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Land Governance and the Conflict in South Sudan

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About the Conflict Research Programme

The Conflict Research Programme is a four-year research programme hosted by LSE IDEAS, the university's foreign policy think tank. It is funded by the UK Foreign, Commonwealth and Development Office. Our goal is to understand and analyse the nature of contemporary conflict and to identify international interventions that 'work' in the sense of reducing violence or contributing more broadly to the security of individuals and communities who experience conflict.

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Acronyms

CPA	Comprehensive Peace Agreement
DRC	Danish Refugee Council
HLP	Housing, land, and property
IGAD	Intergovernmental Authority for Development
IDPs	Internally displaced persons
PoC	Protection of civilian
R-ARCSS	Revitalized Agreement on the Resolution of the Conflict in South Sudan
R-TGONU	Revitalised Transitional Government of National Unity
SPLM/A	Sudan People's Liberation Movement/Army
SPLM-IO	Sudan People's Liberation Movement-in-Opposition
SSLC	South Sudan Land Commission
SSLS	South Sudan Law Society

Executive Summary

This paper examines how land governance – or 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 – has interacted with the conflict in South Sudan.¹ A theme running through the paper is that control over decisions relating to land, as much as control over the land itself, has served as a means for individuals and groups to advance their interests in the conflict setting.

Land governance is being contested on several fronts. First, as in many conflict situations, the secondary occupation of landholdings belonging to displaced populations is widespread across rural and urban parts of South Sudan. While most of these instances involve situations in which internally displaced persons (IDPs) have settled on other people's land because they simply have no other option, in some cases land has been forcibly grabbed by political and military actors. There are also concerns that the temporary accommodation of large numbers of IDPs on other people's land could become increasingly permanent, giving rise to land conflicts between IDP and host communities.² Until now, neither the national government nor state governments have mounted a serious response to these problems.

Second, in both urban and rural areas, public authorities have initiated land survey and registration processes that involve the large-scale reallocation of property rights among residents in these areas. To the extent that displaced populations are disadvantaged

in the process, the survey and registration programs risk undermining durable solutions to displacement and exacerbating inter-group tensions. They also serve to entrench power and authority in state and local government institutions suffering from legitimacy deficits due to the contested conflict environment and an inability to provide basic public goods and services.

Lastly, administrative changes, including the division and reunification of states and counties, has had far-reaching implications on the property rights of local populations and their ability to access to humanitarian services. When coupled with ethnic tensions and underlying conflict, these administrative changes can cause groups to assert exclusionary claims to previously shared resources on the basis of restrictive notions of identity. The proliferation and subsequent reduction of administrative units has also generated considerable tension among the various levels of government as they vie for control over land governance processes.

These contests over land rights and decision making at a local level are also playing themselves out more broadly in terms of how property rights are defined and understood at a national level. Processes such as the peace talks mediated by the Intergovernmental Authority for Development (IGAD), a National Dialogue initiated by President Salva Kiir in 2016, and a longstanding effort to develop a National Land Policy for South Sudan have, to varying degrees, created space for discussions on land and its role in the conflict. The IGAD peace process and National Dialogue provide an interesting point of comparison in this regard. Whereas the IGAD peace process tended to prioritise elite interests in power sharing and security arrangements, the National Dialogue

¹ David Palmer et al., *Towards Improved Land Governance*, Land Tenure Working Paper 11, Food and Agriculture Organization (FAO) (Sep. 2009), available at <https://uni.unhabitat.org/wp-content/uploads/2014/06/TOWARDS-IMPROVED-LAND-GOVERNANCE-Land-and-Tenure-Working.pdf>.

² See e.g., David K. Deng, *Conflict Sensitivity Analysis: Considerations for the Humanitarian Response in Mangalla*, Conflict Sensitivity Resource Facility (CSRF) (Oct. 2020), available at <https://www.csrf-southsudan.org/repository/conflict-sensitivity-analysis-considerations-for-the-humanitarian-response-in-mangalla/>.

created space for people to frame the problem in their own terms, and participants consistently raised land issues as a key driver of conflict. This dichotomy illustrates the important complementary role that more inclusive, bottom-up peace initiatives play alongside the elite processes that are geared towards short-term political solutions.

Several recommendations flow from this analysis:

Policymakers should invest more into streamlining housing, land, and property (HLP) issues into the humanitarian response. The transition of the UN-administered protection of civilian (PoC) sites into IDP settlements under the control of the government, coupled with the possible return of displaced populations, will likely serve to increase pressures on land in the coming years. If policymakers do not prepare plans to address the many HLP issues likely to arise, tensions over land could undermine efforts to secure a sustainable solution to the conflict. Any effort to address these issues should recognise their inherently contested nature and the need to identify 'good enough' solutions to difficult problems without prejudicing longer-term institution-building and reform processes.

The Revitalized National Legislature should expedite efforts to adopt the National Land Policy and the Protection and Assistance to Internally Displaced Persons Act to provide a framework for addressing HLP issues in the country.

Decades of investment into state-building in South Sudan demonstrate that legislative processes such as these are not a panacea for problems as deeply embedded as those of land. Nonetheless, legislation can provide space for different actors to engage with land issues in new and innovative ways,

potentially giving rise to new champions of reform. The legislation should include implementation plans that are realistically costed, and relevant governmental and non-governmental stakeholders should be supported to conduct public outreach and civic engagement efforts to raise awareness about the new laws.

Policymakers should enact emergency measures to address priority land issues in the current context. Such measures may include temporary freezes on land registration processes in parts of the country, the establishment of dispute resolution mechanisms that are adequately backstopped by justice and security actors to address instances of land grabbing by political or military actors, or the financing of reconstruction efforts in areas where people's homes were destroyed during the conflict.

The Government of South Sudan and its international partners should invest more into creating space for dialogue around land issues and where they intersect with conflict in South Sudan. The discussions that have taken place in the context of the National Dialogue, the IGAD peace talks, and the development of the National Land Policy provide some entry points, but much more needs to be done. Above all, any effort to address land issues, whether as a short-term emergency response or a longer-term reform initiative, must be firmly situated within the political and historical context in which they arise.

Introduction

Land features less prominently in explanations of the civil war in South Sudan than other issues such as elite power struggles or the breakdown of patronage systems in the face of dwindling oil revenue. While it may be true that major inflection points in the war, including the outbreak of violence in December 2013, the establishment of a unity government in April 2016, the collapse of that government in July 2016, and its partial reestablishment in February 2020, have all been associated with disputes or rapprochements among a few dozen political leaders at the national level, this explanation fails to capture some of the ways conflict dynamics change over time and how they can become intertwined with underlying problems that predate the war. A more nuanced understanding must account for the impact that seven years of conflict have had on the land and property rights of a population that was already grappling with a host of land-related problems from past civil wars.

Conflict throws property rights into disarray, destabilising livelihoods and creating opportunities for more powerful individuals and groups to exploit the situation to their advantage. Land becomes yet another natural resource over which people fight to gain advantage in the fluctuating circumstances of the conflict. In some cases, the conflict presents opportunities for groups to advance their positions in longstanding disputes over land that may go back decades or even longer. In other cases, the forcible removal of populations from their lands may be followed by an influx of

internally displaced persons (IDPs) seeking refuge. As so often happens, what was initially envisaged as a temporary solution to an imminent threat can become increasingly permanent as time goes on.

During war, as much as in times of relative peace, control over land governance – or 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 – is a valuable commodity.³ Administrative processes than may appear technocratic or apolitical, such as land use planning, land survey, registration, urban development, or the creation of new administrative units, offer a range of opportunities for power brokers to buy loyalty and fragment support for their opponents.⁴ When the legitimacy of public authorities is contested and their ability to deliver public goods and services is limited, tools of population control, including dictating where people can and cannot live, becomes a means of asserting sovereignty through displays power.⁵ Too often, the most vulnerable in society bear a disproportionate share of the burden. IDPs, refugees, and returnees must continuously struggle for access to land as a means of meeting their basic survival needs, and women and girls, who are treated like second class citizens when it comes to land and property, are typically among the first to lose out.

In responding to such a complex situation, policymakers should seek to limit the harm that is done while conflict is ongoing, anticipate problems likely to arise in

³ Palmer, *supra* note 1; Peter Hakim Justin, State-Building and Land Conflict in South Sudan (2020), available at <https://edepot.wur.nl/533348>.

⁴ As Badiy observes in relation to land in Juba: "Struggles over control of land in the town, over which level of government had authority over land and who was a legitimate resident, were intimately tied to the outcome of post-conflict reconstruction: who would control it, who would benefit from it, and ultimately what kind of state would emerge from it." Naseem Badiy, *The strategic instrumentalization of land tenure in 'state-building': the case of Juba, South Sudan, Africa*, 83 (1) (2013), pp. 57–77.

⁵ According to Kindersley and Rolandsen: "One of the most visible forms of entrenched practice across armed parties [during the 22-year war, 1983–2005] was that of population control, which included forcing mass displacement and the depopulation of territories through raiding and bombing, controlling the flight paths and resettlement of these populations, and brokering and taxing aid supplies and the remaining personal assets of people under their control." Nicki Kindersley and Øystein Rolandsen, *Who are the civilians in the wars of South Sudan?*, Security Dialogue (Aug. 2019), available at https://www.researchgate.net/publication/335242741_Who_are_the_civilians_in_the_wars_of_South_Sudan.

the future – particularly if people begin returning to their homes in larger numbers, as is expected from the transition of the UN-administered protection of civilian (PoC) sites into IDP settlements under the control of the government – and put in place programs early on to address those problems. Policymakers could go one step further by streamlining housing, land, and property (HLP) issues into the humanitarian response, as is currently being considered in several pilot programs in South Sudan.

This paper examines some of the ways in which land governance has interacted with the conflict using problems relating to land in Unity State as an entry point. A theme running through this paper is how control over decisions relating to land, as much as control over the land itself, has served as a means for power brokers to entrench their position in both urban and rural parts of the country. The second part of this paper examines some of the spaces that have been created for dialogue over land issues in recent years. Discussions over land have featured, to varying degrees, in the regional mediation effort, President Salva Kiir's National Dialogue process, and in a longstanding effort to adopt a National Land Policy that has been rekindled in recent years. None of these processes has yet resulted in the adoption of a coherent government program to address the many problems of land that South Sudan currently faces, but each offers insights into what a more comprehensive program might look like.

1. Land and Conflict in Unity State

Unity State has been a conflict hotspot throughout the seven-year civil war in South Sudan. By the end of 2015, nearly 560,000 people – 90 percent of the state's population – had been forcibly displaced.⁶ 137,000 people sought refuge in the UN-administered PoC site in Bentiu, the state capital.⁷ Five-and-a-half years later, PoC sites across the country are transitioning into conventional IDP settlements under the administration of the Government of South Sudan.⁸ The ensuing population movements will likely bring a number of underlying problems to the surface, including the many problems of HLP which are the legacy of current and past conflicts.

The subsections below examine these issues with reference to recent developments in Unity State. Several considerations flow from this analysis. First, the secondary occupation of landholdings belonging to displaced populations is widespread across rural and urban parts of the state and indeed across South Sudan as a whole. The overlapping claims will become more difficult to address if large-scale return and resettlement programs begin in earnest.⁹ Second, in both urban and rural parts of the state, land survey and registration programs have been initiated in recent years that involve the large-scale reallocation of property rights among residents in these areas. To the extent that displaced populations are disadvantaged in

6 Tong Deng Anei, Alex de Waal, and Bridget Conley, *Accountability for Starvation Crimes: South Sudan*, World Peace Foundation, Policy Brief No. 2 (Jun. 2019), available at <https://starvationaccountability.org/wp-content/uploads/2019/11/Accountability-for-Starvation-South-Sudan.pdf>.

7 Office of the Deputy Humanitarian Coordinator for South Sudan, *Crisis Impacts on Households in Unity State: Initial results of a survey* (Jan. 2016), available at https://reliefweb.int/sites/reliefweb.int/files/resources/160202_Crisis%20impacts%20on%20households%20in%20Unity%20State_SS.pdf.

8 In a December 2020 statement to the UN Security Council, then Special Representative of the Secretary-General in South Sudan, David Shearer, noted: "The PoC sites, as you all know, were established seven years ago to protect people fleeing from intense conflict. That threat no longer exists today, with most residents now moving daily between the camps and towns while still being able to access humanitarian services. ...The Government, with UNMISS [United Nations Mission in South Sudan] technical support, has assumed ownership of the sites and is now obliged to work towards more durable solutions where IDPs can return home safely and with dignity." *Statement of the Special Representative of the Secretary-General, David Shearer, Briefing to the Security Council on the Situation in South Sudan* (15 Dec. 2020), available at <https://peacekeeping.un.org/en/statement-of-special-representative-of-secretary-general-david-shearer-briefing-to-security-council>.

9 Gemma van der Haar and Mathijs van Leeuwen advise that in such circumstances, policymakers must be prepared to manage trade-offs between three sets of issues: (1) short-term conflict resolution and structural solutions, (2) customary/community-based governance, (3) principles (such as the right to return or restitution) and acknowledgement of the new situation. See *War Induced Displacement: Hard Choices in Land Governance*, 8 Land 88 (1 Jun. 2019), available at <https://www.mdpi.com/2073-445X/8/6/88/htm>.

the process, the programs risk undermining durable solutions to displacement and exacerbating inter-group tensions. Lastly, the example of Koch, a county 95 kilometres south of Bentiu, shows how the division and reunification of counties has had far-reaching implications on the property rights of local populations and their ability to access humanitarian services. When coupled with ethnic tensions and underlying conflict, administrative changes such as these can cause groups to assert exclusionary claims to previously shared resources based on restrictive notions of identity.

1.1 Secondary Occupation and Land Grabbing

In many ways, the issues of secondary occupation and the closely associated practice of land grabbing epitomise the 'land problem' in South Sudan. Secondary occupation refers to situations in which people are residing on the land of displaced persons without their consent.¹⁰ The circumstances of secondary occupation can become quite complicated. In many cases, the secondary occupants are themselves IDPs who have had to abandon their primary residence and temporarily settled on someone else's land because they have nowhere else to go, or a returnee who has returned home to find that someone else has occupied their land and is therefore forced to settle on whatever vacant land they can find. The situation can be further complicated when the secondary occupant transfers the land to a third party who may buy the land in good faith, not knowing that it belongs to someone else. Alternatively, the state itself may expropriate the land of displaced persons in the context of land survey and registration programs and

transfer it to third parties.

Land grabbing typically refers to processes of secondary occupation not done in good faith and accompanied by force or threats of force against the primary landowner. Particularly egregious incidents of land grabbing have been reported in Juba and other parts of South Sudan for many years. Military personnel are regularly accused of taking landholdings by force and refusing to return them to the original owners, even in the face of court orders. According to Ina Rehema Jahn:

"Urban and peri-urban areas of South Sudan are witnessing an often systematic takeover of land and properties belonging to displaced populations. Several interviewees reported that in several key locations such as Juba, Bor and Bentiu, land and properties belonging to displaced populations are systematically confiscated by actors to the conflict. This also includes the unlawful transfer and sale of confiscated properties for profit."¹¹

A study by the South Sudan Law Society (SSLS) in 2019 found that one in five (19 percent) of the 677 households surveyed in Nimule, Torit, Wau, and Yei had one or more household members whose land was unlawfully occupied by another person.¹² Two in five (37 percent) respondents admitted that the plot where they were residing at the time did not belong to them. In the context of a return and resettlement process involving tens or hundreds of thousands of people, figures such as these would present a major obstacle to durable solutions for displaced populations.

Similar incidence rates have been documented in Unity State. High levels of displacement and extensive destruction of property in Unity State have sent settlement

¹⁰ *The Pinheiro Principles: United Nations Principles on Housing and Property Restitution for Refugees and Displaced Persons*, Centre on Housing Rights and Evictions (n.d.) (see Principle 17 with rules on how states should behave towards secondary occupants), available at https://reliefweb.int/sites/reliefweb.int/files/resources/14513560A4FD818FC1257458004C8D88-Pinheiro_Principles.pdf.

¹¹ Ina Rehema Jan, Key Housing, Land and Property Issues in Urban Areas of South Sudan, Shelter NFI Cluster South Sudan (Sep. 2017), available at https://www.sheltercluster.org/sites/default/files/docs/key_housing_land_and_property_hlp_issues_in_urban_areas_of_south_sudan.pdf.

¹² See David K. Deng, *Housing, Land and Property Disputes in South Sudan: Findings from a survey in Nimule, Torit, Wau and Yei*, South Sudan Law Society (SSLS), available at https://docs.southsudanngoforum.org/sites/default/files/2020-11/SSLS_HLP-report-final-003.pdf.

patterns into disarray and secondary occupation is commonplace. In order to meet their basic need for shelter, people are often forced to settle on land belonging to someone else. In a household survey conducted by Danish Refugee Council (DRC) in Bentiu in 2018, one in five respondents said that someone was occupying a landholding of theirs unlawfully and without their permission, and more than half (55 percent) of respondents (excluding those in Bentiu PoC site) said they did not own the land they were living on at the time.¹³

The willingness of secondary occupants to vacate the premises when the original landholder returns varies from situation to situation. In many cases, the secondary occupant is an IDP who says they will leave when asked, but some cases involve the occupation of landholdings by heavily armed groups of men who show no intention of leaving. A resident Bentiu PoC interviewed for the DRC study described his reluctance to approach a group of military personnel who were occupying his land:

"When the [SPLM-]IO governor returned to town, I took the initiative to visit my house and upon arrival I was afraid to ask questions because I found someone on my land who looked like military official because he had a lot of machine guns even from outside."¹⁴

Finding solutions to secondary occupation and land grabbing is no easy task. In many cases, secondary or tertiary occupants have made significant investments into the property and alternative land may not be available to accommodate the party that relinquishes their claims. Due to the intractability of these disputes, it is not surprising that displaced populations consistently experience more land-related disputes and have less access to dispute resolution mechanisms than resident or host populations.¹⁵

1.2 Land Survey and Registration Processes

Due to a combination of factors, including rampant corruption, fluctuating global oil prices, the government's practice of preselling oil, an untold amount taken out in loans, and payments to Sudan for use of its pipeline, national revenue has greatly reduced in recent years. As a result, other land-based resources have become increasingly important commodities for power brokers in South Sudan.¹⁶ The UN Panel of Experts on South Sudan has identified trade in high value resources such as gold and valuable hardwoods as a driver of conflict.¹⁷ Less well known is the value of land administration systems in urban and rural areas. Land use changes, registration processes, and the expropriation

¹³ The incidence of secondary occupation was particularly high among returnees (21 percent) and IDPs (20 percent) compared to people who had been residing in their homes and did not identify as returnees (7 percent). David K. Deng and Matthew F. Pritchard, *Cracks in the Foundation: Rapid Assessment of Housing, Land and Property (HLP) Issues in Bentiu, South Sudan*, Danish Refugee Council (DRC) (Oct. 2019) (on file with author). In another household survey that DRC conducted in Koch in 2019, 92 percent of IDP respondents said they were residing on land owned or held by someone else. See Matthew F. Pritchard and David K. Deng, *Secondary Occupation and Indefinite Displacement: Rapid Assessment of Housing, Land and Property (HLP) Issues in Greater Koch, South Sudan*, DRC (Apr. 2020) (on file with author).

¹⁴ *Cracks in the Foundation*, *supra* note 9, p. 22. Similar incidents were documented in Koch County, where some plots left behind by members of the Sudan People's Liberation Movement-in-Opposition (SPLM-IO) have been occupied by government-allied security sector personnel. Given the political sensitivities, these individuals found it difficult to assert their property claims against the secondary occupants. Interview with member of SPLM-IO, Koch (13 Nov. 2019).

¹⁵ A 2017 survey by the SSLS and Norwegian People's Aid found that 74 percent of respondents who had access to a piece of land and had been displaced at some point in their lives were currently experiencing a land dispute. Conversely, only 6 percent of people with land who had never been displaced were currently experiencing a dispute. Matthew Pritchard, *Land Disputes in Urban and Peri-Urban South Sudan: Disputing Access, Discouraging Returns*, South Sudan Law Society (SSLS) and Norwegian People's Aid (NPA) (2017), available at <http://www.mfpitchard.com/wp-content/uploads/2017/09/Pritchard-2017.pdf>; see also, *HLP Disputes in South Sudan*, *supra* note 8.

¹⁶ For more on how taxes could be used as a source of revenue as South Sudan moves towards a decarbonized future, see Matthew Benson, 'Who is this Government Really?': *South Sudanese Perspectives on Taxes and Public Authority*, London School of Economics (LSE) (14 May 2020), available at <https://blogs.lse.ac.uk/crp/2020/05/14/south-sudanese-perspectives-on-taxes-and-public-authority/>.

¹⁷ See e.g. *Interim Report of the Panel of Experts on South Sudan submitted pursuant to resolution 2521 (2020)*, U.N. Doc. S/2020/1141 (25 Nov. 2020), available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N19/075/66/PDF/N1907566.pdf?OpenElement>.

and reallocation of land rights present opportunities for public authorities to consolidate power, acquire revenue, and exert influence in a context where funding from the central government is lacking.

Registration processes can cut both ways in this context. Registration can be a means of strengthening tenure security by allowing individuals and groups to solidify claims to landholdings that may otherwise be susceptible to misappropriation or secondary occupation. When seen from this perspective, the prevalence of unregistered landholdings in South Sudan undermines tenure security as it is often easier to usurp or infringe upon property rights when they are not officially recorded. Although accurate statistics on the amount of registered land are not available, the vast majority of landholdings are thought to be unregistered or informally held, particularly in rural areas. For example, a 2019 household survey the SSLs conducted across four towns in South Sudan found that a third (33 percent) of respondents were living on unregistered landholdings, ranging from a high of 65 percent in Nimule to a low of 13 percent in Wau.¹⁸ Other estimates have placed the figure as high as 50 percent or more in urban areas.¹⁹ Almost all landholdings in rural areas are unregistered.

But registration processes also carry risks, particularly in contexts characterised by widespread displacement. People who are unable to return to their homes, including

IDPs and refugees, are often disadvantaged in these processes, as are women and ethnic outsiders whose land rights tend to be treated as secondary and conditional. The rapid expansion of registration processes in such an environment has the potential to undermine tenure security, inhibit returns, solidify displacement, exacerbate existing land-related disputes, and incentivise individuals and communities to assert more exclusive claims to previously shared resources.²⁰ As Cherry Leonardi and Martina Santschi note, the formalization of land tenure in this context brings different value systems into competition with one another in potentially harmful ways:

“The privatization and commodification of land appears to offer more secure tenure for those with the monetary income to purchase titles. At the same time, this security can be undermined by the illegal actions of powerful actors or the incompetence and corruption of land governance institutions—whether state or customary, or a mix of both. The privatization and commodification of land is also likely to deprive poorer, less privileged people of land that they would have formerly accessed through customary systems of land rights and usage.”²¹

These negative impacts are made worse when due process requirements are not adhered to, as is typically the case in South Sudan.²² The 2019 household survey by the SSLs, for example, found that 68 percent

¹⁸ HLP Disputes in South Sudan, *supra* note 8.

¹⁹ David K. Deng, *South Sudan County Report: Findings of the Land Governance Assessment Framework (LGAF)*, SSLs (Jan. 2014), available at <https://openknowledge.worldbank.org/bitstream/handle/10986/28520/119635-WP-P095390-PUBLIC-7-9-2017-10-34-1-SouthSudanCountryReport.pdf?sequence=1&isAllowed=y>.

²⁰ When seen in this light, a provision of the R-ARCSS that would expedite registration processes throughout the country comes across as a somewhat risky proposition. According to Section 4.8.2.1.2: “Within eighteen (18) months of the Transitional Period, [the RT-GoNU shall] establish an independent registry of Lands at all levels of government for issuance of title deeds.” Intergovernmental Authority for Development (IGAD), R-ARCSS (2018), available at [https://www.peaceagreements.org/wview/2112/Revitalised%20Agreement%20on%20the%20Resolution%20of%20the%20Conflict%20in%20the%20Republic%20of%20South%20Sudan%20\(R-ARCSS\)](https://www.peaceagreements.org/wview/2112/Revitalised%20Agreement%20on%20the%20Resolution%20of%20the%20Conflict%20in%20the%20Republic%20of%20South%20Sudan%20(R-ARCSS)).

²¹ Cherry Leonardi and Martina Santschi, *Dividing Communities in South Sudan and Northern Uganda: Boundary disputes and land governance*, Rift Valley Institute (RVI) (2016), available at <https://riftvalley.net/publication/dividing-communities-south-sudan-and-northern-uganda>. With reference to developments in Juba before independence, Badiey explains how the interaction of competing value systems serves to shape the relationship between state and society in South Sudan: “[A]midst the political and institutional change inaugurated by the CPA, actors at a variety of levels of the state and civil society in Juba employed competing interpretations of rights to land as state-building strategies – as tools towards promoting particular visions of the state and of citizenship. In other words, the ways that these groups defined rights in land, and the grounds on which they made claims to those rights, were instrumental in defining citizenship in the new South Sudan, and allocating authority among different state and social actors.” Badiey, p. 59.

²² Among the protections of due process that are required under South Sudanese law is that the expropriation is done in the public interest, that prior notice is provided, that individuals who stand to be affected are able to contest the decision, and that compensation is provided to those whose property is taken. See Land Act, Ch. XII, §§ 73–77 (2009), available at <https://www.refworld.org/do->

of respondents that had their property expropriated said they were not consulted beforehand, and 85 percent said they did not receive compensation.²³

A series of land surveys that the Unity State government has conducted in recent years illustrate the danger these processes pose in a context of widespread displacement. In 2016, the newly established state government began a new series of land surveys in parts of Bentiu and its sister town Rubkona. The land surveys were accompanied by acts of expropriation in many instances.²⁴ The government expropriated registered and unregistered private landholdings to build and expand roads, marketplaces, and schools.²⁵ In some cases, smaller plots were combined to make larger ones, forcing those that had lost out in the process to find alternative land and housing. While government officials claimed they were only surveying unregistered land and areas where people had to be moved to open roads or expand public lands, affected individuals and groups contest this narrative, alleging that the government has transferred landholdings belonging to IDPs and refugees to third parties.²⁶

The land surveys generated considerable confusion given the prevailing humanitarian situation and the fact that the vast majority of residents in the two towns were living either in Bentiu PoC site or as refugees in Sudan. Affected individuals, whether long-time residents who were losing their homes or secondary occupants who were being forced to move elsewhere, feared the impact the surveys would have on their basic

livelihoods, and displaced residents feared their land could be expropriated or registered in the name of other individuals without their knowledge or consent. In a survey of 361 respondents the DRC conducted in 2018, 60 percent of respondents that were aware of the surveys disapproved of them. Unsurprisingly, the disapproval was most pronounced among residents of the PoC where 76 percent of respondents who had heard about the surveys disapproved of them.²⁷ Many viewed the surveys as either an attempt to grab land belonging to IDPs or else a ploy to incentivise people to leave the PoC in order to reclaim their land.

As these events were underway in Bentiu, a similar survey and registration process was carried out in Koch. In 2018, the County Commissioner initiated a land survey in the Gany County headquarters (Koch County was divided into Gany and Liech Counties in 2016 and reunited into a single county in 2020) in communication with the state-level Ministry of Physical Infrastructure in Bentiu.²⁸ Local residents reported that landholdings belonging to displaced persons were surveyed and distributed to people that did not own the land. Local government officials, on the other hand, stressed the temporary nature of the land allocation and downplayed the potential for problems to arise when displaced populations begin returning to Koch in larger numbers. As experiences have shown across South Sudan, it is never this easy to undo the damage that such extensive changes to land rights cause in a context of large-scale displacement.

[cid/5a841e7a4.html](https://doi.org/10.1017/9781108888888.005).

²³ HLP Disputes in South Sudan, *supra* note 8.

²⁴ In a 2018 survey by DRC, 16 percent of the individuals surveyed said the government had seized or expropriated landholdings of theirs within the past five years. *Cracks in the Foundation*, *supra* note 9.

²⁵ Representatives of the state government justified the surveys on a number of grounds, including crime and public health concerns, a need to make additional land available closer to the town centre due to insecurity in the peripheries, and the expansion of public lands, including roads, schools, and marketplaces. *Id.*

²⁶ The committee in charge of the process says it usually provides advance notice ranging from 10 days to one month, just three of 58 households affected by expropriations in the DRC survey said they were consulted prior to the expropriation. None of the respondents had received any compensation, whether in cash or in kind.

²⁷ *Id.*

²⁸ Individuals were charged a nominal fee ranging from 1,000 to 2,000 SSP (roughly \$3.25 to \$6.50 USD).

One policy option that has been used in other contexts is to put a temporary freeze on property transfers, registration, and purchases to reduce people's ability to trade in land belonging to refugees and IDPs. In Iraq, for example, when the Islamic State captured a city, they would seize land and property belonging to non-Sunni religious sects and redistribute it among their fighters.²⁹ Among the first things coalition forces would do after recapturing a city was to place a freeze on property transfers. While Unity State is not entirely analogous to Iraq in that government forces have been firmly in command of the state capital of Bentiu for many years and may not have the same incentives to halt land transactions, the example nonetheless provides some precedent for suspending land survey and registration processes when they are seen to be disadvantaging significant segments of the population.

1.3 Division of County Administrations

The proliferation of local government units is not a new development in South Sudan. As far back as 2010, in a study for the London School of Economics, Mareike Schomerus and Tim Allen wrote: "The creation of new counties and drawing up of constituencies has fomented confusion regarding local administration structures, causing a number of problematic socio-political dynamics."³⁰ The division of local administrative units took on a new dimension with the presidential decrees dividing South Sudan into 28 and subsequently 32 states. Alongside the expansion of states, the number of counties mushroomed from 79 to more than 300 as governors took it upon themselves to divide counties whenever they deemed it appropriate.³¹ The

fragmentation of state and local government administrations has given rise to a host of problems, including boundary disputes, disagreements over the distribution of assets, relocation of populations, exacerbation of underlying disputes, and the generation of new ones.³²

Recent developments in Unity State illustrate many of these dynamics. In 2016, Koch County was divided into two new counties of Gany and Liech, the latter housing the former Koch County administrative headquarters in Koch town. The division was announced amidst intense fighting between government and opposition forces in Koch. In 2018, after government forces succeeded in recapturing Koch town from the opposition, the County Commissioners of Gany and Liech told residents of Koch town who were from clans that historically resided in Gany County that they would have to relocate across the border, about a kilometre down the road. In doing so, many of those who relocated ended up settling on lands that belonged to IDPs or refugees who had fled the violence. As noted in Section 1.2, the Gany County administration conducted a land survey and formally registered the landholdings of many of the newcomers, even when they had settled on land belonging to displaced persons. The movement of people from Koch town to Gany also allowed other returnees or IDPs from clans who historically resided in Liech County to settle on lands previously occupied by the people that had relocated to Gany.

The division of Koch and coerced relocation of people to Gany has given rise to a geographic, administrative, and sectional divide between the two counties. Residents in Gany complain that they did not enjoy the same access to humanitarian assistance

29 Rukmini Callimachi, *The ISIS Files*, NY Times (4 Apr. 2018), available at <https://www.nytimes.com/interactive/2018/04/04/world/middleeast/isis-documents-mosul-iraq.html>.

30 Mareike Schomerus and Tim Allen, *Southern Sudan at Odds with Itself: Dynamics of conflict and predicaments of peace*, London School of Economics (LSE) (2010), p. 40, available at <http://eprints.lse.ac.uk/28869/1/SouthernSudanAtOddsWithItself.pdf>.

31 See *Secondary Occupation and Indefinite Displacement*, p. 13, *supra* note 9.

32 Matthew Pritchard and Aly Verjee, *South Sudan: From 10 States to 32 States and Back Again*, United States Institute of Peace (USIP) (1 Mar. 2021), available at <https://www.usip.org/publications/2021/03/south-sudan-10-states-32-states-and-back-again>.

in Liech because they were no longer seen to be from that county. They also complain that they are denied jobs with NGOs and local government in Liech. Although residents of both counties were from the same Jagei section of Nuer, the division of the county nonetheless gave rise to increasingly restrictive notions of identity that divided people along clan lines. Those who relocated to Gany felt as though they were being marginalised in the process, contributing to intra-ethnic tensions among the groups.

Similar dynamics have played themselves out in other parts of Unity State over the years. In 2008, during the governorship of Taban Deng Gai, a conflict broke out between the Leek and Jikany Nuer communities in Rubkona and Guit counties over the placement of the border between the two counties. The dispute stemmed from a poor boundary demarcation process when the two counties split from one another in 2005. The conflict interrupted a survey that was going on at the time in a border area called Chilak. In an attempt to neutralise the conflict, the governor ordered the area to be demolished and declared that no one from either side should be permitted to settle there.

In 2015, the current governor, Joseph Nguen Monytil, reinitiated the land survey in Chilak and announced that the state government would distribute plots to people who apply. Government officials downplayed the risk that the survey could stoke tensions among groups in the area, but residents expressed contrary viewpoints. According to a female focus group participant in a DRC study from 2019:

"With what is happening [in Chilak] it will be very proper if the government have waited for all the people to return so that this land can be divided in the presence of all the people. If it is not enough, they will know it's not enough because we are many.

These surveys will make people to live in fear because we do not know if another leadership will come and say, 'We will survey this land again.' People live in fear and do not know if they will continue to be here."³³

These examples demonstrate how changes to administrative boundaries can give rise to disputes that persist far into the future. In places where rights are already contested, conflict introduces a whole new set of problems associated with widespread secondary occupation as well as land survey and registration processes that risk disenfranchising entire groups of people, particularly those displaced by the conflict. The current and past problems become intertwined and feed into feelings of marginalisation and exclusion. As Matthew Pritchard explains in relation to administrative fluctuations more broadly in South Sudan:

"The resulting increase in the association of ethnic and clan-based communal identities with administrative units, such as states, but also sub-state units such as counties, *payams*, and *bomas*, incentivizes competition between newly territorialized ethnic groups, while simultaneously increasing fears of marginalization and exclusion. The result is a zero-sum game where historically interdependent communities with overlapping rights compete for exclusive access to administrative resources in order to control the political and financial power that flows from them."³⁴

In February 2020, Liech and Gany Counties were reunified into a single Koch County with the return to 10 states and 79 counties. But the widespread secondary occupation and the integration of recent arrivals into Koch town following the initial division of the counties, individuals in Gany who left behind landholdings in Koch town are likely to face serious difficulties in reclaiming their land.

³³ *Cracks in the Foundation*, *supra* note 9.

³⁴ *Id.*

2. Space for Dialogue on Land Issues

The contests described above between individuals and groups over land rights and decision-making at a local level are also playing themselves out more broadly in terms of how property rights are defined and understood at a national level in South Sudan. While policymakers struggle to put forward a coherent plan for how to address the 'land problem', several spaces for dialogue on the issue have been established in recent years. Processes such as the peace talks mediated by the Intergovernmental Authority for Development (IGAD), a National Dialogue initiated by President Kiir in 2016, and a longstanding effort to develop a National Land Policy for South Sudan provide insights into the useful role that such spaces for dialogue play, even during an active conflict, as well as their limitations. The subsections below explore these processes in greater detail and explain how peace processes and legislative reforms, as flawed as they might be (and if we judge success in terms of implementation, then these processes certainly have their share of flaws), nonetheless create spaces to promote greater consensus around difficult issues.

2.1 R-ARCSS and National Dialogue

In December 2016, the President of South Sudan announced what would prove to be a contentious National Dialogue process with the ambitious objective to "end all violent conflicts in South Sudan, constitute national consensus, and save the country from disintegration and foreign interference."³⁵ South Sudan was arguably at its lowest point. The outbreak of violence in Juba for

the second time in July 2016 had thrown the peace process into disarray and conflict was spreading to previously stable areas in Greater Equatoria and Greater Bahr-el-Ghazal. The National Dialogue's proponents said it would help to address the violence through a bottom-up process that engaged South Sudanese at the grassroots level in discussions about how to resolve the conflict and set the country on a path towards peace. The National Dialogue's critics, however, viewed it as a ploy to undermine the IGAD peace process and defuse criticism against the government for atrocities its forces were committing in various parts of the country. Key opposition groups refused to participate, maintaining that it was not possible to have meaningful dialogue while the war was raging, and most international donors declined to provide financial or political support to the initiative.

What is noteworthy for the purposes of this paper is how prominently land issues featured in South Sudanese people's explanation of the conflict. Problems relating to land arose in many forms, ranging from competition over access to land among farmers and cattle-keepers, to land grabbing and boundary disputes. Underlying all these issues was a fundamental difference over the definition of land ownership itself. The right of communities to make decisions over lands they historically held, managed, and used figured prominently in the platform of the Sudan People's Liberation Movement/Army (SPLM/A) during the 22-year war (1983–2005).³⁶ However, once the regionally autonomous Government of Southern Sudan was established in 2005, it quickly ran into difficulties accessing land for government offices and for the purposes

³⁵ Government of South Sudan, National Dialogue Concept Note (2016), p. 3–4, available at <https://www.ssnationaldialogue.org/resource/concept-note-national-dialogue/>. See also, David K. Deng and Rajab Mohandis, *Citizen Perspectives on the National Dialogue in South Sudan*, South Sudan Civil Society Forum (SSCSF) and Detoro (May 2021), available at <http://csforumsouthsudan.org/wp-content/uploads/2021/05/Citizen-Perspectives-on-the-National-Dialogue-in-S-Sudan-FINAL.pdf>.

³⁶ David K. Deng, 'Land belongs to the community': Demystifying the 'global land grab' in Southern Sudan, Land Deal Politics Initiative (LDPI) (Apr. 2011), available at <https://www.future-agricultures.org/wp-content/uploads/pdf-archive/David%20K%20Deng%20Final.pdf>.

of development from communities who were reluctant to provide land to a government they viewed as corrupt and abusive.

This debate over whether South Sudan should adopt a system based on state ownership of land as exists in Khartoum or one based on community land ownership has been raging for many years. In the context of the National Dialogue, the issue reached a head at regional conferences that were held for each of the three regions following grassroots consultations. Each of the three regions each adopted a slightly different position, with the regional conference for Greater Equatoria resolving that “land shall belong to the community and be protected by the government and it shall be managed and administered by the local government in collaboration with the indigenous communities,” Greater Bahr-el-Ghazal resolving that “the government should own and manage the land,” and Upper Nile resolving that “that rural land be owned and managed by indigenous communities and urban gazetted land be owned and managed by the government.”³⁷ At a national conference in Juba in November 2020, the culmination of almost four years of work by the National Dialogue with more than 500 participants from across South Sudan, delegates endorsed community landownership, stating, “land is owned by the communities and shall be managed by various levels of government in accordance with the law.”³⁸

Compared to the National Dialogue, the regional peace talks leading to the signing of the Revitalized Agreement on the Resolution of the Conflict in South Sudan (R-ARCSS) in

2018 devoted relatively little attention to land issues. The negotiating parties and mediators decided early on that the main cause of the conflict was a power struggle among political leaders in the SPLM and that the solution lay in a unity government that recreated the pre-conflict configuration of power in the country. As a result, the R-ARCSS ended up with just four provisions relating directly to land issues.³⁹ Nonetheless, as discussed in greater detail in Section 2.2 below, one of these provisions calling for the Revitalized Transitional Government of National Unity to review land law and policy in South Sudan opened opportunities for progress to be made on a National Land Policy that has been under development for more than a decade.

The way in which land issues were addressed sheds light on the potential complementarity between bottom-up processes such as the National Dialogue and top-down processes such as the IGAD peace talks. While peace talks among the elite may have advantages in terms of securing quick agreements among key actors that can help contain violence, they can also overlook issues of critical importance to the broader population. The challenge for policymakers now is to use the processes that have been set in motion by the two initiatives, including the constitutional development program, changes to law and policy provided for in the R-ARCSS, and the implementation mechanism for the outcomes of the National Dialogue, to generate greater consensus around key land issues and build a more coherent and comprehensive plan for managing land as an integral component of post-conflict stabilisation efforts moving forward.

³⁷ Communiqué, The Equatoria Regional Conference, 26–31 August 2019, available at <https://paanluwel2011.files.wordpress.com/2019/08/the-national-dialogue-initiative-final-communicue-from-the-equatoria-regional-conference-in-juba-26-august-2019.pdf>; Communiqué, The Bahr el Ghazal Regional Conference, 24 February to 2 March, available at <https://www.ssnationaldialogue.info/resource/communiquue-bahr-el-ghazal-regional-conference/>; Communiqué, The Upper Nile Regional Conference, Juba, South Sudan, 20–25 May 2019, available at <https://www.ssnationaldialogue.info/resource/communiquue-upper-nile-regional-conference/>. A subsequent report by the National Dialogue on South Sudan land policy and administration took the somewhat equivocal position that “a sound land policy in South Sudan must vest land ownership neither in the community nor government but rather in the people,” before going on to say that public opinion, which favoured community landownership, should not be ignored. See National Conference Recommendations: South Sudan Land Policy and Administration, National Dialogue Steering Committee (Mar. 2020), p. 21, available at <https://www.ssnationaldialogue.info/wp-content/uploads/South-Sudan-Land-Policy-and-Administration-Final-Version.pdf>.

³⁸ South Sudan National Dialogue, *Communiqué, National Conference, Juba, South Sudan 3rd – 17th November 2020* (on file with author).

³⁹ R-ARCSS, Ch. IV, Art. 4.8.2.1.

2.2 National Land Policy

The South Sudan Land Commission (SSLC) first started work on the National Land Policy in 2006 shortly after the signing of the Comprehensive Peace Agreement (CPA), in collaboration with a Land Policy Steering Committee that included representatives of 13 ministries, commissions, and boards. Despite early disagreements over whether the Land Policy or Land Act should come first, the SSLC and the Legislative Assembly moved ahead with the adoption of the Land Act in 2009 while the National Land Policy was still in its formative stages. The idea was to fill the legislative vacuum and amend the Land Act if necessary once the Policy was in place.⁴⁰

However, due in part to the political sensitivity of land issues, the National Land Policy was not submitted to the Council of Ministers until 2013. It was tabled for a first reading at the Legislative Assembly in June 2014, but the process stalled thereafter. In 2017 the Standing Specialized Committee on Lands and Physical Infrastructure (Parliamentary Land Committee) initiated a study to determine the status of the Land Policy and identify opportunities to move forward with its adoption. The study concluded that the lapse in legislative process could not be attributed to any single factor, but that significant changes to the composition and membership of the Legislative Assembly and introduction of “other new policies which preceded the land policy in adoption by the Assembly” demonstrated the need to review and reintroduce the Land Policy to members of parliament.⁴¹

The Parliamentary Land Committee brought in technical experts to review the draft land policy, propose areas in which it could be strengthened to better address contemporary challenges, and facilitate discussions with

members of parliament and other stakeholders with a view towards adopting a revised Land Policy, as required by the R-ARCSS.⁴² This review of the Land Policy was prompted in part by the establishment of a technical working group on HLP issues chaired by the United Nations High Commissioner for Refugees and with representation from a range of UN agencies, NGOs, and government institutions. The Ministry of Humanitarian Affairs was also in the process of developing a Protection and Assistance to Internally Displaced Persons Act, which provides specific protections relating to HLP rights. Just as the National Land Policy was due to be tabled before parliament in 2020, the Ministry of Lands asked that it be withdrawn so they could conduct further review of the document.

As drawn out and convoluted as the development of the National Land Policy has been, it has nonetheless created space for important discussions about land to take place. The outbreak of conflict in 2013 after billions of dollars had been invested into state and nation-building efforts in South Sudan has generated considerable scepticism among policymakers about efforts to develop law and policy frameworks for a state that appears unwilling or unable to implement them. However, in the long-term, these processes create spaces for people to discuss contentious issues such as community landownership, the restitution of land to displaced populations, and the government's right to expropriate land rights in the interest of urban development, in a context where civic space is severely limited.

⁴⁰ The Land Act was promptly shelved after its enactment, and for several years thereafter, government institutions responsible for implementation were not even able to obtain copies.

⁴¹ The “other new policies” included the Agriculture Sector Policy Framework (2012), Forestry Policy (2015), National Environment Policy (2015), National Fisheries Policy (2017), and Draft Livestock Development Policy (2019).

⁴² The author and another international expert served as technical experts in this process.

Conclusion

Contests over land in South Sudan play themselves out at various levels. At the most basic level, armed groups are fighting for control of territory. But they are also fighting for control of land governance, or the power and authority to make decisions about how people own, manage, and use land. More generally, differences among groups over fundamental issues, such as how landownership is to be defined, further complicate the issue. Several spaces have been established in recent years to discuss these difficult issues, but it is challenging to envision a government as fractured as that of South Sudan balancing the various interests at play and putting forward a unified position without sustained pressure from its citizens and robust support from international partners.

This paper has sought to illustrate some of the ways that land issues interact with the conflict in South Sudan. Even if land issues were not a proximate cause of the outbreak of violence in December 2013, they have now become deeply intertwined with the conflict. With the PoC sites transitioning into IDP settlements under the responsibility of the government of South Sudan, it is likely that IDPs will increasingly begin returning to their homes. In the absence of a coherent plan to deal with the many HLP issues the conflict has left in its wake, this is likely to be a chaotic process, as it was after the signing of the CPA in 2005. Among the initiatives that policymakers could consider supporting to develop more effective and equitable land governance systems moving forward are the following:

- Streamlining HLP – As mentioned above, several pilot initiatives are underway to incorporate HLP issues into the humanitarian response. These

efforts need to be upscaled to mount a response that is commensurate with the scale of the problem. If policymakers are caught on their backfoot, as they were after the signing of the CPA, tensions over land could undermine efforts to secure a sustainable solution to the conflict. Any HLP programming must be based on a solid understanding of the local context, political dynamics, and historical trends to ensure it does not inadvertently entrench tensions among groups.

- Legislative development – Once established, the Revitalized National Legislature should expedite efforts to adopt the National Land Policy and the Protection and Assistance to Internally Displaced Persons Act to provide a framework for addressing the HLP issues that have arisen from current and past conflicts. The legislation should include implementation plans that are realistically costed, and relevant governmental and non-governmental stakeholders should be supported to conduct public outreach and civic engagement efforts to raise awareness about the new laws.
- Emergency measures – Policymakers should consider emergency measures that may be necessary to address priority land issues in the current context. Such measures may include temporary freezes on land registration processes in parts of the country, the establishment of dispute resolution mechanisms that are adequately backstopped by justice and security actors to address instances of land grabbing by military actors, or the financing of reconstruction efforts in areas where people's homes were destroyed during the conflict. As the

legislature works towards establishing a legal framework for these initiatives, they can be initiated through executive orders.

- Citizen dialogue – The Government of South Sudan and its international partners should invest more into creating space for dialogue around land issues where they intersect with conflict in South Sudan. The discussions taking place in the context of the National Dialogue, the IGAD peace talks, and the development of the National Land Policy provide some entry points, but much more needs to be done. As the examples provided in this paper demonstrate, land issues are tremendously complex and difficult to resolve. Mutually agreeable outcomes are only possible through a process of dialogue and negotiation against a backdrop of agreed upon principles and rules. The state has an important role to play in creating space for these discussions to take place.



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