



Housing, Land and Property (HLP) Challenges in South Sudan January 2021

Housing, Land and Property (HLP) rights including reclamation, restitution and reconstruction continue to be a crucial issue in South Sudan. To achieve durable solutions for those affected by the conflict significant effort will be required to ensure that they are effectively addressed. South Sudan is not yet conducive for mass scale returns, however with the signing of R-TGoNU in February 2020, an increase in spontaneous returns has been recorded, alongside a corresponding increase in HLP issues. Equitable access to HLP remains a pivotal requirement for peacebuilding and recovery in post-conflict South Sudan. Inter-communal land and resource conflicts rooted in access, ownership and usage threaten peacebuilding and stabilization efforts. Development of land tenure policy, review of associated legal frameworks, and installation and operationalizing of land administration structures at sub-national levels are all important post-conflict priorities that are essential to identifying durable solutions in resettling IDPs and refugees, and ex-combatants. Securing HLP rights that enable livelihoods and addressing HLP grievances/disputes will also contribute to establishing the rule of law, which in turn produces conducive environments for returns, investment, poverty reduction and development.

Attention to HLP issues by the highest levels of South Sudanese authorities and the Humanitarian Country Team (HCT) demonstrates the commitment of the Government to fulfil its responsibilities and that of the international community in terms of playing a supporting role. This covers activities aimed at creating a conducive environment for returns and includes responses to HLP issues that mitigate the potential for returns to exacerbate tensions over scarce resources. It also establishes mechanisms to identify legal and/or community-based solutions to resolve HLP disputes.

There are numerous issues that continue to undermine the full realisation of HLP rights for the people of South Sudan and HLP is recognized as a growing key protection concern across the country. The COVID-19 pandemic has exacerbated some of the risks associated with HLP issues in several areas of the country. The process of redesignating PoC sites into IDP camps, i.e. transferring responsibility from UNMISS to the Government of South Sudan, has created further risks associated with HLP issues, including issues regarding established IDP camps. Voluntary return and relocation for IDPs faces multiple issues connected to both HLP rights and wider security. The HLP Technical Working Group (HLP TWG) strives to ensure the integration of HLP rights and concerns in humanitarian responses, and to ensure that key affected populations are supported. This note summarizes the key HLP challenges in South Sudan and provides recommendations for various stakeholders to better inform advocacy and programming.

Key HLP Challenges

Weak land administration and dispute resolution mechanisms – The lack of availability and inefficiency of land administration services and mechanisms to address disputes at National and State levels (including at County, Payam, and Boma levels) results in difficulties related to securing land documentation and resolving land disputes. Most formal implementing institutions provided for in the 2009 Land Act and in the Draft Land Policy (yet to be adopted), have not been established and related laws have been disseminated in only a limited way. Government officials at the state level lack awareness, training and capacity on how to implement the laws. Absence of active land administration institutions, lack of awareness and capacity for implementation of land laws at the subnational levels make it especially challenging for rural communities to access HLP related services. Customary courts are often tasked with resolving land disputes however customary court members also often lack understanding of legislation required to pass fair judgement.

Discriminatory dispute resolution mechanisms: Customary courts and government officials are addressing land disputes with limited awareness of/support from related legislative or administrative bodies. Discriminatory rulings are reportedly passed with little consultation or opportunities to contest.

Financial burden of proving land ownership: In various locations in order to secure land ownership individuals must pay for a land survey. The cost of a land survey can be prohibitive, particularly for recent returnees. In some cases, the individual that is able to pay for the land survey first has a greater chance of securing land ownership, as opposed to processes that support decisions made based on rightful ownership.

Lack of legislation implementation: This increases the risk for breach of HLP rights. The weak efficacy and fairness on the applicability of the plural land regime, which allows the co-existence of statutory and customary land tenure regimes, may undermine HLP rights, particularly those of vulnerable groups as women, child-headed households, the elderly, amongst others. The ongoing delay in the approval of the National Land Policy, under development since 2006, undermines filling gaps in HLP related legal frameworks that draw from the Land Policy. The legal insecurity weakens the ability of HLP agencies to respond appropriately at the field and national level.

Registration and documentation: The absence of a harmonized and coherent national land registration and documentation system contributes to the increase in land disputes and hinders the resolution of disputes. The current registry is outdated and lacks capacity to handle the number of cases. Without a harmonized system, different systems of registration have emerged at Peri-urban, state and sub national levels, leading to confusion and contested claims. Given this situation, the system is open to exploitation and as such private landowners have been able to rent or sell their land and properties to multiple parties thereby creating disputes.

Potential increase in HLP disputes in areas of return and relocation of IDPs and refugee returnees: The full scale of HLP issues across areas of South Sudan has not yet fully materialized given the scale of returns in comparison with the displaced population. However, with the gradual improvements in stability and implementation of the peace agreement this is likely to change. Many IDPs and refugee returnees are reported to have had their houses and lands destroyed or occupied, which will likely lead to an increase in HLP disputes in these areas. Due to the lack of dispute mechanisms in place, the risk of escalation of disputes is concerning and may result in outbreaks of violence.

Sensitivity of HLP issues: Discussion about land is still sensitive in parts of the country and must be appropriately contextualized in each location. The sensitivities create barriers to fully resolve disputes and increases the risk of the use of violence for dispute resolution.

Complexity of HLP issues: Addressing HLP issues requires a complex combination of legal, shelter, and other solutions focused assistance which is rarely available across South Sudan. The realization of HLP rights is cross-cutting and requires multi-sectoral approaches. Limited funding and short-term funding cycles undermine the implementation of comprehensive activities for addressing HLP issues. This is particularly problematic in a context such as South Sudan where documentation to prove ownership of HLP is rarely available and long-standing disputes over HLP, both at the individual and community level, are common.

COVID-19 and risk of forced evictions: COVID-19 presents increased risk of forced evictions and related HLP disputes due to premature returns from displacement sites, and increased complexity in coordinating and advocating on HLP issues. Reduced income as a result of COVID-19 border closures and reduced trade leading to failure to pay rent, could lead to forced evictions in a number of instances, particularly in urban areas such as Juba. With the recognised increased risk of COVID-19 in congested locations, South Sudanese refugees in neighbouring counties and IDPs living in PoCs or other displacement sites may try to return or relocate to less congested areas. Households choosing to leave displacement sites due to an increased risk of COVID-19 are therefore likely to either return to areas of origin or habitual residence, or choose to relocate to a third location, prematurely. In a number of instances, this is likely to mean households arrive to

areas with no HLP, with destroyed HLP, or with others occupying their HLP. Given the restrictive measures on movement due to COVID-19 situation and especial sanitation and health protocols to be followed by humanitarian agencies, this also means full HLP assessments or other activities will not be always possible.

Barriers to women's land rights: The realization of women's HLP rights remains far from being achieved in South Sudan. Women are especially affected because of cultural and social norms that hinder women's access to HLP related rights. These norms prohibit women and girls from owning or inheriting HLP. Widows and separated/divorced women are often particularly vulnerable because they may not be documented as heads of households with land tenure rights, thus being subjected to forced marriages or obligated to stay in violent domestic situations in order to maintain access to HLP. Despite progressive improvements in related legislation, the lack of implementation of laws and commitment from government structures to uphold laws undermines the legal provisions. This legal pluralism leads to women's statutory rights not being applicable in customary tenure.

Next steps and recommendations for the HLP Technical Working Group

- Support the development of progressive and nuanced national-level legislation, including continuous advocacy for the review and adoption of the Draft Land Policy and the review of HLP related legal frameworks. As deemed necessary, the HLP TWG should support advocacy at a national level through various methods and is already working on key areas such as prevention of forced eviction.
- Support the newly established National and State level Task Forces on Solutions with their advocacy at National and State levels on HLP issues and in supporting HLP solutions for those returning home spontaneously.
- Consolidate and disseminate most useful/relevant tools and data collection frameworks, in addition to compiling and discussing best practices implemented by members.
- Strengthen awareness raising activities, including among IDPs, refugee returnees and host communities, on HLP-related issues in light of the possible increase of HLP issues with the returns and relocations of IDPs and refugee returnees.
- As part of protection monitoring, HLP monitoring should be included in all assessments, ensuring partners continue documenting issues and referring as needed to the Protection Cluster and HLP TWG.
- Legal assistance remains a key activity requiring ongoing expansion and implementation across the country. While access to public institutions such as courts and Land Committees as well as other administration offices may be fully or partially disrupted at this time, legal assistance services should be maintained whenever possible.
- Capacity building support to customary court bodies should be undertaken to support rulings in line with relevant legal frameworks.
- Support agencies on HLP considerations in light of COVID-19 by providing short, accessible guidance notes, communication messages, and tailored support as needed.
- Referral pathways should be developed between the Protection Cluster and S/NFI cluster for the referral of damaged shelters, especially for persons with special protection concerns affected, but also with the other clusters, where HLP is cross cutting issue, like WASH, Health, Education.
- Integration should be achieved with the National and State Level Task Forces on Solutions established by the MHADM and RRC to operationalize the Framework and Action Plan on Return, Reintegration and Relocation of Displaced Persons.
- Support HLP and shelter actors with rigorous awareness raising on and adherence to due diligence guidelines and the do no harm principle.
- Support advocacy for the restructuring and alignment of customary and statutory land regimes to ensure that HLP rights of vulnerable groups (women/widows/divorced, child/youth-headed households, etc.) are protected.