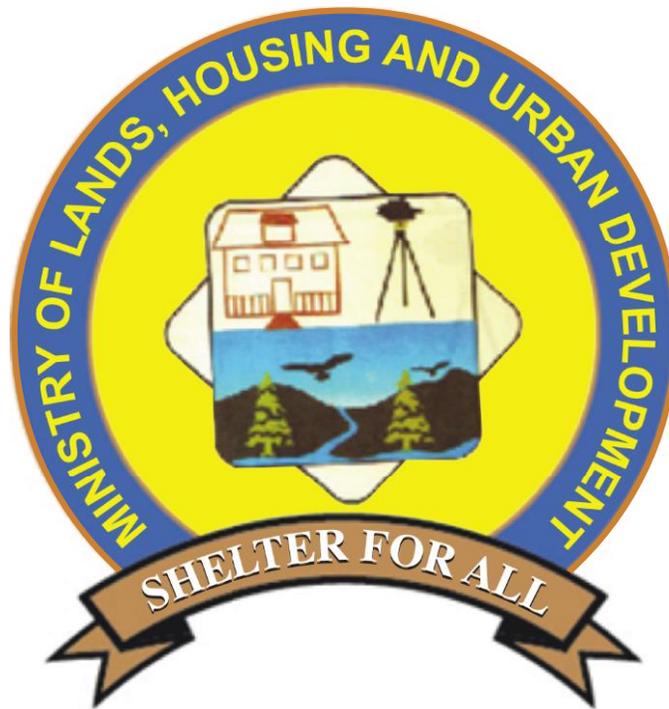


REPUBLIC OF SOUTH SUDAN
MINISTRY OF LANDS, HOUSING AND
URBAN DEVELOPMENT
(MLHUD)



Draft National Land Policy
23 April 2023

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ACRONMYS AND ABBREVIATIONS

AfDB	African Development Bank
ARCSS	Agreement on the Resolution of the Conflict in the Republic of South Sudan
AU	African Union
AUBP	African Union Border Program
CPA	Comprehensive Peace Agreement
F&G	Framework and Guidelines on Land Policy in Africa
GDP	Gross Domestic Product
GOSS	Government of South Sudan
GRSS	Government of the Republic of South Sudan
IDPs	Internally Displaced Persons
FAO	Food and Agriculture Organization of the United Nations
LIS	Land Information System
MLHPP	Ministry of Lands, Housing and Physical Planning
MLHUD	Ministry of Lands, Housing and Urban Development
NAP	National Adaptation Plan
NAPA	National Adaptation Programme of Action
NBSAP	National Biodiversity Strategy and Action Plan
NSAs	Non-State Actors
R-ARCSS	Revitalized Agreement on the Resolution of the Conflict in the Republic of South Sudan
SDGs	Sustainable Development Goals
SSLC	South Sudan Land Commission
SSNDS	South Sudan National Development Strategy
TCSS	Transitional Constitution of South Sudan
TNLA	Transitional National Legislative Assembly
UN	United Nations
UNMISS	United Nations Mission in South Sudan
UNEP	United Nations Environment Programme
UNFCCC	United Nations Framework Convention on Climate Change
VGGT	Voluntary Guidelines on Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security

GLOSSARY OF TERMS

- Boundary** - either the physical objects for marking the limits of a property or line or surface marking where an area ends and another begins.
- Community** - a clearly defined group of users of land, usually a clan or ethnic community, with clearly defined rights and obligations over land and land-based resources.
- Corruption** - any act or omission by any person involving dishonesty or lack of integrity in land and property rights or otherwise making a decision thereon, and includes bribery, fraud, embezzlement or misappropriation of public funds, abuse of office and breach of trust.
- Customary land rights** - rights conferred by or derived from African customary law as practised by ethnic communities in South Sudan, whether formally recognized by legislation or not.
- Eminent domain** - the power of the Government or its agent to expropriate private property for public use, with payment of compensation.
- Fragile Ecosystems** - ecosystems that are key to the survival and sustainability of flora and fauna and include forests, arid and semi-arid lands, water bodies, wetlands and all areas hosting threatened biodiversity.
- Informal settlements** – settlements that emerge and are established informally and not in compliance with physical and land use planning requirements.
- Land administration** – the process of determining, recording and disseminating information about ownership, value and use of land when implementing land policies.
- Land-based resources** - the physical, biotic, environmental, infrastructural and socio-economic components of a natural land unit, including surface and near-surface freshwater resources.
- Land management** - implementation of goals and mechanisms to influence land use with a view to achieving desired policy objectives.
- Land tenure** - mode of holding and exercising rights in land, system of access to and control over land and related resources, or the set of relationships among people concerning land or its use.
- Peri-urban** - areas lying at the interface between designated urban boundaries and contiguous rural areas.
- Restitution** - restoration of individuals or communities to areas from which they were unfairly removed or evicted.
- Spousal property** - land rights acquired by parties to a marriage during the subsistence of their marriage.
- Subterranean resources** - natural resources that occur below the surface of the earth, including minerals, oil and gas.

Tenure security - degree of confidence held by holders of rights to land that they will not be arbitrarily deprived of their rights or the benefits deriving therefrom.

Wetlands - areas where water covers the soil, or is present either at or near the surface of the soil all year or for varying periods of time during the year, including during the growing season¹.

¹ <https://www.epa.gov/wetlands/what-wetland>

EXECUTIVE SUMMARY

The Government of the Republic of South Sudan has developed this National Land Policy to establish a sustainable framework for allocating and protecting collective and individual land rights for all the people of South Sudan. The policy articulates principles, structures, and processes for access and ownership, control, administration, use and sustainable management of land to meet core national governance and development objectives. It sets out principles of land governance, identifies priority land issues and challenges, articulates policy options and strategies, sets up the institutional framework and defines roles, responsibilities and interactions to enhance responsible land governance that will promote tenure security for improved land productivity and sustainable development. Once adopted, the National Land Policy will create the basis for formulation of sector policies to spur sustainable economic development, manage competing imperatives over land and land-based resources, and resolve land-related disputes.

The development of the National Land Policy has involved extensive public consultation and research to identify key land issues and challenges as well as strategies for addressing them. The process has been undertaken with the active participation of policy makers, traditional and religious authorities, national and international stakeholders, and communities all over South Sudan. The initial consultations that started in 2006 under the leadership of the South Sudan Land Commission led to the publication of the first draft of the National Land Policy, which was approved by the Council of Ministers and submitted to the Transitional National Legislative Assembly (TNLA) by the then Minister of Lands, Housing, and Physical Planning in 2014.

Although the legislative process for approval of the National Land Policy fell victim to the disruption that governance systems suffered following the outbreak of internal conflict in 2013, the need for a comprehensive land policy became even more apparent in the efforts to resolve the conflict. Chapter IV of both the Agreement on the Resolution of the Conflict in the Republic of South Sudan (ARCSS) and the Revitalized Agreement on the Resolution of the Conflict in the Republic of South Sudan (R-ARCSS) called for “an in-depth national debate to review the current national land policy and the Land Act, 2008, in order to achieve consensus over land tenure, use, management and address issues of land grabbing, other malpractices involving land, carry out necessary reforms, undertake mapping, and to maximize economic utilization of land in South Sudan”² as an integral part of the peace building process.

With technical support from the Food and Agriculture Organization of the United Nations (FAO) and the United Nations Mission in South Sudan (UNMISS), the MLHUD convened a Technical and Planning Workshop in March 2022 to reflect on strategies for finalization of the National Land Policy. Following the workshop, the Hon. Minister of Lands, Housing and Urban Development constituted a Technical Task Force under the leadership of the Chairperson of SSLC to oversee the process of review, revision and finalization of the Policy document. The Technical Task Force convened and facilitated a Multi-Stakeholders Retreat in Wau between 25th April and 3rd May 2022 which produced and submitted to the Hon. Minister a revised and updated draft of National Land Policy in June 2022.

The MLHUD convened the National Land Policy Validation Workshop in Juba between 6 and 8 September, 2022, attended by major land sector actors from National and State Governments, UN Agencies, Development Partners, the Private Sector, academia, traditional chiefs and Civil Society. The Workshop mandated the MLHUD to convene a final Technical Review Retreat to

² The same wording appears in Article 4.2.1.1 of ARCISS and 4.8.2.1.1 of R-ARCISS

finalize the draft in readiness for presentation to the Council of Ministers. This South Sudan National Land Policy is the output of the Final Technical Review Retreat.

The vision of the National Land Policy is *a self-reliant South Sudan in which land and land-based resources are managed efficiently and sustainably to promote urbanization and national economic development*. The vision is underpinned by recognition of and commitment to upholding: the essence of land for South Sudan and her people; sustainable utilization of land and land-based resources; development control to reconcile competing land uses in an equitable and sustainable manner; diversity of land use and land-based livelihoods; and planned human settlement in both urban and rural areas. The goal and overall objective of the National Land Policy is respectively *to ensure that land and land-based resources are held, used, and managed efficiently, productively and sustainably for poverty reduction, wealth creations and overall socio-economic development to enhance the welfare of the people of South Sudan and to strengthen tenure security over land and land-based resources for individuals and communities as a basis for poverty reduction, wealth creation and sustainable economic development in South Sudan*. The Policy stipulates ten guiding principles that shall underpin the pursuit of the vision, goal and objectives.

The Policy is divided into five chapters. The first chapter provides key baseline information on land, territory and people of South Sudan, explains the historical significance of land and outlines the process followed in developing the National Land Policy. Chapter Two identifies and explains the major land governance issues and challenges in South Sudan that require policy response. Chapter Three presents the National Land Policy Framework consisting of the vision, goal, objectives, and guiding principles. Chapter Four articulates the policy options and strategies to address the policy challenges identified in chapter Two. Chapter Five proposes strategies and actions for implementation of the Policy to realize its objectives.

CHAPTER 1

BACKGROUND TO THE NATIONAL LAND POLICY

1.1. Introduction

Land is crucial in the struggle for political independence, social justice and welfare of the people of South Sudan. Land is a precious the heritage that is vital for the transformation and progress of the present as well as future generations. It consolidates and fortifies the coexisted sociocultural diversity and cherishes a collective identity and national development through its history. Land use and exploration of its natural resources must index great endurance of innocuous development, civilization and growth. Land reforms are fundamental in inaugurating vivacious market economy as well as macroeconomic stabilization.

Thus, the Government of the Republic of South Sudan has developed this National Land Policy to establish a sustainable framework for allocating and protecting collective and individual land rights for all the people of South Sudan. The key function of a land policy is to articulate principles, structures and processes for access and ownership; control, administration, use and sustainable management of land to meet core national governance and development objectives. To this end, the National Land Policy sets out principles of land governance, identifies priority land issues and challenges, articulates policy options and strategies, sets up the institutional framework and defines roles, responsibilities and interactions to enhance responsible land governance that will promote tenure security for improved land productivity and sustainable development. The National Land Policy, once adopted, will create the basis for formulation of sector policies to spur economic development.

1.2. South Sudan: Land, Territory and People

South Sudan is attained statehood in July 2011 upon seceding from the Republic of Sudan following decades of civil war that ended with the signing of the Comprehensive Peace Agreement (CPA) in 2005. It is a large country with a diverse landscape extending over an area of approximately 658,842 sq. kms, its territory is primarily defined by the 1956 land boundaries of the then independent Republic of the Sudan.

The Transitional Constitution of the Republic of South Sudan (TCSS) specifies that the territory of South Sudan encompasses “all lands and air space that constituted the three former Southern

Provinces of Bahr el Ghazal, Equatoria and Upper Nile, in their boundaries as they stood on January 1, 1956; and the Abyei Area, the territory of the nine Ngok Dinka chiefdoms transferred from Bahr el Ghazal Province to Kordofan Province in 1905 as defined by the Abyei Arbitration Tribunal Award of July 2009 in the event that the resolution of the final status of the Abyei Area results in the Area becoming part of the Republic of South Sudan”³.

South Sudan is a land-locked country bordered by Sudan to the north, Ethiopia to the east, Central Africa Republic to the west, Democratic Republic of Congo to the southwest, and Uganda and Kenya to the south. It lies between latitudes 3°N and 13°N, and longitudes 24°E and 36°E.

Although the country’s international borders are known, prolonged political conflict and the absence of effective land administration have adversely impacted on the status of the borders. While it is only the disputes over the border with the Republic of Sudan to the north of the country that is active, there exists challenges of delimitation and demarcation of the international borders between South Sudan and most of her neighbours⁴. In the course of implementing this National Land Policy, the country will take advantage of the African Union Border Programme to demarcate its international borders and settle any disputes where these exist.

The land of South Sudan is not only huge, it is also well endowed with immense agricultural potential and substantial land-based natural resources that include oil, minerals and forest resources. The White Nile traverses the country, flowing from south to north and passing through the cities of Juba, Bor and Malakal. The river forms the Sudd, a vast swamp whose area varies from 30 000 to 40 000 square kms. Hills and mountains occur in the eastern and central parts of the country, while flat lowlands and swamps occur particularly in Upper Nile.

Ecological Zones - South Sudan is divided into seven agro-ecological zones, namely: greenbelt; ironstone plateau; hills and mountains; arid/pastoral; Nile-Sobat Rivers; western flood plains; and eastern flood plains. The agroecological zones are also livelihood zones, as they define livelihood patterns in the respective regions. The country has huge, but largely unrealized potential for agriculture, with estimates showing that up to 33 million hectares of land suitable for agriculture

³ Article 1 of the Transitional Constitution of the Republic of South Sudan, 2011 (as amended)

⁴ Johnson, Douglas H., 2010. *When Boundaries Become Borders: The Impact of Boundary-making in Southern Sudan's Frontier Zones*. London and Nairobi: Rift Valley Institute (RVI)

across six agro-ecological zones. Only four per cent of this land is under cultivation, mainly for subsistence.

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

Population and Density - South Sudan is a multiethnic societies constituting a population estimated at between 11.2 million and 14.8 million. It has one of the lowest population densities in the world at between 13 and 18 people per sq. km. Notwithstanding the country's huge land and natural resources potential, the World Bank estimates that 83 percent of the country's population were living below the poverty line by 2016. Causes of pervasive rural poverty are linked to prolonged conflict, destruction of agricultural value chains and displacement of the productive population⁵. Those who have stayed in rural areas are unable to produce more than for subsistence due to the constraints imposed by conflict and insecurity.

Livelihood - A majority of the population derives their livelihoods from the land, practising subsistence farming, herding, fishing, bee-keeping, hunting and gathering. Farming is practised in the green belt cutting through Equatoria States, while livestock keeping is the main occupation in the more arid regions of Greater Bahr Ghazal and Upper Nile. Secure rights to acquire, access, use, and transfer land and associated productive resources are essential not just for the well-being of families and communities, but also for national economic development.

Climate and Topography - the Climate of South Sudan is tropical with distinct dry and wet seasons, with considerable variation across the country, ranging from a tropical semi-humid climate, characterised by a short rainy season in the north, to tropical wet-dry and rainy climate

⁵ The data in this paragraph is taken from FAO and The World Bank (2022). Transforming Agriculture in South Sudan: From Humanitarian Aid to a Development Oriented Growth Path; and IFAD Country Note 2021-2022

characterised by progressively longer wet seasons in the south. The southern part of the country experiences more rainfall with strong seasonal variations.

The mean annual rainfall also varies from as low as 500 mm in the drier northern areas to as high as 2,260 mm in mountainous areas of Western Equatoria State. There are two broad rainfall regimes in the country, one unimodal and the other bimodal. The unimodal rainfall occurs in the north, with a six-month wet season that runs from May to October. The bimodal rainfall regime occurs in the south, with a seven-eight-month wet season that runs from March/April to October/November, interspersed with a few drier weeks in June-July. Mean temperatures vary from 25 to 30 degrees Celsius during the rainy season and over 40 degrees in some parts of the country during the dry season.

1.3. The Historical Significance of Land in South Sudan

The history of South Sudan has been in many ways shaped by struggles over control of its land and natural resources. A defining feature of that history has been communities' resistance to forces that sought to wrest control of land from their customary institutions and to replace customary norms and structures of land governance with imported regimes. Both the Turko-Egyptian regime of 1821 - 1885 and the Anglo-Egyptian regime of 1898 - 1956 made concerted efforts to intervene in the management of land and natural resources through law, but at the end of each of these periods land continued to be administered under customary law. Even the 1906 Land Ordinance enacted by the Anglo-Egyptian regime declaring all land in the Sudan the property of the government, was only enforced in the major towns of Northern Sudan. Land lying outside these areas remained in the ownership and control of communities through their customary laws and practices.

In 1925, the regime enacted the Land Settlement and Registration Ordinance, declaring land in the Sudan to be 'disputed' and requiring anyone claiming title to any land to submit a claim for settlement and registration. Like the 1906 Land Ordinance, it had little impact on customary land rights, as its application was limited to the land on both sides of the Nile situated between Khartoum and the Sudanese-Egyptian border.

The same fate befell the Prescription and Limitation Ordinance of 1928, which provided that anyone who had occupied a piece of land uninterrupted for a period of ten or more years became entitled to the land by prescription and limitation. The Ordinance was enacted at the same time

with sectoral laws on agriculture, mining, and quarrying. All these laws were equally limited in their reach, applying only to specific land on which the government established agricultural, mining and quarrying projects.

After the independence of the Sudan in 1956, the most significant land legislation was the 1970 Unregistered Land Act. It provided that any land not registered in accordance with the provisions of the 1925 Land Settlement and Registration Ordinance was deemed to belong to the Government of Sudan. The Unregistered Land effectively aimed to dispossess communities of their land, given that they were not registered with the Central Lands Registry in Khartoum.

The law was opposed and challenged by communities, and was never fully implemented. Nevertheless, it was invoked by the government to justify dispossession and displacement of communities in the Nuba Mountains and the Funj Region of Central and South Eastern Sudan from their ancestral lands, which were then sold to unscrupulous multinationals. Community disaffection and grievances over land dispossession would ultimately be a major factor underpinning the civil war between the people of South Sudan and the successive Khartoum regimes.

But even as the civil war raged, the Khartoum government continued to enact laws aimed at taking over control of land from the communities of South Sudan. In 1998, the regime enacted a new law declaring all land in the Sudan to belong to Allah (God) and giving the Islamic State, as the representative of Allah on Earth, the power to dispose of land owned by non-Muslims. But just as with land laws enacted in the past, this law did not change the reality on the ground, as communities in South Sudan continued to govern their land through customary norms, practices and institutional arrangements.

Land was a major point of contention in the negotiations between the SPLM and the Khartoum regime leading to the signing of the CPA. In the Wealth Sharing Protocol, the parties agreed to the formation of two Land Commissions, one at the national level and the other in the South. The Protocol also acknowledged the reality of two different legal systems over land in Sudan, with customary land law applying in the South. The functions specified for the Southern Sudan Land Commission included making recommendations to appropriate levels of government about land reform policies and recognition of customary land rights and/or law.

Struggles over land between communities of South Sudan and formal government throughout the country's pre-independence history have been shaped by contesting visions of land ownership and governance. The Sudanese People's Liberation Movement/Army (SPLM/A) used the mantra of "land belongs to communities"⁶ to rally the population of South Sudan to support the struggle against the Khartoum regime, on the understanding that they were fighting to secure land rights of communities. In the negotiations leading to the signing of the CPA, SPLM/A invoked the same mantra to resist inclusion of detailed provisions on land governance in the Wealth Sharing Protocol. The Protocol confirmed this position by stipulating that "regulation of land tenure, usage and exercise of rights in land is to be a concurrent competency exercised at the appropriate levels of government"⁷.

Throughout the civil war, the leadership of the SPLM/A committed to abrogate the policies, laws and practices of the Khartoum regime on land and natural resources, which were deliberately designed to marginalize communities from decision-making over their lands and to weaken their customary ownership rights. They blamed the land policies of the Khartoum regime for undermining security of tenure and hindering the use of land to drive socio-economic development, rural transformation and prosperity. To many South Sudanese, the civil war was about reclaiming authority and control over their land and natural resources.

Over the period since the signing of the CPA, different interpretations of "land belongs to the people" have emerged with some seeking to assert that land belongs to communities. This assertion has been seen in some quarters as threatening the unity and peaceful coexistence among the people of South Sudan as well as impeding national development.

A major function of the Land Policy is to clarify interactions between individuals, communities and the state in land access and control, while also ensuring equity and sustainability.

1.3.1. Case for a National Land Policy

The need for a comprehensive National Land Policy for South Sudan cannot be gainsaid. Not only is land central to the people's cultural identity and livelihoods, it is also the principal means for achieving national economic development. Thus, streamlining and strengthening the framework for land governance is essential to post-conflict stability and long-term reform generally and the

⁶ There are those who now assert that the slogan was "land belongs to the people"

⁷ Article 2.3 of the Agreement on Wealth Sharing During the Pre-Interim and Interim Period

implementation of R-ARCSS specifically. Moreover, effective and accountable land administration that guarantees security of tenure and facilitates improved management of land-based resources will improve management of large-scale returns and contribute to livelihoods security, rural transformation, national economic growth and long-term stability⁸.

The National Land Policy provides a framework for developing and implementing structured approaches to addressing the challenges to land governance and management enumerated in chapter 2 below to enable South Sudan to realize the full potential of its vast land mass and natural resources wealth to secure livelihoods and promote national economic development. While the delay in finalizing and adopting the National Land Policy is unfortunate, the long time the process has taken is understandable, given the sensitive nature of land issues. It has also provided ample opportunity for different stakeholders to make inputs into the process. The ongoing R-ARCSS process provides an enabling context for meaningful progress in policy reforms on land governance as part of the overall political settlement.

The principal goal of the policy is to extend and protect the land and property rights of the people of South Sudan. The Policy will establish the foundation for developing and adopting sector policy and legal reforms to clarify roles of government institutions and other key stakeholders with respect to land administration; build capacity of land administration institutions, including civil and traditional authorities; strengthen transparency and accountability of land sector institutions; provide guidance on good land use planning practices; and strengthen the rights of women to land and property, among others.

1.4. The Process of Developing the National Land Policy

The process of developing a National Land Policy commenced in 2006 under the leadership of the South Sudan Land Commission (SSLC). The Commission facilitated an extensive process of public consultation and research to identify key land issues and challenges as well as strategies for addressing them, engaging with policy makers, traditional and religious authorities, national and international stakeholders, and communities all over South Sudan. The Commission produced a first draft of the National Land Policy, which its Chairperson presented to the Ministry of Legal Affairs on 18 February 2011.

⁸ Pritchard, M, and D. Deng (2019). Technical Report on the Draft Land Policy in South Sudan

In 2014, the then Minister of Lands, Housing, and Physical Planning (MLHPP) submitted the said first draft of the National Land Policy to the Transitional National Legislative Assembly (TNLA) for deliberation and adoption, following its approval by the Council of Ministers. Although the legislative process for approval of the National Land Policy fell victim to the disruption that governance systems suffered following the outbreak of internal conflict in 2013, the need for a comprehensive land policy became even more apparent in the efforts to resolve the conflict. Chapter IV of both the Agreement on the ARCSS and the R-ARCSS called for “an in-depth national debate to review the current national land policy and the Land Act, 2009, in order to achieve consensus over land tenure, use, management and address issues of land grabbing, other malpractices involving land, carry out necessary reforms, undertake mapping, and to maximize economic utilization of land in South Sudan”⁹ as an integral part of the peace building process.

The TNLA revived the legislative process for adoption of the National Land Policy in 2017, with a call for further review of the 2014 draft to update it with reference to other related policies adopted by the TNLA and to subject it to further public consultations in the light of developments that had taken place in the country since its publication. A second draft of the National Land Policy that took into account the feedback received from the TNLA on the 2014 draft and the views of diverse stakeholders from a series of workshops held across South Sudan was published in 2019. The draft also took into account challenges and opportunities presented by the current socio-economic and institutional context of South Sudan.

Upon the recall of the draft national land policy from the South Sudan National Legislative Assembly 2020, the Ministry of Lands, Housing and Urban Development commissioned national consultants to review the policy with a technical support from IGAD. At the beginning October 2021, the MLHUD received technical support from the Food and Agriculture Organization of the United Nations (FAO) to boost the review of draft of the National Land Policy with a view to finalization, adoption and implementation. In April 2022, the United Nations Mission in South Sudan (UNMISS) joined the effort. Building on this support, the MLHUD convened a Technical and Planning Workshop in March 2022 to reflect on strategies for finalization of the National Land Policy development process. The Workshop recommended that the draft of 2019 should undergo a final review focused on updating the policy background, refining policy issues and challenges to

⁹ The same wording appears in Article 4.2.1.1 of ARCISS and 4.8.2.1.1 of R-ARCISS

better articulate land governance issues, including capacity development on innovations in land administration, strengthening coordination and improving land monitoring in South Sudan. Following the Workshop, the Hon. Minister of Lands, Housing and Urban Development constituted a Technical Task Force under the leadership of the Chairperson of SSLC to oversee the process of review, revision and finalization of the Policy document.

The Technical Task Force convened and facilitated a Multi-Stakeholders Retreat in Wau between 25 April and 3 May 2022 for stakeholders to deliberate on the current context of land governance in South Sudan and review the 2019 draft of NLP on the basis of the instructions from the Minister. The Multi-Stakeholders Retreat produced a revised and updated draft of National Land Policy, which the Technical Task Force presented to the Hon. Minister of Lands, Housing and Urban Development in June 2022.

The Hon Minister circulated the draft South Sudan National Land Policy 2022 to key stakeholders for further review. The Ministry subsequently convened the National Land Policy Validation Workshop in Juba between 6 and 8 September, 2022, attended by major land sector actors from National and State Governments, UN Agencies, Development Partners, the Private Sector, academia, traditional chiefs and Civil Society. The Workshop, which was closed by H.E Gen. Prof. Dr. James Wani Igga, the Vice President of the Republic of South Sudan and Chairperson of the Economic Cluster, ended with a Communique validating the Draft South Sudan National Land Policy 2022 subject to changes proposed by participants for its improvement. The Workshop mandated the MLHUD to convene a final Technical Review Retreat to finalize the draft in readiness for presentation to the Council of Ministers.

In conformity with the mandate from the National Land Policy Validation Workshop, the MLHUD convened the Final Technical Review Retreat in Wau between 20 and 27 September to finalize the South Sudan National Land Policy, taking into account the recommendations of the National Validation Workshop and feedback from diverse stakeholders. This South Sudan National Land Policy is the output of the Final Technical Review Workshop.

The Policy is thus a result of the widest possible consultation involving a large number of South Sudanese citizens and land sector stakeholders from all levels of government, development partners and other Non-State Actors (NSAs) as well as community members from across South Sudan. In developing the Policy, due regard has been paid to the dictates of the Transitional

Constitution of South Sudan (TCSS) 2011 (as amended), the Revised South Sudan National Development Strategy (SSNDS) 2021-2024, and the recommendations contained in Chapter IV of the R-ACSS 2018. The process has also taken into account relevant regional and global imperatives that South Sudan has signed up to within the framework of the African Union (AU) and the UN. Of particular relevance in this regard are the imperatives of the Guidelines and Framework on Land Policy in Africa (F&G), the Declaration on Land Issues and Challenges adopted by the AU at Sirte, Libya in July 2009, the Sustainable Development Goals (SDGs) and the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGT). These instruments articulate consensus by the family of nations on the process of developing a National Land Policy, and the key issues and challenges that the Policy should address.

The Policy has been subjected to further review by the Technical Task Force and other stakeholders. It will be endorsed by the Economic Cluster of the Council of Ministers for presentation to the Council of Ministers for approval, after which it shall be submitted to the TNLA for adoption. Once the TNLA adopts the Policy, the process of its implementation set out in Chapter 5 shall commence in earnest.

CHAPTER 2

LAND GOVERNANCE ISSUES AND CHALLENGES IN SOUTH SUDAN: THE CASE FOR A NATIONAL LAND POLICY

2.1. The Land Question in South Sudan

The major challenge for the land sector in South Sudan is one of governance. It can be summed up as the absence of an effective framework for governance of tenure over land and land-based resources. Such frameworks which exist are ineffective in their operations, uncoordinated in their interactions, and do not engender confidence on the part of landowners and users.

Land governance refers to “the rules, processes and structures through which decisions are made about access to land and its use, the manner in which the decisions are implemented and enforced, and the way that competing interests in land are managed”¹⁰. Land governance frameworks include statutory, customary and religious institutions, and encompass policy and legal instruments as well as traditional and informal practices of communities for access, use, transfer and control of land rights.

Land governance is wider than but encompasses land administration and management. It envisages processes of decision making about land rights that are participatory, inclusive and empowering of all land users. The idea of “responsible land governance” is now mainstreamed into the global discourse on tenure security by the VGGT, which was negotiated by Member States of the UN under the leadership of FAO and endorsed by the Committee on World Food Security (CFS) in May 2012. The VGGT articulate similar imperatives as those in the F&G, which was adopted by Member States of the AU as a framework to strengthen land rights enhance productivity and secure livelihoods¹¹. As a member of the Intergovernmental Authority on Development (IGAD), South Sudan has endorsed the IGAD Land Governance Business Plan 2020-2030, which provides a framework through which IGAD provides technical support to Member States to strengthen land governance. IGAD Land Governance Unit has provided support to some of the inputs to the development of this Land Policy, and once it is adopted, the country has the opportunity to draw on the support of the unit in its implementation.

¹⁰ Palmer, D., S.Fricska and B. Wehrman, 2009. Towards Improved Land Governance. Land Tenure Working Paper No. 11. Rome: Food and Agriculture Organization of the United Nations, p.9

¹¹ The F&G is subtitled ‘Land Policy in Africa: A Framework to Strengthen Land Rights, Enhance Productivity and Secure Livelihoods’

In consultations held across South Sudan since 2006 to support the development of the National Land Policy, stakeholders identified widespread tenure insecurity as the principal policy problem, and enumerated factors that contribute to tenure insecurity. Tenure insecurity poses a major governance and development challenge for South Sudan, given the centrality of land in the country's socio-cultural, political and economic organization and prospects. Security of tenure is key to achievement of sustainable peace, economic development, and national unity.

In order to articulate appropriate policy responses to tenure insecurity, it is important to reflect on its main causes, so that the National Land Policy addresses underlying causes and not just their manifestations. In this connection, it is important to appreciate that tenure insecurity is primarily a consequence of the bigger challenge of the land governance framework.

From the research and consultations conducted to support the development of the National Land Policy, the following have been identified as the major land governance issues and challenges:

- i) Lack of consensus on who owns the land;
- ii) Weak land administration and management;
- iii) Displacement resulting from conflicts and disasters;
- iv) Gender bias and discrimination;
- v) Agriculture and sustainable management of land-based resources;
- vi) Land use planning, land management and environmental conservation;
- vii) Informal settlements in cities and towns;
- viii) Managing interactions between pastoralism, farming and other land uses;
- ix) Land grabbing and illegal land occupations;
- x) Disputes over internal boundaries and international borders; and
- xi) Climate change and natural disasters.

While the above list is by no means exhaustive, it captures the most significant and urgent issues for which the National Land Policy should articulate policy responses. The key manifestations of each issue are further elaborated below.

2.1.1. Lack of consensus on who owns the land

Over the period since South Sudan emerged as a separate state, there has been growing controversy over ultimate control of land. The Land Act 2009 affirms the rights of communities to land and natural resources and stipulates that these rights “shall have equal force and effect in law with

freehold or leasehold rights acquired through statutory allocation, registration or transaction”¹². In community consultations held in the states on the draft National Land Policy, it was evident that there is lack of consensus on the implications of this provision.

The question “who owns the land in South Sudan?” elicits different answers from different people. “Who are the people?” remains an outstanding question to be answered. The relation between the “community” and the “people”, and more precisely on how the people are represented as members of a community is unclear. In addition, the nature of the land right held by communities and/or their members is not clarified in the Act. Section 8(3) of the Land Act refers to a right of occupancy, whereas section 7 acknowledges that customary land, which includes community land, is equal to ownership rights. Sector policies and laws such as those on forests do not make clear linkages with community rights to land and natural resources as articulated in the Land Act 2009.

Does the land belong to the State, people, or communities? And which level of the State? Different people advocate for land to be owned respectively by the State, the people, and communities.

Article 170 (1) of the TCSS 2011 (as amended) declares that “All land in South Sudan is owned by the people of South Sudan and its usage shall be regulated by the government in accordance with the provisions of this Constitution and the law”. In this, the TCSS echoes the Land Act 2009, which was enacted in conformity with the CPA. Even when the Land Act 2009 was enacted, there were people who objected that its provisions on this issue were a departure from what the SPLM/A had asserted throughout the period of the civil war that the land belongs to communities.

The controversy reflects the challenge of managing expectations and reconciling competing demands of the State, communities and individual citizens on land and land-based resources. The tension has been driven in large part by competition for access to land in urban and peri-urban areas of Juba and other major cities in the absence of a policy framework and in a fluid institutional context characterized by weak enforcement mechanisms. The National Land Policy articulates options and strategies in Chapter Four that aim to clarify this issue and reconcile associated tensions.

¹² Section 8(6)

2.1.2. Weak land administration system

Land administration is a key component of good land governance. Defined as “processes of recording and disseminating information about the ownership, value and use of land and its associated resources”¹³, land administration encompasses ascertainment, demarcation, survey, registration, and documentation of land rights, systematic tracking of land rights transactions, establishment and enforcement of performance standards for the management of land resources, assessment of land resources for fiscal development and revenue collection, and efficient and accessible mechanisms for resolution of land disputes. A properly functioning land administration system is essential to tenure security, which is critical for productive use of land and natural resources to support livelihoods, create wealth, and promote peace and security.

The F&G identifies the state of land administration systems in Africa as a major impediment to the use of land as an engine for national and regional development, and calls for their reform. It recommends that land administration reforms be focused on improving land rights delivery and strengthening the efficiency and efficacy of laws, structures and institutions for land governance.

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

The multiplicity of public institutions carrying out land administration functions poses a major threat to tenure security in South Sudan as a result of overlapping mandates with no effective coordination. There is inadequate clarity about the distribution of land administration functions between the national MLHUD, the State Ministries of Housing Lands and Public Utilities, the

¹³ UNECE, 1996. Land Administration Guidelines: With Special Reference to Countries in Transition. New York and Geneva: United Nations

local government and traditional authority. This creates confusion as state organs at different levels respond to different incentives and are subject to often competing interests, creating a situation where conflicting interests of powerful elites at the different levels of the State and between them and communities create tensions and undermine effective functioning of the land administration system.

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

During the many years of civil war, the formal land administration system functioned only in a few major urban centres, and at the height of the war, a number of these were destroyed. In South Sudan, land administration has always been poor in rural areas, as compared to urban areas, throughout the country. In rural areas, existing statutory land legislation has rarely been applied. Different decentralization efforts of the public service were not accompanied by the transfer of information and cadastral records to new state level services. Key challenges faced in the land administration process in South Sudan are as follows:

- i. *Capacity of the land administration and status of survey departments.* Little is known about the status of the geodetic network. Most survey work is not related to a geodetic network;
- ii. *Land register and uneven handed land service delivery.* The Land Register is poorly developed with very few lands having been registered. Records are not available for public consultation;
- iii. *Absence of legal framework and transparent procedures.* For a number of land administration tasks, a legal framework, regulations and norms still need to be developed.

These include the identification of town boundaries, procedures for acquisition of land, plot allocation, compensation, land taxes, dealing with property claims. Existing procedures are a mixture of practice and precedent, which reflect what is generally understood to be ‘how things are done’, rather than being based systematically on statutory regulations or responding to all the needs of communities; and

- iv. *Weak public awareness.* Requirements and procedures to be followed are little known. There is evidence that any paper, form or sketch map is used by some to establish unrightfully a claim over land.

At the moment, only Juba, Wau, and Renk have functional land registries, albeit with serious institutional capacity challenges. The failure to reform the policy, legal, and institutional framework for land administration since the interim period has created a gap that engenders confusion about the applicable legislation on land rights. Although the Land Act of 2009 repealed the land laws of the Sudan, it has never been fully implemented. Rules and regulations for its implementation have never been issued. Land transaction forms that exist are those that were issued under the Land Settlement and Registration Act, which continues to guide land registrations even though it was repealed by the Land Act 2009¹⁴.

Traditional institutions continue to play a major role in land administration, as the custodians of land held under customary tenure, but the absence of a comprehensive land policy and the weakening of the rule of law have undermined their effectiveness. Moreover, the role of the institutions land administration in urban areas has exposed them to corruption and threatens to undermine their reputation for fairness and integrity in mediating land relations. There have been reports that their allocation of fourth-class plots has been mired in corruption¹⁵.

The National Land Policy proposes policy options and strategies that will clarify, balance, and reconcile land administration mandates at different levels of governance; foster transparency and accountability in land administration; ensure that land rights delivery services are accessible to the ordinary land using public; provide for redesign and technological upgrading of the Land

¹⁴ USAID Sudan. Land Tenure Issues in Southern Sudan: Key Findings and Recommendations for Southern Sudan Land Policy. Juba, December 2010

¹⁵ *ibid*

Information Systems (LIS) for faster and more efficient delivery of land rights services; and establish a framework for resolution of land disputes that incorporates traditional mechanisms.

2.1.3. Forced displacements resulting from conflict and disasters

Displacement as a result of conflict has been a reality in South Sudan for a long time. It has continued to be a major challenge even after the end of the civil war, secession and declaration of independence. The United Nations High Commission for Refugees (UNHCR) estimates that more than 4 million South Sudanese are displaced. Of these 2.02 million are Internally Displaced Persons (IDPs) who have settled in informal settlement and urban areas on land provided by host communities or in Protection of Civilian (PoC) camps in UN bases, and 2.3 are refugees living in the neighbouring countries of Uganda, Kenya, Ethiopia, Sudan and Democratic Republic of Congo.

Natural disasters are another major cause of displacement in South Sudan. The country suffered its worst flooding on record in 2021, which, according to the UN Office for Humanitarian Affairs impacted more than 900 000 people across nine States. Flooding has caused widespread destruction and displacement particularly in Jonglei, Unity and Upper Nile states. Apart from the impact this has on livelihoods, it affects land governance and management as productive land is left idle and unutilized.

Resettlement of returnees and IDPs is a major challenge for South Sudan. At the end of the civil war, it had been hoped that returnees would go back to their places of origin, where the process of their resettlement would be handled effectively by traditional institutions. However, many returnees have not shown a willingness to return to their ancestral lands but have chosen to settle in urban and peri-urban areas where the majority of them either live in informal settlement or illegally occupy the land of others. The situation has been further complicated by insecurity and lack of social services in rural areas. Managing the resettlement of returnees¹⁶ and IDPs in urban and peri-urban areas has been much more challenging, as authorities and competencies between traditional institutions, local authorities and the Government of South Sudan (GOSS) come into conflict. Moreover, many years of conflict have blurred rights to land in both territorial and production unit terms, so that when, at the end of the conflict, individuals sought to assert prior

¹⁶ UNHCR puts the number of returnees at 607,218 as at September 2022, <https://reliefweb.int/report/south-sudan/south-sudan-unhcr-overview-spontaneous-refugee-returns-september-2022>

rights, where these existed, these efforts tended to generate further and more intense internal conflict.

While the foregoing discussion focuses on involuntary displacement, there are also substantial population movements that are voluntary in nature, but which also contribute to land pressure. The independence of South Sudan resulted in the return of large numbers of citizens from abroad, increasing demand for land, particularly in urban areas. The demand for land in urban areas for housing, businesses, and public services has increased phenomenally since independence. Although demand has eased somewhat following the outbreak of conflict in December 2013. As efforts to implement R-ARCSS gather momentum the need for appropriate policy responses to displacement, both voluntary and involuntary cannot be gainsaid.

The National Land Policy articulates policies and strategies that will enable effective management of the resettlement of IDPs and achievement of durable solutions within the framework of the 5Rs (relief, rehabilitation, resettlement, reintegration and return). A major concern of the policy in this regard is to ensure that IDPs and returnees access housing, land and property rights in a way that mitigates potential for reigniting conflict between communities, and that proper procedures are put in place for resettlement, restitution and compensation.

2.1.4. Gender bias and discrimination

Although they constitute anything between 48 and 60 percent of the population of South Sudan, women are largely marginalized in political, social, and economic terms. The National Gender Policy acknowledges that “attitudes to gender equality and the rights of women are still predominantly steeped in a patriarchal social system which entrenches gender-based discrimination and exposes women...to marginalization, violation of rights and violence...men dominate all spheres of life and are accorded most productive assets, powers and authority”¹⁷. Structural discrimination against women adds to the challenges they face as a result of conflict and displacement, rapid urbanization and climate change.

The marginalization of women is probably most manifest in land ownership. In a society that is predominantly rural and where most of the land is held communally under customary tenure, rights to land are governed by customary norms that are enforced by traditional institutions, which are

¹⁷ Ministry of Gender, Child and Social Welfare 2012. National Gender Policy, p. 15

underpinned by patriarchy, so that women's access to land is pegged to their relationship with male members of the community as parents, spouses or offspring. Most communities in South Sudan do not recognize the right of women to own land in their own names. Instead, women have access to land for use to fulfil their roles in food production for household consumption and in their reproductive roles.

That their rights to access and use of land are pegged to their relationship with men, renders women rights weak as they can lose them when those relationships terminate. Widows, unmarried and divorced women are particularly vulnerable in this regard. This situation persists notwithstanding the fact that according to some estimates, up to 48.6 percent of households in South Sudan are female-headed. In any event it contravenes the provisions of the TCSS, which accords women full and equal dignity of the person with men, stipulates that they shall have the right to own property and share in the estates of their deceased husbands together with any surviving legal heir of the deceased, and mandates all levels of government to enact laws to combat harmful customs and traditions which undermine their dignity and status.¹⁸ Strengthening access to land and the ways in which women and youth have a voice in decision-making and conflict resolution processes can enhance equitable access to natural resources. In dryland areas fragile ecosystems and competition of resources can lead to competition over fuelwood, exposing women to threats of gender-based violence.

The South Sudan Women's Land Rights Agenda developed by the MLHUD with support from IGAD Land Unit identified priority issues for women's land rights in South Sudan that include: structural exclusion of women from land sector policy processes; gender gaps in customary norms governing land rights in most communities; lack of access to justice for women to assert their land rights in both formal and informal dispute resolution mechanisms; limited capacity and resources for advocacy on women's land rights; poor implementation of policies and laws promoting women's land rights; weak coordination and collaboration between land governance structures and key stakeholders on women's land rights; and limited institutional capacity for gender analysis, gender-responsive budgeting and programming among key land sector actors.

A critical challenge to enforcing women's land rights in South Sudan derives from resistance by those who fear that adapting customary rules and practices to changing socio-economic

¹⁸ Article 16

circumstances will impact negatively on tradition and cultural identity. This explains the gap between what the law states and what happens in practice, particularly in rural areas. Gender education, awareness creation and empowerment will be needed to address these fears.

Strengthening women's land rights is imperative under the 2030 Agenda for Sustainable Development. Sustainable Development Goal (SDG) 5 aims to "achieve gender equality and empower all women and girls". To this end, target 5a commits Member States of the UN to "undertake reforms to give women equal rights to economic resources, as well as access to ownership and control over land and other forms of property, financial services, inheritance and natural resources, in accordance with national laws." Progress on this target is measured through two indicators, which focus on ownership and/or control over land¹⁹.

The National Land Policy appreciates the link between secure land rights for women and the achievement of broader development goals, poverty reduction, and economic growth, as well as promotion of food and nutrition security. It articulates policies that will ensure that women enjoy their constitutionally guaranteed rights to own land and property. In doing so, the Policy also acts on the recommendations and commitments by government in the South Sudan Women's Land Rights Agenda.

2.1.5. Agriculture and sustainable management of land-based natural resources

South Sudan is well endowed with natural resources. Extensive grasslands, wetlands, and tropical forests adorn the landscape. It has significant natural assets including agricultural land, mineral, oil, timber and water resources. Agricultural potential is particularly huge, with up to 95 percent of the territory suitable for agricultural production. The mostly hot and dry climate with seasonal rains allows for two or three harvests a year in the country's green belt.

Yet the agricultural potential is largely unexploited, with estimates indicating that no more than five percent of the potential arable land is cultivated. The same is true of the other natural resources with which the country is blessed. In this connection, South Sudan has faced similar challenges as those of other post-conflict resource rich countries. Experience has shown that where a country in conflict is rich in natural resources, the pressure for indiscriminate extraction and plunder of the resources becomes a major factor in the post-conflict settlement. The powerful groups that benefit

¹⁹ FAO, (2021) , Realizing women's rights to land in the law: A guide for reporting on SDG indicator 5.a.2 (Brochure). See also <https://elearning.fao.org/course/view.php?id=364>

from such extraction and plunder are often net losers when appropriate policies and structures for governance of land and natural resources are formulated and have strong motivation to sabotage such efforts.

Proper and sustainable governance and management of land and natural resources is key to security of livelihoods for South Sudanese, and for the country's social and economic transformation. Up to 78 percent of households in South Sudanese depend directly on land and natural resources for their livelihoods as subsistence farmers and pastoralists while agriculture and pastoralism account for up to 15 per cent of the Gross Domestic Product (GDP)²⁰. Thus, South Sudan's natural resource are critical to the country's prospects for a peaceful and prosperous future.

The National Land Policy is key to harnessing of the assets to create jobs, generate revenue to fund basic government services, and lift people out of poverty. The absence of a National Land Policy has until now constrained the effective implementation of sector policies to realize the promise of prosperity for all contained in South Sudan Vision 20140. The policy options articulated herein will remedy this situation and contribute to sustainable management of the country's land and natural resources.

2.1.6. Land use planning, land management and environmental conservation

As South Sudan is blessed with a huge land mass and a relatively small population, it is tempting to imagine that problems of land use planning, land management and environmental conservation are not of priority concern. Indeed, a cursory survey of government policy over the years shows that land use planning has been accorded little priority, notwithstanding the commitment by the Government in South Sudan Vision 2040 adopt appropriate measures to limit pollution that may result from rapid industrialization and to foster sustainable environmental management.

Uncontrolled urban expansion and spread of informal settlements, land use conflicts, and environmental degradation are direct consequences of the failure of policy action. Degradation of forests, wildlife habitats, wetlands and other fragile ecosystems has increased since the end of the civil war in 2005. Pollution of land and water is another major problem across the country. These problems are driven in large measure by the absence of policies, laws and institutional capacity for enforcement of sustainable land use approaches, including waste management.

²⁰ UNEP, 2018. South Sudan First State of Environment and Outlook Report 2018

Most returnees and IDPs since 2005 have settled in informal settlements in urban and peri-urban areas and live in generally crowded and unsanitary conditions. The increase in numbers has put more pressure on the administration of towns and cities, already constrained in resources and capacity to effectively manage their environments. The settlers engage in unsustainable land use, including through over-exploitation of natural resources, especially through the cutting of wood for building purposes and fuel. The resulting environmental degradation impacts negatively on women and girls as they are forced to spend more time and energy fetching water and firewood.

The TCSS accords individuals and communities the right to a clean and healthy environment, imposes upon every person the obligation to protect the environment, and mandates government to take appropriate legislative action and other measures to prevent pollution and ecological degradation, promote conservation and secure ecologically sustainable development and use of natural resources to promote socio-economic development, while protecting genetic stability and biodiversity²¹. At the global level, South Sudan is a signatory to international environmental conventions, including the Montreal Protocol to the Vienna Convention on Substances that Deplete the Ozone Layer, the United Nations Framework Convention on Climate Change (UNFCCC), the Kyoto Protocol to the UNFCCC, the International Plant Protection Convention (IPPC), the Convention on Biological Diversity (CBD) and the United Nations Convention to Combat Desertification (UNCCD), all of which impose upon it obligations to establish policy, legal and institutional frameworks to promote sustainable management of the environment. The National Land Policy provides a critical starting point for this.

2.1.7. Managing interactions between pastoralism, farming and other land uses

The significant policy challenge posed by the interaction between pastoralism and other land uses, especially agriculture justifies treating it as a separate concern beyond the land use concerns dealt with in the previous section. Nomadic pastoralism is a major land use in South Sudan in its own right, but beyond that its interactions with agriculture has significant implications for inter-communal relations and environmental management.

South Sudan is reputed to have the highest per capita number of livestock in Africa. Estimates indicate that the livestock population stands at 38 million, exceeding the human population of 12.3

²¹ Article 41

million by a factor of three²². The livestock are not only an important source of rural livelihoods they also play important roles in defining social status among herding communities. Because the social and cultural importance attached to livestock overrides their economic value for many herders, the huge livestock wealth has not produced commensurate benefits to the national economy. Instead, livestock are a major source of conflict as well as environmental degradation in a context of increasing climate change.

Conflicts over access to pasture and water are widespread among pastoralist groups and between pastoralists and agrarian communities in South Sudan. The situation is compounded by the general conflict context that has prevailed in the country for many years, and the resultant proliferation of small arms and light weapons on the one hand, and the weakening of traditional institutions and mechanisms that traditionally governed seasonal movement of livestock on the other hand.

As it is the land use dimensions of livestock keeping that define its interactions with agriculture, the National Land Policy is the appropriate starting point for defining principles and articulating strategies that will promote peaceful coexistence between pastoralists and farmers. Such principles and strategies will contribute to peacebuilding and conflict management, stem environmental degradation, and facilitate the realization of the full potential of the livestock sector for wealth creation and economic transformation.

A major cause of conflicts between pastoralists and agrarian communities is the seasonal movement of livestock in search of pasture and water, the availability of which varies over time and space. This is because they are not able to follow traditional and preferred migration routes, whether are a result of the spread of incompatible land uses or due to conflict, herders are forced to concentrate cattle on non-productive land causing overgrazing or to move them to pasture in areas where there are no pre-existing relationships with resident farmers, leading to new sources of conflict. Livestock are having to move more often and over longer distances than in the past due to the impacts of climate change, increasing the opportunities for conflict.

The National Land Policy will propose strategies for regulating livestock mobility drawing on indigenous knowledge systems and integrating the imperatives of the IGAD Protocol on Transhumance, to which South Sudan is a signatory.

²² USAID. (2014). South Sudan Tropical Forests and Biological Diversity Assessment - Phase 1: Pre-Field FAA 118/119 Desk Assessment; USAID. (2016). Climate Change Risk Profile South Sudan Fact Sheet

2.1.8. Land grabbing, illegal land occupations, and large-scale land investments

Land grabbing and illegal land occupations refer to the forcible taking over of land and property, mostly by the powerful citizens with authority of power and money, high skill officials, unauthorized community members, armed forces and political elite, in total disregard of pre-existing rights of individuals and communities. This phenomenon, which is pervasive in South Sudan, is not unique to the country. Post-conflict scramble for prime urban and agricultural land by elites returning to take up positions in politics, government and the public service happened in Kenya, Zimbabwe, Angola and the DRC. It arises as military and political elites take advantage of the absence of clear policies on land rights and weak enforcement mechanisms to appropriate large tracts of land to themselves, their relatives and associates, causing conflicts and feuds that feed on and engender inter-communal animosities.

The years since the establishment of the GOSS have been characterized by claims of land grabbing, particularly in Juba and other big towns in South Sudan. Both returnees and long-term residents are reported to have lost their land to forceful occupation by soldiers. Cases of long-term residents losing their land to well-off returnees who use the military to force owners to give up their property have also been reported²³.

Complaints about land grabbing date back to the period before independence. For instance, reports indicate that in just four years, between the start of 2007 and the end of 2010, foreign interests sought or acquired a total of 2.64 million hectares of land (26 400 km²) in the agriculture, forestry and biofuel sectors alone. Land acquisitions by domestic investors, some of which date back to the pre-war period, and investments in tourism and conservation bring the figure to 5.74 million hectares (57 400 km²), or nine percent of the country's total land area. As much as the influx of land-based investments is good for the economy generally and rural transformation in particular, large-scale acquisition of land in the absence of appropriate policy, legal and institutional frameworks and safeguards poses significant threats to land rights and may in fact undermine livelihoods²⁴.

A major demand by communities during consultations for development of the National Land Policy has been for measures to control land grabbing and to reclaim land that has been illegally

²³ Pantuliano, S. 2009. Going home: Land, return and reintegration in Southern Sudan and the Three Areas

²⁴ David Deng, 2011 "The new frontier: a baseline survey on large scale land-based investment in Southern Sudan", NPA.

appropriated from communities, particularly in peri-urban areas. The underlying problem in this connection is the weakness of enforcement mechanisms to uphold property rights and the rule of law, as even landowners with valid title documents have lost land to the land grabbers. As one commentator has observed, “Land ownership documents mean little when threatened by a gun”²⁵.

Closely related to land grabbing is the phenomenon of large-scale land acquisitions, including for investment purposes. Following the signing of the CPA in 2005, South Sudan experienced a huge influx of investors sourcing land for large-scale land-based investments in such sectors as commercial agriculture, plantation forestry, biofuel projects, and carbon credit schemes. Reports indicated that investors secured leasehold rights over land holdings equivalent to over eight percent of South Sudan’s total land area with little or no consultations with communities²⁶. The targeted land comprised some of the most fertile and water-rich regions of the country. The investment never took off. Initially, the investors sought to hold off putting up money until the end of the political uncertainty of the interim period leading to the referendum. Thereafter, the outbreak of conflict within two years of independence put everything in abeyance. Be that as it may, the scramble for large areas of land and the manner in which the land changed hands illustrated worrying gaps in policy and governance, which have remained unaddressed to-date. The National Land Policy provides a critical starting point for addressing these gaps, by articulating policy principles, options and strategies that will ease access to land for investments while protecting the land rights of individuals and communities.

2.1.9 Disputes over internal boundaries and international borders

Conflict over internal boundaries within and between states have adversely impacted service delivery, and threatened inter-communal relations. These conflicts are underpinned by claims over land between neighbouring communities, and are often exploited by politicians keen to expand their influence by expanding the territories of their respective communities and constituencies.

There also exist simmering disputes over international borders between South Sudan and its neighbours. Lack of clarity over international borders undermines the sovereignty of South Sudan and threatens international relations and regional peace.

²⁵ Ibid p.158

²⁶ Deng, D. (2011). The New Frontier: A baseline survey of large-scale land-based investment in Southern Sudan

The National Land Policy articulates principles and strategies for delimitation and demarcation of both internal boundaries and international borders.

2.1.10. Climate change and natural disasters

According to the Climate Change Vulnerability Index, South Sudan was ranked among the five most affected countries in the world in 2017²⁷. Climate change is now the fundamental driver of livelihood insecurity and conflict in South Sudan. Prolonged droughts, intense temperatures, and associated reductions in the availability of water and rangeland are drastically increasing conflict over scarce and unreliable resources creating a volatile situation. Severe flooding across the country during the 2019/20 rainy season resulted in significant crop damage and an increased number of livestock disease alerts and outbreaks as sudden climatic changes provide conducive environment for disease outbreaks. Grazing lands were flooded resulting in reduced availability of pasture, and livestock deaths due to starvation.

These dynamics are causing changes to the traditionally known migratory routes and heightening competition over increasingly scarce natural resources, creating growing tensions between farming and pastoralist modes of livelihoods. Pastoralists are no longer able to plan livestock migration and negotiate passage with farmers as used to happen in the past. Unplanned movements often cause conflict between farmers and pastoralists, as well as within agro-pastoralist communities due to competition for access to water and pasture. Climate change is also expected to undermine the population's access to safe water and improved sanitation and increase their vulnerability to climate-related health risks.

Climate change has a direct bearing on peace and stability in South Sudan, particularly on account of its impact on the agricultural sectors, the development of which is crucial to long term peace and development. The combination of increased droughts and floods on the one hand, and a rapidly growing population and expansion of farming on the other, will lead to increased competition over access to productive land, engendering conflicts within and between communities.

The National Land Policy is crucial to the management of climate risks in South Sudan. It will provide the overall framework for implementation of sector specific policies on environment, food security, nutrition and health, water and sanitation, and disaster risk reduction. It also creates the

²⁷ World Bank and FAO (2022). Transformation agriculture in South Sudan, From Humanitarian to a development oriented growth path. See: <https://www.fao.org/3/cc1048en/cc1048en.pdf>

foundation for developing and implementing South Sudan's National Communication to the UNFCCC, National Adaptation Programme of Action (NAPA), National Adaptation Plan (NAP), National Biodiversity Strategy and Action Plan (NBSAP), Comprehensive Agriculture Master Plan (CAMP) and National REDD+ Strategy and Action Plan.

CHAPTER 3

FRAMEWORK OF THE NATIONAL LAND POLICY

3.1. Introduction

The South Sudan National Land Policy is underpinned by the desire of the people of South Sudan for a land governance framework that will secure their individual and collective rights to land, administer land rights in a transparent and accountable manner to promote its sustainable use for livelihoods security and overall national economic development, and promote resilience to climate change and other risks. The land sovereignty, vision, goal, objectives and principles of the National Land Policy are all directed at achieving this.

3.2 Land Sovereignty

All lands in South Sudan is owned by the people of South Sudan collectively as a nation, as communities and as individuals.

- i. All lands in South Sudan is designated as public, community or private.
- ii. The usage of All Lands in South Sudan is regulated by the State in accordance with law and the constitution.
- iii. The State authority which is the second tier of the government shall manage and administer the land in accordance with law and regulations.
- iv. The land tenure shall be perpetually owned or rationalized into land leases as regulated by law and usage.

3.3. Vision of the National Land Policy

The National Land Policy envisions *a self-reliant South Sudan in which land and land-based resources are managed efficiently and sustainably to promote urbanization and national economic development.*

The principal attributes of this vision are:

- i. **Essence of land for the people and the country:** land is a common heritage of the people of South Sudan, which links past, present and future generations. All citizens have a stake and a role in its management. The Government has the responsibility to regulate its use to ensure equity and sustainability for the benefit of present and future generations.

- ii. **Sustainable utilization:** land and land-based resources shall be managed and used sustainably paying particular attention to wetlands, fragile ecosystems, and biodiversity hotspots.
- iii. **Development control:** the Government shall enforce standards and regulations for physical developments on land to reconcile competing land uses in an equitable and sustainable manner.
- iv. **Diversity of land use and land-based livelihoods:** governance of land shall take into account the social and cultural diversity of the people of South Sudan and their land use systems, and ensure peaceful coexistence of these systems in a spirit of mutual respect and collaboration.
- v. **Planned human settlement:** Development of both rural and urban settlements shall be planned through effective land use regulation, physical planning and provision of adequate infrastructure

3.4. Goal of the National Land Policy

The goal of the National Land Policy is *to ensure that land and land-based resources are held, used, and managed efficiently, productively and sustainably for wealth creations and overall socio-economic development to enhance the welfare of the people of South Sudan.*

3.5. Objectives of the National Land Policy

The **overall objective** of the National Land Policy is to strengthen tenure security over land and land-based resources for individuals and communities as a basis for wealth creation, enhance land accessibility, strengthen peaceful coexistence and sustainable economic development in South Sudan.

To this end, the National Land Policy shall aim to:

- i. Harmonize and streamline tenure systems to ensure equitable access to land and security of tenure for all citizens, including women, youth, and other marginalized groups;
- ii. Establish and strengthen land administration systems to ensure efficient, cost-effective and equitable delivery of land rights through participatory, transparent, and accountable procedures and processes;
- iii. Stimulate the contribution of the land sector to poverty reduction, wealth creation, and overall socio-economic development of the country;

- iv. Ensure efficient and effective land use planning for sustainable utilization of land and land-based resources to ensure equity within and between generations;
- v. Promote sound conservation and sustainable utilization of wetlands, water sources, biodiversity hotspots, and fragile ecosystems;
- vi. Ensure planned, environmentally-friendly, affordable and orderly development of human settlements in both rural and urban areas, including infrastructure development;
- vii. Establish and implement a process of land rights restitution and compensation to redress land and property injustices occasioned by the decades-long civil war and internal conflicts to achieve balanced growth and social equity;
- viii. Harmonise all land-related policies and laws, and strengthen institutional capacity at all levels of Government and within traditional institutions for the sustainable management of land and land-based resources; and
- ix. Establish and strengthen socially acceptable frameworks and mechanisms for effective resolution of land related disputes.

3.6. Guiding Principles for the National Land Policy

The following principles will underpin and guide the implementation of the National Land Policy:

- i. Security of land tenure and property rights;
- ii. Equitable access to land for subsistence, commercial productivity, and settlement, and the need to achieve a sustainable balance between the different land uses;
- iii. Efficient, effective and sustainable management of land and land-based resources;
- iv. Gender equity and respect for diversity;
- v. Effective regulation of land development and planning of human settlements;
- vi. Transparent, accountable, and participatory administration of land;
- vii. Recognition and enforcement of customary land rights and the role of traditional institutions in land governance;
- viii. Redress of historical land grievances and injustices;
- ix. Access to land information; and
- x. Peaceful resolution of land conflicts and disputes, including through traditional mechanisms and Alternative Dispute Resolution (ADR) approaches.

CHAPTER 4

POLICY OPTIONS AND STRATEGIES

The following policy options and strategies shall be implemented by the Government of Republic of South Sudan to address the respective land governance issues and challenges.

4.1. Policy Statement 1: Securing land tenure for all the people of South Sudan

The Government shall guarantee security of land tenure for individuals and communities to ensure security of livelihoods and promote socioeconomic development

Land tenure refers to the terms and conditions under which rights to land and land-based resources are acquired, held, used, transferred or transmitted. South Sudanese claim rights to land as individuals and collectively as members of respective communities. They also have rights to land that are exercised on their behalf collectively by the State.

The absence of clarity about tenure over land and land-based resources in South Sudan has undermined productive use of land, fostered conflict within and between communities, between communities and Government at the different levels, and facilitated unsustainable land use practices. The Government shall use the ongoing review of the Transitional Constitution of South Sudan to clarify land tenure and the interactions between individuals, communities and the State over land rights.

To clarify and strengthen security of land tenure, the Government shall:

- i. Entrench land tenure categories and principles of land policy in the Constitution and define the power of eminent domain and how it shall be applied;
- ii. Enact a Community Land Act and a Public Land Act, setting out institutional arrangements, procedures and processes for governance of the two categories of land;
- iii. Conduct an inventory of land in urban and peri-urban areas and, on that basis, enact a National Physical Planning Act;
- iv. Review, revise and update the Land Act 2009 to:
 - a) Define clearly the three land tenure classifications of community, public and private, specify the types of land under each classification, and stipulate how they shall be governed;

- b) Clarify the meaning and nature of “community” for purposes of community land tenure;
- c) Clarify the nature and content of community land tenure and define the governance thereof;
- d) Provide guidance on the application of customary law in the administration of community land and clearly define the interactions between traditional institutions and statutory institutions in the administration of community land;
- e) Include comprehensive provisions on how the State may acquire community land for public purposes; and
- f) None South Sudanese shall acquire land and secure tenure for investment through the following:
 - i. through derivative rights of occupancy limited to leasehold to number of years in accordance with laws.
 - ii. Access community land in the rural areas with an approval of government authority.

4.2 Policy Statement 2: Strengthening the land administration system

The Government shall strengthen the land administration system to ensure efficient, effective, transparent and accountable delivery of land rights.

A properly function and effective land administration system guarantees security of tenure over land and land-based resources by maintaining records of land allocation and land transactions, and providing land users with appropriate documentation to facilitate land rights delivery, land disputes resolution and land taxation. A major challenge to land governance in South Sudan is the weakness, inefficiency and ineffectiveness of land administration.

To strengthen the land administration system, the Government shall:

- i. Review, revise and update the Land Act 2009 to:
 - a) Clarify the roles and jurisdiction of national, state, and local government land administration institutions and clarify how they interact;

- b) Reconcile its provisions with those of the Local Government Act 2009 on land administration and dispute resolution functions of local government and traditional institutions;
 - c) Strengthen land dispute resolution mechanisms, incorporating customary norms and traditional institutions, and ensuring the effective participation of women; and
 - d) Clarify the mediation role of the South Sudan Land Commission and strengthen its institutional and technical capacity to deliver on its role in this regard.
- ii. Enact a Land Registration Act that shall recognize and protect legitimate rights and interests in land held under all tenure categories;
 - iii. Enact a Land Survey Act that incorporates the use of modern technology in demarcation, survey and mapping;
 - iv. Digitize²⁸ and digitalize²⁹ land records and processes and facilitate access to land information through low cost and socially appropriate approaches;
 - v. Develop and implement a strategic plan for institutional and technical capacity strengthening of land administration at national, state and local government levels; and
 - vi. Establish a land taxation regime that facilitates efficient revenue collection, promotes effective utilization of land, incentivizes appropriate land use, and discourages land speculation.

4.3. Policy Statement 3: Securing the land rights of IDPs and returnees

The Government shall guarantee secure access to land and property by IDPs, returnees as a basis for achievement of durable solutions.

Displacement of populations due to conflict and natural disasters is a major problem in South Sudan, compounded by the decades-long cycles of conflict on the one hand, and the impacts of climate change on the other hand. Many IDPs and returnees have lost their land rights to others and are unable to reclaim their rights even when they wish to return to their ancestral lands,

²⁸ *Digitization*: Digitization is the process of converting information into a digital (i.e. computer-readable) format <https://en.wikipedia.org/wiki/Digitization>

²⁹ *Digitalization*: Transforming your business processes for digital. Digitalization moves beyond digitization, leveraging digital information technology to entirely transform business processes, evaluating, reengineering and reimagining the way you do business. <https://www.truqcapp.com/digitization-vs-digitalization-differences-definitions-and-examples/#:~:text=If%20digitization%20is%20a%20conversion,and%20make%20better%20business%20decisions>

particularly in urban and peri-urban areas. Secure access to land is crucial to the 5Rs of relief, rehabilitation, resettlement, reintegration and return.

To ensure access to land and property by IDPs and returnees as part of the durable solutions approach to managing displacement the Government shall:

- i. Work with development partners to strengthen institutional and technical capacities at national, state and local government levels for disaster risk reduction through more effective and efficient prediction, preparedness and response;
- ii. Mainstream land, housing and property rights in all policies, laws and institutional frameworks for humanitarian response, and strengthen coordination of responses to housing, land and property issues among humanitarian actors at all levels;
- iii. Review, revise and update the Land Act 2009 to implement and enforce the provisions of Chapter XIII on land restitution and compensation to redress grievances over loss of land and property up to and including those arising from the conflict that broke out in 2013;
- iv. Improve physical infrastructure and social service provision in rural areas to make them attractive to returnees and to stem rural-urban migration; and
- v. Establish a policy and institutional framework to facilitate partnership between the GRSS, State, and local governments, communities and development partners to develop and implement a structured process for resettlement of IDPs and returnees who do not wish or are not able to return to their ancestral lands, taking into account the rights of host communities and the imperatives of sustainable land use and environmental management.

4.4. Policy Statement 4: Securing the land rights of women

The Government shall ensure that women enjoy their land rights as guaranteed by the TCSS

Notwithstanding the guarantees in the TCSS of the right of women to land and property, South Sudanese women are denied ownership rights to land, and have weak access rights that are wholly dependent on their relationship with men. The important role of women as the main users of land for agricultural production, and the large number of women headed households makes it imperative that their land rights be strengthened and secured to ensure livelihood security, household food and nutrition security and the productive use of land for economic development.

To strengthen and secure land and property rights of women, the Government shall:

- i. Implement the Women's Land Rights Agenda for South Sudan;
- ii. Enact appropriate legislation to ensure effective protection of the rights of women to own and inherit land and related resources before, during, and after marriage;
- iii. Repeal existing laws and outlaw regulations, customs and practices that discriminate against women in relation to land;
- iv. Legislate for joint spousal registration and documentation of land rights, and joint spousal consent to land disposals under all tenure systems;
- v. Enact family law, including on succession and matrimonial property that implements the provisions of the TCSS on women's land rights, domesticates all regional and international Conventions ratified by the GOSS that outlaw discrimination against women, and enforces all the principles therein;
- vi. Implement affirmative action to increase women's access to and ownership of land and property;
- vii. Implement a structured process for aligning customary laws to the provisions of the TCSS on the land rights of women;
- viii. Carry out public education campaigns to encourage the abandonment of cultural practices that discriminate against women in the ownership and inheritance of land and related natural resources; and
- ix. Legislate for proportionate representation of women in institutions dealing with land at all levels.

4.5. Policy Statement 5: On sustainable management of land-based natural resources

The Government shall promote the sustainable management of land-based resources for the benefit of the present and future generations

South Sudan is blessed with substantial natural resources that the majority of the population depend on for their livelihoods, and which also constitute the foundation for the country's social and economic development. However, the natural resources are under threat due to climate change and unsustainable use, putting livelihoods at risk and undermining prospects for wealth creation.

To promote the sustainable management of land-based resources, the Government shall:

- i. Develop and implement a comprehensive resource tenure policy that integrates customary tenure principles relating to shared use, conservation and management of land-based resources and recognizing the role of traditional institutions in that regard;
- ii. Undertake an inventory of all land-based natural resources both exploited and unexploited;
- iii. Enact legislation and establish administrative mechanisms for defining the obligations of the State as trustee of land-based natural resources and for allocating benefits arising from the exploitation of those resource between the different levels of government;
- iv. Facilitate public access to beaches, rivers, waterfronts and fish landing sites; and
- v. Recognize and protect the rights of communities that live adjacent to and depend on forests, water and other natural resources to access and use the resources for their livelihoods, and ensure that they share in the benefits derived from investments in the said resources.

4.6. Policy Statement 6: On land use planning, land management and environmental sustainability

The Government shall promote effective land use planning and management, and ensure that the environment is managed sustainably

Land use planning and sustainable management of land and environment have not received adequate policy attention in South Sudan, notwithstanding the commitment in South Sudan Vision 2040 to adopt appropriate measures to limit pollution that may result from rapid industrialization and to foster sustainable environmental management. This may be explained by the fact that the country is blessed with a huge land mass and a relatively small population.

However, in the period since the end of the civil war, the rapid increase of population, particularly in urban and peri-urban areas has created challenges that make land use planning an urgent priority to ensure, among other things, the sustainable utilization and management of land and land-based resources, reduction of land use conflicts, mitigation of environmental degradation, and planned rural and urban development that facilitates provision of social services.

To ensure effective planning of land use, and the sustainable management of land and environment the Government shall:

- i. Develop a national land use policy as a basis for land use planning and management;

- ii. Enact and implement a Physical Planning Act to govern planning of rural and urban land at all levels of government;
- iii. Develop and strengthen institutional and technical capacity for land use planning, land management and development control at all levels of government;
- iv. Adopt and implement a National Housing Policy that addresses the needs of both rural and urban housing development;
- v. Review, revise and update sector policies and laws on environment and natural resource management to align them with the National Land Policy;
- vi. Strengthen the institutional and technical capacity for enforcement of environmental policies and laws;
- vii. Undertake a survey and inventory of all biodiversity hotspots and fragile ecosystems, and develop and implement participatory mechanisms for their sustainable management that integrate indigenous knowledge and provide for the role of traditional institutions; and
- viii. Ensure effective consultation and informed participation of impacted individuals and communities in land use planning and land management processes.

4.7. Policy Statement 7: Ensuring peaceful coexistence between pastoralists and farmers

The Government shall regulate pastoral land use to ensure its peaceful interaction with other land uses, particularly farming

Although nomadic pastoralism and farming have coexisted for millennia, the interaction between the two land use systems has become increasingly negative and tense in recent years due in large to population growth, the spread of land uses incompatible with pastoralism and climate change. The importance of livestock to the livelihoods and the economy of South Sudan dictates that the interaction between pastoralism and agriculture should be managed in such a manner as to promote harmony among herders and farmers in order to stem conflict and ensure sustainable use of land. To promote positive interactions between pastoralism and farming and ensure harmonious coexistence between herding and farming communities, the Government shall:

- i. Adopt and implement a policy on rangeland management that integrates traditional rangelands management norms and recognizes the role of traditional institutions;

- ii. Domesticate the IGAD Protocol on Transhumance to secure and manage seasonal livestock migration routes;
- iii. Integrate the requirements of seasonal livestock mobility into rural land use plans;
- iv. Encourage and facilitate negotiations between pastoral and farming communities to develop and implement protocols to govern their relations, taking into account traditional norms;
- v. Strengthen early warning and response mechanisms in areas where the risk of inter-pastoralists conflict as well between pastoralists and agrarian communities exists; and
- vi. Involve traditional institutions in facilitating and mediating interactions between pastoralists and farmers.
- vii. Encourage livestock taxation with aim of protecting the environment, enhance rangelands/ ranching and promote transformation.

4.8. Policy Statement 8: Stemming corruption in land administration, land grabbing and illegal land occupations, and regulating large-scale land investments

The Government shall stem corruption in land administration, land grabbing and illegal land occupations, and regulate large-scale land acquisitions

The stemming of corruption in land administration, and land grabbing and reclaiming of land that has been illegally appropriated from communities, particularly in peri-urban areas, is a crucial step in upholding property rights and the rule of law. Regulating the manner in which land is acquired for investment purposes will open up opportunities for attracting investors to initiate projects that will help realize the full potential of the land sector in South Sudan to be an engine of wealth creation and economic transformation.

To control and stem corruption in land administration, land grabbing and illegal land occupations, and to regulate access to land for investments, the Government shall:

- i. In partnership with state and local governments, conduct an inquiry into illegally acquired land all over the country, and elaborate a process for reclaiming and recovering it;
- ii. Investigate and prosecute all cases of corrupt and fraudulent practices in land allocations;

- iii. Develop and implement a public education on responsible land governance targeting all land administration and management institutions, including traditional authorities;
- iv. Review, revise and update Chapter IX of the Land Act 2009 on acquisition of land for investment purposes to ensure effective consultations and transparent procedures, and strengthen the enforcement mechanisms for the same;
- v. Strengthen the capacity of the South Sudan Land Commission for arbitration and medication of land dispute and enforcement of decisions on land claims;
- vi. In partnership with state and local governments and communities, develop and enforce zoning requirements for industrial, commercial and agricultural land;
- vii. Work with state and local governments to reserve land in every state and county headquarters for establishment of industrial parks to ease access to land for investment purposes; and
- viii. Review, revise and update the Investment Promotion Act, 2009 to integrate the imperatives of this Policy.

4.9. Policy Statement 9: Resolving disputes over internal boundaries and international borders

The Government shall promote peaceful resolution of disputes over internal boundaries and international borders

A long history of conflict, displacement and population movement within and across national borders has created many boundary disputes within and between states in South Sudan, as well as simmering border disputes between South Sudan and its neighbouring countries. To a great extent, the frequent boundary disagreements pose threats to peaceful coexistence among communities, while border disputes threaten the sovereignty of South Sudan and its international relations.

To resolve the boundary disputes within the country and the border disputes with neighbouring countries, the Government shall:

- i. Facilitate delimitation and demarcation of disputed internal boundaries in partnership with state and local governments, and with the full participation of communities and traditional institutions, with due regard to customary norms;

- ii. Seek the support of the African Union Border Program (AUBP) and work with neighbouring countries to resolve outstanding border disputes, delimit and demarcate the international borders through participatory processes that engage border communities;
- iii. Work with relevant stakeholders to produce an up-to-date official map of the Republic of South Sudan.

4.10. Policy Statement 10: Strengthening resilience to climate change and disaster risk management

Government shall strengthen communities' resilience to climate change and improve capacities for disaster risk management

South Sudan faces significant challenges from climate change and climate-change induced disasters. Extreme weather conditions, variable rainfall, land degradation, persistent droughts and flooding have increased in recent years, resulting in constrained production, productivity and competitiveness of the country's agricultural sector, thereby undermining prospects for food and livelihoods security as well as national economic development. These risks are likely to increase as the climate crisis deepens across the region and globally.

To strengthen the resilience of communities to climate change and improve capacities for disaster risk management, the Government shall:

- i) Adopt a Climate Change Policy and enact a Climate Change Act to provide an enabling policy, legal and institutional framework for mainstreaming climate change across sectors of government at all levels;
- ii) Review, revise and update sector policies and laws on environment, food security, nutrition and health, water and sanitation, and disaster risk reduction to integrate climate change imperatives;
- iii) Implement measures for climate change adaptation and mitigation that build on communities' indigenous knowledge and strengthen the role of traditional institutions;
- iv) Strengthen the institutional framework for disaster risk management to improve preparedness and response to disasters;

- v) Compile disaster risk profiles for all regions of the country as the basis for preparedness; and
- vi) Develop and implement South Sudan's National Communication to the UNFCCC, National Adaptation Programme of Action (NAPA), National Adaptation Plan (NAP) and National Biodiversity Strategy and Action Plan (NBSAP)

4.11. Policy Statement 11: Land Markets and Investment

Land markets are essential component of economy stabilization and an stimulus of growth as it constitute a constant driver of domestic and foreign investment. The efficient management of land markets and its potential revenues generation through land transactions and housing development, it can certainly guarantee delivery of the required public goods and support the national economic development with less dependency on foreign financial loans. The World history reveals that ancient Kingdoms as well as the contemporary nations manage their sociopolitical and economic affairs through land revenues and taxation since the century 7th BC.

The South Sudan national land policy aims at development of vibrant land markets to inspire the South Sudan national development Agenda 2040. Thus, the national land policy shall advance the discourse of land markets across the country through the following strategies;

- i. Enhance and regulate safe land transactions both in the rural and urban setup.
- ii. Promote the national land markets to meet the international standards.
- iii. Establish robust and resilient land taxation regime.
- iv. Enhance and regulate safe land transactions across the country.
- v. Establish National Land Bank and land microfinance institutions to boost land and land related investment for present and future generation.

4.12 Policy Statement (12): National Land Registry and Land Records System

The Government shall enhance the National Land Registry and manage it in a decentralize manner to optimize utilization of land resources for stimulating the national economy and support socio-cultural development.

Although the transition of the Land Registry from the South Sudan Judiciary to the National Ministry of Lands, Housing and Urban Development (MLHUD) is accompanied with multiple

challenges, yet, it provides an opportunity for reforms that will anchor the entire land registry process to the national housing and physical planning policies and strategies. This gives a unique chance for acknowledging the customary land registration system (a dominant rural land registration base approach) and makes it an indispensable factor of the desired national land registry. Transparency and accountability are vital instruments that shall reinforce maintenance and keep an up-to-date land information database in general and improve efficiency of the land registry in particular. Taking into account experience of Countries with good practice of land management, it is apparent that a holistic vertical and horizontal management of the national land registry will ascertain the contribution of this important sector to the country's security, economic and social development and improved livelihoods.

Hence, with the fundamental aim of rejuvenating and establishing a resilient land registry in support of a new dispensation of land regime in South Sudan, the national land policy shall pursue the following:

- i. The National Ministry of Land, Housing and Urban Development shall build the architecture of the National Land Registry on a decentralized manner, with a central hub at MLHUD and a decentralized land registry portals at the Ministry of Land, Housing and Public Utilities at the respective State and Administrative Areas level of governance.
- ii. The National Ministry shall do the oversight over the land titles and Ministry of Land, Housing and Public Utilities at the State and Administrative Areas level of governance shall manage the entire process of land acquisition and allocations and issuance of land deeds.
- iii. The National Ministry of Land, Housing and Urban Development (MLHUD) shall be the final authority in approving land transactions, leases and transfer of public owned lands and properties upon recommendations by the National Ministry of Cabinet Affairs as well as the respective States and Administrative Areas.
- iv. The National Ministry of Land, Housing and Urban Development (MLHUD) shall be the authority in granting permission for the foreign ownership of properties and land and their registration.
- v. All the financial revenues generated in the entire land management processes as well as the land registry shall be shared between the national government and the respective

- States and Administrative Area and County Authority in an agreeable percentage formula in accordance with the law.
- vi. The National Land Registry/ Ministry shall be the authority in granting permission for registration of foreign ownership of properties and land titles.
 - vii. The Land Registry governance shall enhance both the formal and customary land registration systems to strengthen tenure security and ensure safe investment on land and land resources.
 - viii. The Land Registry in a decentralized manner shall maintain the following:
 - a) Land Registers and Registry Maps and supporting documentation.
 - b) An application book of all documents presented for registration.
 - c) An Index of Owners of land, leases and charges.
 - d) A register of Power of Attorneys.
 - e) Any other land registry documents in accordance with the law.

4.13 Policy Statement 13: Assignment of Roles and Responsibilities for Land Administration

The principle of subsidiarity and devolution on roles and responsibilities among the stakeholders in land administration is crucial in addressing matters of overlapping roles. This policy highlights some major roles and responsibilities of the different levels of government and traditional authorities pertaining to land administration and are as follows:

4.13.1 The National Ministry of Land, Housing and Urban Development (MLHUD)

- i. Development of laws and regulations to help management and development of the land administration and land markets.
- ii. Develop the official documents to be use in land administration, land transactions and other land related affairs.
- iii. Lead the process for the establishment and development of the National Physical Planning, Land-use planning and Geo-spatial.
- iv. Develop and manage the South Sudan Land Registry and establish a national hub at the National Ministry.
- v. Coordinate establishment of the National Physical Planning Council.

- vi. Establish all the types of land related fees and taxes and determine their limits in local currency.

4.13.2 State Ministry of Housing, Land and Public Utilities

The policy envisages roles and responsibilities of the State Ministry of Housing, Land and Public Utilities as follows:

- i. Develop urban and town planning maps and direct rural human settlements expansions.
- ii. Administer the land administration and land records.
- iii. Adjudicate on land disputes and encourage peaceful resolution of land related conflicts.
- iv. Coordinate acquisition of land with Community for town development, agricultural schemes, and infrastructure expansions.
- v. Allocation of plots for public amenities/ conveniences, housing, industrial and infrastructural development.
- vi. Prompt issuance of land leases, title deeds and lease certificate of public land for investment.
- vii. Plan and Approve all organized human settlements planning, mass agricultural schemes and major infrastructure development within the State/ Administrative Areas.
- viii. Delimit and demarcate the intra-state boundaries in coordination with concerned government and civil institutions.
- ix. Implement and adhere to the national and regional physical planning policies and strategies.

4.13.3 Local Government

- i. Coordinate, organize and administer the peri-urban and rural human settlements within the County territory.
- ii. Implement and manage the national and regional physical planning policies and strategies at both urban and rural levels.
- iii. Control and manage county markets and public land at county level.
- iv. Manage counties and payams grave yards as well as any public grave yard.

- v. Plan and manage waste collection points and disposal sites
- vi. Allocation of plots, issuance of land leases and keeping up-to-date land records of the approved residential areas and rural human settlements within the Council territory.
- vii. Facilitate and coordinate processes of County/ council intra-borders delimitation and demarcation.
- viii. Efficient consultation and coordination with local community for acquisition of land needed to accelerate rural transformation and consolidate national development and land banking for future generations.
- ix. Liaise efficiently with the respective Ministry of Housing, Land and Public Utilities in the respective States/ Administrative Areas on matters of land and human settlement development.
- x. Any other responsibilities on land management at the level of the local government jurisdiction prescribed by a law.

4.13.4 Municipal Authority

- i. Regulate and administer the municipal jurisdiction
- ii. Implement and manage the national and regional physical planning policies and strategies within the municipal territory.
- iii. Control and manage municipal markets and council housing and property.
- iv. Manage municipal grave yards and public lands under the municipal territory.
- v. Plan and manage waste disposal sites
- vi. Protect and supervise the public utilities at the municipal territory.
- vii. Any other responsibilities on land management at the level of the local government jurisdiction prescribed by a law.

4.13.5 Traditional Authority and Payam Land Councils

In respect with the power and function of the Traditional Authority in land management in accordance with the Land Act 2009 and Local Government Act 2009, this National Land Policy envisages the fundamental roles and responsibilities of the traditional Authority in adequate land management for sustainable national socioeconomic development as follows:

- i) Exercise the role of Custodian of traditional/community land and represent the concerned community on matters related to their land.
- ii) Coordinate and support the national and regional physical planning policies and strategies for better rural transformation and urbanization.
- iii) Provide crucial guidance on protection of community/ spiritual lands and area; protection of environment; securing cooperate social support and other benefit from new human settlement, infrastructure development and investment.
- iv) Drive their final rights and decisions over matters of specific community land through a participatory approach and coordination with the local government authority.
- v) Endorse and support the process of converting communal lands into public ownership and usage one.
- vi) Seek approval of the State Authority on issues of both foreign and mega-domestic investment within their concerned jurisdiction.
- vii) Active participation in committees of social survey within their jurisdiction and maintain up-to-date data of traditional/customary land ownership.
- viii) Adjudicate and promote peaceful resolution on matters related to land conflict or traditional transactions within their respective territory.
- ix) Perform any other functions or duty prescribed in any other law or regulations pertaining to issues of land management.

CHAPTER 5

IMPLEMENTATION OF THE NATIONAL LAND POLICY

Successful and effective implementation of the National Land Policy depends on the existence of three major factors – an institution, capacity and resources. An institution is needed that takes primary responsibility for the implementation of the Policy through a comprehensive plan with clear benchmarks. To be effective in this regard, the institution must have sufficient constitutional and legal authority to coordinate action across different sectors of government. The MLHUD is the appropriate institution in this case, as it holds the cabinet portfolio for coordinating development of the land sector as a whole, and it has spearheaded the development of the Policy. It shall work closely with the South Sudan Land Commission in the implementation of the Policy as it has done in its development.

The Ministry will need to mobilize the requisite technical capacity and financial resources, and bring on board all major stakeholders to agree a structured process for implementation of the Policy. In particular, the Ministry will require the full cooperation of sector Ministries and agencies of government, state and local governments, and development partners (including UN agencies, bilateral donors, civil society, the private sector and research institutions) in developing a land policy implementation framework. In this connection, the Ministry shall:

i. Establish a Land Reform Unit led by a coordinator to oversee the preparation of a Land Policy Implementation Strategic Plan through a participatory process that involves all key stakeholders at the national, state and local government levels as well as development partners.

The Land Reform Unit will facilitate drafting and enactment of legislation for implementation of the Policy, establishment of relevant institutions, recruitment and training of relevant personnel, mobilization of financial and other resources, including through UN agencies and other development partners, and civic education to disseminate and create awareness about the Policy;

ii. Develop and implement a Capacity Building and Communications Plan for implementation of the Policy to support capacity development for relevant staff at national, state and local government levels, particularly on policy coordination, land administration and management, and land disputes resolution;

- iii. **Develop and implement a Resource Mobilization Strategy** to generate the financial and other resources needed to implement the Policy. The Strategy shall incorporate partnerships with NSAs to ensure adequate resources are mobilized and availed to state and local governments to enable them implement the Policy;
- iv. **Develop and implement a Land Rights Education and Awareness Creation Strategy** to develop and sustain public awareness and engagement with the Policy as a way of strengthening demand for reforms among the citizenry;
- v. **Develop and implement Land Policy Implementation Monitoring Strategy** to facilitate ongoing monitoring, evaluation, and learning to improve implementation; and
- vi. **Review and update the Policy** periodically to reflect changes in the political, social, economic and environmental context and integrate learning and fill gaps. The initial review of the Policy shall be done at the end of seven years from the date of its adoption.

5.1. Reform of land sector laws

Law reform is an integral part of the Land Policy implementation process. Once the Policy is adopted, existing laws on land tenure, property rights, and land administration will require extensive review and amendment and new laws and implementing regulations will need to be drafted in order to give legal expression and force to the goals of the Policy. Legislative priorities will include the amendment of the Land Act 2009 and adoption of Regulations for its implementation, the Local Government Act 2009 and the Investment Promotion Act 2009, the Petroleum Act 2012, and the Mining Act 2012. Sector policies on environment, water resources, forest resources, and agricultural development will also be reviewed and updated to integrate the imperatives of the National Land Policy. New policies may also have to be adopted, including on climate change, disaster risk reduction, and management of IDPs and returnees.

The Policy has proposed the enactment of new laws to give effect to its provisions on strengthening the land administration system. Some of the new laws to be enacted for this purpose will include:

- i. Community Land Act;
- ii. Public Land Act;
- iii. Land Registration Act;
- iv. Land Commission Act;
- v. Physical Planning Act (incorporating town and country planning);
- vi. Land Survey Act;

- vii. Climate Change Act; and
- viii. Family Law (incorporating inheritance of land)

The Land Policy Implementation Strategic Plan will provide for the review, revision, and updating of existing policies and laws, and identify new policies and laws that need to be developed. The Land Policy Implementation Unit will work with the relevant sector ministries and other actors to ensure that the necessary policy and legislative reforms are effected. In this connection, the Unit shall seek the support of international cooperation and development partners to mobilize technical resources as appropriate.