

SOUTH SUDAN

FOOD SECURITY AND LAND GOVERNANCE FACTSHEET

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ABSTRACT

In South Sudan, food security highly depends on secure access to land and water, whether rain-fed or irrigated. Currently, most farmers (essentially pastoralists) rely on customary tenure systems. Local customary institutions often deal with conflicts due to competing land uses and need to be strengthened for more effective dispute resolutions. However, these institutions have become stretched by violence, insecurity and refugees/ IDP resettlement. As a result, farming communities have been destabilized and denied the opportunity to cultivate their crops. Land is also a contentious issue for its mineral resources, as oil represents the biggest engine for development. Overall, there is a political interest to attract foreign investors and large-scale land acquisitions are on-going. But, these processes lack transparency and may lead to more conflict over water and land in the near future. Only independent since 2011, South Sudan is currently building its institutions; the coordination between central and local governments is still weak. In a tense post-conflict context, new legislation has been rapidly developed, which recognizes customary systems. However, implementation remains slow.





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About IS Academy on Land Governance for Equitable and Sustainable Development

LANDac, the IS Academy on Land Governance for Equitable and Sustainable Development, aims at bringing together researchers, policy makers and practitioners in the field of land governance and development. It is a partnership between several Dutch organisations and their Southern partners involved in development-related research, policy and practice. LANDac is one of the IS Academies for International Cooperation sponsored by the Netherlands Ministry of Foreign Affairs.

About KIT

The Royal Tropical Institute (KIT) in Amsterdam is an independent centre of knowledge and expertise in the areas of international and intercultural cooperation, operating at the interface between theory and practice and between policy and implementation. The Institute contributes to sustainable development, poverty alleviation and cultural preservation and exchange.

Country expert contribution:

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1 POLICY AND LEGISLATION

1.1 Regulatory land governance framework

By 2013, the Government of Southern Sudan (GOSS) aims to develop, distribute and implement a land policy and respective legislation. The work of Southern Sudan Land Commission, established in 2006, is integrated in the Natural Resource Sector Plan for 2011-2013. Programme 4 of the action plan concerns land management.

The Southern Sudan Land Commission (SSLC) drafted the Land Act that was passed by Parliament in 2009. SSLC is now working on implementation and developing a land policy as well as the central and local institutions necessary to govern and administer land rights, which is required for implementation of the Land act. Other priorities are strengthening of women’s rights on land ownership.

For the development of a land policy, state land policy consultation took place in 2010 in all 10 States of Southern Sudan. A draft land policy is available since February 2011. In this draft version, access to land is identified as a ‘social rights’ and there is support for community ownership. Other key pieces of legislation affecting land governance are the local governance Act (2009) and the investment promotion Act (2009) (Deng, 2011).

Law	Content
The 2009 Land Act	<p>All land is owned by the people of southern Sudan, and the GOSS is responsible for regulating use of the land.</p> <p>Provides for the registration of land in southern Sudan; all land, whether held individually or collectively, shall be registered and title granted.</p> <p>The Land Act classifies land as public, community, or private land.</p> <p>Public land is land owned collectively by the people of southern Sudan and held in trust by the GOSS. Public land includes land used by government offices, roads, rivers and lakes for which no customary ownership is established, and land acquired for public use or investment.</p> <p>Community land is land held, managed, or used by communities based on ethnicity, residence, or interest. Community land can include land registered in the name of a community, land transferred to a specific community, and land held, managed, or used by a community.</p> <p>Private land includes registered freehold land, leasehold land, and any other land declared by law as private land</p>
The 2009 Local Government Act	<p>Calls for a local government council, established at the county level, to be the primary institution managing land issues within rural communities</p> <p>calls for land committees, within the local government council, to be responsible for the “mediation of consultation processes of land lease between the community and other investors</p>
The 2009 Investment Promotion Act	<p>Act lays out the procedures for certifying and licensing foreign investors to operate in South Sudan</p> <p>explicitly limits foreign investments in agriculture and forestry to renewable terms of 30 and 60 years, respectively</p>

1.2 Land tenure forms

After the Comprehensive Peace Agreement new long-term leases over community lands were issued by the authorities to commercial interests and well-connected individuals without consulting local populations or obtaining their consent. By default, land over which no private ownership including customary ownership is established is declared public (GOSS, 2011).

The current 2009 Land Act protects customary land rights in southern Sudan and expressly requires consultation with communities in the area of land acquired for investment (Pantuliano 2007; GOSS 2009a). In practice however, community consultation has been lacking or was poorly conducted.

Type	Characteristics
Customary	<ul style="list-style-type: none"> • Covers most of rural areas. • Is used for residences, agricultural, forestry, and grazing. • May be granted for life to the landholder and are inheritable. • Can be subject to usufruct rights and sharecropper agreements but cannot be alienated. • Allocated by traditional authorities subject to pre-notification of local government authorities and pre-approval of local government authorities for non-residential land over 250 feddans (about 105 hectares)
Private	Held in perpetuity and includes the right to transfer and dispose of the land.
Public	<ul style="list-style-type: none"> • Land pertaining to the State, including roads and other public transportation thoroughfares; watercourses over which community ownership cannot be established; and forest and wildlife areas formally labeled as national reserves or parks. • By default, land over which no private ownership including customary ownership is established is declared public.
Leasehold	Leaseholds can be obtained for customary and freehold land. Leases can be granted for periods of 99 years or less. Leases of more than 105 hectares of customary land must be approved by two local government bodies.

1.3 Institutional framework

Customary land tenure systems are dominant and the point of departure of the GOSS 2009 Land Act. Customary rights are recognized as equal to formal land rights in force and effect. These systems vary throughout South Sudan, such as pastoralists dominated tenure in the North, semi-feudal systems close to the Nile, and other different practices amongst southern and western tribes. Overall, land is vested in a tribe or clan and cannot be sold to outsiders; use-rights are retained by a household and can be inherited. Tenure systems for land (residence, farming) and natural resources (grazing, hunting) are distinct. Local authorities determine who has rights to land and other natural resources and who must seek permission for use (Rahhal and Salam 2006; Jok et al. 2004; Rolandsen 2009).

The management of (rural) land allocation may rest with customary institutions. This authority of traditional leaders (subject to oversight by local government) is sanctioned by the 2009 Land Act, provided that customary land rights held by individuals or groups prior to the enactment of the Land Act are recognized. In such cases community members have a right to access land to use for a residence and farming whereas traditional leaders have the authority to allocate land to members of the community (GOSS 2009a; De Wit 2004; Bruce 1998; Shanmugaratnam 2008).

New land administration systems and laws are developed by the SSCL and other institutions; notably by the Ministry of Legal Affairs and Constitutional Development (MOLACD) and the Land Policy Steering Committee (Pantuliano 2007; Rolandsen 2009; UNMIS 2010; ARD 2009b; EVD et al. 2009; Giampaoli 2010).

These new local-level land institutions include County Land Authorities and Payam Land Councils. However, there are no clear procedures for establishing such institutions and few

have been established to date. Local Government Councils are responsible for planning and allotment of all Local Government Council land, leading the acquisition of land for government use, regulation of seasonal access to land (pastoralists, agriculturalists, etc.), establishment of Council Land Committees or Authorities and undertaking land management.

The Land Policy proposes that the Community Land Act provides for the establishment of County Land Authorities and Payam Land Councils. These are envisaged as civic authorities, established and empowered by law and subject to various regulations and that would act as trustees and administrators of community land rights. Traditional authorities may serve on Land Authorities and Land Councils, including in the role of Chair. But importantly, the trusteeship and administrative responsibilities over community land should be legally vested in the Land Authorities and Councils, and not in traditional authorities.

There has been considerable conflict between county, payam officials and residents over boundaries between counties and between payams. Disputes are widespread, contributing to insecurity and in some cases the delay of investment and development. Authorities at appropriate levels need to be empowered and assisted to mediate boundary disputes and adjudicate boundary determination fairly and accurately.

The registration of land by communities (group rights) can be done in the name a traditional leader, a clan or family, or a community association as trustee for the community. Individual community members may be entitled to register individual rights to certain portions of community land once registered, (GOSS 2009a).

1.4 Gender

Though the GOSS 2009 Land Act states that women shall have the right to own and inherit land together with any heirs of the deceased, women's land rights are at present highly insecure (De Wit 2004; Pantuliano 2007; GOSS 2009a). Obstacles abound for widowed women when trying to claim inherited leasehold rights from the government. Reliance on customary law might marginalize women because customary tenure systems offer only indirect rights to land (USAID, 2010). During the consultations for the new land policy in 2010, special workshops on improving women's access to land and property were organized.

1.5 Foreign direct investment

Foreigners cannot own land in southern Sudan but can lease land for periods up to 99 years (GOSS 2009a; Rolandsen 2009). For agricultural investments, leases are up to 30-years and renewable, for forestry this period is up to 60-years renewable. Prior to a lease a consultation with affected communities is required and an environmental impact assessment.

Although the 2009 Investment Promotion Act explicitly limits foreign investments in agriculture and forestry to renewable terms of 30 and 60 years, respectively, many government institutions are not aware of this restriction and continue to issue 99-year leases to foreign investors for agriculture and forestry investments (Oakland Institute, 2011).

The size of large-scale investments in agriculture varies between studies. Deng (2011) identifies 10 cases, four in agriculture and six in forestry/carbon credit that are being negotiated or completed between 2007 and 2010. Nine of these cases cover about 450.00 ha in total, and the 10th deal is about 1 million hectares (Deng, 2011). According to the Oakland Institute (2011), the extent is much larger as deal or negotiation over large-scale investments would cover 5.15 million hectares (ha) of land, more than 8% of the country. The reality is still difficult to assess as these investments are not yet operational. It is argued that these investments are made on doubtful legal footing and may contribute to conflict (Deng, 2011).

In South Sudan, the military, land speculators, and elites have taken land without regard for customary rights. However, land grabbing is identified as a problem in the draft land policy (Deng, 2011).

2 INTEGRATED WATER MANAGEMENT

2.1 Policy framework

Water policy in South Sudan	
The Southern Sudan Water Policy of December 2007	<p>Provides that access to sufficient water of an acceptable quality to meet basic human needs is a human right.</p> <p>The right to water shall be given the highest priority in the development of water resources</p> <p>Rural communities shall participate in the development and management of water schemes.</p> <p>The involvement of NGOs and the private sector in water projects shall be encouraged.</p>

(GOSS 2009b).

The South Sudan Water Policy was passed in December 2007 and provides for the establishment of institutions at the central, state and county level, development of sub-sector strategies for rural water supply, urban water supply and water resources management, establishment of Budget Sector Working Groups, and creation of sector coordination mechanisms (GOSS 2009b).

South Sudan is a member of the Nile Basin Initiative. South Sudan’s use of water in the Nile Basin is subject to international agreements and obligations related to this membership (UNDP 2006; Adams et al. 2006; NBI 2009).

Forests, significant for watersheds in South Sudan, are subject to a 2007 Forest Policy developed by the Ministry of Agriculture and Forestry.

2.2 Institutional framework around Integrated Water Resource Management

Southern Sudan has opportunities for expanding irrigation schemes, but which requires investment in infrastructure.

The overall leadership in the GOSS water sector is with the Ministry of Water Resources and Irrigation (MWRI), which has a range of responsibilities related to overall strategy development around integrated management of water resources, drinking water, irrigation, and overseeing the operation of the Water Corporation of Southern Sudan (WCSS). In 2011, the Ministry of Dams and Bridges was created to supervise the construction of dams and the production of hydro-power. At local level, it is expected that local communities will manage and ensure the maintenance of constructed water supplies. Projects to reduce flooding, construct water harvesting facilities, rehabilitate and construct rural water supply and sanitation facilities, provide rehabilitation and management of irrigation facilities are planned (GOSS 2009b).

3 REALITIES ON THE GROUND

Farming communities have been destabilized by continuing violence and insecurity in some States - denying them the opportunity to cultivate their crops. Unclear land tenure systems often spark conflicts especially among livestock herders and sedentary farmers consequently reducing agricultural production (USAID, 2010). Local **customary institutions** often deal with conflicts due to competing land uses and over land rights and land allocation. It is important to

strengthen local and traditional conflict resolution bodies for alternative dispute resolution and the participatory approach for natural resource management.

A major challenge to effective land policy is the continuing **violence and insecurity** in several regions of Southern Sudan. As a result, a large numbers of **IDPs** are unable to return to their place of origin because of the political conflict and occupation by newcomers. In areas housing IDPs and refugees, the scale and complexity of the problems cause severe stress to customary institutions (Noragric/ Shanmugaratnam, 2010). New friction can come from the return or resettlement of IDPs, which can turn into ethnic conflicts.

South Sudan is a new country with new institutions that have inherited land governance issues scarred by a long civil war. Though legislation is being produced, implementation is still largely absent. In many cases, the new institutions have been slow to develop and often **lack clear mandates, regulatory frameworks, necessary levels of funding, and the human capacity** for their own establishment and effective operation (World Bank 2007; Rolandsen 2009; Giampaoli 2010). The **communication** channels between GoSS and the States have not been clearly charted out, resulting in limited information flow.

Land grabbing is regarded a problem. Large-scale land acquisitions by foreign investors are taking place but actual investments have not yet been realised. The process of negotiation is marked by lack of transparency and may lead to more conflict over land and water. **Reversing land-grabs** committed in the transitional period and ensure community consent for development schemes is important for peace building.

4 RESOURCES AND OTHER INFORMATION

4.1 Related country profiles

- USAID (Sudan): <http://usaidlandtenure.net/usaidltpproducts/country-profiles/sudan/>
- FAO (Sudan): <http://www.fao.org/countryprofiles/index.asp?lang=en&ISO3=SDN>
- FAO/Gender: <http://www.fao.org/gender/landrights/report/en/>
- IMF: <http://www.imf.org/external/country/SSD/index.htm>
- World Bank: <http://www.worldbank.org/en/country/southsudan>

4.2 Laws, policy and regulations search engines

- FAO Lex (Land & NR search engine): <http://faolex.fao.org/faolex/index.htm>
- Water Lex (Water laws search engine): <http://faolex.fao.org/faolex/waterlex.htm>

4.3 Maps and databases

- Land and soils databases/information systems: <http://www.fao.org/nr/land/databasesinformation-systems/en/>
- Water database/information systems: http://www.fao.org/nr/water/infores_databases.html
- Land and water maps and graphs: <http://www.fao.org/nr/solaw/maps-and-graphs/en/>
http://www.fao.org/nr/water/infores_maps.html

4.4 Portals and other resources

- http://landportal.info/search/apachesolr_search/south%20sudan

4.5 Donor support programs

- The SSLC is supported by USAID.
- The World Bank is planning to implement a land governance assessment framework.

- Other development partners also support the dissemination of the Southern Sudan Land Act and trainings on effective land management.
- Among others, the Norwegian People's Aid (NPA) is among the most active to disseminate the Land Act and other information perceived as relevant for local communities.

4.6 Civil society organizations working on land governance

No members of International Land Coalition from South Sudan

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