# Baseline study report on Women’s land rights in South Sudan

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# Acronyms

ARCSS - Agreement on the Resolution of the Conflict in South Sudan

CC - Collective Center, a place of safety, most often a church, where IDPs have settled.

CPA - Comprehensive Peace Agreement, signed in 2005 to bring South Sudan into being.

FAO - The Food and Agriculture Organization of the United Nations.

FPIC - Free Prior and Informed Consent

IDP - Internally displaced person.

MOPI - Ministry of Physical Infrastructure

IOM - International Organization for Migration

NRC - Norwegian Refugee Council

POC - Protection of Civilian site, a UN run place of safety for IDPs

RARCSS - Revitalized Agreement on the Resolution of the Conflict in South Sudan

SSLC - South Sudan Land Commission.

The Project - Enhancing Women’s Access to Land to Consolidate Peace in South Sudan, project of UN Habitat and FAO.

UN - United Nations

UN Habitat - United Nations Human Settlement Program

UNHCR - United Nations High Commission for Refugees

WDG - Women’s Development Group

# Definitions

Land rights Are the various rights that people have to land and normally the fixed properties on that land. We think of land rights as being made up of a bundle of rights. The bundle varies in different contexts, under different laws and different land administrations. The type of rights that are often considered to be in a bundle of rights include things like the right: to use in particular ways (the use rights on any particular piece of land may vary for different people and at different times. Typically, for example, agricultural or grazing land cannot necessarily be used for residential purposes. And some people may have a use only at certain times of year, for example livestock keepers may be able to graze on agricultural land after the crops have been harvested); to exclude others from its use; to give away; to sell; to encumber (e.g. use as collateral for loans); and to bequeath to a person of your choice.

Ownership Ownership is one form of right to land. It is normally quite a strong right incorporating a range of rights that make up the bundle of rights.

Land access People using land in anyway have some form of access. Access constitutes a right to land, albeit a limited right. This right of access can be quite secure, or very insecure.

Certificates The term land certificate in this report is used to refer to all forms of document that confirm some form of land right for the holder/s of the certificate (of which there are many kinds at the moment). These can be provided by customary or statutory authorities, as long as they are documented and recognized by and authority.

# Introduction

This paper gives an overview of the current situation of women’s land rights in the Republic of South Sudan (hereinafter South Sudan) and makes recommendations for what needs to be done to advance women’s land rights. This is not an in depth elaboration of every aspect of land rights and administration, or women’s land rights in the country, there are quite a number of good papers already available on land in the country (see for example: Elof, 2019a, Jahn, 2017, Pritchard, 2015, Deng, 2014, Morongwe, 2013, US Aid, 2009, USAid, Undated). Although it is notable that a number of these, otherwise thorough papers, say little about the situation of women. What this paper aims for, is to be accessible and focused on practical steps that can be taken to improve women’s land rights and through that contribute to a sustainable peace and progress in South Sudan. Secure land rights, and all the benefits that are derived from these, will not be achieved without sustained peace, and neither will peace be sustained without secure and equitable land rights, including for women.

The paper starts with presenting a framework for analysis of the situation of women’s land rights giving particular attention to how this relates to the creation of sustainable peace. It then presents both an analysis of the current situation and ideas for change starting with women’s experiences of land rights and steps that can be taken to secure women’s land rights at the local level, especially in Wau State). This is followed by a focus on land administration and management and then a section on the situation and opportunities related to national land polices. Particular attention is given throughout the report to identifying the opportunities for progress on women’s land rights, especially where these are found in existing practices. It becomes necessary to challenge some of the incorrect assumptions and discourses around women’s land rights that are frequently used as arguments against taking steps to improve women’s land rights. In the final section the recommendations are summarized and linked to a monitoring framework to guide the tracking of progress.

The topics covered in this paper align with the outputs of the “Enhancing Women’s Access to Land to Consolidate Pease in South Sudan” project (hereafter referred to as The Project) of UN Habitat and FAO, that has supported its production. It is hoped that the recommendations in this paper will be taken up within the project as well as more widely.

The contents of this paper are informed by an extensive review of existing academic and grey literature (such as project and government reports) related to the situation of land rights in South Sudan and international experiences. It is also informed by a series of interviews with a range of key informants in South Sudan, especially in Wau State, and interviews with community members - from around Wau, Aweil and Gogrial States - about their actual land rights experiences and realities. Some vignettes are shared throughout the paper to give the reader a better sense of the experiences and realities of the respondents.

It is important to recognize that post conflict periods in any country are full of threat and also opportunity. It is often a time when laws and policies are revised, as indeed is happening in South Sudan and required in terms of the peace agreements entered into. It is also a time when those displaced by conflict return. These revisions to policy and the way people resettle after being displaced can either consolidate inequalities, such as gender inequalities, or be a moment when problematic beliefs and practices are challenged and the foundations are set for new more equitable policies, practices, and gender relations.

There are currently many lines of conflict in South Sudan, such as between ethnic groups based on territorial claims and between people with different livelihood systems, such as pastoralists versus settled farmers. These lines of division and conflict also overlap, making them more complex. But they can and must be dealt with and part of the solution lies in effective land administration. Military action cannot be allowed to be used to further ethnicity based territorial claims or land grabs. Strong land administration, including credible justice systems, that are accessible and fair to all, are needed to transcend ethnic and other divisions. Gendered power relations need to be challenged from the household, to community, to national levels in order to build more equitable practices that can support the implementation of the laws that call for gender equality and equity.

# Framework of Analysis

## 2.1. Understanding Women’s Land Rights

The focus in this paper is on women’s land rights, rather than on access. This is first because access is a form of right to land, so covered under any serious discussion on rights, and what becomes important is the nature of those access rights. Secondly, the primary challenge for women is not access to land, there is plenty of land that women live and produce on (such as their husband’s land or father in-law’s land) and more that they could access if needed. The problem is that women too often have very weak rights to the land they work and the properties where they make their homes. This reduces the extent to which they can determine their livelihoods, be secure in their homes, and benefit from their hard work. This in turn reduces the incentives for women to invest their time, energy and other resources in improving their homes, infrastructure and production on the land. Further, the nature of rights to land, especially where land is central to people’s economic and social lives, influences the power people have in decision making structures. Relying for one’s livelihood on accessing land that someone else has unaccountable control over makes a person very unlikely to challenge the controller of the land. It is not easy to stand up to a person who can determine your livelihood prospects and even remove you from your home.

Fully enjoying and benefitting from rights to land also requires an ability to use the land to one’s benefit. Women who face discrimination in markets and in access to inputs, will be less able to use and benefit from land. At the same time, having rights to land often determines the support services - such as extension services, access to credit and subsidized inputs – that a farmer can get. Effectively securing women’s rights to land in South Sudan can help unlock other opportunities and also requires creating an enabling environment in the wider food and agricultural sector.

For women to have secure rights to land they need to have a meaningful involvement in land related decision making and be secure within the household they are part of. In turn, households need to be secure within the community they are part of, and the community itself needs to be secure. We need to consider all these levels in terms of the rights that all women and men have and then the specific rights that women have at these different levels. Within communal land use systems, the rights of members of the community are ensured not so much through documented rights to particular pieces of land as much as they are secured through their participation in land related decision making so that they can ensure their needs and interests are considered. Experience shows us that where women are excluded from such decision making their interests tend to be overlooked or taken less seriously. Therefore, improving women’s meaningful participation in decision making becomes a key path to improving women’s land rights and their benefits from land.

People actually enjoying land rights (as with other rights) requires these rights to be entrenched in a range of spheres of influence. These can be seen as being within policies, practices, ideas and beliefs. Policies include laws and regulations as well as draft and approved public policies. Practices involve how land is actually distributed and administered, which is not always in line with the stated policies. Government practices are seen in things like the programs put in place and the budgets allocated to support them. Resources invested have a big impact on actual outcomes. Ideas and beliefs, which often manifest in particular attitudes and cultures, influence which policies get adopted and shape the way they are interpreted and implemented. As the Independent Expert Group on South Sudan (IEG) have said, it is essential to “invest much more in social norms and behaviour change with a broader purview of gender equality and women’s empowerment” (IEG, 2019a: 3). These spheres reshape each other. While beliefs influence policy, policies can also start to influence practices and people’s beliefs as they adapt to new policy environments. Almost all countries tend to have a gap between policy intentions and their implementation in practice. The more that ideas and beliefs align with policy, the easier implementation will be and the more likely it is that practices will align. Bringing change on an issue like women’s land rights will require change in all these spheres and in the gendered power relations that shape them.

#### Box 1. Sarah’s story

Sarah[[1]](#footnote-1) is 37 years old. Although she is married, but her husband is away and she doesn’t know when he will return. She used to farm in the area of Natubu a little way outside town. First, she fled into Wau Town due to conflict. This stopped her being able to farm. In addition, land that she used in the past was subdivided and she doesn’t think she can get it all back. Later, when there was further conflict, she fled her rented home in the town of Wau to a collective center (CC). Over the last years, the conflict and resulting loss of access to agricultural land has forced her to support herself and her family from business activities. She now bakes bread and sells this and other food stuff on the side of the road. Looking to the future she wishes to have a secure place to trade so that she can develop her business. If she can get agricultural land she may also use that, but it is unlikely to be back where she came from.

What we see in this and other cases is how people’s means of livelihood and relationship to the land has changed. Sarah is holding the family together and providing for them in the absence of the husband and without support from his family. Old assumptions about her husband’s family land being used for production to support her and her husband’s children don’t apply. If Sarah were to become the primary rights holder to urban residential and business land (even new agricultural land), and if she were able to pass that on to her daughters as well as sons, it is not going to infringe any of her husband’s family’s land, but it will help to secure her and her children’s futures.

## Women, Land and Peace

Women’s meaningful participation in peace processes and beyond is a recognized contributor to the creation of sustainable peace (UN Women, 2019). Land rights for women are important to the participation and people’s well-being. A study on women and peace submitted to the UN Secretary General in 2002, recommended that more be done to “Identify and address problems relating to land and property rights facing women returnees, particularly in situations where their husbands are missing.” (UN, 2002: 126). As the South Sudan Draft Land Policy says, tenure security builds peace and unifies the nation, “The leaders of South Sudan recognize the central importance of secure property rights to build a peaceful and prosperous nation” (MLHPP, 2014: 17-18).

Women’s participation is essential for sustained peace and land rights for women has been found to enable greater women’s participation in wider decision making and leadership as they have their own home and economic base and greater confidence – as well as being respected as land owners – to participate and be taken seriously in decision making (Allendorf, 2007, Englert and Daley, 2008, Tsikata, 2003). Improving land rights for women will contribute to situating women to participate more effectively and help ensure women’s issues are better addressed.

Of particular relevance for South Sudan, women’s participation is also identified as important to support as women tend to push for important actions, such as “[t]he pursuit of gender-sensitive justice and land reform, protection against discrimination, and specific protections for poor, indigenous or ethnic minority women and girls are other central issues.” (UN, 2002: 65).

The comprehensive peace agreement for South Sudan, followed international best practice by including commitments to women’s participation, but these commitments have not been met. Women’s groups and others continue to argue for the meaningful inclusion of more women in the peace process and the structures that are key to establishing and sustaining peace (IEG, 2019b, Pasi, 2019). One of the excuses for women not to be involved is the lack of experienced women leaders. Experienced civil and political leadership is something that needs to be built from the ground and land rights for women is a key element of building that leadership. Experience from different parts of the world shows that giving women more secure land rights increases their leadership and decision making in households, in communities and in wider political processes (Wagle et al., 2017).

Women’s right to be treated equally and land rights issues were addressed explicitly in the founding of South Sudan as a nation. The Comprehensive Peace Agreement that ended the war between Sudan and South Sudan and ushered in the establishment of South Sudan as a sovereign nation, prohibited any discrimination “on any ground such as race, colour, sex” (CPA, 2005: 16). The constitution confirmed “The equal right of men and women to the enjoyment of all civil and political rights set forth in the International Covenant on Civil and Political Rights and all economic, social, and cultural rights set forth in the International Covenant on Economic, Social and Cultural Rights shall be ensured” (CPA, 2005: 17). It also set out a process for addressing land issues, a process that was identified as essential for peace, and brought into being the South Sudan Land Commission (SSLC). The SSLC had, among other functions, the responsibility to: deal with land claims; arbitrate on land issues and land claims; and to make recommendations on Land reform policies and the recognition of customary land rights and/or law.

It has also been identified that post conflict the “the responsibility of looking after the family mainly falls on women” (GRSS, 2015: 18). This is another reason to rethink the land rights afforded to women. The social and economic structures have shifted and the nature of land rights and administration need to be adjusted to fit the new realities. For example, a number of women interviewed for this study were found to have shifted from depending on agriculture to depending on business in town for their livelihoods and to support their families. This is a combination of the impact of conflict, but also part of wider trends of urbanization and the shifting structure of the economy.

Another important link between land and peace is that there will be no sustainable peace unless most people have access to a reasonable livelihood. In South Sudan land for agriculture and livestock remains, despite some shifts, essential for the creation of livelihoods for the majority of people now and in the foreseeable future. Thus, land administration and related factors, such as land use planning and markets for agricultural produce, have to be orientated toward the creation of the maximum amount of economic opportunities. In doing so, one can also create a more enabling environment for women to succeed. In addition, secure land rights over business sites and properties need to be created for the development of business opportunities for women and men, especially those in poverty.

# Women Securing Land Rights (Focus on Wau State – The Project outcome 1)

This section looks at the actual situation of women’s land rights, taking-into-account the framework of analysis. The information and a greater level of focus, especially in sub-section 3.2, is on the situation in Wau due to that being the focus State for The Project. Nevertheless, many of the lessons and best practices from Wau are applicable in other states. It should be noted, however, that Wau is in a number of ways in a better position in relation to land administration than many states. It is a town with more infrastructure than most, such as being one of the few with a tar airstrip. Historically, with its rail link to Khartoum, Wau had better infrastructure and better administration than many towns. The court, that is much trusted in Wau, functions well relative to many such courts and has made many rulings in defense of women’s land rights. And it should be noted that some towns do not have a high court. Further, Wau was not as affected by conflict as some areas, so infrastructure was not as badly damaged.

As with the work on land administration systems (discussed in section 4 below), there is an opportunity through The Project to put in place some best practices that can serve as a testing ground and where successful as an example for other states to learn from and hopefully to follow. The advantages Wau has can support this initiative and provide the opportunity for it to be a good example. At the same time, it should be remembered that other areas do face greater constraints.

## 3.1. Current status of women’s land rights

Communities and their members, women and men, have faced and continue to face great insecurity in terms of their access and rights to land and property due to the threat and at times reality of violent conflict. Despite the peace agreement sporadic violence continues, for example, as recently as June 2019 conflicts between farmers and pastoralists in Wau state have led to attacks and deaths, with one incident in Roc-Roc-Dong county leaving 14 civilians dead (Elof, 2019b). This has affected rural communities with land under customary land administration and urban settlements with land administered through the Ministry of Physical Infrastructure. It has also had a big impact on agricultural production. At times the violence has appeared to be part of the assertion of territorial aspirations of particular groups and linked to the civil war. At times people have been displaced by violence that appears to be more linked to local conflicts over land, such as between pastoral livestock keepers and settled farmers. Local conflicts also get linked to national conflicts, or continued under the guise of the national conflicts (Craze, 2019). The proliferation of armed groups and weapons leads to a situation where too often disputes are settled with violence rather than through non-violent means such as negotiation or legal action in court. In some cases, land grabs by national and/or international elites and corporate interests have also threatened the land rights of communities. Such land grabs have an additional impact on women, compared to men, as women’s weaker rights to land and limited involvement in decision making makes them more likely to lose land and less likely to get any compensation if such is paid (Tandon and Wegerif, 2013).

An area of ongoing conflict is between mobile pastoralist livestock owners and settled farmers involved with agriculture. There needs to be planning and agreement between actors on how these two livelihood systems can coexist and complement each other. There are positive interactions between the groups, such as trade in their different products, livestock being able to eat from what is left in fields after harvest, manure that can be left in fields or collected from livestock to fertilize agricultural production. This requires agreements between different land users and land use plans, with amongst other things established livestock routes, especially to reach water, and agreements on different and overlapping land uses, and established dispute resolution mechanisms (IIED and SOS Sahel, 2010). These are normally best facilitated at the local level where they can be responsive to specific needs and opportunities, not least in the actual availability of water and types of soils and crops. Such local processes and agreements are ideally backed by state and national law and policy with support for the establishment and maintenance of such agreements. The work of Elinor Ostrom on Common Pool resource management is useful in seeking solutions to how such common pool resources can be managed (Ostrom, 2010, Ostrom, 1990). Her eight principles for effective common pool resources management are summarized in Annex 1.

Within communities, both men and women have experienced threats to their land rights from local elites attempts to appropriate land, poor land administration decisions and a lack of certainty about land rights. This includes customary and non-customary leaders allocating land to more than one person and leaders favoring international investors over local farmers. Another way in which a number of the respondents spoken to in The Project lost land is through it being surveyed and subdivided in ways that cut across existing de-facto boundaries. This has had a particular impact on people’s access and rights to agricultural land, but also impacted residential land and people’s houses. A number of people interviewed had lost agricultural land, with negative effects on their livelihoods. With residential plots, people should be allocated alternative plots, but these are in some cases smaller than what they lost and they face the challenge of having to rebuild their homes. In some areas of Wau, one can see numerous houses with large red crosses on them marking them for demolition as they are deemed to be in the wrong place. It seems very unfortunate and unnecessary, especially following people losing land and homes to violence, that people face the loss of their homes to arbitrary administrative action (surveying) that is being done with the claimed aim of securing people’s land rights in orderly settlements. Having to reconstruct a house on a slightly different plot, after surveying, is clearly a big issue for many families, given that having a physical home to move into is one of the main needs that IDPs have to enable them to resettle. Disrupting agricultural production is also the last thing any state structure should be doing given the disruption to production and the economy from years of war and the need for people to re-establish livelihoods.

#### Box 2: Phillip’s story

Phillip is a 63 year old married man living in Khor Malang, under Wau municipality. When conflict erupted his family fled to the POC and they are still there, but he stays at home. His main source of livelihood is agriculture. He takes pride in his crops, especially his giant Okra. He has a nursery where he grows seedlings. He also grows and sells ground nuts, beans, okra and other crops.

He says he shares the agricultural produce, income from it, and decision making with his wife. “I depend a lot on my wife for decisions”.

He used to grow more, but lost land when the village was surveyed and plots demarcated about five years ago. Surveyors came and without consulting him they surveyed and demarcated his agricultural land, distributing it to other people. The agricultural land he uses now belongs to other people who are in the POC. They could come back at any time and take the land, he would not stop them as he knows it is there land. They let him use it because it is better to have it looked after and it is less likely to be grabbed if it is being used.

Phillip also feels insecure on his residential land, despite having a certificate for it. He feels he can lose the land to the government or to “middlemen” who are taking land. But he does think he could successfully appeal to Ministry of Physical Infrastructure (MOPI), should that happen.

For the future, Phillip wants more land for residences for all his children and for agriculture. He wants to expand his nursery and grow more trees for fruit and timber.

Women within communities face additional challenges that revolve around three main issues. First, they do not benefit from inheritance in the way that men do. Most women don’t inherit land and the few that do don’t get the same amount of land as men. This perpetuates an intergenerational inequality in land holding between men and women. It means that efforts to secure land rights for women now, could be undermined if the next generation of women don’t inherit that land, but it instead reverts to male ownership, reestablishing gender land inequalities. Women have less say in decision making structures, reducing their confidence in those structures and reducing the extent to which women’s particular land needs and interests are considered and secured. Women have weaker rights to land, as they are often only entitled to land access through their relationship with men (e.g. husbands, fathers, brothers), or allowed to use land provided they have children and use the land to support those children. Almost all respondents also said that women can own livestock and if they have livestock they will have access to grazing land for their livestock. That grazing land usually being communal land the use of which is shared among those who have livestock. Indeed, it was found that some women do have rights to land in their own name and some do have livestock.

#### Box 3: Beula’s story

Beula is a 45-year-old mother of 7 children staying in Nazereth in Wau town. She says that she is married, but she has not seen or heard from her husband since 2011 and her younger children are not the children of her husband. She currently stays at a collective center, but has a house and land. She grows ground nuts and okra and also keeps chickens. She currently decides what to do on the land and believes she can decide to sell it or bequeath it if she wishes to. She doesn’t think she can lose the land “unless my husband comes and causes conflict and takes the land document, maybe, but I don’t think so”. If someone else tries to take the land she will go to court and thinks she can succeed. But if her husband returns, she is not sure what will happen.

The war for the independence of South Sudan and then the civil wars within South Sudan have had a very disruptive effect on families and communities. Hundreds of thousands are estimated to have died, millions have been displaced. This is leaving many women heading households due to their husbands being killed and also in many cases husbands that have been absent for years, but without confirmation if they are still alive or have lost their lives. Women proceed to take care of their families and try to get on with their lives, but they live with the uncertainty that their husbands might return and may disrupt the livelihoods that they have created.

#### Box 4: Christina’s story

Christina is a 29-year-old woman living in Aroyo county, Aweil state. She produces and sells groundnuts, pumpkins, sorghum and okra. She also has cows and goats. She inherited agricultural land in a communal area from her mother. She doesn’t have any document for the land, but she decides what to do on the land and controls the produce and income from it. She also believes that she can sell or bequeath the agricultural land if she wants to. But at the same time, she fears she could lose the land as it is community land and she doesn’t feel secured on it, she says the community could decide to take the land and she doesn’t think she could appeal if this were to happen as she knows it is the land of the community.

Christina believes that women are discriminated in relation to land and inheritance. She says that men inherit more wealth from their fathers and that men own larger pieces of land than women. Christina has not been involved in any land decision making structures and is skeptical about women’s involvement, she says “women can be in the committee and have no powers or any voice in decision making”

Christina’s situation highlights a few interesting points. One is that despite the narrative of women not inheriting, she has inherited land, or at least the use of it. As with Anna (see box below), her mother passed on the land to her showing that some women are in a position to pass on land and also do pass it on to their daughters. We found a number of such experiences even within our small sample. Secondly Christina, again like Anna even though they are in different states, has full control of the use and also the passing on of the land. Unlike Anna, however, Christina is worried that she could lose the land. She understands that it is community land and doesn’t appear to have confidence that the community would necessarily respect her rights to the land. Her sense of insecurity is likely to be influenced by her sense that women are discriminated against compared to men and that women don’t have a voice in community decision making. The positive point is that there is a level of acceptance in practice, in at least some areas, that women can bequeath land, inherit land and have full control of it. The challenge is that these rights, while extensive, are not well secured. There is a tension in the balance between the communal interests and the individual interests. More meaningful participation in community decision making and ending discriminatory practices would enhance women’s confidence in the communal land administration and allow a better balance of interests without doing away with customary land administration.

One internationally recognised way of measuring the extent of women’s land rights is to apply the methodologies for SDG indicators 1.4.2 and 5.a.1. These are overlapping indicators. Indicator 1.4.2 assesses the “Proportion of total adult population with secure tenure rights to land, with legally recognized documentation, and who perceive their rights to land as secure, by sex and by type of tenure” (IAEG-SDG, 2018a). Indicator 5.a.1 looks at “(a) Proportion of total agricultural population with ownership or secure rights over agricultural land, by sex; and (b) share of women among owners or rights-bearers of agricultural land, by type of tenure” (IAEG-SDG, 2017). The main difference is that 5.a.1. focusses on agricultural land and the agricultural population, while 1.4.2. is looking at all land. The sources of data for measuring these indicators are the same and are administrative data and surveys. The data to be able to assess progress against these indicators is, however, simply not available in South Sudan at the moment. Making such information available is one area of work that requires the administrative capturing of sex disaggregated data and setting up regular surveys that capture further quantitative data on the extent to which people have legal documents for their land rights and perceive themselves to have secure rights to land. In the meantime, the qualitative work done for The Project, and other research that has been done, while not providing quantitative information, does confirm that there is a large gender inequality in agricultural land rights and many women and men do not have what would be considered secure tenure rights to land.

#### Box 5: Anna’s story

Anna uses a piece of agricultural land in a communal area a bit outside the town of Wau. Her mother used to plough there and gave Anna a piece of land to use for herself. The mother has also allocated land to other people. Her mother has been there as long as she can remember. Anna grew ground nuts and sold some and kept some for food at home. Anna’s mother can sell or give away the land or bequeath it, but not Anna. Anna does decide what to grow there and what to do with the income from that. Anna uses the money from the sale of crops to pay for school fees and clothes for the children at Christmas. There are no documents for the property, but Anna doesn’t think she can lose use of the land, she says “I can even build a house on it if I want to, I would only need to discuss with my mother.”

### Attitude to women holding land rights

Despite clear discrimination against women in terms of land rights, a positive finding is that almost all key informants and community members spoken to expressed the belief that women can own land and they saw no problem with women owning land. The positive aspect of this is that there is little overt resistance to the notion of women owning land and therefore less likely to be strong resistance to efforts to secure or increase women’s ownership of land. This opportunity needs to be built on to gain support for improving women’s rights in legislation and in programs and to overcome the obstacles women experience in practice.

The situation of women accessing land in the rural and customary land areas is interesting in that there is a sense that there is a lot of land available and therefore if a women asks for land to use she can get. Further women are able to access grazing land if they have livestock. These rights women have to use the land are, however, often quite weak. Women felt that if they are told by community leaders to stop using the land they would do so and would not appeal against this as they understand it to be community land, so they can’t argue if the “community” tells them to leave the land. The opportunity of land access should be built on with the provision of agricultural and livestock support services to enable women to use more land. This could include programs of giving women goats and cattle. There are many good examples of receive-one give-one schemes where the beneficiaries also contribute by passing on a calf, in the case of cows, to other new beneficiaries. By becoming livestock owners, women automatically also become users of grazing land. Interventions to increase women’s use of this land need to be accompanied by efforts, touched on elsewhere in this paper, to strengthen women’s documented rights to land and their meaningful involvement in land related decision making structures.

### 3.1.2. Women’s representation in land structures

Women’s representation in land related decision making structures is currently weak from the local to national levels, but it exists. Key informants and community respondents said there was women’s representation and were aware that this is required. The representation is, however, normally at the absolute minimum level, such as one women in Payam and County land committees (as that is what the land policy requires). What that does indicate is the potential to increase the representation of women if the proportion required is increased and is widely communicated. Most officials have accepted the requirement of women’s participation and implemented it, but to the current minimum. The other form of resistance to women’s participation, and indeed constraint on the effectiveness of that participation, is the lack of experience and land governance knowledge among many women.

The role of women’s organizations and movements have always, around the world and in South Sudan, been important in demanding women’s representation and supporting women to make use of the influencing opportunities representation brings. Without women’s movements there is a greater risk of representation being tokenistic. It is therefore important that the government allows and protects the space for women to organize and that all support women’s organizations.

### 3.1.3. Inheritance

Where there is the clearest gender discrimination is in the narrative and the practice concerning inheritance. Almost all respondents, including officials, other key informants, and women interviewed in various communities, said that women cannot inherit land.

The core narrative about women’s access and rights to land that informs the position that women should not inherit, is one that in simple terms follows the idea that[[2]](#footnote-2) women marry and go to stay with their husbands and live in the home on land of the husband’s family and clan and support themselves and their families from agricultural production on land of the husband’s family and clan. They have full use of that land as long as they are supporting that family. If, however, they divorce from the husband, or the husband passes away, the land should not revert to the wife as she will take it out of the family and clan. Likewise, it is believed that women should not inherit part of their father’s land for the same reason that she could, through marriage to another man, take that land out of the control of her father’s family and clan. She could marry another man who will take over the land and through this the original husband’s family will lose land. The land, it is believed, must stay in the husband’s family to build that family. One of the ways in which a widow can continue to use the land of her late husband is to marry one of her husband’s brothers, a practice of wife inheritance that can force women into relationships they don’t want, resulting in what amounts to rape, simply to be able to keep their home and their land-based livelihood for themselves and their children.

This basic belief in land needing to remain in a man’s name, and under his control, for the benefit of the family, is so strong that even women we spoke to who have bought or otherwise acquired land themselves in their own name say they will bequeath the land to their sons in order to keep it in the family for the family’s benefit.

Of course, in practice people’s lives often do not follow such a uniform path as depicted in the common narrative, especially not with the dramatic changes brought about by war, the changing economic structures of society, and urbanization. Not all women get married. Some marry but don’t live in their husband’s home or work his land. Some women (and men) have other forms of non-agricultural livelihood so don’t have the same dependence on agricultural land. In many cases it is women, rather than men, who sustain and build families. An interesting finding from the survey done was the extent to which women and men are engaged in practices that do not conform to the dominant narrative and assumptions. A number of women had inherited land from their mothers. In one case a woman was allocated land by her mother in law who could see that she would use it well for the family. One male respondent, a mature adult, said that he lived in his sister’s house. One couple had bought residential land from the wife’s aunt. So, they lived on land that came from the wife’s family, not the husbands. Many women supported themselves through agriculture and business activities not on land of their husband’s family. Many women had acquired land in their own names and were the foundation holding families together socially and economically as their husbands had disappeared or been killed. These changed practices challenge the logic of the practice of denying women full and equal land, property, and inheritance rights. The fact that such different practices exist, indicates that changes in the norms around inheritance are possible and may face less resistance within communities than some think. The narrative needs to be and can be shifted, especially with stories that show how women build their families and clans and do so with secure land and property rights.

### 3.1.4. Using land, creating livelihoods

What women can do with their land to improve their lives is both important to progress for them and their communities, but will also enable women to hold onto their land. Agriculture remains one of the most important sources of livelihood for the majority of people in South Sudan and the main production and economic opportunity people have. Almost all women and men have some level of agricultural knowledge and experience that can be built on. Increasingly, especially with urbanization and the displacement from their agricultural land, women have turned to various forms of business and trading, much of it in food and agricultural produce, to support themselves and their families. Ensuring market access, water access, and land use management planning have to happen alongside the strengthening of land rights. It is encouraging to find that a vibrant food market exists in Wau, and in other towns, this provides an outlet for agricultural produce and economic opportunities in the market. An unfortunate dimension of the current food marketing is the large amount of basic foods that could be grown in South Sudan that are being imported from other countries on long and expensive journeys over bad roads. For example, maize, onions, eggs. The positive of this is that there is a major opportunity for the local production of such products that have a ready market. Other forms of economic opportunity should be developed, but agriculture and related food processing and marketing present the most accessible short and medium-term options for larger numbers of people in Wau and other parts of South Sudan.

### 3.1.5. Access to justice

Critical to having secure land rights is having a means to get justice if your land rights are violated. Without this land rights are extremely weak and vulnerable. Most women spoken to about their land rights have confidence in the courts to resolve their disputes. It was encouraging to find a number of women have successfully used the courts to defend or reclaim their land rights[[3]](#footnote-3). These included senior staff in NGOs and in the UN system, but also some more typical community members. The court process, is however, expensive and time consuming. It is not an option for many poorer women who do not have the financial resources or the social networks to enable them to use the courts.

A number of women have also turned to their chief or sultan to resolve land disputes and in some cases have been assisted. But others clearly do not have confidence in these local and customary structures. There are progressive thinking chiefs who recognize the need and right of women to have rights to land, but others who see little need to defend women’s rights and are more interested in how they can get benefits for themselves that come with making land available for elites. The problem is a lack of accountability of such customary structures to some basic and common norms and standards, including the constitutional right not to be discriminated against based on one’s sex.

A three pronged approach is suggested to create greater access to land justice and through that contribute to securing women’s land rights: 1) Amend policy and law from the Constitution downwards to make explicit that all land matters are judiciable in court and the courts must uphold fundamental human rights, including the right not to be discriminated against based on sex and that this overrides any customary practice or law; 2) Make available legal services to indigent people on land matters and in particular to indigent women. This should be built into national policy and provisions for the delivery of legal aid services. Non-government legal service providers and pro-bono work by private practice lawyers should be encouraged and can assist some in the short-term as well as being a learning ground for what works in terms of legal assistance. The right to legal representation should go beyond this, however, and be something that is secured in policy and legislation (see elaboration in paragraphs below); and 3) Restructure land decision making and dispute resolution structures to be more democratic and accountable, with more women in them, and with a greater understanding of gender transformation.

Most countries have a form of state legal aid to ensure access to legal services as one essential component of ensuring access to justice and a fair trial. Some combine this with interventions such as legislating a proportion of time private law firms have to provide for the delivery pro-bono legal services. In making available such legal services, particular attention needs to be given to land issues due to the complexity of the cases. Experience has shown that many general practice lawyers are not well equipped to deal with land matters.

Section 20 of the Constitution of South Sudan does give a right to litigate and says that “no person shall be denied the right to resort to courts of law to redress grievances”. This clause does not make any mention of legal representation, but Section 19 on “Fair Trial” does in subsection 7 which says that “Any accused person has the right to defend himself or herself in person or through a lawyer of his or her own choice or to have legal aid assigned to him or her by the government where he or she cannot afford a lawyer to defend him or her in any serious offence.” This is, however, explicit in referring to accused persons in criminal cases and there is no indication that such right to legal representation would apply to people in civil cases, which most land cases are. It is therefore important to be explicit that legal representation is available in land cases. One can build an argument based on section 20 and section 19 of the Constitution and other sources to argue that the right to redress in the courts, as per section 20, is meaningless without the right to effective legal representation. Further, that if people accused of crimes have a rights to legal counsel when the outcomes could have serious impacts on them, then surely people who could lose land (a serious outcome) and have been accused of no crime should also be entitled to legal representation. There is international precedent that supports such arguments for applying the right to legal representation to civil cases where substantial injustice could occur if a person is not legally represented. For example, South Africa has a similar constitutional provision giving indigent people a right to legal representation at state expense in criminal cases. This right was expanded to include a right to representation and an obligation on the state to provide it, through a court case brought by an NGO (Nkuzi Development Association), decided in May 2001. This judgement found that indigent farm dwellers who should have security of tenure under legislation, but whose security of tenure was under threat, had a right to legal representation and the state must make this available (LCC, 2001).

Beyond a constitutional provision, making access to legal representation available, requires, law, regulations and effective institutional mechanisms with resources. An opportunity for strengthening this is the process currently underway, led by the Ministry of Justice, to draft a Legal Aid Bill.

## 3.2. Resettling IDPs with secure land rights

Part of the focus of The Project is securing women’s land rights in very concrete ways, in particular in Wau State and especially for Internally Displaced (IDP) women headed households. This is in line with the Agreement on The Resolution of the Conflict in South Sudan, in section 1.1.4. that calls for the right of refugees and IDPs to citizenship and the establishment of mechanisms for registration and appropriate identification and/or documentation of… property, land and other possessions which might have been lost during the conflict (IGAD, 2015). This section of the paper, therefore, focusses on practical considerations involved and steps to be taken to achieve this. Land to be secured for residential and agricultural purposes as well as for business sites as IDPs need to reestablish their livelihoods as well as homes.

Reports compiled on the situation of women in the POC and CCs around Wau and experiences of other and existing programs that are resettling people are a useful source of insights on this. Interviews done with IDPs for this report also help to directly inform the understanding of the situation and the recommendations. The reports on IDPs and the intention surveys carried out by the IOM are particularly useful. The continuing resettlement projects of the UNHCR and IOM, including those implemented by the Norwegian Refugee Council (NRC) and the Women’s Development Group (WDG), have similar objectives to The Project and therefore have important lessons for it. Coordinating implementation with these other resettlement projects seems essential.

The first potential constraint on securing the land rights for IDPs is that they may not be willing to leave the CC and POC sites. The first obstacle is the fear of violence and conflict. Until peace and security is assured, there is little prospect of people being settled anywhere with secure land rights. Secondly, the IDPs have material needs that they want assurances will be met if they move from their current temporary places of safety. The most important of these needs, for most IDPs, is shelter as their homes where often destroyed. Other important needs are for food, health and education services, basic household items (like pots, pans, and blankets), and a source of income or livelihood (IOM, 2019a). It has to be said that IDPs are not asking for secure land rights, or land certificates, in order to be able to go home or set up a new home. They are focused on the more immediate needs such as safety and a roof over their heads. Where land documents do get raised by IDPs, in relation to their return, is situations where they have lost land documents and this often makes them think there is less chance of getting back the land and property they had.

In a situation where an IDP currently has shelter at the POC or a CC and they receive food rations there and other services, such as access to health care, it is no surprise that they would have some reluctance to move until they are sure they can get the same services when they resettle. The move to provide food rations outside the POC and CCs is good, but people correctly assume that this support may not go on forever. Indeed, we need to be honest that the UN and other agencies are under financial pressure and are definitely seeking to end the direct support, such as providing food to IDPs, as soon as they can. They can cut off supplies to people living in their own homes in a way that they cannot do to those residing in a POC that they run.

Despite the constraints, many IDPs have left the POC and the CCs either as returnees going back to where they fled or as people relocating to new places of residence. The total numbers living in the POC and CCs in Wau town, for example, had dropped by March 2019 to 24,123, about 38% of what it was at its peak a few years before (IOM, 2019a). But, by August 2019, some localized violence had led to new displacements and the numbers had gone up again to 29,139 (IOM, 2019b). A further challenge is that even as the numbers reduce, those remaining are likely to be the ones harder to resettle; there are reasons they have not returned home yet.

Some officials talk disparagingly of people who live in the POC or CCs, but come and go and are out most days. Officials refer to these places of safety having far less people present when they visit compared to the numbers who claim to stay there, due to people often leaving for short times for a range of reasons. The implication being that people are taking unfair advantage of the facilities. It makes complete sense, however, for people to keep a foot in the POC or in the CC, given the uncertainties about their safety, and the resources they need that they get through the POC or CC. It is clear that many people don’t have houses to sleep in at night and are more afraid of violence at night, it is therefore logical for them to be out in the day attempting to carry on with their lives, but to return in the evening to the POC or CC.

A number of IDPs interviewed have fled from violence on more than one occasion, some related how they fled rural areas to town where, having lost access to their family homes and fields, they rented rooms. Then violence started again and they had to flee those homes and now stay at a POC or CC. They have no claim to return to the houses they rented and they have little prospect of getting back rural land that they fled years before. Sometimes they do not want to go back to that rural land, which is often under the control of their male relatives or their husband’s family and in some cases has been taken over by forces or ethnic groups that the IDP fears.

#### Box 6: Fatemah and David, what they need to return

Fatemah is a married woman of 45 living in Kuajoc in Gogrial State. She fled her previous home in a rural area due to violence and while she would like to return, she says “I am afraid that war may happen again”. If she were to return she would support herself from farming, but she says, in addition to peace, she would need assistance with rebuilding her house, at least two rooms for her and her family, transport to get there, and items like a mattress, bed, and cooking utensils.

David currently living in a CC in Wau says he would like to return to the home he fled, but says the roofing of his house was removed along with other personal belongings that were looted. He says he could return if he is assisted with roofing material, renovation of the house, and provision of some household equipment.

Within the existing resettlement programs, such as the IOM and UNHCR resettlement projects, there has been a targeting of women as beneficiaries. They have also tried to ensure that beneficiaries have some kind of secure land rights before investing in the reconstruction of houses. What they have not done, however, is to keep track of whether the land certificates are in the name of women or men.

There are two main ways that it is suggested The Project go about securing the land tenure rights for women IDPs. The first is to coordinate with other resettlement programs that are carrying out the necessary community consultation and facilitation as well as providing the essential infrastructure and material items that IDPs need in order to return home or to relocate out of the POC and CCs. The Project can assist in securing the tenure rights that are needed to invest in the infrastructure and do so in a way that secures more land rights for women. This will add value to the programs of other agencies and The Project will benefit from the role other agencies play in providing the essential services and shelter that will enable IDPs to return or relocate. This seems a clear win-win and a positive route to follow. What it requires is more UN Habitat commitment to effective coordination through the existing structures set up for this. This approach still relies on IDPs being willing to return (and in the time period of The Project) and that means that there needs to be an increasing sense of security, something that cannot be guaranteed given a variety of local conflicts and the delays, and consequent uncertainty, in fulfilling the commitments of the national peace agreements.

The second approach is to work with those IDPs who have already returned or relocated of their own initiative. These can be found by working with local organizations and community leaders within the communities where the IDPs now reside. The Project can establish their current land tenure status and work with the women to secure land rights on the land where they live and work. It is well established that most IDPs who have returned or relocated do not have land rights certificates. This approach can be seen as consolidating their return and relocation and doing so in a way that advances women’s land rights.

In both of the above approaches, The Project can add value to the previous and existing resettlement work by: explicitly acting to advance women’s land rights, both through expanding the land (residential, agricultural and for business purposes) women control and strengthening their rights on that land; gathering and compiling sex disaggregated data on the beneficiaries and their land rights secured; working on building women’s capacity for effective engagement in land decision making structures and requiring as part of the packages of assistance that the number of women in land structures be increased; and supporting development orientated town and land use planning that is responsive to existing settlement patterns and secures space for agriculture (ideally with irrigation water) and business for women and men, but with a requirement of at least 50% of it going to women. Surveying should be done in support of these development plans and avoid leading to further land insecurity and negative impacts on agricultural production. Through such a planning change, people can be more secure in their homes and on the land they use for their livelihoods, women’s economic opportunities can be advanced, and economic development supported, rather than undermined. There is a chance to use the process of resettlement to restructure gender relations around land and related economic opportunities to be more favorable to women. Space for food processing and for food trading, especially in towns, and making these available for women are obvious interventions. There are many experiences of effective community driven land use planning and there are tools for facilitating this that have been tried and tested[[4]](#footnote-4). These can all be drawn on for land use planning in South Sudan.

While The Project focuses on resettlement and relocation of IDPs it is essential to support this in a way that is integrated with the wider community where the IDPs settle (Pantuliano, 2009b, Pantuliano, 2009a). The process needs to bring benefits for all and not create divisions. After all, other members of these communities also have weak land rights and are often in poverty.

For effective resettlement and development for the whole community, it is important to embrace agriculture in the urban as well as rural areas. Many parts of most towns in South Sudan are essentially rural in their infrastructure, in the forms of housing, and in the extent of agricultural production. This should be embraced. Many other countries and cities are trying to create more space for urban agriculture as they have seen the benefits for local food production and accessibility, for building community and for maintaining a healthier environment (Nasr and Komisar, 2012, Lee-smith, 2010, Jarosz, 2008). South Sudan already has extensive agriculture in its urban areas and could embrace this as a strength to be preserved and built on, rather than ignoring or undermining this agriculture as is happening with the current approach to land demarcation.

# Gender Responsive Land Management and Administration (The Project outcome 2)

The current land administration systems in South Sudan are varied and often unclear, but all lack a focus on promoting and documenting gender equity.

Different states use different land registration forms, certificates and records. There is no uniform system for capturing or compiling land administration information and none capture the sex of the land rights holder/s or provide space for spouses to be registered. This means that there is no administrative information available on the number of women who hold land rights, compared to men, nor any information on the amount of land women hold rights to compared to the amount of land men control.

There is no requirement, nor proactive promotion of the registration of rights in women’s names and no incentive given to do so. There are administrative charges and a transfer duty to be paid when registering land in municipal areas, and administrative fees in customary land areas, that become obstacles for those in poverty to register their land rights. This is a greater obstacle for women as they are on average poorer than their male counter-parts. Many IDPs mention the cost as a major obstacle to registering their land rights and even to getting replacement land certificates where these have been lost in the conflict and looting. These costs are, however, an opportunity to incentivize the registration of women as land rights holders by waving admin fees and duties when this is done. Such an intervention could be implemented immediately in some areas with donor funding and then be mainstreamed. There is an even stronger argument for doing this in the case of IDPs who last documents or who now need secure land rights in order to benefit from a package of support for their return, including the building of shelters.

Land administration staff and land administration structures are very male dominated from the local to national level and in customary and statutory institutions. This is an obstacle to gender transformation and can be intimidating for women approaching these structures. Where women are included, they are only included in the minimum numbers that it is believed they are required to be included. The lack of qualified professional women is a challenge in filling land administration posts with women staff. This is an obstacle, but also points to the potential benefit of providing a sustained training and education program targeting women and including professional skills relevant to land administration.

The Project will be promoting improved land administration and management across South Sudan, but implementing more directly in Wau State. The hope is that best practices tested and refined in Wau State can show positive results and serve as an example to other states and to national policy makers. A number of the suggestions made above could be rolled out in Wau state in the short-term and some, like the capturing of sex disaggregated data, do not require any large amount of finance.

## Land certification

In urban areas, where land rights are being documented, the forms (many of which are the old forms from the united Sudan before independence of South Sudan) need to be amended to make space to identify spouses and the sex of land rights holders. The registries also need to contain this information. As well as enabling the gathering and tracking of the gender of land rights holders, this will enable the joint registration of spouses and the identification of spouses that is needed to give better effect to the requirement of spousal consent before disposal of land.

While there are systems of land registration and certification in towns, that can be built on and reformed to give greater attention to gender, in most rural areas there is little documentation of land rights. A basic system of documenting customary land rights of the individuals and families within communities needs to be rolled out. Such a system should not face strong resistance if it is affordable and easy to use. It is not changing existing customary practices, simply capturing the information so that it is documented. Most chiefs and others involved in customary land administration appreciate such initiatives that are investing in and giving greater recognition of their administration systems. GPS technology is becoming more and more affordable and accessible and is being used in the municipal areas for land demarcation. This offers the easiest way to map the land rights being registered even in rural areas. But, South Sudan is indeed impoverished and it may take time for GPS equipment to be available in all areas. This should not stop the issuing of certificates confirming that people have land rights and written descriptions of the land they have rights to can be used until proper measurement can be done.

In rolling out such registration there is the opportunity to include women’s names individually or along with spouses on the land certificates and land registries. The sex of the land rights holders should also be included from the beginning so that this becomes part of the norm that people are used to. There are functioning, if not perfect, examples of customary and village land registration and certification that can be learnt from in other countries, such as Ghana, Tanzania, Mozambique, and Rwanda (Wegerif et al., 2015, Kelsey et al., 2014, Knight, 2010). In all of those countries customarily administered village land is registered in a simple and affordable way. Requiring the regular reporting to a national office, for purposes of collating the information and monitoring progress on certificates issued and how many to women and men, would be useful and enable national monitoring. This reporting can be linked to the release of finance for the processes of certification of women’s land rights as a way to incentives the reporting as well as subsidies or waive the costs of registration for women. Just getting such reporting with sex disaggregated data to be done will get people thinking about as well as tracking progress on securing women’s land rights.

It should always be remembered that certification of women’s land rights is not enough to ensure they really enjoy those rights and improve their lives. Experiences from many countries have shown that certification has to be accompanies by a range of other measures that improve women’s opportunities to use and defend their land and empower them to assert their rights and challenge discriminatory practices where needed (for example: Belay and Abza, 2019, Kelsey et al., 2014).

## Land use planning

Part of land management is land use planning, town planning and surveying. There is little land use planning done currently in rural and customary land areas of South Sudan. The current practices in urban areas do not include development planning, but tend to get reduced to a technocratic surveying of plots that often results in the loss of agricultural land and displacement of people. It has been found that good participatory land use planning can assist to secure the land rights of all those using the land in customary areas (Knight et al., 2017, Knight et al., 2012). Such planning can also unlock the potential of land as land is more likely to be used for appropriate purposes related to its potential, and the users of the land can be confident they will not be interfered with when using the land for those purposes.

Agreed land use plans - when produced in a well facilitated and transparent and inclusive way - also reduce conflict because the needs of different land users are addressed and provisions can be made for sharing of key resources such as water. A clear example of conflict reducing land use planning that is needed in South Sudan is to address the conflict between pastoralist livestock keepers and settled farmers by having plans that accommodate both their needs. Shared access to water and to key land resources in dry periods are some of what needs to be agreed on and clearly captured in land use plans. Livestock corridors need to be established to enable the movement of livestock, especially for access to water, without interfering with farmer’s crops.

There is great potential in many parts of South Sudan, including in Wau, for irrigation that can enable high value production, such as fresh vegetables and fruit. Land, with irrigation, close to urban markets presents an excellent livelihood opportunity and can contribute to food security.

## Democratizing local land administration structures

At the local level the key structures of land administration, both under municipal areas and the communal areas, are the chiefs or sultans and the committees they work with. There are a mixture of experiences and practices related to these. All are male dominated, but have included the minimum number of women when required to do so. Some are elected, or at least claim to be. In some cases, the supposedly elected sultan has not actually faced election for decades. Nevertheless, the notion that it is an elected position opens the way for implementation of actual election processes. The importance of all community members electing leaders, rather than allowing people to occupy positions for life and pass on their positions to their children or others they chose, should not be underestimated. When based on all in the community being able to vote, regardless of ethnicity and gender, it moves away from these positions being reserved only for particular men. It also brings a different accountability of those in leadership. Shifting how and who can lead in the community and on land issues goes along with changing the understanding of who can have rights to land within that community.

Moving away from hereditary leadership - that is always linked to particular family, clan and ethnic identity - moves the land control away from being an ethnic territorial issue to be fought over. All South Sudanese should be able to have rights to land and be part of land decision making in any part of the country where they live. Likewise, they all have a responsibility to follow the law and respect the decision making structures.

Women’s organizations, in particular feminist organizations, play a key role in demanding the inclusion of women leaders and in building and supporting women’s leadership (Dancer and Tsikata, 2015, Tsikata, 2011, Mbilinyi and Sechambo, 2009). Requiring certain minimum levels of participation of women in all structures opens space for women to gain such experience. This is experience that is also essential for greater women’s involvement in peace making and monitoring structures and processes. There is a two way interaction between securing women’s land rights and including women in leadership. With more women in leadership there is a better chance of women friendly land practices and women will feel more confident in asserting their land rights. At the same time, women having more land rights will involve them in more land related decision making from the household to the community level and build their confidence to take up leadership in higher decision making structures. Becoming a land rights holder at the family level is the beginning of women taking more responsibility for land related decisions and being better equipped to contribute to land administration decision making structures.

## Gender transformation in land administration

Land administration structures from customary to statutory structures, and in rural and urban areas, are very male dominated in South Sudan. This is contributing to these structures not being seen as welcoming to local women or very considerate of women’s particular needs. Having women in positions, from land administration to senior management of land programs and policy, is essential, but not enough. Whether women or men are leading, there needs to be a gender transformative approach that recognizes and works actively to address discrimination against women. Interventions to address this could include: investment in training on key land management and administration skills that specifically targets and creates opportunities for women; the active seeking and promotion of women for key land administration roles; and sensitization of all land administration staff and members of land structures and their leadership on gender transformation (Wakefield, 2017, Batliwala, 2010).

#### Box 7: Marriam’s story

Marriam is a 42 year-old mother of seven children. For the last 3 and a half years she has lived in a collective center (CC) in Wau. She sleeps in a makeshift tent of tarpaulins with faded logos of IOM on them. The single bed is the only furniture in her tent and it fills more than half the space. Her children live in another tent nearby.

She fled to the CC during an outbreak of violence. Her oldest son refused to go. He stayed on in the house and was killed there when the house was burnt to the ground. It was a house she had rented and lived in for six years. She came their fleeing war in Raja where her husband was killed.

Now she supports herself and family from the food parcels they receive at the CC and by selling ground nuts and cakes on the side of the road. She used to farm and sell her produce, but that changed with the war.

She would like to leave the CC, she complains about the life there and that her children don’t go to school, but she says it is still too insecure to return to either of her former homes. Also, she has no money for rent or to buy a place. She has no claim on the house she had rented in Wau and it was destroyed along with all her possessions. If there is peace, she thinks she could return with her children to access her husband’s land in Raja. But this would only be if she goes with the children and because she has not remarried. She worries that she could also lose the right to access the home and the farming land, both now controlled and used by her late husband’s older brother who has also put the documents for the house in his name.

She says women can own land if they have the money. She also believes women can inherit land, but only if there are no boys to inherit. She seems to have lost interest in returning to her former land and life, her dream for the future is to have a house in her own name and a shop where she will sell bread and other things she bakes; “If I can have that I will be grateful” she says.

# National Land Policy (The Project outcome 3)

“We the People of South Sudan…Committed to… upholding values of human dignity and equal rights and duties of men and women”. Preamble of the Constitution, of South Sudan.

National policies are not only setting the approach of government, they also shape the understanding and the discourse around land rights. They send a message to citizens and to officials implementing policies. In other words, they are not just policies, which should to some extent shape practice, they can also impact on ideas and beliefs.

Section 13 of The Land Act, 2009 talks to the “Rights of Citizens to Land” stating that:

“(1) Right to land shall not be denied by the Government of Southern Sudan, State Government or community on the basis of sex, ethnicity or religion.

(2) Every person shall have access to land for housing, cultivation, pasture, grazing, or fishing as shared resources as shall be regulated by this Act, rules and regulations.

(3) Any person may have access to land for investment purposes under this Act and the investment law.

(4) Women shall have the right to own and inherit land together with any surviving legal heir or heirs of the deceased as stipulated in Article 20(5) of the Constitution.”

The above clauses set a positive tone, but this is undermined by the unlimited Constitutional and Land Act recognition of customary practices as valid and as a source of law. With customary practice seen as a source of law equal to any other sources of law, the way is open for courts and others to view gender discrimination done in the name of custom as lawful. The Draft National Land Policy recognizes this limitation and suggests being more explicit in stating that: “Community land rights and their administration should be governed by principles of gender equality” (MLHPP, 2014). This draft is, however, still under discussion.

Analysis of the current status of the legal and policy environment to support the closing of the land rights gender gap is based on the meta-data and methodology developed by FAO and approved by the IAEG-SDGs for the measurement of progress in achieving SDG Indicator 5.a.2. Unlike the indicators 1.4.2 and 5.a.1. mentioned in section 3, this indicator is not measuring the outcomes in terms of the land rights (or lack thereof) that women actually experience, rather it is measuring the government’s efforts to close the gender gap in land rights. This SDG methodology is augmented here with additional proxies suggested based on this report’s analysis of the situation of women’s land rights and opportunities to improve them.

## 5.1. Proxies from SDG Indicator 5.a.2 and the methodology for its monitoring

In short, South Sudan is far from being a country that can be considered to be doing enough to close the gender gap in land rights, in terms of the SDG commitment in target 5.a. As can be seen below, the country does not meet any of the five proxies used to identify countries that are acting to close this gender gap.

**Proxy A – Is the joint registration of land compulsory or encouraged through economic incentives?**

This Proxy was not found. It is not present in national laws, policies or practices. Nor was it found in any states or localities.

Objections to this being made into policy or practice include that it goes against the wide-spread belief that the man is the head of the home and the holder of the land. Further it was raised that such an arrangement will not cover polygamous relationships.

My findings are that it is actually not uncommon for women to be named as owners or rights holders to land and property and that it is further not uncommon for both men and women to consider it important to consult their partners in land related decision making. Thus, the norms some people practice are not as far removed from an acceptance of joint registration as some would argue. The situation of polygamous relationships can be dealt with in two ways. First, more than one spouse could be identified as being one of the rights holders of the land. Second, it can be possible to register different pieces of land in the name of different spouses as individual rights holders. The second option has been found to be the preferred option in other contexts as it fits with the common practice of each wife in a polygamous relationship having a piece of land allocated for her use.

Joint registration should, as a first step, be made an option. It can be done by simply including space to name a spouse on land registration documents and certificates. This can be done locally, such as in Wau, almost immediately and from there can be made part of national guidelines and a requirement at national level across all states. There can be space for different forms to be used by different states, as long as they have space for the registration of the spouse. Economic incentives can be provided by simply reducing or removing fees for the registration of land when a women’s name is recorded as an owner, either individually or jointly with her spouse.

**Proxy B – Does the legal and policy framework require spousal consent for land transactions?**

The requirement to have spousal consent for land transactions is implied in the law of evidence and in family law as well as regulations. The consent of the wife and adult children is required. But this is often ignored in practice, in both customary and other settings. There is no check on this in land registration and transfer documents and such checking would be difficult given the absence of the identification of any spouse on land registration documents.

It is therefore recommended that space be made in land registration documents for a spouse to be identified and space also be provided on the documents where the spouse can confirm their consent when land is being transferred. If there is no spouse, the person doing the transfer should sign to confirm that is the case. Should the transferor lie about this on the form they are committing fraud and rendering the transaction null and void, which also gives an incentive for the buyer to ensure spousal consent is given where needed.

**Proxy C – Does the legal and policy framework support women’s and girls’ inheritance rights?**

The right to inheritance is protected in the Constitution and Current Land Act. But it is not clear that this must be equal inheritance for women and men. Section 16.5 of the Land Act combines women’s right to inherit with that of other heirs, thus diluting a woman’s right to inherit her husband’s property and re-enforcing a customary land position that sees women only as using land for the benefit of the family, rather than holding rights on her own. Section 13 (4) of the Land Act states that “Women 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”. The recognition of customary law as a source of law, not subject explicitly to human rights considerations, further undermines the ability of women to claim full and equal inheritance rights on customary land where patriarchal norms prevail.

The provision in the Draft Land Policy is not explicit enough in calling for equality of inheritance. It calls for the “Enactment of legislation guaranteeing the inheritance rights of female household partners and children”, but this does not say it should be equal and by combining women and children it could be interpreted to be calling for a reinforcing of the current practice of linking women’s inheritance rights to those of her children.

**Proxy D: Does the legal and policy framework provide for the allocation of financial resources to increase women’s ownership and control over land?**

This proxy was not found to exist. There is no current policy or programme allocating resources to increase women’s rights to land.

**Proxy E – In legal systems that recognize customary land tenure, does the law explicitly protect the land rights of women?**

The legal system recognizes customary land tenure systems in the Constitution, of 2011, and in the Land Rights Act, 2009. But there is no specific protection of women’s rights within the customary system. Arguably some of the constitutional provisions, as mentioned above, that assert that all can own land and that women have a “right to own and inherit land”, should give some protection to women in customary areas as well. But that is far from clear in law and in practice. The right to inherit, is as mentioned above, even in the Land Act specifically linked to the rights of children. Further, the legal recognition of customary law for land governance in communal areas can be used to defend customary practices that are discriminatory.

Making the customary administration of land explicitly subject to basic human rights principles, specifically the rights of women to have rights to land the same as men’s, and to inherit land equally to men, not tied to them having or looking after children, is one of the key areas of change that is needed. The argument against women inheriting has at its core the notion that a man’s land stays in the family and is used to build the family, whereas if it is a woman’s land she may take it away from the family. Yet, increasingly it is women who are actually sustaining and building families. A campaign is needed to build the awareness of how women are actually builders of family. This can include the many stories of how women are doing that. With the support of this narrative, there needs to be a push to ensure women get full and equal inheritance rights to land and property. It is possible and it is not a new discussion. It is in the Constitution and has been discussed in many other places (for example: GRSS, 2015, US Aid, 2009). We should build on this as a concept that is gaining acceptance. The research for The Project, as mentioned, found examples of women in practice inheriting land, which indicates that this can be accepted and implemented.

## 5.2. Additional key proxies at national policy level.

In addition to the proxies from the SDG indicator 5.a.2., I suggest the following proxies that are important in the context of South Sudan and that are also not currently being met. Presenting these as proxies makes clear what needs to be done and what questions South Sudan should be able to answer in the affirmative, if they are really acting to close the gender gap in land rights.

**Additional Proxy F – Does the legal and policy framework mandate women’s participation in land management and administration institutions?**

There is a call for women's participation in the peace agreements and their monitoring. The extent of the participation has not been defined clearly. One interpretation is that whatever is agreed in terms of women’s participation in political structures, such as the current 30% of women in parliament, should apply to all other structures. This is not, however, made very clear or explicit. 16.4.a. of the Constitution requires 25% women in legislative and executive structures. This has more recently been increased to 30%. Women’s representation in the judiciary is called for, but with no target set. The Land Act, 2009, calls, in section 45, for one women’s representative in the County Land Authority and section 49 calls for one women’s representative in the Payam Land Council. Traditional courts and local government are also supposed to have women’s representation of some kind, but the extent of it is not specified. What has been picked up, down to the village level, is that women should participate and this seems to be generally (not always) complied with at the minimum level of having at least one women in structures. Such minimum compliance is disappointing, but also positive in that the requirement has been met. This gives a reasonable basis to believe that if a required level of participation, such as a minimum of 35%, was made explicit and communicated, it too would be complied with. Even easier to communicate than percentages is actual numbers. For example, if a committee is nine people, three or more should be women. If it is ten people, four or more should be women. Simple and clear instructions get a better response rate.

**Additional Proxy G – Does the legal framework allow for, require or create incentives for women to gain and hold rights to land?**

The Constitution and Land Act are specific in allowing for women's ownership and/or rights to land, but there is no incentive put in place to encourage this.

I recommend a financial incentive in the form of a waiver[[5]](#footnote-5) of the fees and land registration duties when a women is named on the papers as the rights holder. This would encourage women’s rights to land to be registered and remove a financial obstacle to that which exists at the moment. Many women do not have money to pay for such registration. This also removes a disincentive to register land in the name of wives in polygamous relationships and provides a good alternative to the joint registration where that is not wanted by either spouse.

**Additional Proxy H – Does the urban and rural land use planning make provision for secure space for agriculture and trading spaces specifically for women and is it required that it be done in a participatory way with specific safe opportunities created for women to be heard in the process?**

At the moment there is no such requirement in national policy, regulations or practice. In most areas there is no land use planning going on. The land use plans that are developed in urban areas tend to be technocratic, focussed on surveying and registering without consideration of development impacts or the securing of space for agricultural production or trade. As has been mentioned, this gap is even resulting in the destruction of agriculture at a time when the country needs to rebuild production.

**Additional Proxy I – Does the law and policy require Free Prior and Informed Consent (FPIC) from communities before their land rights and land use are changed for any development or economic purpose and does the process require that rural women affected have given their FPIC?**

There is currently no requirement in law or policy, or the proposed Draft Land Policy, to apply FPIC. Yet there is a strong case for this based on the impact investments and development projects can have on communities and rural women in particular. General recommendation 34 of CEDAW also makes the case for FPIC to specifically be ensured for rural women due to their vulnerability and the experience of women being excluded from decision making in relation to land rights and land use changes (CEDAW, 2016).

**Additional Proxy J – Are there policies and programmes in place to ensure legal representation for indigent people, explicitly including indigent women, on land cases?**

The Constitution says that everyone is equal before the law. But this will only be a reality if legal representation is available for everyone. If legal representation is only available to those who can afford it or who have the right connections, then there is no equality before the courts or the law. Some are advantaged and some are disadvantaged. As South African human rights lawyer and now judge Jody Kollapen has said; “How can the scales of justice be balanced if the judge hears only one side of the story?” (Kollapen, 2019). That imbalance undermines the credibility of the courts and the law as a means to resolve disputes. This applies more acutely in land issues due to what is at stake; people’s homes, livelihoods and communities’ territories. To sustain peace requires credible non-violent ways to resolve land disputes.

There is currently no right to legal representation on land cases. Not in the Constitution, the Land Act, the Draft Land Policy or the technical report on the Draft Land Policy. And legal representation is often not being made available in practice, outside the ad hoc assistance some women get from non-government legal service providers, generous lawyers, or because they can afford to buy the service. For women in poverty the law is not within their reach, that has to change if the law is to work for them. Given how the courts are widely trusted and wealthier women have been able to use the law and courts to defend their land rights, ensuring legal services are available is an important opportunity for securing women’s land rights and their ability to defend these rights.

## 5.3. Draft Land Policy

As I write this paper the process of work on the National Land Policy is underway. The 2005 CPA calls for such a policy to be developed. Various drafts have been worked on and in 2014 the Ministry of Land Housing and Physical Planning along with the SSLC put a draft policy before the National Legislative Assembly (MLHPP, 2014). The Policy was however not finalized or adopted. It has been reported that there is a new draft, but that has not yet been made available. The Agreement on the Resolution of the Conflict in South Sudan (ARCSS) and the Revitalized Agreement on the Resolution of the Conflict in South Sudan (R-ARCSS) commit to the revision of laws and policies including the Land Policy as part of the transitional arrangements. From 2017 there were a set of workshops to discuss the Land Policy and in 2019 extensive consultations and work has been done on reviewing the policy in preparation for it to be presented again to the National Legislature and finally adopted. Important in that work has been a technical review of the existing draft policy that made extensive recommendations for improvements to the draft (Pritchard and Deng, 2019).

As part of The Project the Draft National Land Policy (DLP) and the technical report on it was reviewed. There are many recommendations in the DLP that should be taken up, including a few on women’s rights and gender. It is reported that the newer draft includes further provisions, such as the proposal to subsidize the land rights registration costs for women. It is however, recommended that the DLP can be strengthened with recommendations in this report, including that it needs to be more explicit on the analysis of the constraints affecting women and the need for legislation and programs to advance women’s land rights especially through, among other things, providing for equal inheritance separated from care for children, ensuring legal representation, and by entrenching FPIC for communities and explicitly for rural women. The idea of subsidizing - or waiving completely especially for those who lost documents or were displaced during conflict - the land registration costs when women’s rights are registered in their names, can in a non-confrontational way encourage and facilitate the legal recognition of more women’s land rights.

The points in relation to the SDG 5.a.2. proxies and additional proxies, explained above, are suggested for consideration in the redrafting of the policy or in its interpretation and implementation. More detailed suggestions are also contained in Annex 2. It is hoped that these will be useful if there should continue to be an opportunity to influence the policy itself and also useful for further advocacy around related regulations, interpretation, and implementation once the policy has been adopted.

# Recommendations and Monitoring and Evaluation

In this section the recommendations are summarized and this is combined with the recommended monitoring and evaluation criteria and process, as it will be against the recommended changes that monitoring and evaluation needs to take place.

Achieving the changes suggested is going to require a combination of actions by different actors, including: local and state government structures changing their practices and being responsive to women’s specific needs; national government and parliament amending policies and laws and making budgets available for implementation; NGOs and development partners supporting the changes with resources and expertise; and women’s organizations and movements organizing women to push to make the changes happen and to shift the balance of power so that improved land rights become real in the lives of women from household to national levels.

It is recommended that monitoring and evaluation of progress on improving women’s land rights will be carried out at three levels: 1) locally looking at actual changes in women’s experiences of land rights and changes in practices and ideas and beliefs of women and men; 2) in the administration of land rights looking at the changes in practices and systems; and 3) in analyzing national policies, laws, programs and budgets.

## Recommendations and monitoring framework

In approaching recommendations, I am informed by national and international standards and agreements and also attempt to take-into-account what could be possible in terms of common norms and values. Unjust and discriminatory norms and values should certainly be challenged, but changing these is likely to be a long-term process. There is greater potential to shift things in the short and medium term where such shifts build on, rather than directly oppose, existing norms and values. By showing how there are existing practices that challenge some of the incorrect assumptions about women’s land rights, it is hoped that more people, including decision makers, will see that these assumption are no longer valid. This can help open the way to a wider support for some required changes. Therefore, in analyzing the results from this research, and making recommendations, especially for short and medium-term changes, I have looked for existing practices that exist as positive examples that can be reinforced and built on.

In the table below is a summary of the recommendations for movement towards the strengthening of women’s land rights and for monitoring of progress.

#### Table 1: summary of analysis of current status and recommendations.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Current status** | **Recommended outputs to be achieved and Monitored** | **Short-term mid 2020** | **Medium-term****end 2021** | **Long-term end 2024)** |
| **1. Local level, changes in ideas, beliefs and experiences of women’s land rights.** |  |  |  |  |
| 1.1. Currently sex disaggregated data on the extent of women’s land rights is not being captured in resettlement projects that are being implemented. | The number of women who have secured land rights registered in their names, through various projects, is established and is increasing.  | X[[6]](#footnote-6) project | X Wau | X |
| 1.2. There is a dominant belief that men are the household heads and secure the family, and therefore should be the land rights holders. | The majority (and an increasing majority) believe that women contribute as much or more to building their families than men do. | X project | X Wau | X |
| 1.3. It is widely believed, by women and men, that men should inherit land and property and not women. This results in more land being inherited by men and boys. | The majority (and an increasing majority) believe that women and girls have as much right to inherit as men and boys. | X project | X Wau | X |
| 1.4. There is no information being gathered systematically or compiled on the sex of land rights holders who receive land certificates. | Sex disaggregated data on land rights holders is available and an increasing proportion of land certificates and quantity and value of land, across all land types, is registered in the names of women (Until women and men have equal rights to equal land). | X Wau | X | X |
| 1.5. There is limited representation in most land related structures, with many structures having just one women to meet perceived requirements of representation. | All land structures have between 33% and 50% women’s representation and many of these women have been through land and leadership orientation and training. | X project | X Wau | X |
| 1.6. There is no explicit effort to secure women’s rights to agricultural land, and business sites, including, there being no effort to secure these for IDPs who are resettling or relocating. | A large proportion of women IDPs resettled or relocated in The Project, and then around Wau State and beyond, get secure rights to agricultural land and/or business and trading sites. | X project | X Wau | X |
| 1.7. There is no systematic assurance of access to legal services for indigent people and no focus on ensuring indigent women in particular can access legal services. Consequently, many poorer women are unable to use court processes. | A mechanism is in place to ensure legal services are available for indigent women with land cases.  |  | X Wau | X |
| **2. In Land Administration practices** |  |  |  |  |
| 2.1. Data on the sex of land rights holder is not captured | Space is made on land registration forms and within local land registers for capturing gender of registered land rights holders. | X Wau | X |  |
| 2.2. No national tracking of land registrations and sex of land rights holders.  | Monthly reports are sent from each town and county containing the key data on how many land certificates have been issued, for how much land, containing the sex of the land rights holders. This to be compiled to provide a national figure and published online on a publicly accessible platform. |  | X partial | X |
| 2.3. The names and identities of spouses are not captured and there is no space on forms to capture joint registration.  | Space on registration forms, land certificates and land registers is made for the names of spouses. | X Wau | X |  |
| 2.4. Spousal consent for land disposal is in policy, but there is no land administration system to ensure this is observed. | Forms for land registration and land registry data includes spousal information and a space to confirm spousal agreement for any land disposal. |  | X Wau | X |
| 2.5. Surveying and the demarcation of plots is done without consultation and simply marks out uniform residential plots with no consideration of wider social and economic development needs and opportunities and the securing of agricultural land. | Local, town and regional plans are done consultatively and create space for women’s meaningful participation. They include and protect agricultural land and fresh food marketing space for small-scale women farmers and women traders.  | X project | X Wau | X |
| 2.6. Few local leaders and land structures are elected and there are no regular processes of leaders accounting to the communities they serve. | All land structures are required to report to communities they serve and face re-elections in a transparent manner every year. Leadership selection is based on selection by all members of communities. |  | X Wau | X |
| 2.7. Most land structures only require one woman member. There is no systematic discussion of why gender transformation is needed and how it can be achieved. | Land administration structures are required to have a minimum of 35% women and gender transformation training is set up for members of land administration structures. | X project | X Wau | X |
| 2.8. There are a shortage of women with land administration and management qualifications and there is no targeted training program to address this. | A training program is in place specifically targeting women with training and education on land administration and management (Link to NELGA[[7]](#footnote-7) and other initiatives to assist in this) |  | X Wau | X |
| **3. National policy and programs** |  |  |  |  |
| 3.1. No requirement or incentive is in place for the joint registration of spouses as rights holders or for women to be registered as land rights holders. | An incentive structure that waives, or significantly subsidizes, administration fees and duties for the registration of land certificates in the name of a women or a women jointly with her husband is rolled out from Wau to become a national program. | X project | X Wau | X |
| 3.2. Equal inheritance rights are not guaranteed in policy and are rarely found in practice. | Equal inheritance rights for women and girls as for boys and men are entrenched in land policy and law and promoted nationally. This is in line with recommendations in draft land policy, section 4.7.1. |  | X |  |
| 3.3. There is no current policy or programme allocating resources to increase women’s rights to land. | A program is designed, budgeted for and rolled out to promote women’s land rights through awareness raising, education of officials and putting in place systems to facilitate the registration of women’s land rights. This is in line with recommendations in draft land policy, section 4.7.1. | X project | X Wau | X |
| 3.4. The recognition of customary law as a source of law equal to statutory law allows a legal space for the continuation of discrimination against women. | All land matters are explicitly subject to court review and customary law is subject to it not violating the right of people to not be discriminated against based on their sex. |  | X |  |
| 3.5. There is no requirement of agreement from communities before changes are made to their land rights or use. This leads to insecurity and land loss, especially in the face of investor interests, administrative actions or encroachment by other groups. | FPIC for all communities is entrenched in land policy and land laws, with guidelines for its practice, and for women in those communities. |  | X |  |
| 3.6. There is no explicit policy on entitlement to legal representation in land cases, nor any adequate institutional arrangements in place to ensure indigent people with land cases can get legal representation. | All are entitled to legal assistance on land matters and the state is obliged to ensure this right is fulfilled for indigent people, in particular women, on land matters. The drafting of the Legal Aid Bill - drawing on the constitutional clauses 19 and 20 and international precedent - is an opportunity to ensure this. |  | X |  |
| 3.7. Lack of clarity on what a minimum level of gender balance is in land structures with contradictory statements in different policies.  | A minimum of 35% of members of land decision making and dispute resolution structures must, according to policy, be women. This requirement is widely promoted in simple language. |  | X |  |
| 3.8. No data is available at a state or national level on the proportion of women with secure land rights. South Sudan is therefore unable to report on SDG indicators 1.4.2 and 5.a.1. | A survey, that conforms with the methodologies for measuring SDGs 1.4.2 and 5.a.1. is designed and being rolled out to capture the proportion of women who have secure land rights.  |  | X Wau | X some states |
| 3.9. There is no clear direction on the requirement for inclusive and gender responsive local land use planning. | Requirement for all states to be facilitating land use planning and that this planning includes reserving agricultural land, livestock corridors, and fresh food marketing space in local, town and regional plans | X Wau | X |  |
| 3.10. There is no common format for land certificates and no capturing of the sex of the land rights holder. | A national set of minimum standards for land certificates and registries requires the capturing of the sex of the land rights holder/s and space to capture spouses identities. | X |  |  |

## Monitoring and Evaluation Processes

Some of the interventions recommended above have built in monitoring features in them, such as the collection and reporting on land rights certificates issued and the sex of those they are issued to. These should all be tracked and transparently reported on.

The monitoring and evaluations, like the interventions themselves, can be tracked at the three different levels as follows:

1. Local monitoring will include, gathering and sharing the gendered administrative data gathered through the revised land registration process. Data gathering in The Project as it is implemented and including this data in the reporting. Surveys will be carried out a year after completion of the project (and two years later if the project is extended) on statistically sound samples to track changing ideas, beliefs and land rights experiences of women and men. It is hoped that the state and county level structures responsible for land administration would continue such monitoring, on at least an annual basis, beyond this project.
2. Administrative. Independent review of systems and practices. This is a simple process of checking the land registries, the forms used and certificates issued as well as observing the provision of services to clients. Analysis will also be done of the sex of staff carrying out land administration and management functions. To be done at the conclusion of the current project period and a year later. If the project it extended it should be carried out annually. It is hoped that beyond the project, the government, through the responsible national department, would take on such monitoring work.
3. National policy. Independent expert review of policies, laws and the program including budgets for their implantation. To be carried out every other year by the responsible national department, probably in collaboration with SDG monitoring institutions and procedures. If resources are available it would be useful to apply the FAO developed Legal Assessment Tool (LAT)(FAO, 2014). This may however, be too demanding across all 30 of their indicators. For practical reasons, therefore, it is suggested that the core measures, as per the SDG Indicator 5.a.2 proxies are used initially along with an expanded version of the FAO LAT stages as explained in Annex 3.

## Resources

Some of the recommendations listed above can be implemented with no or little new resources, they simply require some changes of approach, or simple actions such as changing the data captured on forms. Other recommendations lend themselves to donor support and donor supported interventions, at least in their initial roll out. For example, providing legal services for indigent clients on land matters can be funded as a particular program and there are many examples internationally of the provision of legal services that can be learnt from as well as local legal organizations that can be worked with on this. The incentivization of the registration of land rights in the names of women, could be donor funded based on donors paying the costs involved for land registration and transfer when a women is the getting the land certificate.

In the long-run these services should not depend on donors, but rather be provided by the government of South Sudan that needs to mainstream such services into its national and state budgets.

Funds for much of this work, especially the monitoring, whether from donors or the state, can be motivated for on the basis that these steps are essential for sustained peace and on the basis that this is contributing directly to the achievement of the SDGs and their monitoring. In particular the monitoring of SDG indicators 1.4.2 and 5.a.1 and 5.a.2 (IAEG-SDG, 2018a, IAEG-SDG, 2018b, IAEG-SDG, 2017).

# Conclusion

To avoid the ethnic division of South Sudan into separate entities, there has to be investment in the creation of a common South Sudanese identity, within which all are included and feel included. Central to this will be having secure rights to land that they can access as citizens of the nation, not on the basis of ethnicity. This requires that people are not accessing or governing land based on their ethnic identity in ways that foreground ethnic identity as of greater importance than national identity. Rather what is needed is accountable leadership and transparent decision making open to all citizens, women and men.

Women are indeed widely discriminated against in relation to land rights in South Sudan. It is, however, encouraging that there are many women, sometimes supported by men, who are in practice challenging the dominant narratives about men being the heads of households and therefore the “owners” of the land and the only ones to inherit. Further, there have been different groups, especially women’s groups, pushing for equal inheritance rights for years, so this is not a new debate. It is hoped that this paper offers some new ideas on the micro and macro steps that can be taken to strengthen women’s land rights. There are actions that can be taken now in any local community and within any local village or town land administration. There are also specific policy ideas that can be taken up at the national level in order to support and encourage local change. What is being proposed is not a radical departure from what is already in place, it is rather building on much that is in national policies and local practices already, taking forward changes that have become not only necessary, but also inevitable as South Sudan builds itself as a new nation that is changing fast, just as the region and the world are changing. To succeed this new nation also needs new gender relations that need to be rooted in stronger rights to land and property for women.

# Annex 1 – Common pool resource management principles

**Ostrom’s principles of common pool resource management**

By studying many examples, Ostrom developed a set of eight commonly found design principles in long-enduring Common Pool Resource management institutions (Ostrom, 1990: 90-102). These can be summarized as:

1. “Clearly defined boundaries” for membership and the CPR. This is one of the reasons this has to be organised at a fairly local level. It must involve those who use the land and water resources. This can still cover mobile populations who return on a regular basis, even if only after years or under particular weather conditions. This does require a careful examination of who the users of particular natural resources are over time and taking into account different and overlapping uses.
2. “Congruence between appropriation and provision rules and local conditions”. Rules fit context. This is self-explanatory and in the South Sudanese context would relate to things like water availability, soils, and the needs of different user groups.
3. “Collective-choice arrangements”. Rules set by those affected. This requires a thorough and inclusive process and is another reason why this is better organised at a local level. Note that a number of local CPR arrangements can also be linked up to cover a wider area, such as with the example of the organisation of water resource management and sharing in California that Ostrom has written about. This covered a large geographic area and involved a large number of sub-groups coming together.
4. “Monitoring” done by monitors accountable to appropriators. That is those how are assigned to monitor compliance with the agreed management arrangments need to be accountable to those who use the resources, and therefore have a vested interest in their sustained management and also were, in a good process, involved in drawing up the rules, as per point 3 above.
5. “Graduated sanctions” for violations set by appropriators or those accountable to them and take into account the context of the offence in order to be experienced as reasonable.
6. “Conflict-resolution mechanisms”. Rapid access and low cost and seen as fair
7. “Minimal recognition of rights to organize”. Not violated by external authority impinging on self-organisation. The state needs to back and endorse the management arrangements that resource user groups come up with (provided they meet minimum standards of respect for human rights), and not be overinvolved or interfering.
8. “Nested enterprises”. All functions are organised in layered ‘nested enterprises’. This concept fits well with the realities of agriculture and livestock keeping in South Sudan that involved what can be seen as nested enterprises. For example, individual farmers producing on their pieces of land within a wider community. And, livestock keepers who operate communally, but with different families and individuals having their own livestock even when looked after within a wider herd.

# Annex 2 – Notes on Draft Land Policy

**Notes on the Draft Land Policy (DLP) Discussion**

**Overview**

These are some notes intended to support the revision of the draft land policy and the development of related regulations, legislative amendments and ultimately implementation of an improved women’s land rights policy environment. Most of these points were forwarded to those working on the revisions to the draft land policy, but it is not known if any of these suggestions, and if so which points, have been included. As the finalisation of the land policy is underway, it is worth noting that many of these points can still serve as a guide in ensuring that regulations, amendments to other laws, and implementation are all done in a way that can maximise women’s land rights.

There is nothing here on decision making and women's lack of involvement. It also seems to assume that the laws are adequate on gender equality, which they are not.

In summary, three points I am focussing on here (by no means a complete list), are:

* Make all law and regulations, including customary law, subject to the overriding human rights including the right to not be discriminated against due to one’s sex. And all land decisions, customary and otherwise, subject to review by the courts. These courts having an explicit obligation to uphold rights such as to not be discriminated against based on gender and ethnicity. In relation to the land policy, it must be explicit that women have the same rights to land ownership and inheritance as men.
* Entrench FPIC for communities relying on land and natural resources before any “development” or investment can happen on their land.
* Entrench explicit requirement for gender equal land and property inheritance, not tied to care of children.
* Draw on African instruments/conventions/frameworks for ideas and to motivate for provisions on women’s land rights.
* Ensure all are equal before the law through entrenching the right to legal representation and the obligation of the state to fulfil this right, in particular for indigent women with land cases.

**FPIC**

One important step is to entrench Free Prior Informed Consent (FPIC) of land users and land rights holders before any land is taken or land use change implemented for “development” purposes, especially when it is for investment and economic development for activities such as large-scale agriculture, and extractive activities. This is not there in the 2014 DLP at all, but could be brought in, for example in 4.15 of the draft. Further and issue of concern for me in meaningful informed consent is to explore not only what the particular investment being proposed claims to offer, but also to explore alternative paths of progress. It is not about business as usual or the particular investment (that is this investor or nothing), it should be about communities making informed choices about the best form of investment, or intervention.

The technical report correctly notes that FPIC is confirmed in international conventions for “indigenous communities” but reduce this to being then a debate about who in South Sudan is technically “indigenous”. My approach is different. I would argue that FPIC for local communities is gaining ground as a norm that should be applied. The fact that it is already accepted for “indigenous” communities, lends it legitimacy. It should apply to all communities in South Sudan who depend on land and natural resources for their livelihoods and way of life (which is most communities). We have other international experiences re-enforcing this, including recent court rulings in South Africa about local communities right to say no to mining in their areas if they don’t want it.

Important to refer to in support of applying FPIC, especially from a women’s rights perspective is the CEDAW General recommendation No. 34 on the rights of rural women. This refers to the evidence that rural women “disproportionately experience poverty and exclusion” and “face systemic discrimination in accessing land and natural resources” due to discriminatory laws (or ineffective implementation of the law) and practices and stereotypes that prevent women from enjoying rights over land, including “with respect to communal lands, which are controlled largely by men”. And in section F.54.(E). it specifically recommends: “Ensure that rural development projects are implemented only after participatory gender and environmental impact assessments have been conducted with full participation of rural women, and after obtaining their free, prior and informed consent.”

**Inheritance**

Being clear on the issue of equal inheritance for daughters and sons across all land types (including customary of course), is important. There is room to shift the practices on this and a clear policy position on this would be good. The draft DLP is not very clear and the technical report is also not clear on this, so it may not make it strongly into any new draft.

In the DLP, first the problem analysis says nothing on inheritance, despite this being probably the biggest way in which gender inequalities are perpetuated. Then section 4.8. states that “Community land rights and their administration need to be governed by principles of gender equality and equal protection before the law as set up in the Interim Constitution.” But this says nothing explicit about inheritance rights. People spoken to in South Sudan would say that women are treated equally in land ownership, but with the next breath they say they don’t believe women should inherit, seemingly not seeing inheritance as linked to land ownership rights.

Chapter 5 on legislative development has an important recommendations including calling for the “Enactment of legislation guaranteeing the inheritance rights of female household partners and children”. It would be more useful if it was accompanied by analysis of the current challenges around inheritance and more explicit proposals to deal with this, including the delinking of women’s inheritance rights from that of their children. This tying of women’s inheritance rights to her children is one of the problems in practice, despite constitutional calls for equality, and the wording of this recommendations, quoted above, could be construed to continue this.

In the technical report from the consultant’s section 3.3.1 talks about inheritance and correctly says it should not be left to supplementary legislation, but strangely they are not explicit on entrenching gender equal inheritance and even in their points a-f on what should be considered in legislation, they don’t mention inheritance at all.

In support of this we can also argue that the proxies for measurement of progress on SDG Indicator 5.a.2, include whether or not the “legal and policy framework support women’s and girls’ inheritance rights?”

**Further Points on the DLP**

3.7 of the DLP on gender equality reads “Men and women will enjoy equal rights to land and property” It is good to have this, but it is very limited. We need commitment to affirmative actions to ensure gender equality. We need reference to effective participation in decision making, including in dispute resolution.

4.7.1. Strategies for Extending and Protecting Women’s Land Rights. This is a good start but can be developed. The para above is contradictory to this in that it takes the treatment of men and women “equally” approach. The strategies largely relies on awareness raising and training. It also recommend More can be done, such as:

- Gendered data gathering and sharing

- Use the SDG 5.a.2 proxies.

Top of page 32, under section 4.8. “Community land rights and their administration need to be governed by principles of gender equality and equal protection before the law as set up in the Interim Constitution.” This is good, but need to see what the constitution says. And we need to be clear that this included inheritance rights.

Proposes a Community Land Act (pg 32), that will be critical and will need careful attention when it is drafted and discussed. This could become a way to democratise community land administration or a way to entrench unaccountable traditional authorities.

4.8.1 envisages a central role in community land for the County Land Authority and the Payam Land Council. But how well do these work? Do they have the resources?

The focus here is on civil society with no commitment from the government. Is there anything on education institutions? Further aside from saying civil society role is welcome, it would be useful to commit government to not interfering with civil society groups doing land rights work and to allow space for civil society organising. To ensure protection for land rights defenders.

4.10.1 on building mediation capacity is a bit vague, saying things will be put in place. Would be nice to hear more of what these guidelines and criteria will be and what the tools will be and will look like

Also need to be clear on the particular skills needed, i.e. urban development and town planning (not surveying).

4.14 is generally good on respecting and committing to listen to and upgrade informal settlements. It says on page 37 that “Government at all levels will not remove residents of informal settlements without due process of law”. The reality, however, is that they are doing it under the name of demarcation. Where they plan settlements, apparently in some kind of rigid grid structure and mark houses for demolished that get in their way. This is very problematic, especially in areas of past removal and destruction of property through violence. People who had some of their houses destroyed, now see crosses on what remains telling them this too will be torn down. There has been no process with people before doing this. Surveyors have gone wild with no social or urban development thinking. This needs to be addressed in the policy. It is part of the need for a development orientated master planning.

4.15 is good in general on Community rights to natural resources used in common. but needs more specifics. Also needs FPIC confirmed. Should confirm the importance of looking at alternative paths of progress before agreeing any land deal or investment.

4.16.4 Urban and Peri-urban planning. This lacks the identification of the 7km radius problem. The need for master plans, clarifying urban area boundaries based on reality of settlement, topographical info, the environment, etc...

There is also the unresolved issue of the lack of clarity on peri-urban, vs urban and communal land administration.

Other laws and policies identified in DLP as needed are:

* Town and country planning law. It will be important to engage with this process.
* Land use policy guide. It will be important to ensure that this has development thinking entrenched and does not become focussed on narrow technocratic planning.

4.17.4. Still misses urban and development planning, it is over focused on surveying and surveying skills.

4.17.6. Land information management. Way over ambitious and nothing on gender. This can be fine as longer-term aspiration, but we need some steps of progress implementable now. Like common lease forms, add gender info. Compile that info, share nationally

4.17.7. On fiscal aspects. Says there should be land tax, but doesn’t indicate much about it. It should specify a progressive tax regime on land and on inheritance and indicate if it is linked to size and/or value of land. It can be counter-productive to link to a measure of value that can be increased by land improvements as that will discourage improvements. There should be an underlying value so that it incentivizes effective use and improvement of value of that land.

4.17.8 Land dispute resolution. Focusses on alternative dispute resolution, which is ok, but first, it should be explicit that people always have access to courts to resolved dispute and when they feel unjustly treated. Further, the issue still remains the balance of power, and there is a risk the less powerful, less well-resourced and less educated lose out in mediation and arbitration. Therefore, what is important is access to support for women and the poorest (indigent) in land dispute settlement including in alternative dispute resolution processes and in court.

You have to state the basics, that people always have the right to adjudication of their land disputes within a reasonable time. Potential for urgent interdict of land and property under immediate threat.

Talk of appropriate land registration system for commercial agricultural investment. 4.18 on page 49 is worrying. Why open the space for some other form of and registration, you have the land registration options already. And you should not have a special one to accommodate foreign investors. Rather local farmer, the real investors should be incentivised.

This section talks too much about the need to develop guidelines and provides too little of the guidance the policy should provide.

This is mention of the Ministry of Land Housing and Physical Planning (MLHPP) being informed of land allocated for agricultural development. This is an unfortunate approach that separates agricultural land from urban land and housing planning. It should be integrated into multi-purpose land use planning. It can't just have land and housing informed about something that needs to be a full part of decision making on development plans that must include agriculture.

Don’t integrate traditional councils into county councils. Let them do their local land admin, let the county be a level people can appeal to if needed and that can provide technical support to things like planning and surveying.

**African Union Provisions**

There are African Union (AU) positions worth referring to for support of arguments and for ideas. They represent clear positions on the need for policy and other actions to advance women’s land rights.

Declaration on Land Issues and Challenges in Africa (Adopted by AU Heads of State, In Sirte 2009)

RESOLVE TO:

1. ensure that land laws provide for equitable access to land and related resources among all land users

including the youth and other landless and vulnerable groups such as displaced persons;

2. strengthen security of land tenure for women which require special attention.

Guiding Principles on Large Scale Land Based Investments in Africa (Adopted at joint Ministerial meeting in Addis in 2014)

“Fundamental Principle 4: LSLBI respect the land rights of women, recognize their voice, generate meaningful opportunities for women alongside men, and do not exacerbate the marginalization of women.

*LSLBI which do not explicitly respect the rights of women and their voice will inevitably further the marginalization of women.*

Principle 11: Promoting gender equality in land governance in national laws is a prerequisite to ensuring that LSLBI promote sustainable development.

Principle 12: LSLBI observe and respect women’s equal rights to own, access, control, and use land as the case may be under different tenure regimes.

Principle 13: LSLBI contribute to sustainable development through gender sensitive employment creation and broad-based wealth creation that benefits women.”

PROTOCOL TO THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS ON THE RIGHTS OF WOMEN IN AFRICA

“Article 15 a) provide women with access to clean drinking water, sources of domestic fuel, land, and the means of producing nutritious food; “

“Article 19 c) promote women’s access to and control over productive resources such as land and guarantee their right to property”

# Annex 3 - FAO Legal Assessment Tool

The Food and Agriculture Organization of the United Nations (FAO) have developed a Legal Assessment Tool (LAT) specifically to assist in the tracking of progress towards creating a more gender-equitable land dispensation. It has 30 indicators and a multi-stage way of monitoring progress on putting in place laws and regulations that would meet these indicators (FAO, 2014).

The stages go from a complete absence of the indicator in a country’s legal framework, stage/score 0, to the indicator appearing in multiple legal instruments, which is stage/score 4. This framework can be useful for monitoring progress on putting in place legislation in South Sudan. If the 30 indicators are too many to track, the stages can still assist in assessing fewer key indicators, such as those linked to SDG Indicator 5.a.2.

Given the frequent challenges in implementation of laws and the need for the active promotion of laws in order for them to be real in the lives of women, especially poorer and rural women, we suggest that an additional stage needs to be added to the rationale. This stage/score 5 would be achieved when stage 4 is achieved for an indicator and in addition there are programs with adequate budgets being implemented to give effect to these laws.

The Multiple stages of the LAT.



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1. All names used in this paper are pseudonyms used to protect the anonymity of the respondents. [↑](#footnote-ref-1)
2. It is worth noting that this is a very similar set of ideas that exist across much of Africa. The approach to land inheritance and ownership has also shifted in most African countries over the last decades, indicating that it is possible to change and doing so has not destroyed families or communities. [↑](#footnote-ref-2)
3. It should be remembered that most respondents were in Wau state that appears to has a court that is perceived to be more functional and progressive than most. [↑](#footnote-ref-3)
4. For example, see the work of Namati and tools developed by GLTN and Its members. [↑](#footnote-ref-4)
5. It has been reported that a recent revised Draft National Land Policy, that is not yet publicly available, is suggesting a subsidy for women’s land registration. This cannot be confirmed as the document has not been seen. Whether a subsidy or a waiver, the incentive should involve a meaningful reduction in the cost for women to register land. [↑](#footnote-ref-5)
6. X indicates when this target will be met for the country as a whole. When the X is followed by project it means within the beneficiaries of The Project and when is X followed by Wau, it means within the town of Wau. [↑](#footnote-ref-6)
7. <https://nelga.org> A pan-African land skills education and training initiative that the University of Juba is already linked to. [↑](#footnote-ref-7)