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Housing & Land property in Urban Development in South Sudan



## Housing & Land property in Urban Development in South Sudan

 **Dr Paul Gal Atem, PhD**

Assistant Professor, Dean of the School of Public Service

University of Juba, South Sudan

<https://orcid.org/0009-0006-0171-2634>



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### Abstract

**Purpose:** Housing and Land property development is a critical aspect of any urban living space that is undergoing rapid development. Juba is the capital of South Sudan with the largest metropolitan area and the most populated urban centre in South Sudan. Housing remains a critical element in the psychosocial wellness of human beings. Increasing rural to urban migration, population explosion in urban areas has seen increased pressure on the housing system in urban region. The fundamental purpose of this research study was to establish and examine the legal framework on Housing and Land property policies for urban development.

**Methodology:** The study was anchored on the Theory of Constraints. The study used qualitative research design. Target population of 200 respondents encompassed critical stakeholders in government and corporate sector who formed the ecosystem of housing and Land property development projects implementation. The study leveraged on interview guides and Focused Group. Data collected was analysed in themes and interpreted.

**Findings:** The findings of the study revealed that insecurity in rural areas had a negative impact on the congestion in urban centres hence leading to corruption in housing and land property development coupled with lack of policy framework.

**Unique Contribution to Theory, Policy and Practice:** The study recommended for clear policy guidelines under the Ministries of Lands and Housing development on matters on Housing and land property development in all urban centres in South Sudan. In conclusion, availing the required resources, eliminating corruption, enhancing capacity building, and ensuring there is proper planning would augment the success of housing and Land property development in South Sudan.

**Keywords:** *Housing & Land, Property Development, Planning, Implementation, Land Management*

## **Introduction**

Like any conflict-affected country, South Sudan faces intractable issues relating to Housing Land Property (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 returnees 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. 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.

The practice by the patriarchal system that institutionalizes women's inferiority to men and excludes them from decisions on allocation of housing and land property rights. Land in South Sudan for example, is central to individual and household livelihoods security as well as national socio-economic development. More than 80 percent of the population live in rural areas and derive their livelihoods directly from the land as subsistence farmers, livestock keepers, fisheries, beekeepers and hunter-gatherers thus, land forms the basis of the country's socio-economic development due to its agricultural and natural resources potential. As a result a framework for land governance that secures rights to acquire, access, use, and transfer land and associated productive resources is essential for the well-being of citizens and overall national development.

## **Background overview**

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 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. In recognition of the linkages between the peace process, quest for durable solutions and HLP issues in South Sudan, chapter 4 of the Revitalized Agreement for Resolution of Conflict in South Sudan (RARCSS) 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 Sudan. 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. Whereas 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. 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.

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 oversight. Pressure on urban and peri-urban areas increase with the onset of return, as many returnees do not want to go back to rural areas but opt instead to live in urban areas which offer more economic opportunities and services.

Housing, Land and Property (HLP) rights including reclamation, restitution and reconstruction continue to be a crucial issue in South Sudan. To achieve durable solutions for those affected by the conflict significant effort will be required to ensure that they are effectively addressed. South Sudan is not yet conducive for mass scale returns, however with the signing of R-TGoNU in February 2020, an increase in spontaneous returns has been recorded, alongside a corresponding increase in HLP issues. Equitable access to HLP remains a pivotal requirement for peace building and recovery in post-conflict South Sudan.

Inter-communal land and resource conflicts rooted in access, ownership and usage threaten peace building and stabilization efforts. Development of land tenure policy, review of associated legal frameworks, and installation and operationalizing of land administration structures at sub-national levels are all important post-conflict priorities that are essential to identifying durable solutions in resettling IDPs and refugees, and ex-combatants. Securing HLP rights that enable livelihoods and addressing HLP grievances/disputes will also contribute to establishing the rule of law, which in turn produces conducive environments for returns, investment, poverty reduction and development.

### **Statement of the problem**

Whereas South Sudan has elaborate constitutional and legal provisions in place that are supportive of Housing & Land Property (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 Housing & Land Property 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 Authority and the Payam Land Council. 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, 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. 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 established. It is in this context that the researcher's interest is based to offer suggestions on Housing & Land Property development in urban centres in South Sudan for development.

### **Objectives**

The major objective of this study is to provide a wide range of suggestions on national and legal policies on housing and Land property in urban development in South Sudan. A framework on which the housing and land policy issues can be anchored for economic development and governance. Other objectives include:

The examination of the land and Local government Act on housing and land property governance. Find out challenges faced by communities in urban centres in South Sudan relation to land and provide Suggestions to address the challenges.

### **Research Questions**

The following questions will be a guiding factor in achieving the above objectives of study

- What legal framework does the government of south Sudan have on Housing & Land property in urban development?
- How is the implementation of the Land Act and Local government Act in relation to Housing and land property development in urban areas in South Sudan
- What are the challenges facing housing and land property development in urban centres in South Sudan?
- What are possible suggestions to address the said challenges

### **Related literature review**

The findings of Ali and Raswol, (2017) in a city in Kurdistan indicated that inefficiency in housing policies made in areas of land acquisition, construction materials mobilization made cumulative value of public housing unreachable for the poor and the low income groups. Government use of



incentives such as providing housing developers with land to set-up affordable housing projects, the result was disappointing in that the objectives of affordability were never met. This evidence indicates that partial incentives not backed by financial resources has less prospects of success as PPP arrangements in commercial terms ended in housing projects that were priced at market rates. This results echo submissions of Kavishe and Chileshe, (2018) in Tanzania, who identified the downsides of PPPs where ineffective participation of government in resources allocation increases likelihood of housing project failure.

A study by Fisher, (2020) on the framework for enhancement of government housing policy on construction resources towards sustainable housing delivery in the Western Cape, South Africa, found out that even with existence of robust programs for public housing construction projects for low income groups, solving housing crisis remains a significant challenge. The results of the study showed that existing housing policies have failed to control the critical input resources necessary for the implementation of the housing projects. Fisher, posited that critical housing resources notably; labor, materials, plants and equipment should be integrated in any public housing policy for it to be sustainable and beneficial to larger masses. Another study by Bhaktyar et al, (2013) in Malaysia established that a combination of factors notably; scarcity of land, population increase, increase in cost for labor in construction sector, fluctuating costs of construction materials have exerted pressure in public housing plans thus limiting prospects of success of the low cost housing. Bhaktyar et al, (2013) postulated that a myriad of socioeconomic dynamics wield significant influence in moderating the implementation of public housing projects which thus invites the need for stronger government participation through policy and regulatory interventions

### **Urban development perspectives**

The United Nations recorded that currently 55% of the world population lives in urban areas, and this is expected to increase to 68% by the year 2050; this trend makes urbanization the most transformative process in the century (United Nations, 2018). This trajectory has caused cities and urban areas to be concentration points for environmental, economic, social, and cultural interactions, challenging the sustainability of housing, infrastructure, basic services, and food security, among others (UN Habitat, 2016). The New Urban Agenda, which contains the trajectory for urban development adopted by the United Nations, highlights the need for a new look at the way cities are planned, designed, financed, developed, and governed, and reaffirms the global commitment to sustainable urban development (Watson, 2016). The shortage therefore of decent housing in sub-Saharan Africa's burgeoning cities and towns, particularly for low and moderate income families, is already acute and growing worse day by day (International Housing Coalition, 2008). With urban growth rates of 5% per annum, it is estimated that by 2030, Africa's cities and towns will have to accommodate more than 300 million new residents. A reasonable estimate is that at least 7,000 units per day or 290 units per hour will be required throughout the region to eliminate the current housing deficits and provide for new urban dwellers (Nakutudde 2010). However, only a small fraction of this amount is actually being produced. Unless a quantum

increase in the production of housing is achieved, cities already unable to cope with the dramatic levels of urbanization will be completely overrun with informal settlements and slums. Currently 74% of Zambia's urban population lives in slums; in Nigeria, 80%; in Sudan, 85.7%; in Tanzania 92.1%; in Uganda, 93%; and in Ethiopia a staggering 99.4% a case scenario for South Sudan with most IDPs in informal UN sites in urban centres. (Nakutudde 2010)

### **Legal Systems in housing Planning**

Booth, (2016) noted that, despite the acknowledgement of the importance of law in the exercise of the powers of planning, little understanding exists of the extent to which law and the legal process has shaped the objects and practice of planning. UN Habitat, (2009) indicated that legal systems are instrumental in defining the extent, nature, and location of the regulatory powers of planning systems. Further, the laws define the rights and legitimate limitations of rights for public purposes. The legal systems have far reaching implications for urban development because the laws define the system of urban government, establish the system of urban planning and regulation of land development, and delimit the powers of urban planners and managers. Booth noted that planning has been legitimized by law, and planning would not be what it is without law. The legal systems define rights and responsibilities in access to and enjoyment of urban opportunities and services such as housing, clean water, land and property rights, and rights to resources that are held in common. Law, in essence, defines what can and cannot be done with respect to urban planning (Booth, 2016). It was therefore appropriate to inquire into legal and institutional systems to identify the barriers to plan implementation because urban-planning systems and regulatory-planning practices are shaped by the prevailing legal systems (Booth, 2016; UN Habitat, 2009).

In other jurisdictions, like the United States, the legal system has influenced planning policies through judgments, court decisions, and enforcement practices that the judgments legitimize or validate, thereby compelling adherence (UN Habitat, 2009). The weak legislation in land policy and housing in South Sudan has been seen as a gateway to corruption and mismanagement of essential ingredients of Housing and Land property rights. Land was considered to belong to the people. As averred by Deng (2017) most groups distinguished between land used for grazing and hunting and land used for farming and residences, and different rules applied to the various land categories. Local leaders determined who had rights to land and other natural resources and who must seek permission for use of land (Deng 2017).

### **Theory of Constraints (TOC)**

Theory of Constraints hypothesized by Goldratt, (1984) is a philosophy of project management and it states that the weakest link in a chain, which could be a system or a process, determines its strength. Goldratt (1984) argued that TOC provides a channel of gaining better control of the organizations initiatives thus assisting them to achieve their goals. TOC is a systemic approach of identifying limitations hindering the success of a system and to execute the necessary changes for removing them. TOC is comprised of distinct, but interconnected conceptions which include

processes of logical thinking, processes of performance measurement as well as logistics. Goldratt, (1984) postulated that TOC's process of logical thinking provides a chain of phases that are a combination of experience, intuition to gain knowledge and cause effect. In this case therefore, the theory discusses the dependent variable, the performance of projects. There is need to reduce the limitations to the performance of a project so as not to compromise on the quantity and quality of the delivered products or services.

Goldratt, (1984) further argued that because the focus of the organization should be on the constraints it's facing, eradicating the constraints should be an easy task and should not take up much of the organization's resources. Goldratt, (1984) recommended five steps for the management of market and resource constraints. The first step was the identification of the constraints. To strengthen the weak link in a system one must first identify it, which could either be a policy or a physical weak link. Secondly, the project management should be able to exploit the identified constraint. This involves making quick improvements using minimal existing resources and without the need for any major upgrades (Goldratt, 1997). The third stage involved subordinating everything else to the exploitation of the constraint as stated above. This is done by ensuring that all the other activities in the system are in line with the resolution of the identified constraint. Alleviating the constraint is the fourth step of the management of the constraints. The management here takes all the necessary actions for eliminating the constraint. This is only done if the management was not successful in the second and third steps. Finally, in the fifth step, the management starts the process all over again. This is because according to Goldratt (1984), eliminating constraints is a cycle that begins but doesn't end because another constraint will always arise after eliminating the last one. The relevance of this theory to this study is in clarifying the corruption variable as one of the constraints affecting housing and land property development in urban centres in South Sudan. The typical limitations stem from ineffective management practices such as bloated costs emanating from corruption and budgeting poorly. The theory highlights the need for the project managers, government engineers and surveyors to detect the limitations that hinder the housing and land property development in urban areas and offer direct mechanisms for solving these limitations

### **Land Governance**

Land governance according to Deng, (2019) refers to the rules, processes and structures through which decisions are made about access to land and its use, the manner in which the decisions are implemented and enforced, and the way that competing interests in land are managed. Land governance frameworks include statutory, customary and religious institutions, and encompass policy and legal instruments as well as traditional and informal practices of communities for access, use, transfer and control of land rights.

At the national level, the post-CPA government introduced the South Sudan Land Commission (SSLC) as the highest land governing institution in the country. This commission was tasked with



the development of land policies and laws in coordination with national institutions that are connected to land tenure such as the Ministry of Land and Physical Infrastructure and the Ministry of Agriculture and Forestry (GOSS, 2005). Based on the decentralisation policy adopted by the SPLA-led government, SSLC was to be decentralised to the sub-national (state) and local levels of the government as a way of extending its services to all sectors of the society. Each state obtained a State Land Commission (SLC), which were further decentralised into County Land Authorities (CLA), Payam Land Councils (PLC), and Boma Land Administrations (BLA). A CLA is headed by the County Commissioner who is appointed by a state governor, a PLC by the Payam director appointed by the County Commissioner, and a BLA by the Boma administrator who is also a staff of the County. Chiefs also played roles on local land governance sometimes formally and in some cases informally. As part of the formal institutions, chiefs discuss land issues in their areas with Payam Directors and Boma Administrators who are the heads of PLC and BLA. At the same time, they (chiefs) engage non-state actors on local land governance on land issues in their areas as they are also considered part of the informal institutions. Like the other staff of the local government, chiefs are appointed to their positions, usually by the County commissioner. Those appointments became the practice though the existing laws suggest individuals holding those positions should be elected by and become answerable to the constituencies they serve (GOSS, 2005). As part of the process of land reform, the SSLC developed the Land Act of 2009, which introduced a new regime of landownership by distinguishing land rights as public, private and community land; respectively owned by the state, private entities and communities (GOSS, 2009a). This is notable, as pre-CPA land laws gave ownership of land in rural areas in South Sudan to the state.

It is worth noting that Land and property policies are an important part of the state-building process, and are thus shaped by the configuration and political history of the country concerned. Yet a significant proportion, if not most of the land in developing countries including South Sudan still retains its informal status, even in Latin America, which is very different from other continents.

### **Land Act 2009 on HLP**

The Constitution recognizes the right of women to own property and share in the estates of their deceased husbands together with any surviving legal heir of the deceased (Art. 16). The right to own property is further confirmed in Art.28 which states that every person shall have the right to acquire or own property as regulated by law and no private property may be expropriated saves by law in the public interest and in consideration for prompt and fair compensation. Under Article 170 all land in South Sudan is owned by the people of South Sudan and its usage shall be regulated by the government in accordance with the provisions of this Constitution and the law. It classifies the land tenure system in South Sudan that shall consist of public land, community land and private land. The rights in land and resources owned, held or otherwise acquired by the Government shall be exercised through the appropriate or designated level of government which shall recognize

customary land rights under customary land law. Under Article 172, the Land Commission was established as an independent commission composed of persons of proven competence, experience, integrity and impartiality to deal with land issues. The Land Act prescribes that land may be acquired, held and transferred through Customary, Freehold and Leasehold tenure. All citizens hold freehold titles to their lands. Non-citizens may acquire leasehold for specific periods but may not possess land in freehold, according to Section 14 of the Land Act.

According to the 2009 Land Act, *“Customary land rights including those held in common shall have equal force and effect in law with freehold or leasehold rights acquired through statutory allocation, registration or transaction.”* The Land Act gives special protection to pastoralists, stating that, *“no person shall without permission... carry out any activity on the communal grazing land which may prevent or restrict the residents of the traditional communities concerned from exercising their grazing rights.”*

The Land Act reiterates the Constitutional provision that the people own all land in South Sudan and its usage shall be regulated by the Government and land may be acquired, held and transacted through the following tenure systems customary; freehold; and leasehold. The Land Act protects land rights. It states that every person shall have the right to acquire or own property as regulated by law and as stipulated the Constitution and land cannot be expropriated or confiscated save by law in the public interest and in consideration for a prompt and fair compensation. It ensures security of occupancy of land rights under customary tenure. However, the Land Act tenure system is quite different from that of the Constitution.

The Land Act prescribes that land may be acquired, held and transferred through Customary, Freehold and Leasehold tenure. All citizens hold freehold titles to their lands. Non-citizens may acquire leasehold for specific periods but may not possess land in freehold, according to Section 14 of the Land Act.

### **Local Government Act (2009)**

The local government Act Sections 88, 89, 90 and 92 provide the mandate of the Local Government Councils to administer, land surveys and land maps, enact laws to regulate land management, land use control and protection, regulate territorial land which is demarcated and gazette by the Government of South Sudan. They are further mandated to provide procedures for acquiring community land and for the maintenance of ownership and derivatives of access to land and registration of land rights. Section 91 provides for the establishment of Council Land Committees or Authorities to ease the processes of land management and administration within its jurisdiction

### **Challenges to HLP in urban centres**

- i) **Weak land administration and dispute resolution mechanisms**

The lack of availability and inefficiency of land administration services and mechanisms to address disputes at National and State levels including at County, Payam, and Boma levels results in difficulties related to securing land documentation and resolving land disputes. Most formal implementing institutions provided for in the 2009 Land Act and in the Draft Land Policy (yet to be adopted), have not been established and related laws have been disseminated in only a limited way. Government officials at the state level lack awareness, training and capacity on how to implement the laws. Absence of active land administration institutions, lack of awareness and capacity for implementation of land laws at the subnational levels make it especially challenging for rural communities to access HLP related services. Customary courts are often tasked with resolving land disputes however customary court members also often lack understanding of legislation required to pass fair judgement. The multiplicity of public institutions carrying out land administration functions poses a major threat to tenure security in South Sudan as a result of overlapping mandates with no effective coordination. There is inadequate clarity about the distribution of land administration functions between the national MLHUD, the State Ministries of Housing Lands and Public Utilities, the local government and traditional authority. This creates confusion as state organs at different levels respond to different incentives and are subject to often competing interests, creating a situation where conflicting interests of powerful elites at the different levels of the State and between them and communities create tensions and undermine effective functioning of the land administration system.

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

#### **ii) Lack of legislation implementation**

Lack of legislation implementation increases the risk for breach of HLP rights. The weak efficacy and fairness on the applicability of the plural land regime, which allows the co-existence of statutory and customary land tenure regimes, may undermine HLP rights, particularly those of vulnerable groups as women, child-headed households, the elderly, amongst others (Deng, 2019). The ongoing delay in the approval of the National Land Policy, under development since 2006, undermines filling gaps in HLP related legal frameworks that draw from the Land Policy. The legal insecurity weakens the ability of HLP agencies to respond appropriately.

### **iii) Registration and documentation**

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

### **iv) Relocation of IDPs and refugee returnees**

The full scale of HLP issues across areas of South Sudan has not yet fully materialized given the scale of returns in comparison with the displaced population. However, with the gradual improvements in stability and implementation of the peace agreement this is likely to change. Many IDPs and refugee returnees are reported to have had their houses and lands destroyed or occupied, which will likely lead to an increase in HLP disputes in these areas. Women are especially affected because of cultural and social norms that hinder women's access to HLP related rights. These norms prohibit women and girls from owning or inheriting HLP. Widows and separated/divorced women are often particularly vulnerable because they may not be documented as heads of households with land tenure rights, thus being subjected to forced marriages or obligated to stay in violent domestic situations in order to maintain access to HLP.

### **Research Methodology**

This study, based on a qualitative methodology, used ethnography based on a case study approach and interviews. These were drawn primarily on empirical data gathered from 200 respondents from different communities and stakeholders in South Sudan. Purposive sampling was used for this analysis where researchers choose who to include in the study on purpose. The primary data was complemented by data from secondary sources comprising of the analysis of policy documents, publications by various governmental and non-governmental organisations. Informants for the interviews and the FGDs and the subjects for the observations included government officials, representatives of civil society, chiefs, traditional leaders, elders, and communities. These were selected based on their knowledge and experience as dwellers in the urban. Through such interactions, researcher linked narratives of respondents obtained through interviews, group discussions to their daily lives, which contributed to the development of an accurate description of the group under study (Geertz, 1973). The strength of ethnography in gathering reliable data that was rooted in its ability to combine the different research methods used for collecting the data under a case study approach. A case study by itself is a powerful research tool in qualitative research which can also be used independently for gathering data (Noor, 2008; Krusenvik, 2016). In this research, I used the case study approach to produce context-specific data to describe the

housing and land property in urban centres in South Sudan on governance, ownership and land use.

## Discussion of findings

### Demographic data of respondents

This section presents data on the demographic profiles of respondents, who participated in the study which sought to examine housing and Land property development in Urban centres in South Sudan.

**Table: 1**

#### Sex distribution of respondents

No	Distribution	Number	Percentage %
1	Male	150	75
2	Female	50	25
	Total	200	100%

Table, 1, shows the sex distribution of respondents in this study. It showed that approximately eighty per cent of respondents (75%) were male and that twenty per cent (25%) were female. This indicates that the majority of the participants who were respondents in this study were males. The higher percentage of males in the sample was indicative of the fact that they dominate in housing and land property issues as opposed to females due to gender imbalance in land governance and land rights in South Sudan; despite them being victims of land conflicts as averred by Deng (2016).

### Weak legislation and implementation

The respondents were asked if there were policies and legislations on Housing and land property rights in urban areas in South Sudan. 80% of the respondents were in agreement that there were legislations in place however, the major problem was the implementation of the policies and regulations, 20% said they were not aware of any legislations since none was being implemented. As averred by Deng (2019) that, the weak efficacy and fairness on the applicability of the plural land regime, which allows the co-existence of statutory and customary land tenure regimes, undermine HLP rights, particularly those of vulnerable groups as women, child-headed households, the elderly, amongst others (Deng, 2019). The ongoing delay in the approval of the National Land Policy, under development since 2006, undermines filling gaps in HLP related legal frameworks that draw from the Land Policy.

### Housing & Land dispute resolution mechanisms

The study sought to find out if the government had housing and land dispute resolution mechanisms to address the challenges experienced. Majority of the respondents (85%) opined that the resolution mechanisms were extremely weak and marred with gross corruption. The study



found that corruption wielded significant influence on project outcome thus form the biggest negative dimension which contributes substantially to stalling, delaying and subsequent collapse of public housing development projects in urban centres. The study establishes that, positive change in curtailing opportunities for corruption factor yields an equivalent positive factor in boosting the prospects of public housing development projects succeeding. The study established that corruption factor in public housing development projects is exacerbated by aspects notably, existence of loopholes of procurement laws, complex government bureaucracy, failed prosecution system, slow judicial adjudication of land cases and government transitions. The study found that the existing procurement laws in South Sudan Public procurement & Asset Disposal Act of 2015 still has weaknesses making it difficult to effectively prosecute irregularities conducted by officials implementing public housing development projects. Judiciary handling of land cases also critically slows down public housing projects as selfish parties have always used these channels to block government projects. Finally, bureaucracy in government and government transitions has repeatedly resulted in altering of priorities thus programs such as public housing resulting in stalling when new administrations come.

The study further found out that lack of availability and inefficiency of land administration services and mechanisms to address disputes at National and State levels including at County, Payam, and Boma levels results in difficulties related to securing land documentation and resolving land disputes. Most formal implementing institutions provided for in the 2009 Land Act and in the Draft Land Policy (yet to be adopted), have not been established and related laws have been disseminated in only a limited way. Government officials at the state level lack awareness, training and capacity on how to implement the laws. Absence of active land administration institutions, lack of awareness and capacity for implementation of land laws at the subnational levels make it especially challenging for rural communities to access HLP related services.

### **Clarity on roles of stakeholders in HLP by Government**

The study sought to find out if various directorates and stakeholders in Housing and land property departments had clear roles or structure. 40% of the respondents opined that there were clear roles. These were mainly respondents from the Ministry of Land, Housing and Local government who are the custodians of the HLP rights. 60 % who were the majority averred that there were confusions on roles performed by the state government, Counties and local government. The Land Act, 2009 gives Customary courts tasks with resolving land disputes however customary court members lack understanding of legislation required to pass fair judgement. The multiplicity of public institutions carrying out land administration functions poses a major threat to tenure security in South Sudan as a result of overlapping mandates with no effective coordination and clear roles. There is inadequate clarity about the distribution of land administration functions between the national MLHUD, the State Ministries of Housing Lands and Public Utilities, the local government and traditional authority. This creates confusion as state organs at different levels respond to different incentives and are subject to often competing interests, creating a situation where

conflicting interests of powerful elites at the different levels of the State and between them and communities create tensions and undermine effective functioning of the land administration system.

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

### **Housing and land property planning**

The study sought to establish what could be done to alleviate the bottlenecks or challenges in the housing and land property issues in the urban centres. Majority of the respondents (70%) said there was need for proper planning for housing and land property guidelines which included transparency and accountability. 30% had varying issues ranging from stiffer penalties for corrupt individuals to resettling the IDPs who seem to cause more challenges in Urban centres due to insecurity in the rural areas. The study makes a finding that planning factor effect on housing projects outcome is subject to the following planning dimensions, pre-project implementation phase feasibility analysis, poor operational coordination, tedious approval processes and political interference. Incomprehensive project feasibility compromises all planning processes which exposes the project to failure. Further, it sets challenges such as operational coordination which slows down execution of projects implementation tasks. Political selfish interests are also exposed on the planning stage which creates barriers for effective coordination and faster regulatory approvals for project implementation. Any minimal fault on planning minimizes the likelihood of project success, whereas good project planning boosts odds of the project success (Deng 2019).

### **Recommendations**

In light of the findings of this study on land policy in South Sudan, I wish to make suggestions and possible recommendations.

#### **i) Clear Legal policy on housing and land property regulation**

Many sections of the Land Act 2009 and the Transitional Constitutional Amendment of 2011 are inconsistent and therefore obsolete in an independent South Sudan. For example, Land registration functions are still performed by the Judiciary in spite of the clear provisions of section 54 of the Land Act 2009 to the effect that the land registry shall be domiciled in the MLHUD. Moreover,

state governments and even municipalities are known to register land. The multiplicity of public institutions carrying out land administration functions poses a major threat to tenure security in South Sudan as a result of overlapping mandates with no effective coordination. The government should amend the sections of the land Act 2009 to meet the needs of South Sudanese. This should include clear separation of powers on land rights, land ownership and land administration by the levels of Government (national, State, County, Payam, Boma) to avoid confusion and duplication. The South Sudan Land Commission should enhance policy that identifies a great number of things that government and citizens must do to achieve this goal, including adopting various legal reforms; clarifying the roles of government institutions with respect to land administration; building the capacity of land administrative institutions, including civil and traditional authorities; taking steps to ensure these institutions are transparent and accountable; providing guidance on good land use planning practices and strengthening the rights of women to land. Indeed if this commission was working according to its mandate, there will be less land issues and therefore less violence. The government should fully operationalize the Land commissions to the lowest level of government for service delivery and avoid the risks of standardisation by putting in place flexible and open mechanisms to manage rights, which allow the actors responsible for their implementation to take account of local specificities and different forms of organization. In addition, address the need for reliable and effective mechanisms by providing initial training and support to enable the actors involved in land management to learn from past and present experiences, adapt procedures to deal with problems encountered during the process, and put in place monitoring and control mechanisms.

### **iii) Transparency and accountability**

There are widespread concerns about corruption, favouritism, and capricious actions by some government officials and traditional leaders in the administration and allocation of land. Those without power, political access, and money fear they will be at a disadvantage when seeking to acquire land or defend their land rights. To mitigate this, the government should digitalise its services and operations in all land matters to reduce delays, paperwork and corruption. Citizens will not enjoy access to property nor will they be secure in their property rights where land allocation decisions are unduly delayed or land records are poorly maintained and are inaccessible. The Central and state governments should endeavour to make the financial resources available to ensure that public land offices are adequately staffed and funded and that staff are well-trained.

### **Resettlement of IDPs**

Resettlement of returnees and IDPs has been a major challenge for South Sudan. At the end of the civil war, it had been hoped that returnees would go back to their places of origin, where the process of their resettlement would be handled effectively by traditional institutions. However, many returnees have not shown a willingness to return to their ancestral lands but have chosen to settle in urban and peri-urban areas where the majority of them either live in informal settlement

or illegally occupy the land of others. The situation has been further complicated by insecurity and lack of social services in rural areas. Managing the resettlement of returnees and IDPs in urban and peri-urban areas has been much more challenging, as authorities and competitions between traditional institutions, local authorities and the Government of South Sudan (GOSS) come into conflict (UNHCR 2022). 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. The government should involve all the stakeholders and the political good will to resettle the IDPs. There is too much land in South Sudan.

### **Conclusion**

Effective institutions governing according to the rule of law are essential for successful implementation of the housing and land property rights in the urban and achievement of secure land tenure in South Sudan. As previously noted, these institutions face major capital and human resource challenges, compounded currently by poorly defined and often overlapping mandates, lack of coordination, and poorly conceived strategies and work plans. All these factors have combined to reduce the efficiency and effectiveness of land institutions in the country. There is continuing confusion in urban areas, as both state and county-level institutions are involved in the administration and allocation of land, sometimes in conflicting roles. The two key issues in policies that aim to secure land tenure are (i) determining what kind of rights will be recognised, and (ii) establishing reliable institutional mechanisms that are capable of providing lasting security of tenure and sustaining the administration of legally recognised rights. In addition to developing procedures to formalise rights to parcels, it is also important to use the diverse experiences, procedures and tools that now exist to consider how changes to these rights can be secured. Recognising and respecting diversity is crucial in designing and implementing inclusive housing and land property policies to formalise rights. Formalising rights is a major component of land policies, but it will not automatically improve security of tenure as legal documents are only useful if they are supported by reliable and accessible institutional mechanisms.

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