

PROTECTION ANALYSIS UPDATE
November 2022
Thematic Focus: Housing Land & Property in South Sudan



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1. REPORT SUMMARY

Despite small yet critical legislative and policy gains, numerous issues continue to affect the full realisation of Housing Land and Property (HLP) rights for the displacement affected population of South Sudan. HLP remains a dominant protection concern across the country.

Displacement is a major challenge for South Sudan in terms of livelihoods, governance, and development. The situation has not changed significantly since independence, as the United Nations High Commission for Refugees (UNHCR) estimates indicate that more than 4 million South Sudanese were displaced as at August 2022, including 2.2 million internally displaced persons (IDPs) and 2.3 million refugees living in the neighboring countries of Uganda, Kenya, Ethiopia, Sudan and Democratic Republic of Congo.¹ HLP rights are a key protection and cross-cutting issue across South Sudan. Equitable access to HLP remains a pivotal requirement for peacebuilding and recovery. It is estimated that 1.8 million people will be affected by HLP issues in 2022, in addition to 933,000 children indirectly affected by HLP issues².

The pervasive protection crisis due to longstanding conflicts and violence and the ensuing high severity levels of risk and needs across the country, leaves civilians, including those affected by displacement, in a profound state of vulnerability and risk exposure, with limited prospects of a life in safety and dignity. HLP issues are regularly

contributors to conflict and to displacement and are often significant obstacle to the realization of a durable solution.

This protection analysis update (PAU) sheds light on the main risks relating to HLP rights in the humanitarian context of South Sudan and provides recommendations for actions:

- **Risk category 1: HLP risks emanating from the overall conflict environment and ensuing protection crisis:** Such risks include physical aggression (forced evictions, destruction, and theft and looting of property), secondary occupation of property/expropriation, displacement and restrictions on movement affecting access to housing, land, property and related services.
- **Risk category 2: Systemic HLP risks for women:** Discriminatory practices creating barriers to women, HLP rights creating specific protection risks facing women including Gender-Based Violence (GBV) in all its forms.
- **Risk category 3: Wider consequences of HLP risks:** HLP risks can lead or exacerbate other protection risks, such as GBV, and the uncertainty over or loss of HLP rights has found to be a source of or psychosocial distress and deterioration in mental well-being.
- **Risk category 4: HLP risks as conflict contributor and barrier to durable solutions:** Grievances and disputes over HLP access, use and ownership are a contributor to conflict. At the same time, loss

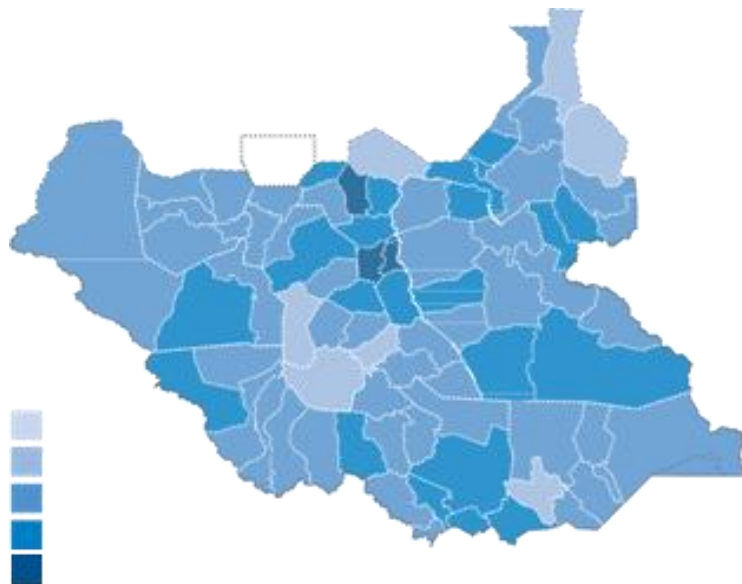
¹ UNHCR Regional Dashboard RB EHAGL: Refugees and asylum-seekers by situation as of 31 August 2022. Accessible at - <https://data.unhcr.org/en/documents/details/95860>

² https://www.globalprotectioncluster.org/sites/default/files/2022-07/pau_south_sudan_jan_march_2022.pdf

of HLP or access to HLP, and related documentation, remains a powerful impediment for IDPs to realize their durable solution.

Housing Land and Property (HLP)-People in Need (PiN)-1.8 million³

HLP needs Severity (6% Stress; 53% Severe; 35% extreme; 6% Catastrophic)



Methodology & Limitations

This analysis on the prevailing Housing, Land & Property [HLP] developments in South Sudan has been developed by the Protection Cluster through a collaborative and consultative process led by the

³ Humanitarian Needs Overview, 2022_HLP PiN and severity of needs, pg 66

⁴ The R-ARCSS agreement was signed between the government side - the Transitional Government of National Unity (Tone), the main opposition (South Sudanese People's

HLP Area of Responsibility [HLP AoR]. The process involved desk review of data and reports from various sources inter alia OHCHR publications, UNSC Resolutions, South Sudan Protection monitoring reports, Inter-agency multi-sectoral reports. Other sources are: UNMISS, OCHA Situation Reports, HNO/HRP, UN Human Rights Council reports, World Bank's South Sudan Economic Monitor report and IGAD's ICPAC & ACAPS reports. Limitations lie in access restrictions, insecurity, rapidly changing protection dynamics and challenges hindering the capacity of human rights and humanitarian actors to fully monitor all risks and incidents. This report therefore is focused on the main HLP risks and trends within these limitations.

2. CONTEXT OVERVIEW OF HLP IN SOUTH SUDAN

Whereas the Revitalized Agreement for the Resolution of Conflict in South Sudan (R-ARCSS) executed by parties to the conflict has halted a return to widespread conflict, its slow implementation coupled with an unprecedented 4th season of floods and cycles of violence in several states have exacerbated HLP needs and delayed substantive reform or return for conflict and flood displaced populations.⁴

In recognition of the linkages between the peace process, quest for durable solutions and HLP issues in South Sudan, chapter 4 of the

Liberation Movement/Army-In Opposition – SPLM/A-IO), the South Sudan Opposition Alliance (SSOA), Former Detainees (FD), and Other Opposition Parties (OPP)



Revitalized Agreement for Resolution of Conflict in South Sudan (R-ARCSS)⁵ sets out 4 key goals. Specifically;

- a.) A national dialogue on the land policy review,
- b.) Establishment of functioning land registry at the national, state and county levels of governance,
- c.) Empowerment of the country's land commission as well as,
- d.) Mediation of land related conflicts to ensure compensation and land restitution.

South Sudan's Land Act, 2019 was enacted under the framework of the 2011 Transitional Constitution. It provided for a 3- tier land tenure system with public, private, and communal land governance regimes co-existing in recognition of the diversity and underpinned by the cultural norms. This innovative approach injected fresh impetus to land rights in South Sudan⁶. Although the Act recognises these land tenure systems, the government retains custodianship of the land, which is "deemed to belong to all persons"- including minority groups and indigenous communities.⁷Whereas the 2011 independence and subsequent land reforms sought (and to an extent) created certainty in HLP matters, to address historical injustices and avoid future conflicts around land, it is recognised that contestations over land as

a result consequently became "conflict triggers".⁸ These contestations continue in the context of the R-ARCSS as land has been central to statehood and a major contributor to conflicts and instability.⁹

Despite the emergence of these conflict triggers, positive developments continue to be witnessed. Taking advantage of the drop in levels of violence in many parts of the country following the signing of the Revitalized Agreement on the Resolution of the Conflict in South Sudan (R-ARCSS) in September 2018, the Government of South Sudan, opposition groups, and development partners have increasingly begun to consider interventions that can help to consolidate peace and create conditions that are conducive to the safe, dignified and voluntary return of internally displaced persons (IDPs) and refugees. Various efforts are underway to reinforce HLP, including a renewed push to adopt the draft National Land Policy¹⁰ that had stalled in parliament shortly after the outbreak of war in December 2013. More needs to be done to mount a response that is commensurate with the scale of the problem, but these developments suggest a certain acknowledgement of HLP as a priority issue in the current situation. In addition, after extensive consultations

⁵ It is important to note that in addition to this, the 'Juba Peace Agreement, 2020' aimed to address essential questions about land rights and political representation in Darfur and highlight opportunities to Durable Solutions for both South Sudan and Sudan returnees.

⁶ See generally, Deng, D. 2011. 'Land belongs to the community, demystifying the 'global land grab' in Southern Sudan' Paper presented at IDS conference April 2011, Brighton.

⁷ Article 28 of the Transitional Constitution of South Sudan

⁸ Justin, Peter Hakim & van Dijk, Han (2017), Land Reform and Conflict in South Sudan: Evidence from Yei River County, in: Africa Spectrum, 52, 2, 3–28.

⁸ *ibid*, p.8

⁹ *ibid*, p.8

¹⁰ Efforts are underway to review the DLP 2022 led by the Ministry of Land, Housing and Urban Development (MLHUD) in line with chapter four of the 2018 R-ARCSS. It draws from the Draft NLP_2014 and DLP 2019 report and has undergone scrutiny and review from Ministers of Housing, Lands and Public Utilities from the 10 States and 3 Administrative Areas, as well as Mayors, States Chairpersons of State Land Commission, Technocrats from land-line related ministries at national and state level, Academia, Women Organizations and Civil Societies Groups Traditional Authorities and private sector. The Draft NLP_2022 was validated on 8 September 2022 with provision of 40 days for incorporation of feedback and consolidation by the technical committee. Thereafter, the Draft NLP_2022 will be tabled before the Economic Cluster and the council of ministers for further review.



on women land rights across the country, the South Sudan Women Land Rights Agenda was developed by the Ministry of Lands, Housing and Urban Development (MLHUD) in June 2022.

Like any conflict-affected country, South Sudan faces intractable issues relating to HLP. The conflict that erupted in December 2013 has superimposed a whole new set of HLP concerns on top of those that were yet unresolved from the previous 22-year war (1983-2005). At the end of the civil war, it had been hoped that returnees¹¹ would go back to their places of origin, where the process of their resettlement and reintegration would be handled effectively by traditional institutions. However, many returnees have not shown a willingness to return to their ancestral lands, choosing instead to settle in urban and peri-urban areas where the majority of them either live in informal settlement or illegally occupy the land of others. The situation has been further complicated by insecurity and lack of social services in rural areas.

Managing the resettlement of returnees and IDPs in urban and peri-urban areas has been much more challenging, as authorities and competencies between traditional institutions, local authorities and the Government of South Sudan (GoSS) come into conflict. Moreover, many years of conflict have blurred rights to land in both territorial and production unit terms, so that when, at the end of the conflict, individuals sought to assert prior rights, where these existed, these

efforts tended to generate further and more intense internal conflict. Additionally, issues relating to land grabbing by military personnel, secondary occupation of land by IDPs, transactions involving the land of displaced populations, forced evictions, and widespread destruction of HLP present very real obstacles to returns in both urban and rural areas. Land rights of women are defined in practice by the patriarchal system that institutionalizes women's inferiority to men and excludes them from decisions on allocation of land rights.¹²

If the Government of South Sudan and its development partners are not able to mount a serious response to these HLP issues, the problems will only become more complex when displaced populations begin returning in earnest.

Aid interventions in the HLP sector can be politically sensitive, particularly in South Sudan.¹³ Large-scale displacement in successive civil wars has given rise to complex and overlapping disputes over land and natural resources.¹⁴ Economic hardship has driven competition for HLP particularly in urban areas, and land administration processes offer a source of income to state and local governments. Programming in the HLP sector is further constrained by a lack of donor funding as Housing, land and Property programs often require a substantial state-building component, something that donors have shied away from since December 2013.

¹¹ Both IDP and refugee returnees

¹² Women Land Rights Agenda for South Sudan-IGAD and MLHUD

¹³ A baseline study conducted for the *Strengthening the Livelihoods Resilience of Pastoral and Agropastoral Communities in South Sudan's Cross-Border Areas with Sudan, Ethiopia, Kenya and Uganda* project found that host communities were more resilient than IDPs and refugees in part because of their ability to access productive assets such as land. According to the study: "Of all assets, productive assets (including land) have the largest impact on resilience (for both host communities

and refugee and IDP households), while access to credit is the most significant variable within the social safety pillar." *Resilience Analysis of Pastoral and Agropastoral Communities in South Sudan's Cross-Border Areas with Sudan, Ethiopia, Kenya and Uganda*, Resilience Analysis Report No. 17, FAO (2019).

¹⁴ David K. Deng, *Land, Conflict and Displacement in South Sudan*, CSRF (2021), available at <https://www.csrf-southsudan.org/repository/land-conflict-and-displacement-in-south-sudan-a-conflict-sensitive-approach-to-land-governance/>.



With a few notable exceptions of humanitarian actors and development actors¹⁵ that have intervened on provision of Information, Legal Counselling, Legal Assistance and Aid, Capacity building and Training, Community Engagement, Policy engagement and Legal Reform, based on the needs, there is a clear underinvestment in HLP related programs in South Sudan.

National infrastructure, governance, and systems to cope with HLP Issues.

Whereas South Sudan has elaborate constitutional and legal provisions in place that are supportive of HLP rights in reality, the same is not enforced. One challenge is the lack of clarity of some of the institutions and mechanisms in place to address HLP issues. The South Sudan Land Act, 2019, although complemented by the South Sudan Local Government Act, 2019, is vague in terms of actual roles and responsibilities between the concerned ministries at the state level, the County Land Authority¹⁶ and the Payam Land Council¹⁷. In addition, many of these institutions have not yet been established in all states, creating a situation of confusion in many urban and peri-urban areas in relation to land allocation, surveying, and registration of rights over land. With many returnees gravitating towards urban

centres, this has resulted in the formation of informal settlements where people often lack security of tenure and are at risk of forced eviction. Traditional authorities can allocate land subject to consultation with the community and must inform the County Land Authority or the Payam Land Council; however, these institutions are sometimes not yet established in many areas in South Sudan. As a result, around Juba it is reported that: High-ranking chiefs, particularly in the surrounding rural Payams are reportedly increasingly co-opted into corrupt urban governmental structures, and as a result are increasingly removed from local communities.¹⁸ Communities are reportedly afraid to challenge the chiefs or individuals close to them for fear of retribution.

The situation around legal and state institutions relevant to HLP is extremely complex, mainly as a result of; the number of institutions involved; their overlapping jurisdiction when dealing with land disputes; lack of jurisdictional knowledge by actors within legal institutions; the fact that the law, regulations and mechanisms have not yet been fully developed or established¹⁹.

South Sudan's population continues to grow, with current estimates at 11,381,377 as at 2021.²⁰ Whereas a considerable proportion of the population lives in rural areas, the concentration of resources in and

¹⁵ Humanitarian Development Consortium(HDC), Norwegian Refugee Council(NRC), United Nations High Commissioner for Refugees(UNHCR), International Organisation for Migration(IOM), Community in Need Aid(CINA), Danish Refugee Council(DRC), Food and Agriculture Organisation(FAO), International Rescue Committee(IRC), Mobile Humanitarian Agency(MHA), Conflict Sensitivity Resource Facility(CSRF), UNDP,UN-Habitat, UNMISS and others.

¹⁶ the government body responsible for administering land at the county level

¹⁷ the government body responsible for land at the payam level

¹⁸ Anna Stone, *Nowhere to Go: Displaced and Returnee Women Seeking Housing, Land and Property Rights in South Sudan*, NRC (20 Mar. 2014), available at https://www.nrc.no/globalassets/pdf/reports/nowhere-to-go/nowhere-to-go_displaced-women-seeking-hlp-rights-in-south-sudan.pdf

¹⁹ Ibid

²⁰ United Nations Population Division. World Population Prospects: 2019 Revision

around Juba as well as other urban/ peri-urban areas of South Sudan has resulted into increased rural-urban movements. Compounded by the 4 consecutive flooding seasons and an unabated conflict in some states (Unity, Upper Nile & Jonglei), this rapid urban growth is of concern to HLP actors as it is unregulated and *ad hoc*- often leading to rapid growth of informal settlements, including *Sukwewe, Rumbor, Referendum, Mia Saba, Gudele, Gumbo Sherikat and Mangateen* in Juba.²¹ The growth has been largely attributed to inadequate technical personnel to undertake planning, engineering urban & design as well as weak or ineffective by- laws to complement the Land Act. Consequently, unconventional registration processes of land in urban areas have been witnessed often fueling corrupt practices.²² Intrinsically linked is the increased competition for private land holdings in an environment deficient of survey maps and beacons/land markers in urban and peri urban areas

In recognition of these challenges, national Housing, Land and Urban Development authorities have begun a process to survey urban areas including these settlements. The law provides dispute resolution mechanisms that IDPs and returnees should be able to access. However, these mechanisms are limited in their effectiveness by lack of capacity and the absence of an enabling rule of law context. Customary law courts, which are the most readily available and functional have their own limitations especially with regards to

protection of HLP rights of women and minorities. The combined governance concerns, urbanisation, insecurity, and political context limit the opportunities to respond to the HLP needs of IDPs in South Sudan.

A comprehensive analysis is required to determine the full extent of the capacity of HLP institutions to respond to the existing needs in South Sudan. Government capacities in various components of HLP response exists and is functional, however this needs to be further strengthened to realise full enjoyment of HLP entitlements by displacement affected populations in South Sudan.

International humanitarian agencies and their efforts on HLP

With the significance of HLP issues across South Sudan and the need for a robust, effective coordination mechanism to fully engage and raise the engagement with these issues, the HLP Area of Responsibility (AoR) under the Protection Cluster was activated in July 2022. The Norwegian Refugee Council (NRC) has taken on leadership of this AoR committing resources, capacity and expertise to lead on this in South Sudan.

Membership of the HLP AoR includes humanitarian actors including other clusters and AoR's representatives within the Protection Cluster²³, development actors²⁴, independent think tanks²⁵ and

²¹ Pritchard, M. 2017. Disputing Access, Discouraging Returns. The South Sudan Law Society, Juba, South Sudan

²² Deng, David K. 2014. South Sudan Country Report, Land Governance and Assessment Framework (LGAF), p3

²³ Humanitarian Development Consortium(HDC), Norwegian Refugee Council(NRC), United Nations High Commissioner for Refugees(UNHCR), International Organisation for Migration(IOM), Community in Need Aid(CINA), Danish Refugee Council(DRC),

International Rescue Committee(IRC), Mobile Humanitarian Agency(MHA), Alliance for Land Rights South Sudan (ALRSS), South Sudan Law Society(SSLs), UNFPA among others.

²⁴ Norwegian Peoples Aid (NPA) Food and Agriculture Organisation (FAO), UNDP, UN-Habitat, UNMISS among others.

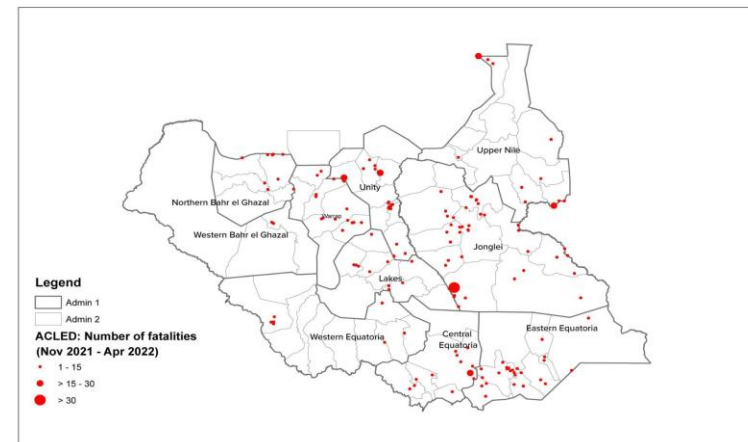
²⁵ Conflict Sensitivity Resource Facility(CSRF) among others

research agencies. Government actors are invited to join in on meetings where specific discussions tailored to their engagement is relevant.

Mine Action efforts and HLP concerns are strongly linked; examples range from land value increasing following clearance and removal of explosive remnants of war, questions surrounding the prioritization of land clearance as well as around contamination and conflict sensitivity prior to clearance during the non-technical surveys with communities. Whilst there have been efforts at global cluster level²⁶ to identify best practices between mine action and HLP and strengthen cooperation; in the context of South Sudan these linkages have yet to be fully explored. Certain organizations, including DRC, have however facilitated referral pathways to national HLP actors at the request of beneficiaries for example following clearance activities in Magwi.

There are close linkages between the HLP AoR and the Gender Based Violence (GBV) AoR, the Shelter/NFI Cluster, Food Security Cluster and Camp Coordination and Management (CCCM) Clusters. Discussions are ongoing to strengthen collated efforts towards joint assessments, guidance's and actions for humanitarian response on issues specific to due diligence, security of tenure, mitigating risks to women and strengthening advocacy messages touching on joint messaging.

It is clear that Housing, Land and Property responses to existing threats are characterized as a collection of systems, often fragmented and uncoordinated, and designed by international humanitarian and development agencies to suit short-term needs.



3. PRIORITY PROTECTION RISKS

RISK 1: HLP Risks emanating from the overall conflict environment and ensuing protection crisis. Includes physical aggression (forced evictions, destruction, theft and looting of property), secondary occupation of property/expropriation, displacement and restrictions on movement affecting access to housing, land, property and related services.

Forced displacement of Civilians-Physical aggression (Risk of Evictions, Destruction and looting of property)

²⁶ Please see <https://www.globalprotectioncluster.org/wp-content/uploads/HLP-workshop-Jan-2022-Summary-report-1.pdf> and <https://www.globalprotectioncluster.org/AoR/mine-action/ma-hlp/>



Forced Evictions²⁷ represent a constant risk for many communities in South Sudan, especially in the urban and peri-urban areas. It is estimated that up to 91% of South Sudanese residents living in urban areas reside in informal settlements where access to basic services remains a challenge.²⁸ Additionally, this has meant that a large urban population does not have land tenure guarantees or hold any documentation and is **at risk of eviction**.

Secondary displacement due to recurrence of conflict and other displacement factors have exposed displacement affected communities to settlement in camp-like settings in some areas like Bentiu in Unity State and Wau in Western Bahr El al Ghazal State, and most recently in Malakal following Tonga conflict where in most cases, they do not have access to security of tenure. In 2021, some of the flood-affected IDPs in Bentiu were moved from the former Protection of Civilian (POC) site to land that was privately owned, without prior legal arrangements to protect them. These IDPs have no rights over the land or security to stay there even though they have built homes and may plan to live there for some years. They are at a constant **risk of eviction**.

Between February and May 2022, UNMISS reports on attacks in Southern Unity State highlight that approximately 44,000 civilians were displaced from at least 26 villages because of the violence.²⁹

²⁷ The practice of forced evictions involves the involuntary removal of persons from their homes or land, directly or indirectly attributable to the state. The right not to be forcibly evicted is an element of the human right to adequate housing.

²⁸ United Nations Human Settlements Programme (UN-HABITAT) See generally, <https://data.worldbank.org/indicator/EN.POP.SLUM.UR.ZS?locations=SS> [accessed on 07 Sep 2022]

²⁹ UNMISS, Human Rights Division, Attacks against civilians in southern Unity State, South Sudan, February – May 2022, p.13

When entering villages, joint armed groups demolished and set ablaze homes, public buildings, shops, and other civilian structures and objects, including public markets and health facilities. The perpetrators burnt private property and objects used in humanitarian relief operations to force civilians to flee, while shooting at them. The IDPs were primarily women and children, who fled during or in anticipation of attacks, leaving behind their homes and properties. The attackers also looted civilian property. The tactics used during the attacks indicate a deliberate intention to drive civilians out of their homes, forcing them to face dire humanitarian challenges.³⁰

Continued occupation of property/expropriation

The widespread rural-to-urban migration, in an environment characterized by a lack of institutional and human capital, has led to a proliferation of informal settlements, secondary occupation, land grabs by emerging political-military elites, and increasing disputes over administrative boundaries and respective oversight³¹. Pressure on urban and peri-urban areas will increase with the onset of return, as many returnees will not go back to rural areas but opt instead to live in urban areas which offer more economic opportunities and services³²

³⁰ Ibid

³¹ Deng, David K. 2014. South Sudan Country Report, Land Governance and Assessment Framework (LGAF), p3

³² M. F. Pritchard, *A Rapid Assessment of Land-Related Disputes in Urban and Peri-Urban Areas of South Sudan*, South Sudan Law Society, 2016; I.R. Jahn, *Key Housing, Land, and Property Issues in Urban Areas of South Sudan*, Shelter/Non-Food Items (NFI) Cluster South Sudan, 2017.

Risk of Exploitation

In areas where land is highly contested, the government has been accused of expropriating land through multiple surveys without due procedures, rendering some of the already vulnerable displaced communities homeless and landless without alternative options heightening their **risk of exploitation**.

Displacement and restrictions on movement and access to land, property, and access to services.

In 2021 and 2022, there has been an increase of rural movements of the population in various locations including *Magwi* and *Lafon* in Eastern Equatoria, *Kajo Keji* in Central Equatoria, *Tonj South* in Warrap and many other areas. This has led to tribal clashes and competition over land use, restriction on movement and access to land which causes tension and possible conflict among cattle keepers and between farmers. Attacks on civilians by armed cattle keepers, and cattle raids continue to displace people. Cattle raids are characterized by multiple forms of violence against civilians, including killing, injury, rape, abduction, looting and destruction of housing and property.

RISK 2: Systemic HLP risks for women: Discriminatory practices creating barriers for women, HLP rights creating specific protection risks facing women including Gender-Based Violence (GBV) in all its forms.

In South Sudan, women face multiple layers of discrimination and gender-specific constraints that are inter-linked and cumulative in accessing their HLP rights. These include:

IDPs

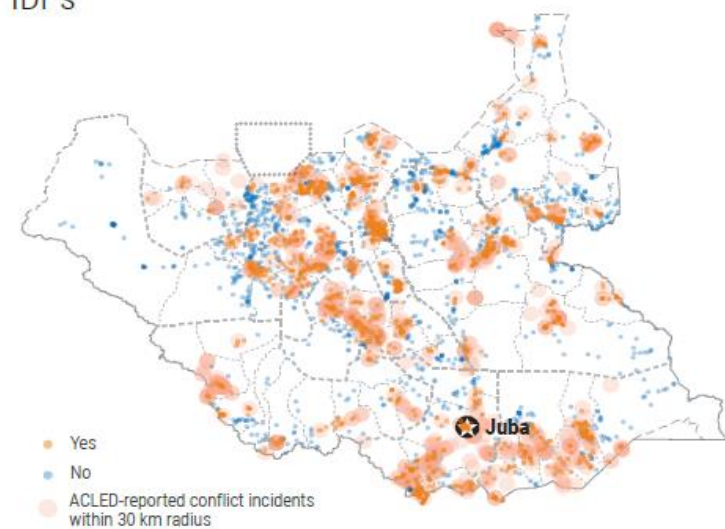


Figure 1 - People's proximity to conflict events, HNO 2022

- Women's experience of armed conflict is multi-faceted: it means separation, loss of relatives. Coupled with the breakdown of traditional social obligations vulnerable women are no longer guaranteed kin support and assistance and forced to live in precarious conditions that further exacerbate the violation of their rights to HLP
- Financial barriers and corruption in accessing Legal Documentation required to secure their tenure arrangements. Low literacy levels make it hard for many displaced women to understand their HLP rights, including land allocation systems, in particular governmental allocation processes in urban and semi-urban areas. This put them at a higher risk of fraud (for example use of forged documents and registration of incorrect names on

HLP documents including Legal Identity documents which could be an added barrier to accessing security of tenure.

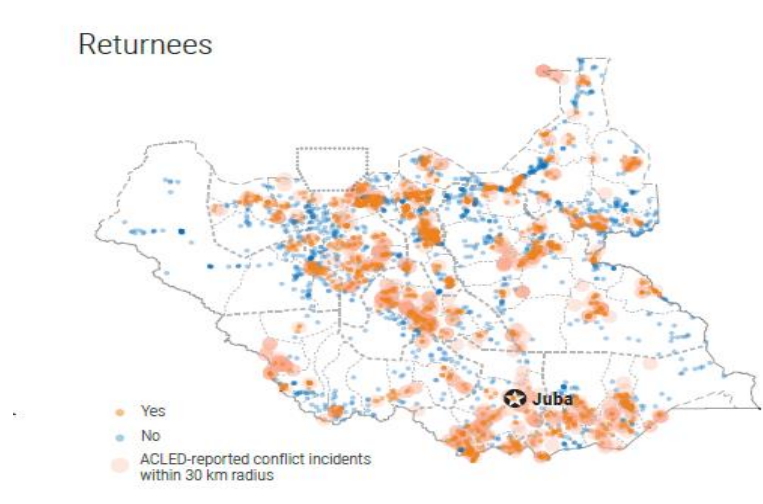


Figure 2 - People's proximity to conflict events, HNO 2022

- Limited access to registration and legal identity documents is a problem for many displacement-affected women as the only documents they have are often those issued during displacement (such as refugee cards) which are often in their husband's or father's names. Widows or separated/divorced women are particularly affected by this as they are no longer part of their former household.
- HLP violations against women and linkages to sexual and gender-based violence (GBV) has been reported in several locations and substantiated by evidence and data in assessments and studies. Further still, there are reports that persons seeking access to land

often get into confrontations with soldiers, members of host communities, male kin and/or traditional leaders.

- Family coercion and community pressure obliges women to give away rights or assign property to male children. This is supported by the fact that customary practices and norms still prevail in South Sudan.
- Failure to enforce court decisions is widely reported. Land grabbers and illegal occupants of land under the lawful ownership of women in South Sudan often defy court orders and continue to occupy property illegally and with impunity even when decisions have been granted in favour of the rightful owner of a particular HLP asset.
- Landlessness and homelessness –many women find themselves homeless, without access to land or secure accommodation. This is exacerbated by GBV. In certain instances, women in polygamous marriages are evicted at household level to make way for new and younger wives, rendering them homeless.

Very limited progresses have been recorded in 2021, for example, the inclusion of women representatives in Abyei Administrative area, the first interactive dialogue with the Committee on the Elimination of the Discrimination against Women, and the launch of the Joint Committee to implement the action plan for the armed forces on addressing conflict-related sexual violence.

RISK 3: Wider consequences of HLP risks: HLP risks can lead or exacerbate other protection risks, such as GBV, and the uncertainty over or loss of HLP rights has found to be a source of or psychosocial distress and deterioration in mental well-being.



Populations exposed to violence and conflict are well known to be at risk of increased incidence of poor mental health outcomes, especially where people have lost or have no access to their HLP. Exposure to violence, both in the short and long term, negatively affects mental, emotional, behavioral, social, and physical well-being, which leads to requiring structured MHPSS (Mental Health and Psychosocial Support) services and specialized individual case management. Many of the displaced face the psychological burden that comes with having little certainty or agency over the future and having no home to return to.³³

RISK 4: HLP risks as conflict contributor and barrier to durable solutions: Grievances and disputes over HLP access, use and ownership are a contributor to conflict. At the same time, loss HLP or of access to HLP, and related documentation, remains a powerful impediment for IDPs to realize their durable solution.

Lack of access to HLP rights have implications for early efforts to attain durable solutions (DS). The lack of clarity on HLP rights in places of origin, reintegration and resettlement has impacted the sustainability of any Durable Solutions.

4. CONCLUSION

HLP is central to sustainable humanitarian assistance; all our humanitarian interventions – from technical mine action, land

clearance to the prevention of gender-based violence, child protection or economic recovery – are implemented on some form of HLP. Land is a critical resource for the people of South Sudan. It constitutes the foundation for livelihoods and socio-cultural, economic, political, and institutional development. Land is the basis for shelter, food, economic activities, infrastructure development, and employment opportunities in rural areas and is increasingly becoming a scarce resource in urban areas. Referral pathways and multi-sector approaches, thus remain crucial³⁴.

HLP coordination is a priority for a more coherent approach to HLP issues in South Sudan. The level of coordination should extend to local chiefs, State Institutions, Humanitarian and Development Actors, Donors and the GoSS. This will support in joint efforts to addressing needs and gaps with the available resources.

Effective response to HLP risks depends on security and access of humanitarian actors in hard-to-reach locations and populations. Climatic conditions like flooding inhibit access during most parts of the year and many partners face constraints reaching targeted areas due to the negative effect of the use of some means of transport and the access to certain zones.

Recurrent conflict in some areas like in Eastern Equatoria states, Warrap, Jonglei, Unity States and Upper Nile where HLP issues have been reported and pose challenges in accessing most vulnerable in communities and in considering State cross border responses.

³³ Meeting Mental Health Needs in the aftermath of Conflict-Tambura, MSF August 2022, <https://www.msf.org/south-sudan-mental-health-after-conflict> ;(accessed 13 Sep 2022)

³⁴ A recent example: Following land clearance in Magwi, DRC has referred 7 of its beneficiaries to an organization to receive training on land rights – some of them are now part of a land dispute resolution committee to support community structures on Dispute resolution.

4.1 Increase Funding Appeal for HLP

The importance of addressing HLP concerns cannot be overstated enough especially at the onset of dealing with recurrent and protracted crisis. The HLP AoR intends to scale up appeals to existing and new donors to complement ongoing funding streams and ongoing responses in the Humanitarian Response plan for 2022, as well as long term recovery and reconstruction efforts. Some of the HLP partners have launched separate appeals for fundraising their HLP responses and are reviewing linkages with the triple nexus approach to programming on HLP.

5. RECOMMENDED ACTIONS

To HLP AoR/Humanitarian/Development Actors

- I. Once the amended Draft Land Policy (DLP) 2022 is adopted, **the HLP AoR and relevant actors should advocate for clearer guidance regarding housing, land, and property to be codified into law.** This includes guidance on, *inter alia*, land administration (including assurance that gender is mainstreamed and equitably handled; the acquisition of land by government for development purposes; individual and community access to legal representation and dispute resolution; environmental/ climatic responsiveness; and specific protections and rights for women and vulnerable people including children and the disabled.
- II. **The HLP AoR should support effective responses on HLP. This should entail preventive and remedial actions aimed at addressing specific HLP needs,** while strengthening the capacity

of all relevant stakeholders, including humanitarians, government, and community structures. Moving forward, the HLP AoR will focus on enhancing the accountability, predictability, and effectiveness of HLP-related responses.

- III. **Existing coordination structures (Inter-Cluster Working Group/Protection Cluster³⁵/HLP AoR) should support the promotion and protection of HLP rights and land tenure security including but not limited to customary tenure systems that are widely used in South Sudan.**
- IV. To promote **better coordination of interventions on the ground, the participation of humanitarian, peace and development partners should be strengthened at the field level,** and HLP concerns should be embedded in relevant actions including but not limited to resilience and development initiatives.
- V. Before any interventions, a comprehensive understanding on the local context and perceptions of HLP should be ascertained.

There is need to strengthen the HLP evidence base through undertaking comprehensive assessment and analysis in areas of return, reintegration, and resettlement and on information management and awareness raising. In particular;

- a. Areas of return or potential return areas already mapped by other clusters / organizations should be utilized to help in the prioritization of HLP interventions.
- b. Share the assessments relevant data with local and national level Solutions Working Groups (SWG) in South Sudan to

³⁵ An example could be utilising the GBV AoR established safe spaces to invest in Legal empowerment through encouraging women, particularly those that are

acutely vulnerable, to seek out information on their rights and how to participate in land reform and leadership processes.

ensure a coordinated response and cooperation building between clusters and stakeholders for prepared and timely interventions.

- c. Assessments must consider conflict sensitivity and risks analysis – those conducting such assessments must be guided by a conflict sensitivity tool on HLP to be developed by the HLP AoR. This will ensure HLP interventions do not further exacerbate any existing tensions
 - d. Assessments must also map existing community capacities to build on existing community structures rather than duplicating or creating new community engagement structures.
- VI. **Humanitarian actors should invest in advocacy; this entails the use of the current space afforded in the legal framework for women’s HLP rights as an opportunity to challenge existing unequal and harmful gender norms.** This requires working closely with customary tenure systems, local leadership, and people within communities to ensure community buy-in.
- VII. **Draw learning from anticipatory actions used in emergency response and apply the same approach to HLP programming; Humanitarians should prepare themselves for seasonal shifts in HLP issues.** For example, humanitarian actors should anticipate increased vulnerability when decisions are made about forced evictions, climatic change displacements etc.

To Donors

- I. **Donors and their international implementing partners should invest in the institutional capacity of local aid organisations – not just specific project-based activities.** This should include investment in risk and security management capacities given the transfer of risk and responsibility associated with an increased emphasis on local knowledge.
- II. **Progressive Land legal and policy reform:** Donors should support the review and development of progressive and nuanced national-level legislation, through continuous advocacy for incremental and measured intervention among all governmental actors and the unification of land related legislation across states towards the adoption of the Draft Land Policy

To Government Stakeholders

- I. **Prioritise strengthening capacity for authorities in the housing and land department,** specifically those working on the survey and demarcation of land. This will prevent or at least minimize corrupt and gender discriminatory practices.
- II. **Strengthen informal dispute resolution mechanisms, in line with rights-based approaches** which promotes transparent, equitable security of tenure. Map existing structures and undertake a capacity needs assessment to ensure directed appeals to strengthen systems towards realization of HLP rights.