to lack of clear guidelines from the government on which law to be applied by which level of government on land ownership and governance and clear policies for environmentally sound land use. 20% (100) said grabbing of land especially in urban centres by the senior military officers who use the forces to evict the communities. 10% (50) said the major challenge to land policy and land use was failure to consistently enforce pastoral land use rights which was a constant source of conflicts and violence. These findings concur with United nations (UNENE (1996) on land and land issues in Africa; such that the multiplicity of public institutions carrying out land administration functions poses a major threat to tenure security in South Sudan as a result of overlapping mandates with no effective coordination. There is inadequate clarity about the distribution of land administration functions between the national MLHUD, the State Ministries of Housing Lands and Public Utilities, the local government and traditional authority. This creates confusion as state organs at different levels respond to different incentives and are subject to often competing interests, creating a situation where conflicting interests of powerful elites at the different levels of the State and between them and communities create tensions and undermine effective functioning of the land administration system hence opens a doorway to corruption.

### **What could be done to redress the challenges**

The respondents had a lot of exciting suggestions; 20% of the respondents said land issues should be left to the traditional chiefs as they know their clan members well. 30% of respondents said the government must set out clear guidelines on jurisdiction of each level of government in land ownership, transfers and use. 40% said the government should seek views and carry out a referendum for the best possible land policy that the people of South Sudan want before being incorporated in the law. 10 % said the land in the urban should belong to the government for economic development but the rest to the communities. These views are in tandem with the World Bank report (2015) which averred that effective solutions to these pressing and complex problems will involve ambitious public policies that address a range of interrelated issues at several levels and in various sectors. Land policies are a key element of these public policies. They have huge political, economic and social implications because they define the way that people relate to each other around land and natural resources. They may be inclusive or exclusive, make access to land, housing and natural resources more flexible or more rigid, and help consolidate peace or exacerbate tension and conflict (World Bank Report 2015). Land policies have long been a source of exclusion rather than inclusion. Now, as land inequalities increase, it is more important than ever for the South Sudan government to take concerted action to balance the complex and often potentially explosive mix of land-related matters.

## **Recommendations**

In light of the findings of this study on land policy in South Sudan, I wish to make suggestions and possible recommendations.

### **i) Land policy Referendum or Debate**

Attempts to develop land policy has not only been cumbersome but exclusive of the main stake holders who are the communities of south Sudan. Land policy development has a huge political, economic and social implications because they define the way that people relate to each other around land use, land management and land governance of natural resources. In this context all the stakeholders must be included promoting in-depth debates on the opportunities for formalisation, informing these discussions with solid empirical analysis, mobilizing different groups of stakeholders and enabling civil society actors to understand the issues, formulate their positions and participate meaningfully in the debates to shape the right destiny on how they would wish their land and resources be owned, transferred, and governed. This will include access to land, housing and natural resources and help consolidate peace. Land policies have long been a source of exclusion rather than inclusion. Now, as land inequalities increase, it is more important than ever for the South Sudan government to take concerted action to balance the complex and often potentially explosive mix of land-related matters.

### **ii) Clear Legal policy on land regulation**

Many sections of the Land Act 2009 and the Transitional Constitutional Amendment of 2011 are inconsistent and therefore obsolete in an independent South Sudan. For example, Land registration functions are still performed by the Judiciary in spite of the clear provisions of section 54 of the Land Act 2009 to the effect that the land registry shall be domiciled in the MLHUD. Moreover, state governments and even municipalities are known to register land. The multiplicity of public institutions carrying out land administration functions poses a major threat to tenure security in South Sudan as a result of overlapping mandates with no effective coordination. The government should amend the sections of the land Act 2009 to meet the needs of South Sudanese. This should include clear separation of powers on land rights, land ownership and land administration by the levels of Government (national, State, County, Payam, Boma) to avoid confusion and duplication.

### **iii) Land ownership**

The land policy should clearly state how south Sudanese can acquire land for ownership. The notion that land belongs to the communities (customary law) continue to be abused by the elites in society. The policy should state clearly the period of leasehold as opposed to the confusion caused in the TCSS. It should be clear whether leasehold is for 99 years or 33- 66 years. The government should further through the Ministry of Lands, Urban and housing give title deeds to the owners of land so that they could use them as collateral in acquisition of loans from banks for economic development. They can as well lease to private investors. Broadening the options for securing tenure so that they meet the needs of different users



and territories; formalising transactions and assigned rights (informal documents), formalising uses and management rules, using land tax as a means of funding the process and securing tenure.

#### **iv) Functional South Sudan Land Commission**

The fundamental objective of the south Sudan land commission was to come up with clear policies on rights over land and natural resources. The government also wanted all citizens to have a fair chance to hold land, under a variety of tenure arrangements, including community tenure, leasehold and freehold. It was believed strongly that government institutions and traditional authorities should administer land rights in a transparent, accountable, fair and efficient manner. Extending and protecting rights to land to as many citizens and other qualified rights holders as possible was the principal goal. The policy identifies a great number of things that government and citizens must do to achieve this goal, including adopting various legal reforms; clarifying the roles of government institutions with respect to land administration; building the capacity of land administrative institutions, including civil and traditional authorities; taking steps to ensure these institutions are transparent and accountable; providing guidance on good land use planning practices and strengthening the rights of women to land. Indeed if this commission was working according to its mandate, there will be less land issues and therefore less violence. The government should fully operationalize the Land commissions to the lowest level of government for service delivery and avoid the risks of standardisation by putting in place flexible and open mechanisms to manage rights, which allow the actors responsible for their implementation to take account of local specificities and different forms of organization. In addition, address the need for reliable and effective mechanisms by providing initial training and support to enable the actors involved in land management to learn from past and present experiences, adapt procedures to deal with problems encountered during the process, and put in place monitoring and control mechanisms.

#### **v) Access to pasture land and water**

Conflicts among pastoralist groups and between pastoralists and agriculturalists are widespread in Southern Sudan. In many parts of the region successful livestock production requires that herders move their herds in search of water and forage, whose availability varies from place to place seasonally. However, the expansion of permanent settlements and cultivation in some areas is affecting the free movement of livestock, resulting in conflicts between farmers and herders. The government through the other levels of governance should allocate grazing land for pastoralists and at the same time set land for farmers without interference to avoid conflicts. Government should put in place management mechanisms based on intermediate levels of governance (decentralisation) and providing opportunities to work with the different bodies and authorities that already exist at the local level. The government should further Provide pastoral groups and agricultural communities with a sustainable institutional framework for peaceful negotiation over use of common property resources; and facilitate the community land management institutions in establishing flexible arrangements for equitable grazing land and water resources sharing across community boundaries.

#### **vi). Transparency and accountability**

There are widespread concerns about corruption, favouritism, and capricious actions by some government officials and traditional leaders in the administration and allocation of land. Those without power, political access, and money fear they will be at a disadvantage when seeking to acquire land or defend their land rights. To mitigate this, the government should digitalise its services and operations in all land matters to reduce delays, paperwork and corruption. Citizens will not enjoy access to property nor will they be secure in their property rights where land allocation decisions are unduly delayed or land records are poorly maintained and are inaccessible. The Central and state governments should endeavour to make the financial resources available to ensure that public land offices are adequately staffed and funded and that staff are well-trained.

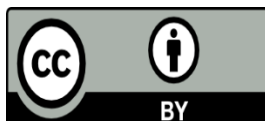
#### **Conclusion**

Effective institutions governing according to the rule of law are essential for successful implementation of the land policy and achievement of secure land tenure in Southern Sudan. Southern Sudan's land institutions operate at the national, state and local levels. As previously noted, these institutions face major capital and human resource challenges, compounded currently by poorly defined and often overlapping mandates, lack of coordination, and poorly conceived strategies and work plans. All these factors have combined to reduce the efficiency and effectiveness of land institutions in the country. There is continuing confusion in urban areas, as both state and county-level institutions are involved in the administration and allocation of land, sometimes in conflicting roles. The two key issues in policies that aim to secure land tenure are (i) determining what kind of rights will be recognised, and (ii) establishing reliable institutional mechanisms that are capable of providing lasting security of tenure and sustaining the administration of legally recognised rights. In addition to developing procedures to formalise rights to parcels, it is also important to use the diverse experiences, procedures and tools that now exist to consider how changes to these rights can be secured. Recognising and respecting diversity is crucial in designing and implementing inclusive land policies to formalise rights. This study has shown the importance of a measured response to the debates on land policies. Formalising rights is a major component of land policies, but it will not automatically improve security of tenure as legal documents are only useful if they are supported by reliable and accessible institutional mechanisms.

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