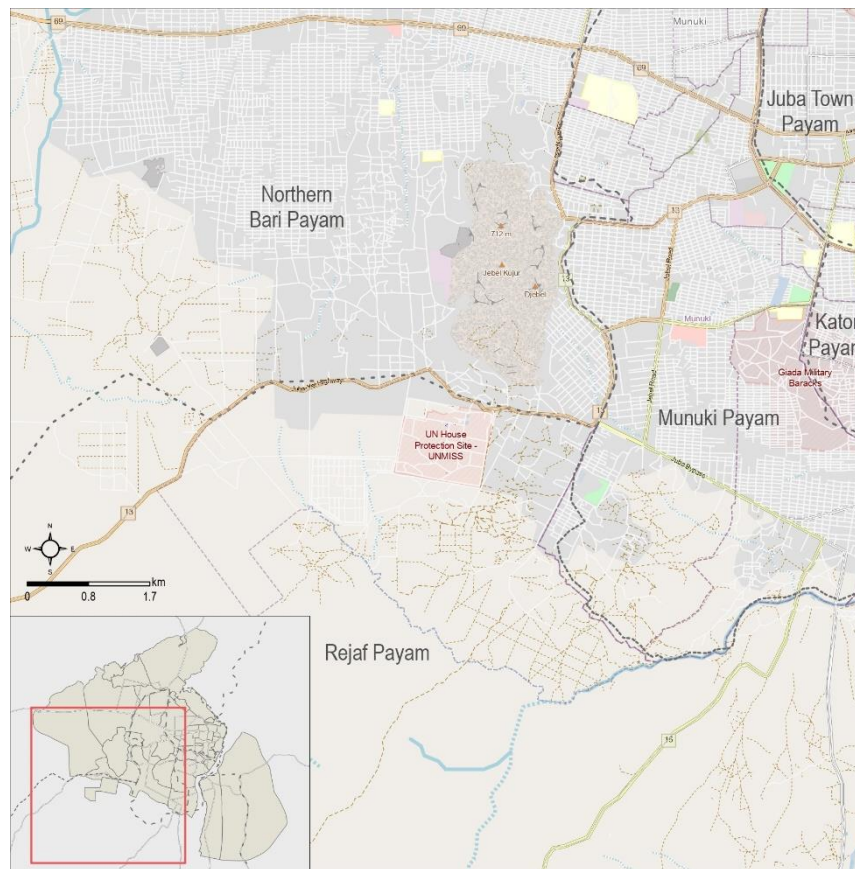




## Housing, Land and Property Assessment of Juba Peri-IDP Sites Area

*Towards Durable Solutions for Safe and Voluntary Reintegration of IDPs into the Host Community in Amadi, Hai Salam and Kor Remleh/Kor William, Rejaf and Gorom Payams, Juba County, Central Equatoria*



Juba, July 2023.

Table of Contents

Acronyms .....	3
<b>EXECUTIVE SUMMARY .....</b>	<b>4</b>
<b>1. Introduction.....</b>	<b>8</b>
1.1.Assessment methodology, limitations, challenges and mitigation measures.....	9
<b>2. Context analysis: policy, legal and institutional.....</b>	<b>10</b>
2.1. The Constitution, Land Act, and Local Government Act.....	11
2.2.Relief and Rehabilitation Commission Act 2016, and Framework for Return, Reintegration and Relocation of Displaced Persons .....	14
2.3.Revitalized Agreement on the Resolution of the Conflict in the Republic of South Sudan (R-ARCSS) .....	15
2.4. Regional and international commitments and frameworks.....	16
<b>3. Stakeholder analysis.....</b>	<b>18</b>
<b>4. HLP rights for IDPs in Juba Peri-IDP: Opportunities, Challenges, Emerging Issues.....</b>	<b>20</b>
4.1. Access to land by IDPs – practice, challenges and opportunities.....	20
4.2. Dispute resolution mechanisms for HLP rights of IDPs – practice, opportunities and challenges...	25
<b>5. Conclusions and Recommendations: emerging priority issues, way forward.....</b>	<b>25</b>
REFERENCES .....	28
National policies, strategies and laws .....	28
Global and regional instruments.....	28
Others.....	28
Annex 1: Stakeholders engaged through KIIs and FGDs .....	29
KIIs (in order of meetings).....	29
FGDs .....	29

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**Acronyms**

ADR	Alternative Dispute Resolution
AU	African Union
CBOs	Community-Based Organizations
CCCM	Camp Coordination and Camp Management
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CES	Central Equatoria State
CMC	Camp Management Committee
CPA	Comprehensive Peace Agreement
CSOs	Civil Society Organizations
CTRH	Commission for Truth, Reconciliation and Healing
DRC	Danish Refugee Council
EU	European Union
FAO	Food and Agriculture Organization of the United Nations
F&G	Framework and Guidelines on Land Policy in Africa
FBOs	Faith-Based Organizations
FGDs	Focus Group Discussions
GRSS	Government of the Republic of South Sudan
HDC	Humanitarian and Development Consortium
HLP	Housing, Land and Property
IDPs	Internally Displaced Persons
IGAD	Intergovernmental Authority on Development
IOM	International Organization for Migration
IRC	International Rescue Committee
KIIs	Key informant interviews
MHADM	Ministry of Humanitarian Affairs and Disaster Management
MLHUD	Ministry of Land, Housing and Urban Development
NGOs	Non-Governmental Organizations
NRC	Norwegian Refugee Council
PoC	Protection of Civilians
PTR	Protection, Transition and Reintegration
R-ARCSS	Revitalized Agreement on the Resolution of the Conflict in South Sudan
RJMEC	Reconstituted Joint Monitoring and Evaluation Commission
RRC	Relief and Rehabilitation Commission
RTGoNU	Revitalized Transitional Government of National Unity
SRF	Special Reconstruction Fund
SSLC	South Sudan Land Commission
TCRSS	Transitional Constitution of the Republic of South Sudan
UK	United Kingdom
UN	United Nations
UNDP	United Nations Development Programme
UN-Habitat	United Nations Human Settlements Programme
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children’s Fund
UNMISS	United Nations Mission in South Sudan
UNOCHA	United Nations Office for the Coordination of Humanitarian Affairs
USA	United States of America
WASH	Water, sanitation and hygiene
WFP	World Food Programme

## **EXECUTIVE SUMMARY**

This report presents the findings, conclusions and recommendations of a Housing, Land and Property (HLP) assessment commissioned by Acted and conducted in Juba peri-IDP Sites area<sup>1</sup> during April and May 2023 to better understand the opportunities, challenges, mechanisms and procedures for acquiring land, the potential for and causes of land-related conflicts, as well as the institutional arrangements, procedures and effectiveness of land disputes resolution mechanisms. The assessment sought to enable a better understanding of the context for HLP rights of Internally Displaced Persons (IDPs) in South Sudan in order to ensure that interventions aimed at achieving durable solutions for IDPs accord with the “do no harm” principle.

### **The context of HLP rights for IDPs**

The context of HLP rights for IDPs in South Sudan has been shaped by the reality of persistent conflict, the most recent of which broke out in 2013, rolling back the gains that had been registered in building policy, legal and institutional frameworks for resettlement and rehabilitation of refugees and IDPs from more than two decades of civil war. This conflict fostered a political and economic crisis that has undermined the functioning of the state and its institutions, and the implementation of policies and laws. Thus, progress on HLP rights for IDPs is closely tied to the resolution of the conflict.

South Sudan has an elaborate policy, legal and institutional framework for land administration and land disputes resolution that has a bearing on HLP rights for IDPs. Unfortunately, the framework does not function effectively on the ground. Legislation such as the Land Act, 2009 and the Local Government Act, 2009 are not fully enforced, and institutional arrangements they create are not functional. Moreover, the existence of multiple institutions exercising land administration mandates without an overarching policy has resulted in competition and confusion that impacts negatively on IDPs when they seek to access land for settlement.

There are number of ongoing processes that have the potential to change the situation for the better, key among them being push for full implementation of chapters three and five of the Revitalized Agreement on the Resolution of the Conflict in the Republic of South Sudan (R-ARCSS), which will make available the funding resources needed to support the relocation, resettlement and reintegration of IDPs, while also addressing the root causes of displacement. The Ministry of Land, Housing and Urban Development (MLHUD) has finalized the drafting of the National Land Policy, which if implemented will clarify the policy and institutional framework for land governance and the roles and interactions between the different levels of government and communities in land administration and streamline the process and institutional framework for registration of land rights, thereby enhancing security of tenure. Actors are pushing for full implementation of the Framework for Return, Reintegration and Relocation of Displaced Persons to jumpstart development and implementation of the Durable Solutions Strategy; the Action Plan for Returns; and the Protection and Assistance of IDPs Bill.

### **Major stakeholders in IDPs’ HLP rights**

There are five categories of major actors actively engaged in efforts to secure HLP rights of IDPs in South Sudan, namely: government (local, State and national); UN agencies and the Intergovernmental Authority on Development (IGAD); development partners; non-state relief and humanitarian actors; and IDPs and

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<sup>1</sup> The area encompasses 3 localities (Kor Remleh/Kor William, Hai Salam and Amadi) bordering the Juba IDP Sites 1 and 3 that have been managed by Acted from 2014 until 2023. In March 2023, Acted handed over the site management responsibilities to community governance in order to promote community ownership of the site. Acted has been actively advocating for durable solutions for the IDP population, including the potential integration into the host community surrounding the IDP Sites.

communities. The national government is the duty bearer with the obligation to secure political, economic and social rights entrenched in the Bill of Rights, including the right to own property and the right to decent housing, and its interest is to implement policies and laws to secure the rights of IDPs as citizens and promote peaceful coexistence between them and the host community.

UN agencies promote international human rights and humanitarian law, and provide technical and material support to GRSS to deal with humanitarian crises. The UN and its agencies are also major actors in the peace building process, as well nation and state building efforts. The interest of UN agencies is to promote human rights and humanitarian law in line with their obligations under the UN Charter; while the interest of IGAD is to see peace return to South Sudan for the benefit of regional peace and security in the Horn of Africa.

Development partners provide technical, financial and material support to the promotion of HLP rights of IDPs, and they are also stakeholders in the South Sudan peace process. Their interest is to advance the HLP rights of IDPs within the framework of chapter three of R-ARCSS, and to support peace building and reconstruction within the framework of the UN Charter. They also provide support to non-State relief and rehabilitation organizations, which are the frontline workers in promoting HLP rights for IDPs. The interest of the non-State actors is to improve the well-being of IDPs by promoting their access to services and securing their rights, as well as those of host communities.

### **Issues, opportunities and challenges to IDPs' HLP rights**

There exist three major categories of IDPs in the two Juba IDP sites - those who were displaced from their homes in Juba by conflict in 2013; those who were displaced from other States due to conflict; and those who were displaced by floods. The majority of IDPs in all the three categories indicated that they would like to settle in Juba when they leave the Sites.

The major challenge to securing HLP rights of IDPs in the peri-IDP sites area is institutional, and is compounded by the lack of clarity about allocation of land governance functions, powers and responsibilities to the different levels of government on the one hand and communities on the other hand. There is a clear need for comprehensive consultations with the host community and among the different levels of government about resettlement of IDPs if the process has to “do no harm”. In the absence of such consultations, the settlement of IDPs in the peri-IDP sites area may in fact create the basis for future conflicts.

With regards to dispute resolution, the assessment team found that the IDPs who have settled in the peri-IDP Sites area do not have significant HLP disputes among themselves or between them and host communities. The major disputes that the IDPs speak about are those linked to their search for justice for their lost HLP rights, especially for those who were displaced from their homes in Juba. The IDPs expressed serious frustration in their efforts to reclaim their rights, and complained about the impunity of the land grabbers, and the way they are able to manipulate and abuse the judicial system, making it impossible for IDPs to get justice. Nevertheless, a number of them are pursuing claims over their grabbed land with the assistance of organizations such as Humanitarian & Development Consortium (HDC). Ultimately however, the greatest hope for redress of IDPs' HLP claims lies in the implementation of chapter five of R-ARCSS, which stipulates commitments and mechanisms for transitional justice, accountability, reconciliation and healing.

The assessment concluded that:

1. The key barriers faced by IDPs in their efforts to acquire land and relocate from the Sites to the host community are firstly, the perception among them that the insecurity that led them to the Sites persists in the country; and secondly, the unclear policy, legal and institutional context for land

governance in South Sudan, coupled with the absence of a coherent programmatic approach by the Government to the transition from PoC sites to IDP Sites and thence to relocation, resettlement and reintegration.

2. The main actors on HLP issues in South Sudan, Juba County and the three localities are Government (national, state, local); UN agencies; development partners; non-state relief and humanitarian actors; and host communities.
3. The major risks to HLP rights of IDPs and the host community come from the reckless disregard of their rights by powerful military and political actors, who grab their land, and are able to subvert the justice system and defeat their claims when they try to seek legal remedies. The most vulnerable groups in this regard are women and child-headed households.
4. HLP related conflict triggers are linked to the governance crisis that has prevailed in South Sudan since 2013, and its ethnic underpinnings, which continue to shape interactions among different communities; and the main opportunity for addressing these triggers lies in the implementation of R-ARCSS, and in particular chapters three and five thereof.

In order to support durable solutions that will secure HLP rights for IDPs in line with ‘do no harm’ principles, the assessment recommends that:

1. The process of addressing challenges to IDPs’ HLP rights be linked to the wider peace-building and reconstruction project within the framework of R-ARCSS, so as to deal with the root causes of displacement, including through strengthening policy and institutional frameworks for land governance and dispute resolution.
2. Any relocation, resettlement and reintegration plan of IDPs from the two Sites should be accompanied by a structured process of transitional justice that addresses claims for restitution or compensation of those IDPs who lost their properties in Juba.
3. The Government of the Republic of South Sudan (GRSS), with the support of the UN, and using the Framework for Return, Reintegration and Relocation of Displaced Persons, should convene a Stakeholders Forum with IDPs, Central Equatoria State (CES), the host community, and humanitarian and relief organizations to agree on strategies and a road map for relocation of the IDPs from the two Sites, based on the triple nexus of humanitarian support, development and peace.
4. GRSS should establish the Special Reconstruction Fund (SRF) and convene the South Sudan Pledging Conference as provided for in chapter 3 of R-ARCSS to raise money for the Fund to support resettlement of IDPs.
5. The technical and logistical capacity of the Relief and Rehabilitation Commission (RRC) should be strengthened so that it may effectively play its role of coordinating humanitarian action.
6. Plans for relocation, resettlement and reintegration of IDPs should be framed as a national, and not just Juba County issue, with due consideration of opportunities for relocation, resettlement and reintegration of IDPs to other safe parts of the country.
7. A relocation, resettlement and reintegration package should be arranged that will support IDPs to construct their dwellings, and restart their lives in dignity and with hope, paying particular attention to women- and child-headed households, the elderly and persons with disability.
8. Any land identified for settling of the IDPs should be appropriately planned, with provisions made for services (health, education, social, etc.), and provisions of these services factored in.

9. The Ministry of Peacebuilding, in partnership with the Ministry of Humanitarian Affairs and Disaster Management (MHADM), RRC and other actors should initiate and implement a structured programme of civic education targeting IDPs, host communities and the relevant authorities, with a view to creating awareness among IDPs about the procedures for acquiring land and promoting peaceful coexistence between IDPs and host communities.
10. Women should be supported through capacity building to play leadership roles among IDPs, and awareness about mainstreaming gender considerations in addressing IDPs' HLP rights should be promoted.
11. GRSS, UN and other humanitarian actors should provide support to training on HLP for local authorities and community leaders across the country.



## 1. Introduction

Acted has worked in South Sudan since 2007, and has been, from 2013 to 2023, the Camp Management Agency for Juba IDP Sites 1 and 3, situated on the outskirts of the City of Juba. The two Sites, which were established by the United Nations Mission in South Sudan (UNMISS) as Protection of Civilian (PoC) sites, were on 16<sup>th</sup> November 2019 re-designated as sites for Internally Displaced Persons (IDPs). In 2020, the IDP sites were handed over to the Government of the Republic of South Sudan (GRSS), although UNMISS Protection, Transition and Reintegration (PTR) Team continues to exercise a protection mandate over the IDPs in partnership with the Government.

In view of this transition, and consistent with its 2022-2025 strategy, Acted has handed over responsibilities for Camp Coordination and Camp Management (CCCM) in both Sites to the leadership of the IDP community. In line with CCCM responsibilities, Acted has been actively supporting the identification of durable solutions for the IDPs, including voluntary integration into the host community within the three surrounding localities of Amadi, Hai Salam and Kor Remleh/Kor William in Rejaf and Gorom Payams, Juba County, Central Equatoria State. Furthermore, and in conformity with the durable solutions approach, Acted is supporting the strengthening of mechanisms and frameworks for securing the IDPs' housing, land and property (HLP) rights as they integrate into the host community<sup>2</sup>.

In order to better understand the opportunities, challenges, mechanisms and procedures for acquiring land, the potential for land-related conflicts and causes thereof, as well as the institutional arrangements, procedures and effectiveness of land disputes resolution, Acted commissioned an in-depth assessment of the HLP environment in South Sudan generally with a focus on Juba County. The need for such an in-depth analysis of the context and framework for HLP rights was established by the rapid multisectoral assessment conducted by Acted in September 2022 to identify the key needs and barriers for settling in the so-called “peri-IDP sites” area. A key finding of the rapid assessment was that HLP issues are extremely sensitive in the peri-IDP sites area a situation that is compounded by a complex and unclear policy, legal and institutional framework and weak enforcement mechanisms. This necessitated a deeper analysis for better understanding of the context in order to ensure that interventions aimed at promoting durable solutions of IDPs would accord with the “do no harm” principle.

This report presents the findings, conclusions and recommendations of the assessment conducted in both Juba Sites 1 and 3 and the Juba peri-IDP sites area during April and May 2023. The overall and specific objectives of the assessment are presented in Box 1.

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<sup>2</sup> For more information on Acted's work in Juba IDP Sites and peri-IDP Sites area, please reach out to Bol Teal, CCCM Project Coordinator at [bol.teal@acted.org](mailto:bol.teal@acted.org), or Sarah Haller, Country Director at [sarah.haller@acted.org](mailto:sarah.haller@acted.org).



**Box 1: Overall and specific objectives of assessment****Overall objectives**

To deepen understanding of the policy, legal and institutional context for HLP in South Sudan and its relevance and application to the resettlement and integration of IDPs into the host community in the three Payams of Ahmadi, Hai Salam and Kor Remleh/Kor William in Juba County

**Specific objectives**

1. To clarify mechanisms, processes and institutional arrangements (both statutory and customary) for acquisition, governance and management of land, including land disputes resolution;
2. To identify and analyze key barriers faced by IDPs in their efforts to acquire land and relocate from the Sites to the host community
3. To identify the main actors on HLP issues in South Sudan, Juba County and the three Payams, and their respective roles, functions and interests;
4. To identify and analyse risks to HLP rights faced by different groups within IDPs and the host community, with a focus on vulnerable groups
5. To identify HLP-related conflict triggers and opportunities for managing them
6. To make recommendations on how to implement durable solutions that will secure HLP rights for IDPs in line with 'do no harm' principles

The report is divided into five sections. This section introduces the assessment and explains the methodology used in conducting it. Section two analyses the policy, legal and institutional context for HLP rights and IDPs resettlement and reintegration in South Sudan. Section three identifies the key stakeholders working on HLP rights of IDPs and assesses their roles and interactions. Section four analyses the HLP rights for IDPs in the Juba peri-IDP sites area, particularly with regards to acquisition and management of land, and resolution of land-related disputes. The final section presents conclusions and recommendations, with a focus on how Acted and other stakeholders can better support safe and secure integration of IDPs into the host community in the Juba Peri-IDP area, and advocate for strengthening of the policy, legal and institutional framework for HLP rights in South Sudan.

**1.1. Assessment methodology, limitations, challenges and mitigation measures**

The assessment was undertaken mainly through qualitative methodology that combined desk review of literature, policies and laws; Key Informant Interviews (KIIs); and Focus Group Discussions (FGDs). The documents reviewed included Acted strategy and programme reports; policies and laws of the GRSS that govern HLP rights; and relevant regional and global frameworks that South Sudan has signed up to. The specific regional and global frameworks reviewed included the Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention), the Framework and Guidelines on Land Policy in Africa (F&G), the United Nations (UN) Principles on Housing and Property Restitution for Refugees and Displaced Persons (Pinheiro Principles), and the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW).

The targeted locations for this assessment - Amadi, Hai Salam and Kor Remleh/Kor William – have been selected due to their proximity to the Juba IDP Sites 1 and 3, the availability of space for IDPs to re-settle (Kor Remleh), and the already-existing presence of IDPs from the Sites in the host community (Hai Salam, Amadi).

The assessment process involved major stakeholders through KIIs and FGDs. The assessment team conducted KIIs in Juba City with a total of 17 individuals representing GRSS, the Government of Central Equatoria State, Local Authorities, UN agencies, and Non-Governmental Organizations (NGOs). The team held FGDs with a total of 121 community members (100 male, 21 female) through five focus groups at the

two IDP Sites and in the three localities. Where the numbers permitted, the team split focus groups so as to hold separate discussions with women and men (see Annex 1 for list of individuals interviewed and focus groups conducted). The draft assessment report was presented at a Stakeholders' Validation Workshop convened by Acted in Juba on 9<sup>th</sup> June 2023. The workshop provided an opportunity for representatives of groups that the assessment team had interacted with as well as other major stakeholders to validate the findings of the assessment. The feedback received at the workshop have been integrated into this report.

The assessment team met two major challenges in its interactions with stakeholders. Firstly, the beginning of the assessment coincided with the outbreak of the internal conflict in Khartoum, which created a huge humanitarian crisis that engaged the attention of key actors in Juba, particularly the senior leadership of the Ministry of Humanitarian Affairs and Disaster Management (MHADM), the Relief and Rehabilitation Commission (RRC), and UN agencies. It proved difficult to pull off appointments with these individuals as they were reported to be in meetings connected with the crisis and its ramifications for South Sudan. At the community level, there was a major challenge related to mobilization of the host community. The design of the assessment had envisaged having engagement with the host community and IDPs as separate interest groups, so to speak. However, in every community visited by the team it was noticed that it was IDPs that were the majority, with one or two people who identified themselves as members of the host community. The team also noticed that in more than one instance, a substantial number of the people in attendance at community FGDs were people who travelled to the meetings from the two IDP Sites. The assessment team was made to understand that apart from the indigenous Bari community, the host community around the two Sites comprise other ethnicities, among them Dinka, Nuer, and Mundari, who had settled in the area before the outbreak of the conflict in 2013. Many of these people also ended up in the two Sites upon the outbreak of conflict.

## **2. Context analysis: policy, legal and institutional**

The situation of internal displacement in South Sudan has been described as “complex, multi-faceted and layered”, encompassing peace and security concerns, as well as political, socio-economic, cultural and climatic vulnerabilities<sup>3</sup>. The conflict that broke out in December 2013, and the way it has evolved to-date “reflects a deep governance crisis reminiscent of a political chasm on state-building in South Sudan, and deeply rooted social and economic grievances”<sup>4</sup>. The social and economic grievances are historical in character and pit communities against each other, with far reaching impacts on inter-communal relations, which in turn impact the building of national unity based on a “South Sudanese” identity.

The conflict that broke out in 2013 fed into and fuelled deep-rooted inter-ethnic animosities. It rolled back the gains that had been registered in building policy, legal and institutional frameworks for resettlement and rehabilitation of refugees and IDPs from more than two decades of civil war, and fostered a political and economic crisis that undermined the functioning of the state and its institutions, and by extension, the implementation of policies and laws. This means that progress on HLP rights for IDPs continues to be closely tied to the resolution of the conflict.

Forced displacement is one of the most devastating impacts of the conflict. The reality and enormity of forced displacement in South Sudan is represented by the number of IDP sites in the country, including the Juba IDP sites. The United Nations High Commission for Refugees (UNHCR) estimated the number of IDPs in South Sudan to stand at 2.33 million people as at 31<sup>st</sup> March 2023<sup>5</sup>. Of these, over 32,000 are accommodated in the two Juba IDP sites, with 7,707 in Site 1 and 25,119 in Site 3. Most of the IDPs in Site

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<sup>3</sup> Human Rights Council, 2014:4

<sup>4</sup> *ibid*, p.5

<sup>5</sup> UNHCR, 2023

1 are said to have been residents of Juba. They were joined by others from elsewhere in Central Equatoria and from Unity States; while those in Site 3 are mostly from Jonglei and Unity States. The IDPs from Jonglei and Unity States include those who were displaced by conflict as well as those who were later displaced by floods.

The policy, legal and institutional framework governing HLP rights for IDPs in South Sudan consists of national policies and laws that integrate principles from regional and global instruments that the Republic of South Sudan has acceded to. The key documents that make up the national policy and legal framework are: the Transitional Constitution of South Sudan (as amended), Land Act 2009, Local Government Act, 2009, the Relief and Rehabilitation Commission Act, 2016, and the Framework for Return, Reintegration and Relocation of Displaced Persons, 2017. Of particular significance in the context of the ongoing peace process is the Revitalized Agreement on the Resolution of the Conflict in South Sudan (R-ARCSS), which makes specific provisions for support to return resettlement and reintegration of refugees and IDPs, and for implementation of transitional justice as a foundation for national healing and reconciliation.

## **2.1. The Constitution, Land Act, and Local Government Act**

### **The Transitional Constitution of the Republic of South Sudan (TCSS)**

The Transitional Constitution establishes the framework for protection and promotion of human rights. It incorporates a Bill of Rights, as “a covenant among the people of South Sudan and between them and their government at every level and a commitment to respect and promote human rights and fundamental freedoms.”<sup>6</sup> The Constitution also provides that “All rights and freedoms enshrined in international human rights treaties, covenants and instruments ratified or acceded to by the Republic of South Sudan” shall be an integral part of the Bill of Rights<sup>7</sup>.

With regards to HLP, the Bill of Rights secures the right of every person “to acquire or own property as regulated by law”<sup>8</sup>, and protects private property from expropriation “save by law in the public interest and in consideration for prompt and fair compensation.”<sup>9</sup> Furthermore, it confers on every citizen “the right to have access to decent housing”<sup>10</sup>, and mandates the State to “formulate policies and take reasonable legislative measures within its available resources to achieve the progressive realization” of the right<sup>11</sup>. The Bill of Rights further protects homeowners from being evicted from their homes or having their homes demolished except in accordance with the law.<sup>12</sup> These rights apply to all South Sudanese, including IDPs.

Other than stipulating that “regulation of land tenure, usage and exercise of rights thereon” shall be governed by the Constitution and the law<sup>13</sup>, the TCSS does not clarify the institutional framework for land administration. It provides for establishment of the Land Commission, but does not specify its functions. Instead, it stipulates that “the structure, composition, functions, powers and terms and conditions of service of the Chairperson, Deputy Chairperson, Members and employees of the Commission shall be

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<sup>6</sup> Transitional Constitution of the Republic of South Sudan (TCSS), Art. 9(1) (2011) (as amended), available at [https://www.constituteproject.org/constitution/South\\_Sudan\\_2011.pdf](https://www.constituteproject.org/constitution/South_Sudan_2011.pdf).

<sup>7</sup> Art. 9(3)

<sup>8</sup> Art. 28(1)

<sup>9</sup> TCSS, Art. 28.

<sup>10</sup> Art. 34(1)

<sup>11</sup> Art. 34(2)

<sup>12</sup> TCSS, Art. 34(3).

<sup>13</sup> Art. 171(1)

regulated by law”. Although the South Sudan Land Commission has now been in existence for 17 years<sup>14</sup>, the law setting out its structure and functions has never been enacted. The Presidential Decree appointing the members of the Commission mandated it to “entertain claims in respect of land and arbitration between willing contending parties thereon, and ... advise different levels of government how to coordinate policies on projects affecting land or land rights”<sup>15</sup>.

### **The Land Act, 2009**

The Land Act was enacted by Southern Sudan Legislative Assembly under the Interim Constitution of Southern Sudan, 2005<sup>16</sup>, to “regulate land tenure and protect land rights...while creating an enabling environment for economic development in the land and natural resource sectors”.<sup>17</sup> It establishes the framework for land administration and management, and makes provisions of relevance to HLP rights in the context of displacement.

Section of the Land Act classifies land in South Sudan into three categories – public, community, and private; while section 7 provides that land shall be acquired, held and transacted through three tenure systems, namely: customary, freehold and leasehold. Customary land rights are allocated by Traditional Authority within specific communities for residential, agricultural, forestry, and grazing purposes<sup>18</sup>. In urban areas, land is allocated by the relevant authorities acting on behalf and at the behest of the State government.

The Land Act provides that the regulation of land tenure, usage and exercise of rights over land thereon “shall be exercised at the appropriate level of Government”<sup>19</sup>. The Act vests different land administration powers and functions on different levels of government. The GRSS is responsible for, among other things, management of public land; resettlement, rehabilitation and reconstruction; and keeping and managing land cadastre and registration system<sup>20</sup>. State governments are responsible for, among other things, resettlement, rehabilitation and reconstruction; regulation of land tenure, usage and exercise of rights in land; management of the survey office; and oversight and coordination of different levels of land administration and management in the respective States<sup>21</sup>. State governments exercises their powers through “the Concerned Ministry at the State level, the County Land Authority and the Payam Land Council”<sup>22</sup>.

The Land Act provides for the Land Registry to be established within the Ministry of Lands, Housing, and Urban Development, with decentralized offices throughout the country<sup>23</sup>. At the State level, the Land Registry is to be established by the State Ministry of Housing, Land and Public Utilities in coordination with the Ministry of Lands, Housing and Urban Development. Notwithstanding the provisions of Section 54 of the Land Act, land registration functions have continued to be exercised by the Judiciary as was the case before the enactment of the Land Act. At the moment, only Juba, Wau and Renk have functional Land Registries, all of which operate under serious institutional capacity constraints.

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<sup>14</sup> The Chairperson and members of the Commission were appointed by Presidential Decree No. 52 of 27<sup>th</sup> June 2006

<sup>15</sup> Government of Southern Sudan Presidential Decree No. 52/2006

<sup>16</sup> Pursuant to Article 200 of the TCRSS, all laws enacted during the interim period remain in force “unless new actions are taken in accordance with the provisions of this Constitution

<sup>17</sup> Section 3

<sup>18</sup> Section 15

<sup>19</sup> Section 41(1)

<sup>20</sup> Section 42

<sup>21</sup> Section 43

<sup>22</sup> Section 41(5)

<sup>23</sup> Section 54

Chapter XIII of the Land Act makes provisions for land restitution and compensation for a person who “lost her or his right after an involuntary displacement as a result of the civil war starting from May 16, 1983”. The Act sets out the procedure for filing and processing of claims for restitution and compensation that integrates traditional procedures and customary land law and practices to be enforced by Traditional Authority in partnership with the South Sudan Land Commission (SSLC).

The provisions of Chapter XIII were specific to displacement that arose from the civil war that ended with the signing of the Comprehensive Peace Agreement (CPA) and establishment of the Government of Southern Sudan. The provisions were timebound, requiring claimants to file their claims within three years of the commencement of the Act<sup>24</sup>. Unfortunately, the Act has never been fully implemented, and there is no evidence that these provisions were ever activated.

Implementation of the Land Act has been undermined in part by the failure to adopt the Regulations envisaged by section 101 of the Act, and the absence of a National Land Policy. The ongoing process to develop a National Land Policy will hopefully fill the void, as the draft Policy articulates options to address HLP rights for IDPs. For now, notwithstanding its limited scope and the fact that it has not been implemented, Chapter XIII remains the only legal provision that speaks directly to HLP rights of IDPs.

### **The Local Government Act, 2009**

The Local Government Act was also enacted during the interim period. The Act, which gives effect to the provisions of Art. 166 of the TCRSS, has never been updated to reflect the transition from the Government of Southern Sudan (GOSS) to GRSS. It provides for the establishment of local governments, and defines their structures and composition, powers, functions and duties. The importance of the Act and its relevance to HLP rights of IDPs derives from the role of local government in land administration, and of traditional authorities in the allocation, administration and management of customary land rights as well as land disputes resolution. The Act formalizes the role of traditional authorities and customary law in governance of Payams and Bomas in rural areas of South Sudan, where traditional leaders play critical roles in land disputes resolution.

Chapter IX of the Act makes provisions on land, and vests Local Government Councils with the power to administer and regulate private, public and community land within their jurisdictions. Section 88 of the Act provides that a Local Government Council shall plan and manage distribution and allocation of land within its jurisdiction “in consultation with the community of the respective area”<sup>25</sup>, and “in accordance with the land customs, traditions and norms of the communities, policy guidelines, the Land Act, 2009, Rules and Regulations thereof”<sup>26</sup>. The Local Government Council has power to acquire community land within its area of jurisdiction “for Government and other uses” subject to respecting the existing customary practices, protecting local heritage and observing international trends and practices in land acquisition; consulting the community concerned; and protecting the rights and interests of the communities<sup>27</sup>. The Act mandates Local Government Councils to establish land committee or authorities at different levels in accordance with the provisions of the Land Act 2009 to perform land administration and management roles, including land allocation and land disputes resolution<sup>28</sup>.

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<sup>24</sup> Section 78(4). The Act commenced on 16<sup>th</sup> February 2009, meaning that the deadline for presentation of claims lapsed as of 15<sup>th</sup> February 2012

<sup>25</sup> Section 88(2)

<sup>26</sup> Section 88(3)

<sup>27</sup> Section 89

<sup>28</sup> Section 91

The Local Government Act establishes and defines the mandates and functions of the Customary Law Council and Courts. The mandate of the Council is to protect, promote and preserve the traditions, customs, cultures, values and norms of the communities, and to regulate, maintain, monitor and ensure proper administration of the customary law<sup>29</sup>. Customary law courts “adjudicate on customary disputes and make judgments in accordance with the customs, traditions, norms and ethics of the communities”<sup>30</sup>. They have authority to hear and determine disputes over customary land rights.

The Act affirms the status of Traditional Authorities, in accordance with the provisions of the TCRSS<sup>31</sup>, as semi-autonomous “institutions of traditional system of governance at the State and Local Government levels responsible for administration of customary law and justice in customary law courts. The Council of Traditional Authority Leaders is established to be the custodian of the customs and traditions of the people of South Sudan as a source of legislation. Functions of the Council include applying customary and traditional conflict resolution mechanisms to resolve inter-tribal disputes, and fostering peace building and resolution of conflicts through mediation and other conciliatory mechanisms<sup>32</sup>.

The elaborate policy, legal and institutional framework for land administration and land disputes resolution that is created by the TCRSS, the Land Act and the Local Government Act does not however function effectively on the ground, as both the Land Act and the Local Government Act have never been fully brought into force. The Regulations for operationalizing the two pieces of legislation have never been adopted, and institutional arrangements provided for by the legislation have either not been put in place, or if in place, are not adequately resourced to deliver on their mandates. Furthermore, the existence of multiple institutions exercising land administration mandates without an overarching policy has resulted in competition and confusion in the land sector. The complexity of this framework makes it difficult for IDPs who lack awareness of how it works, to navigate it in their efforts to access land for settlement. Moreover, that the majority of citizens do not understand the system makes it possible for those with power and influence to abuse it through land grabbing and other malpractices.

## **2.2. Relief and Rehabilitation Commission Act 2016, and Framework for Return, Reintegration and Relocation of Displaced Persons**

The RRC is established as an independent constitutional commission by Article 148 of the TCRSS. The Article also provides for enactment of a law to elaborate the structure, composition, powers, and functions of the Commission. The Relief and Rehabilitation Act 2016 was enacted in 2016 to give effect to this provision of the Constitution.

Section 7 of the Act lists the powers and functions of the Commission, two of which are relevant to this assessment, namely: (i) to coordinate relief, repatriation, rehabilitation, resettlement and reintegration of IDPs and returnees; and (ii) in coordination with relevant government institutions, to mobilize resources from internal and external partners for resettlement of displaced persons. This means that RRC is the primary partner in government for acted and other actors working to address challenges faced by IDPs, including their HLP rights.

The Commission is domiciled within the Ministry of Humanitarian Affairs and Disaster Management (MHADM), which is responsible to provide policy and strategic guidance. Notwithstanding its key role on IDP issues, including their HLP rights, RRC has no powers over land allocation and looks to the relevant line ministries and departments of national, State and local governments to facilitate IDPs’ access to land.

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<sup>29</sup> Section 95

<sup>30</sup> Article 98

<sup>31</sup> Article 167

<sup>32</sup> Section 121



As a senior official of the Commission pointed out to the assessment team “RRC does not have anything to do with land, this is an issue for government and communities”<sup>33</sup>.

### **Framework for Return, Reintegration and Relocation of Displaced Persons**

In order to enhance coordination of responses to the challenges of displacement, the MHADM partnered with UNHCR, humanitarian agencies and other actors to develop the Framework for Return, Reintegration and Relocation of Displaced Persons, which was published in February 2017. The strategic goal of the Framework is to create conditions that enable safe and voluntary return, and durable solutions to internal displacement in South Sudan. The Framework articulates principles for return, relocation and reintegration of IDPs that draw on international law and regional instruments, underscoring the right of all IDPs to choose whether to return and reintegrate into the community where they lived before being displaced, or settle and integrate in the locality where they resided while displaced, or relocate and integrate in a different area of the country. Whichever of the three options they choose, IDPs are entitled to have access to effective mechanisms for restoration of HLP rights and/or compensation as appropriate. The Framework commits government and other actors to take measures to enable durable solutions and to ensure that upon their return, local integration or resettlement in another part of the country, IDPs have access to and enjoy the full range of rights accorded to them by international human rights and humanitarian law.

The Framework establishes an Inter-Ministerial Committee, comprising of relevant line ministries and commissions to provide overall policy guidance; and a Task Force led by government and comprising of representatives of humanitarian and development partners, to provide technical support to the Inter-Ministerial Committee. Beyond establishing these two frameworks, stakeholders complain that the Government is yet to commit resources to enable the roll out and full implementation of the Framework.

### **2.3. Revitalized Agreement on the Resolution of the Conflict in the Republic of South Sudan (R-ARCSS)**

Chapter three of R-ARCSS is on Humanitarian Assistance and Reconstruction. It commits the Parties to the Agreement to “create an enabling political, administrative, operational and legal environment for the delivery of humanitarian assistance and protection”<sup>34</sup>. Of specific relevance to this assessment is the commitment by the Parties to ensure the right of refugees and IDPs to return in safety and dignity and to be afforded physical, legal and psychological protection; and to ensure exercise of their right “to return to their places of origin and/or live in areas of their choice in safety and dignity”.

The Agreement commits the Revitalized Transitional Government of National Unity (RTGoNU) to institute programmes for relief, protection, repatriation, resettlement, reintegration and rehabilitation of IDPs and returnees during the Transition, in coordination with the United Nations (UN) and other relief and humanitarian agencies. The Agreement also provides for the establishment of a Special Reconstruction Fund (SRF) to provide funding for programmes for reconstruction of conflict-affected States, including the provision of assistance and protection to IDPs.

Chapter five of the Agreement is also relevant to this assessment. The chapter, which is on transitional justice, accountability, reconciliation and healing provides for establishment of the Commission for Truth, Reconciliation and Healing (CTRH) to spearhead efforts to address the legacy of conflicts, and promote peace, national reconciliation and healing. The CTRH is important for IDPs as it provides a framework for redressing claims of those who lost their HLP rights during the conflict.

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<sup>33</sup> KII with Senior RRC official at the MHADM, 26<sup>th</sup> April 2023

<sup>34</sup> 3.1.1



Unfortunately, implementation of two chapter three of the R-ARCSS has not been prioritized by the RTGoNU. In particular, the delay in establishing the SRF and following through with the convening of a South Sudan Pledging Conference that was to raise money to resource the Fund, has limited availability of funds to support resettlement and reconstruction, including support that would strengthen and secure HLP rights for IDPs.

#### **2.4. Regional and international commitments and frameworks**

South Sudan's national policy, legal and institutional framework draws on values and principles agreed at the regional and global levels within the African Union (AU) and UN where South Sudan is an active participant. At the AU, South Sudan is a signatory to the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (the Kampala Convention, 2009), which establishes a legal framework for solidarity and cooperation among States Parties to promote durable solutions for combating displacement and addressing its consequences. The Convention articulates obligations, responsibilities and roles of different actors with respect to the prevention of internal displacement and the protection and assistance of IDPs.

Parties to the Convention commit to domesticate its imperatives by adopting national policies, laws and strategies, to establish institutions to coordinate protection and assistance to IDPs, and to allocate the necessary financial and other resources for this purpose. To support domestication, the *AU Model Law for the implementation of the African Union Convention for the Protection and Assistance to Internally Displaced Persons in Africa* has been developed for Member States to adopt and adapt to their circumstances. The Model Law provides a framework for addressing all aspects of displacement, whether resulting from natural disasters, projects, or human rights violations, armed conflict and generalised violence, including safeguards, procedures, and remedies to protect and provide assistance to IDPs, including through international cooperation. It embraces the durable solutions approach that includes return and reintegration, restitution and compensation.

South Sudan is also a party to the Framework and Guidelines on Land Policy in Africa (F&G), which AU Member States adopted in 2009 to guide land policy development with the aim of improving land governance and management to enable African countries realize the full potential of land and natural resources for food security and sustainable economic development. The F&G makes the link between land and conflict, and calls for land policy to address the impacts of conflict and insecurity on HLP rights, including those of IDPs.

Within the framework of the UN, South Sudan subscribes to the *United Nations Principles on Housing and Property Restitution for Refugees and Displaced Persons* (the Pinheiro Principles). Although the Principles are not binding, they are part of international soft law. The principles affirm the right to housing and property restitution as a core remedy to displacement.<sup>35</sup> They underscore the importance of developing and implementing policies and laws and putting in place institutions and mechanisms for resolving HLP disputes to enable IDPs reclaim and secure their rights.

The Pinheiro Principles expand on the normative framework that was previously articulated in the *Guiding Principles on Internal Displacement*, which recognize that the right of displaced persons to voluntary, safe and dignified return encompasses not just the right to return to their countries of origin, but also to their original homes. They provide guidance for the development of appropriate national policy, legal and

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<sup>35</sup> *Principles on Housing and Property Restitution for Refugees and Displaced Persons (the Pinheiro Principles)*, UN Sub-Commission on the Promotion and Protection of Human Rights (Jun. 2005), available at <https://www.unhcr.org/en-us/protection/idps/50f94d849/principles-housing-property-restitution-refugees-displaced-persons-pinheiro.html>.

institutional frameworks for securing HLP rights of displaced persons, including such technical concerns as reconstitution of HLP records, legislative measures, and enforcement of restitution and compensation orders. The Principles recognize that States may be unable to ensure HLP rights due to a general breakdown in the rule of law or collapse of technical and institutional capacity in post-conflict situations, and encourage States, in such situations, to “request the technical assistance and cooperation of relevant international agencies in order to establish provisional regimes for providing refugees and displaced persons with the procedures, institutions and mechanisms necessary to ensure effective restitution remedies.”<sup>36</sup>

The Pinheiro Principles have been integrated into the Framework for Return, Reintegration and Relocation of Displaced Persons, as well as chapter three of R-ARCSS. Thus, South Sudan has in place a fairly robust policy, legal and institutional framework for addressing the challenges IDPs face in exercising and enjoying their HLP rights. What is lacking is the political will, capacity and commitment to the implementation of the framework. In the absence of effective implementation of formal legal frameworks on land administration, customary law and traditional institutions continue to play critical roles in mediating HLP rights, particularly in rural areas.

In the specific context of Juba, and the peri-IDP site area, the operative legal system is a mix of the customary and the formal. This creates a reality of legal pluralism that can cause confusion and undermine security of HLP rights. The diversity of the population in this urban and peri-urban context and the huge interest of the State and other actors in land undermine the effectiveness of customary law. Yet, as we have seen, the formal legal framework is not fully operational. This undermines the certainty and predictability of processes that are important for securing HLP rights. The existence of multiple institutional mandates and competencies over land allocation spread across local authorities, national government, and traditional institutions is a critical challenge in this regard.

The reality of successive conflicts spread over the last three decades has complicated the situation for reclamation of HLP rights by IDPs. IDPs who owned land in Juba before the outbreak of conflict in 2013 have lost their land to illegal occupants, many of whom are soldiers and government officials. Such IDPs are unable to reclaim their lands without the assistance of government. Furthermore, incidences of land grabbing by powerful individuals, secondary occupation of land, transactions involving the land of displaced populations, forced evictions, and the weakness of institutional frameworks for the management of HLP rights present obstacles to successful enforcement of IDPs’ HLP rights.

A major constraint to security of land rights for both IDPs and the general population in South Sudan is the absence of an overarching land policy. Streamlining the policy, legal and institutional framework for land administration is thus a priority for the country, in its efforts to create an enabling environment for durable solutions to displacement. Ultimately, however, effective resolution of the conflict within the framework of R-ARCSS is a condition precedent for the successful implementation of policies for land administration generally and for securing HLP rights of IDPs specifically.

These challenges notwithstanding, there are a number of ongoing processes that have the potential to change the situation for the better. The full implementation of chapters three and five of R-ARCSS holds the greatest promise in this regard, as it will make available the funding resources needed to support the relocation, resettlement and reintegration of IDPs, while also addressing the root causes of displacement. UN Agencies, the Reconstituted Joint Monitoring and Evaluation Commission (RJMEC), and the Intergovernmental Authority on Development (IGAD) are working with the parties to R-ARCSS to ensure implementation of the two chapters.

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<sup>36</sup> *Pinheiro Principles*, Principle 12.5.

The MLHUD has finalized the drafting of the National Land Policy, which - if implemented - will clarify the policy and institutional framework for land governance and the roles and interactions between the different levels of government and communities in land administration. The National Land Policy will also streamline the process and institutional framework for registration of land rights, thereby enhancing security of land tenure. Full implementation of the Framework for Return, Reintegration and Relocation of Displaced Persons will jumpstart development and implementation of the Durable Solutions Strategy; the Action Plan for Returns; and the Protection and Assistance of IDPs Bill. These processes provide space and opportunity for strengthening the policy, legal and institutional framework to secure HLP rights of IDPs, particularly if they are linked to and integrated with general governance reforms in the context of peace building and reconstruction under R-ARCSS.

### **3. Stakeholder analysis**

The major actors involved in the work to secure HLP rights of IDPs in South Sudan fall into five main categories, namely: government (local, State and national); UN agencies and IGAD; development partners; non-state relief and humanitarian actors; and IDPs and communities. The national government is the primary actor as a duty bearer with the obligation to secure political, economic and social rights entrenched in the Bill of Rights, including the right to property and the right to decent housing. The government delivers on these obligations through State organs that include relevant ministries, institutions and commissions, among them Ministries of: Humanitarian Affairs and Disaster Management; Lands, Housing and Urban Development; Peacebuilding; Justice; Finance; and Interior; the Commission for Refugee Affairs; the Relief and Rehabilitation Commission; the South Sudan Land Commission; and the South Sudan National Police Service. The main interest of these institutions is to implement policies and laws to secure the rights of IDPs as citizens and promote peaceful coexistence between them and the host community.

At the State Government level, the key institutions are the State Ministries of Housing, Land and Public Utilities; State Ministries of Local Government and Law Enforcement; State offices of RRC; and State Land Commissions. The key actors at the local government level are Local Councils; Traditional Authorities; County Land Authorities; and Payam Land Councils. The interests of these frameworks are similar to those of the national government, namely to implement policies to deliver services and secure rights of IDPs, while promoting peaceful coexistence between them and the host community.

UN agencies play a major role in promoting international human rights and humanitarian law, providing technical and material support to Member States to deal with humanitarian crises. In the specific context of South Sudan, the UN and its agencies are major actors not only in the peace building process, but also in their support to nation and state building efforts. Many UN agencies play different roles in the country, but the agencies working directly on HLP rights of IDPs are UNMISS, UNHCR and the International Organization for Migration (IOM). Other UN agencies whose mandates are relevant to strengthening of HLP rights for IDPs include United Nations Office for the Coordination of Humanitarian Affairs (UNOCHA); United Nations Development Programme (UNDP); Food and Agriculture Organization of the United Nations (FAO); United Nations Human Settlements Programme (UN-Habitat); and United Nations Children's Fund (UNICEF). Closely linked to the role of the UN is that of the Inter-Governmental Authority for Development (IGAD), which convened and spearheaded the South Sudan peace process that led to the signing of R-ARCSS, and is one of the guarantors thereof. The interest of UN agencies is to promote human rights and humanitarian law in line with their obligations under the UN Charter; while the interest of IGAD is to see peace return to South Sudan for the benefit of regional peace and security in the Horn of Africa.

Development partners provide technical, financial and material support to the promotion of HLP rights of IDPs in many forms, either directly or through their bilateral organizations. They provide such support

directly to the GRSS, but also through their funding to UN agencies and to other humanitarian organizations. Development partners are also stakeholders in the peace process through the TROIKA<sup>37</sup>, China and the European Union (EU). In this capacity they have an interest in advancing the HLP rights of IDPs within the framework of chapter three of R-ARCSS. More generally, development partners are interested to support peace building and reconstruction in South Sudan within the framework of the UN Charter.

Non-State relief and rehabilitation organizations, which include NGOs, Faith-Based Organizations (FBOs), other Civil Society Organizations (CSOs) and Community-Based Organizations (CBOs), are the frontline workers in promoting HLP rights for IDPs. Key actors in this category include Acted, the Norwegian Refugee Council (NRC); International Rescue Committee (IRC); Danish Refugee Council (DRC); and Humanitarian and Development Consortium (HDC). The interest of these organizations is to improve the well-being of IDPs by promoting their access to services and securing their rights.

Host communities are key stakeholders as hosts to IDPs. The term “host communities” refers to the landowning communities that donate portions of their land for IDPs to settle in. As has been noted above, in the specific context of this assessment, host communities include those who, although they are not indigenous to the area, had settled there before the outbreak of conflict in 2013. Thus, apart from the indigenous Bari, host communities in the Juba peri-IDP sites include members of the Mundari, Dinka, and Nuer ethnic groups. Host communities are key stakeholders as they provide land and accept to integrate IDPs into their communities while their interest is to ensure peaceful coexistence with IDPs.

Table 1 presents a summarized list of major stakeholders and their interests.

**Table 1: Major stakeholders in HLP of IDPs and their interests**

Category	Key Actors	Interests
Government	<p><b>National</b></p> Ministry of Humanitarian Affairs and Disaster Management Ministry of Land, Housing and Urban Development Ministry of Peacebuilding Relief and Rehabilitation Commission South Sudan Land Commission Ministry of Interior Ministry of Finance and Economic Planning Ministry of Justice Commission of Refugee Affairs South Sudan National Police Service	To Implement policies as mandated by the TCRSS and other laws
	<p><b>State</b></p> State Ministries of Housing, Land and Public Utilities State Ministries of Local Government and Law Enforcement State offices of Relief and Rehabilitation Commission State Land Commissions	
	<p><b>Local Government</b></p> Local Councils Traditional Authorities	

<sup>37</sup> USA, United Kingdom, and Norway

	County Land Authorities Payam Land Councils	
United Nations	UNMISS, UNHCR, IOM, UNOCHA, UN-HABITAT, FAO, UNICEF, WFP	To promote human rights and humanitarian law in line with their obligations under the UN Charter
Development Partners	USA, UK and Norway, China, EU, Japan	To support peace building and reconstruction in South Sudan within the framework of the UN Charter; and as international partners who signed as witnesses to R-ARCSS
Non-State relief and humanitarian organizations	Acted, NRC, DRC, IRC, HDC, World Vision	To improve the conditions of IDPs by promoting their access to services and securing their rights
IDPs, refugees, returnees, and host communities	Groups and communities collectively and through their leadership	Beneficiaries and benefactors

The list above is by no means exhaustive. It does however, identify major categories of stakeholders and actors. The number and diversity of stakeholders is such that the need for coordination cannot be overstated. Thus, a critical challenge for GRSS is to enhance the capacity for coordination, particularly within RRC and MHADM. Adoption of the Framework for Return, Reintegration and Relocation of Displaced Persons is an important first step in this regard, but more remains to be done to make it deliver on the promise of coordination. So far, it is the view of many stakeholders that the Framework is yet to have any real impact on the ground.

**4. HLP rights for IDPs in Juba Peri-IDP: Opportunities, Challenges, Emerging Issues**

Loss of HLP rights ranks among the most devastating impacts of forced displacement, and the reassertion of those rights is a core concern in enabling IDPs to re-establish themselves and reclaim their standing in society. The priority concern in this regard is to enable IDPs to reassert their HLP rights and by returning to their original homes in safety and dignity, resettling elsewhere or reintegrating into the places where they have been displaced.<sup>38</sup>

This assessment sought to understand the opportunities and challenges associated with enforcing HLP rights for IDPs and host community in the localities of Amadi, Hai Salam and Kor Remleh/Kor William. Specific concerns in this regard included how IDPs access land and the key actors involved in the process; and how land disputes involving IDPs are resolved. In both cases, the assessment examined the roles of both formal and traditional institutions, their effectiveness and interactions.

**4.1. Access to land by IDPs – practice, challenges and opportunities**

In its interactions with communities through FGDs in Site 1, Site 3, Amadi 1, Amadi 2, Hai Salam, and Kor Remleh/Kor William, the assessment team identified three major categories of IDPs. The first two

<sup>38</sup> UN OCHA, *Guiding Principles on Internal Displacement*, UN OCHA (2004), Principles 28-30 (Principles Relating to Return, Resettlement and Reintegration), available at <https://www.unhcr.org/protection/idps/43ce1cff2/guiding-principles-internal-displacement.html>. Like the *Pinheiro Principles*, the *Guiding Principles* are a form of soft law that articulates existing international law on internal displacement.

categories are those who were displaced from their homes in Juba by conflict in 2013; and those who were displaced from other States, principally Unity and Upper Nile. The third category of IDPs are those who were displaced by floods, mainly in Jonglei and Unity States. The majority of IDPs in all the three categories indicated that they would like to settle in Juba, as it is the place where they see prospects of some level of security whether from violence or from floods. It is also important to understand that although for purposes of this assessment, the three groups are identified as IDPs, there are those among them who dispute this categorization in view of having lived in the location for going to ten years now. The challenge of classification is further compounded by the fact that there are returned who were forced to settle in the Sites following the resurgence of conflict in 2016, and who continue to live in the Site because they are not sure of the security situation in their area of origin.

The assessment team found that IDPs have been moving out of the Sites to acquire and settle on land in the peri-IDP sites locations since 2021. In all the locations, IDPs indicated that they had acquired land by working with Chiefs and the local government, specifically the County Commissioner. The process of acquiring land by IDPs has so far been largely self-driven by the IDPs, who organize themselves into groups and approach the local leaders to request for land for settlement. Once they are allocated land, the leadership of the groups organize with the Surveys Department of the State Ministry of Housing, Land and Public Utilities for survey and mapping to facilitate allocation of plots to individuals and the setting aside of land for public services such as roads, schools and health facilities.

IDPs seeking to get land in the different localities had to make “contributions” to offset the cost of surveying and opening up of roads. In Hai Salam, the assessment team was informed that IDPs contribute SSP 10,000 for public works and 10,000 for roads, making a total of 20,000 as a standard contribution for allocation of one plot. In Hamadi 1, the team was informed that IDPs payment ranged from SSP 10,000 for those who are unemployed to SSP 100,000 for those who are employed. The leadership of the IDP community were keen to emphasize that the payments made by IDPs were standard as they were contributions to cover the cost of surveying and opening up of roads, and not payment for the land, since the land was freely donated by the local communities.

IDPs seemed to be more concerned and worried about security and service provision than they were about accessing land for settlement. The general impression given by the IDPs who have moved out of the Sites was that getting access to land is not a formidable challenge. IDPs who are interested to settle in the neighborhood of the Sites are able to get access to land, and many have. On the other hand, IDPs who are still living in the Sites contend that the host community is not ready to give land to IDPs to settle in Juba.

In Juba IDP site 1, the members of the Camp Management Committee (CMC) recounted their failed efforts to seek assistance of government officials. They had met the Chiefs of Gondokoro, who referred them to the Governor of CES and the County Commissioner for Juba. When they met the State leadership in September 2022, they were advised to wait as leadership were consulting with communities. They have not had any communication by the time of the assessment.

Both the IDPs living in the Sites and those who have relocated to the peri-IDP sites area are concerned about safety and security, and service provision in terms of water, sanitation and hygiene (WASH), roads and other infrastructure, including schools, health facilities, and livelihoods support. For those living in the Sites, these are what they need to persuade them that it is safe to move out of the Sites; while for those already out of the Sites, these are the major concerns that they want to see addressed for them to settle and integrate. Those who have moved out of the Sites reckon that after ten years, some IDPs have become overly dependent on the support and services offered by the UN and other humanitarian agencies in the Sites, and are scared of the prospects of fending for themselves outside the Sites.



All the members of the host community who interacted with the assessment team confirmed that their community had at the request of the IDPs donated land to them, and that the IDPs and host community were living peacefully together. This latter assertion was at odds with the view of a number of key informants in Juba (mainly officials of the State and local governments) who pointed out that the relations between IDPs and host community are far from cordial, and that this is one reason why some members of the host community are opposed to the resettlement of IDPs in the area.

From the observations of the team however, it was only in Wonglere (Amadi 2) that the team interacted with IDPs who had put up and were occupying their houses. It was also the only location where the team saw children, and even a functioning market. In the FGD in Wonglere, the group emphasized that the area is occupied by diverse ethnic groups, and the leadership of the group has representation of the Nuer, Bari, Dinka and Shilluk. As one of the participants declared, “This place is not occupied by Nuer, but by all ethnicities, since 2021”<sup>39</sup>. In the other three locations what the team saw were houses under construction, many of them unoccupied. Many of the people who converged at those locations for the FGDs came from the Sites, and even from town. This was particularly evident in Kor Remleh/Kor William.

The majority of IDPs are still living in the Sites, and many are apprehensive about moving out, citing concerns about their personal security and safety, and need of provision of basic social services. To back up the concerns about security, examples were provided of incidents of insecurity in which IDPs have been attacked both within and in the vicinity of the Sites.

In discussions with the assessment team, the IDPs still living in the Sites suggested that the best solution as far as they are concerned is for them to be allocated the land on which they are, i.e., that the Sites should be surveyed into plots and allocated to the households living there. They pointed to the fact that the IDP sites already have services (though continuously decreasing), and many of them have lived in them for 10 years now.

Those who have moved out of the Sites also confirm that their counterparts who are afraid to come out of the Sites want to be sure that they will have the same security and access to services that they have in the Sites if they relocate. “All you have to do is improve services out here, and no one will want to stay in the Sites”<sup>40</sup> one of them declared. In fact, some IDPs in the Sites have plots in the peri-IDP sites area, but are not ready to move out for fear of security<sup>41</sup>. There are also those in the Sites who have plots but are not able to put up houses on them.

The idea of the IDP Sites being planned for IDP settlement might be a feasible option for those living in Site 1, which is land that was allocated to UNMISS by the Government of Central Equatoria State, and which UNMISS is set to surrender back to the State Government. But it would not be as feasible in Site 3, which is a planned area of land that was already surveyed and allocated to individuals. The individuals were persuaded to surrender the land for use in accommodating IDPs on the understanding that it would revert back to them once the conflict was over. It is now ten years since the land was taken over, and the owners’ interests would have to be considered in any plans to allocate the land to IDPs.

A substantial number of IDPs in Site 1 are people who had land or houses in Juba before the outbreak of the conflict in 2013. Their land and houses were taken over mostly by soldiers when the conflict broke out, and their main concern is to reclaim their properties. Some said that the occupants of their land have proceeded to develop them, even though some IDPs have title documents. Many of them reported that

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<sup>39</sup> IDP FGD participant, Amadi 2, 27<sup>th</sup> April, 2023

<sup>40</sup> IDP FGD participant, Hai Salam, 25<sup>th</sup> April 2023

<sup>41</sup> For more information on the security and safety situation in Juba IDP Sites and peri-Sites area, please refer to Acted’s safety audit report conducted in April and May 2023.



they have made efforts to reclaim their lands and houses through the courts and with the assistance of NGOs but without success. Some of them reported being threatened with death if they persisted in pursuing their claims. While they were happy to hear about the President's call made to the Government of Central Equatoria State during the visit by Pope Francis to Juba in February 2023, to allocate land to IDPs<sup>42</sup>, they wondered what the implications of this are for their claims to restitution and/or compensation.

The fact that virtually all of the IDPs in the two Sites want to settle in or around the Sites, also poses significant planning challenges, particularly as most of them insist on accessing land as ethnic groups rather than as individuals. The IDPs are estimated to be at least 30,000 (some estimates put the figure at between 40,000 and 50,000), and all of them want to settle in Rejaf Payam, where the local population is estimated to be about 15,000. According to one key informant, settling this number of IDPs in the Payam would be tantamount to creating counties within a Payam. For their part, IDPs approach settlement as ethnic groups because of concerns about security, thus confirming that the re-establishment of peace and the rule of law is a critical building block for durable solution and the restoration of IDPs' HLP rights.

### **Specific challenges of female IDPs**

Female IDPs indicated that they were facing unique challenges in accessing land outside the Sites. When host communities donate land for resettlement of IDPs, the land is handed over to IDPs as groups, the leadership of which are invariably men. Women, and in particular those who are unmarried or widowed, are disadvantaged when it comes to complying with the conditions for allocation of plots. The assessment team heard of instances where women are required to register their interests in the names of men as certificates are only issued in men's names. Female IDPs recounted how some women have lost their interests when the men whose names are registered in the certificates proceed to forcibly take over the land. In another incident, a female IDP reported how she lost two plots that had been allocated to her "not because I could not afford to pay or construct, but rather because the plots were in strategic places for residential and commercial purposes - and some men wanted them"<sup>43</sup>.

Women also complained about their inability to raise the contribution for survey and opening up of roads, which ranges from SSP 20,000 to 50,000, and to even 200,000 in some locations. In Hai Salam, the IDP leadership indicated that they allocate land to widows, child-headed households and other vulnerable groups without charge. However, even where this is done, such people are still disadvantaged as they cannot afford the cost of putting up houses in the land allocated to them.

The women decried the absence of any structured process by government, the UN or other humanitarian agencies to assist IDPs generally and the vulnerable ones in particular to relocate and resettle outside the Sites. "No one from government, the UN or other actors is talking to us about resettlement"<sup>44</sup>, a participant at the FGD in Hai Salam complained. Some IDPs were also concerned that when government officials talk about IDPs in the Sites they seem to only think of those who were displaced in 2013, yet there are IDPs who joined the Sites later.

The assessment finds that the major challenges to securing HLP rights of IDPs in the peri-IDP sites area are institutional, i.e., a function of the unclear policy framework for land governance, the confused mandates across different levels of government and communities, and the absence of a structured program to manage the transition from PoC sites to IDP sites, and thence to relocation, resettlement and reintegration. More than two years since UNMISS redesignated the PoC sites into IDP sites, IDPs complain

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<sup>42</sup> 'Kiir asks CES to provide land for Juba's IDPs', *Eye Radio*, Monday February 6, 2023

<sup>43</sup> A participant at a women-only FGD in one of the locations

<sup>44</sup> IDP FGD participant, Hai Salam, 25<sup>th</sup> April 2023

that they do not as of yet see substantive evidence of the government taking over responsibility for administration of the Sites and investing in provision of services.

The confusion around IDPs' access to land in the peri-IDP Sites area is compounded by the lack of clarity about land governance and the respective powers and responsibilities of different levels of government on the one hand and communities on the other hand. Community ownership of land is an extremely contentious issue in the political economy of South Sudan. Section 7 of the Land Act states that "All land in South(ern) Sudan is owned by the people of South(ern) Sudan and its usage shall be regulated by the Government," thereby asserting both the ownership rights of the people over land, and the authority of the government to regulate its usage.

While the law states that land is owned by "the people", the political slogan "land belongs to communities", which was popularized by the Sudan People's Liberation Movement (SPLM) during the long civil war with the Khartoum regime, has continued to shape debates about land ownership in the country. On the one side of this debate are those who see community landownership as a necessary safeguard against government malpractices in the land sector; and on the other side are those who reckon that communities are using the concept to frustrate the government's sovereign authority over the land in its territory.

The strength and diversity of viewpoints on the issue were evident during National Dialogue process that ran between 2017 and 2020. The national conference held in Juba in November 2020 resolved that land shall be "owned by the communities and ... managed by various levels of government in accordance with the law." Yet, the regional conferences that preceded it came to different conclusions, with Greater Bahr-el-Ghazal calling for the government to declare its ownership of all land in South Sudan, Greater Equatoria endorsing the position that land belongs to the community and Greater Upper Nile recommending that the government should own land in urban areas, while communities own land in rural areas.<sup>45</sup>

These regional perspectives played out in the interactions the assessment team had with communities and individual informants. The IDPs from outside Greater Equatoria, were quite consistent in the assertion of their rights as South Sudanese citizens to settle in the peri-IDP sites area. It was also evident that IDPs are not only aware of their rights, but also of the commitment the GRSS has made in chapter three of R-ARCSS about their resettlement. They insist on their right to settle in Juba. As one of them observed, while arguing that the land on which the Sites stands should be surveyed and allocated to them,

"This Site is not in a foreign country, and we are not foreigners. We have a right to settle on this land as it is part of South Sudan and we are South Sudanese".

On the other hand, key informants that the assessment team interacted with who are originally from Greater Equatoria asserted that the land in the peri-IDP sites area is owned by the local community, and expressed the fear that the community risks being dispossessed of their land when it is allocated to IDPs. In this context the need for comprehensive consultations about resettlement of IDPs cannot be overemphasized, as otherwise there is a real danger of creating the basis for future conflicts. In this connection, the assertion by a member of the host community in Hai Salam that "we the Bari have given this land to the IDPs temporarily for 50 years" was instructive, since the IDPs clearly do not see their settlement in the area as temporary.

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<sup>45</sup> David K. Deng and Rajab Mohandis, *Citizen Perspectives on the National Dialogue in South Sudan*, Detcro (May 2021).

#### 4.2. Dispute resolution mechanisms for HLP rights of IDPs – practice, opportunities and challenges

The assessment team was surprised that the IDPs did not have much to say about disputes and dispute resolution mechanisms. Instead, they emphasized how they are living peacefully among themselves and with host communities, and that any disputes among them are resolved amicably with the assistance of Sultans and elders. Thus, the impression that the assessment team got from the IDPs in the peri-IDP sites areas is that there are no significant disputes among them or between them and host communities. One explanation for this may be the fact that the settlements are not yet fully occupied, and interactions are still focused on putting in place structures and infrastructure.

The major disputes that the IDPs speak about are those linked to their search for justice for their lost HLP rights, especially for those who were displaced from their homes in Juba. One woman recounted her experience in this regard<sup>46</sup>,

*Before December 2013, we were living in our own house on our own plot, with my husband and children. When the conflict broke out, we ran to the camp as a family, with the original title documents for our plot. My husband eventually died in the camp. When the conflict ceased, and I went back to my house, I found that it has been occupied by a man who was in possession of a photocopy of our title documents. He told me that the owner of the house had died and it was now his. I filed a case in court, which never took off for a long time, although I kept being asked to report for the hearing. One day, when I reported to the Court for the hearing of my case, I was informed that the judge who was attending to my case had died so the court would not be able to help. That is how I lost my plot and house.*

The case of this individual is representative of many HLP claims by IDPs, demonstrating the power asymmetry between them and those who grabbed their lands, the impunity of the land grabbers, and the injustices that result from the way the judicial system is manipulated and abused. It also demonstrates the helplessness on the part of many IDPs, particularly women.

A number of IDPs have been pursuing claims over their grabbed land through Humanitarian & Development Consortium (HDC). The Consortium is a member of HLP Area of Responsibility (AOR) in the Protection Cluster together with NRC and IOM. It uses Alternative Disputes Resolution (ADR) approaches to pursue claims, and informed the assessment team that it has registered 1,774 claims, out of which it has succeeded in restituting 490 plots to IDPs. The Consortium sees the greatest hope for redress of IDPs' HLP claims in the implementation of chapter five of R-ARCSS, which stipulates commitments and mechanisms for transitional justice, accountability, reconciliation and healing. The HLP claims by IDPs have to be addressed within the framework of transitional justice and accountability in order to lay the foundation for reconciliation and healing. Effective implementation of chapter five of R-ARCSS will reassure IDPs and abate the fears they have about moving out of the sites.

#### 5. Conclusions and Recommendations: emerging priority issues, way forward

This report presents the findings of an HLP assessment of peri-IDP sites area in Juba County, covering three localities of Amadi, Hai Salam, and Kor Remleh/Kor William. The assessment analysed the policy, legal and institutional context for HLP in South Sudan and its relevance and application to the resettlement and integration of IDPs into the host community in the three localities. Based on the analysis, the assessment team makes the following conclusions on the key questions spelt out in the specific the TOR:

1. The key barriers faced by IDPs in their efforts to acquire land and relocate from the Sites to the host community are firstly, the perception among them that the insecurity that led them to the Sites

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<sup>46</sup> A women-only FGD participant, Site 1, 24<sup>th</sup> April 2023

persists in the country; secondly, the unclear policy, legal and institutional context for land governance in South Sudan, coupled with the absence of a coherent programmatic approach by the Government to the transition from PoC sites to IDP sites and thence to relocation, resettlement and reintegration; and thirdly the lack of awareness of IDPs about their rights.

2. The main actors on HLP issues in South Sudan, Juba County and the three localities are Government (national, state, local); UN agencies; development partners; non-state relief and humanitarian actors; and host communities.
3. The major risks to HLP rights of IDPs and the host community come from firstly, the lack of financial resources to enable IDPs purchase land for their resettlement, and secondly, the reckless disregard of their rights by powerful military and political actors, who grab their land, and are able to subvert the justice system and defeat their claims when they try to seek legal remedies. The most vulnerable groups in this regard are women and child-headed households.
4. HLP related conflict triggers are linked to the governance crisis that has prevailed in South Sudan since 2013, and its ethnic underpinnings, which continue to shape interactions among different communities. The main opportunity for addressing these triggers lies in the implementation of R-ARCSS, and in particular chapters three and five thereof.

The team makes the following recommendations in support of durable solutions that will secure HLP rights for IDPs in line with 'do no harm' principles:

1. The process of addressing challenges to IDPs' HLP rights be linked to the wider peace-building and reconstruction project within the framework of R-ARCSS, so as to deal with the root causes of displacement, including through strengthening policy and institutional frameworks for land governance and dispute resolution.
2. The relocation, resettlement and reintegration of IDPs from the two Sites should be accompanied by a structured process of transitional justice that addresses claims for restitution or compensation of those IDPs who lost their properties in Juba.
3. GRSS should, with the support of the UN, and using the Framework for Return, Reintegration and Relocation of Displaced Persons, convene a Stakeholders Forum with IDPs, CES, the host community, and humanitarian and relief organizations to agree strategies and road map for relocation of the IDPs from the two Sites, based on the triple nexus of humanitarian support, development and peace.
4. GRSS should establish the Special Reconstruction Fund (SRF) and convene the South Sudan Pledging Conference as provided for in chapter 3 of R-ARCSS to raise money for the Fund to support resettlement of IDPs.
5. Support the strengthening of technical and logistical capacity of RRC so that it may effectively play its role of coordinating humanitarian action
6. The plans for relocation, resettlement and reintegration of IDPs should be framed as a national, and not just Juba County issue, so that opportunities for relocation, resettlement and reintegration of IDPs to other parts of the country are considered.
7. A relocation, resettlement and reintegration package should be arranged that will support IDPs to construct their dwellings, and restart their lives in dignity and with hope, paying particular attention to women- and child-headed households, the elderly and persons with disability.
8. Any land identified for settling of the IDPs should be appropriately planned, with provisions made for services (health, education, social, etc.), and provisions of these services factored in.

9. The Ministry of Peacebuilding should, in partnership with MHADM, RRC and other actors initiate and implement a structured programme of civic education targeting IDPs, host communities and the relevant authorities, with a view to creating awareness among IDPs about the procedures for acquiring land and promoting peaceful coexistence between IDPs and host communities.
10. Support capacity building for women to play leadership roles among IDPs, and promote awareness about mainstreaming gender considerations in addressing IDPs' HLP rights.
11. Government, UN and other humanitarian actors should support training on HLP for local authorities and community leaders across the country.

## REFERENCES

### National policies, strategies and laws

Transitional Constitution of the Republic of South Sudan (as revised)  
Revitalized Agreement on the Resolution of the Conflict in South Sudan (R-ARCSS)  
Land Act 2009  
Draft National Land Policy 2022  
Local Government Act, 2009  
Relief and Rehabilitation Commission Act, 2016

### Global and regional instruments

United Nations Principles on Housing and Property Restitution for Refugees and Displaced Persons  
Convention on the Elimination of all Forms of Discrimination Against Women  
UN OCHA Guiding Principles on Internal Displacement  
African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention)  
Framework and Guidelines on Land Policy in Africa (F&G)

### Others

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Human Rights Council. Twenty-sixth session, Agenda item 3: *Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development*: Report of the Special Rapporteur on the human rights of internally displaced persons, Chaloka Beyani: Mission to South Sudan (12<sup>th</sup> May 2014)

UNHCR (2023). Regional Bureau for East, Horn of Africa and the Great Lakes Region, Sudan and South Sudan Refugees, Asylum-seekers and IDPs as of 31 March 2023. <file:///C:/Users/User/Desktop/IGAD%20Soln%20Sudan%20and%20South%20Sudan%2020230331.pdf>, accessed 30<sup>th</sup> May 2023

## Annex 1: Stakeholders engaged through KIIs and FGDs

### KIIs (in order of meetings)

1. Hon. Louis Kwot, *Undersecretary*, Ministry of Land, Housing and Urban Development (MLHUD)
2. Gabriel Sostein Bathuel, *Former ICLA/NRC Officer*
3. George Ritti, *Director for Land Administration*, MLHUD
4. Eng. Immanuel Matayo Wani, *First Director General*, State Ministry of Housing, Land and Public Utilities, Central Equatoria State
5. Fr. Mark Lotang Thomas, *SSRRC*, Ministry of Humanitarian Affairs
6. Waden Santo Loku Richard, *Deputy Director*, SSRRC, Ministry of Humanitarian Affairs
7. Santino Lado Jukere, *Camp Administrator*, SSRRC Central Equatoria State (CES)
8. Paska Achiro John, *Legal Associate*, Humanitarian and Development Consortium (HDC)
9. Both Biel Deng, *Legal Associate*, HDC
10. Juach Bul, *Protection Monitor*, HDC
11. Hon, Robert Lado, *Chairperson*, South Sudan Land Commission (SSLC)
12. Hon. Alikaya Aligo, *Lecturer*, Juba University and *Former Undersecretary*, MLHUD
13. James Wani, *NRM Officer*, Food and Agriculture Organization of the United Nations (FAO)
14. Cephus Diggs, *Team Leader*, UNMISS Protection, Transition and Reintegration (PTR), CES Field Office, Juba
15. Esther Kyewalabye, *Humanitarian Advisor*, Reconstituted Joint Monitoring and Evaluation Commission (RJMEC)
16. Betty Wilson Dilli Soro, *Protection Associate*, United Nations High Commissioner for Refugees (UNHCR)
17. Maker Deng Nyang, *Protection Associate*, UNHCR

### FGDs

Location	No. of Participants	Men	Women
Site 1	19	16	3
Site 3	19	15	4
Amadi 1	31	25	6
Amadi 2	22	19	3
Hai Salam	17	14	3
Kor Remleh/Kor William	13	11	2
<b>Totals</b>	<b>121</b>	<b>100</b>	<b>21</b>