

Housing, Land and Property, Aid and Conflict in South Sudan

A conflict sensitivity analysis of emerging housing, land and property (HLP) issues and trends. Based on discussions at an expert roundtable (July 2018) and aid actor workshop (August 2018).



Background

South Sudan is characterised by mass, continued and repeated displacement. Against this backdrop, the January 2017 announcement of 32 states demarcated partly along ethnic lines spelt immediate concerns for returns and relocations. Occupation of land following displacement of local populations has further complicated the picture, as have government decisions to demarcate empty or occupied land for sale in some parts of the country.

Why does it matter from a conflict sensitivity perspective?

- In South Sudan, land is closely associated with identity, culture, heritage and wealth as well as access to resources, services and livelihoods. This makes it inherently contested, which in turn leaves housing, land and property issues vulnerable to manipulation for political purposes.
- Providing aid that interacts with contested land can pit humanitarian principles against one another. Impartiality dictates that aid must be provided solely on the basis of need. Anyone with needs has the right to assistance, regardless of their right to the land they are occupying or using when they receive it. Conversely, a commitment

What does Housing, Land and Property (HLP) mean in the humanitarian context?

Within the humanitarian coordination system, the Norwegian Refugee Council (NRC) is the globally designated focal point agency for Housing, Land and Property (HLP). Established in 2007, the HLP Area of Responsibility (AoR) brings together non-governmental organisations, UN agencies and academic institutions at global and country levels to address HLP issues in humanitarian crises.

to neutrality prohibits humanitarians from engaging in 'controversies of a political, racial or religious or ideological nature.'¹ Yet such

¹ Hans Haug, ICRC, '[Neutrality as a fundamental principle of the Red Cross](#)', December 1996

controversies are unavoidable when providing assistance in the context of a political policy of ethnic redistribution such as 32 states. As such, decisions to assist today will impact conflict dynamics for many years to come.

Access to housing, land and property in South Sudan is unequal – and not just because of economic inequalities. Gender and ethnicity can also be determining factors in who has access to housing, land and property. In this context, a basic ‘do no harm’ programming approach can inadvertently reinforce and even legitimise unjust land claims.

How can aid impact HLP rights?

Whether digging boreholes, building or rehabilitating shelters, distributing seeds for planting or simply assisting people where they are, on some level, all aid interacts with land. In doing so, it inherently changes the use, value and perceptions of that land. Simply by assisting people where they are, aid can be seen as legitimising their presence there. This can be problematic when housing, land and property (HLP) ownership and access rights are contested. This is often the case in South Sudan, where the historical and current context have been characterised by large-scale displacement and seasonal migration for many years. Contestation may not always be apparent at the time of intervention – particularly where people have been displaced and so are not around to claim their rights. In these cases, aid may inadvertently entrench and reinforce land-grabbing by individuals or politically-backed groups. Aid workers should consider these dynamics when:

- Assisting people where their HLP rights are contested: Disputes over HLP rights are most common in areas affected by displacement and seasonal migration (though many functional local mechanisms for managing HLP disputes arising from seasonal migration exist). This includes displacement from previous wars, which can result in two or more seemingly legitimate claims to housing and land. For example, in Malakal, both the Shilluk and Dinka profess a historic claim to the east bank of the White Nile. Large-scale migrations and population displacements over generations ensure that, in the absence of any

written record or formal, fixed territorial boundaries, it is virtually impossible to settle this debate with reference to historical ‘fact’.² Such a situation can leave aid actors in the contentious position of deciding whose rights to prioritise – either explicitly or implicitly through their interventions.

- Promoting or supporting land-based livelihood activities: This includes distribution seeds and tools, agricultural skills training, and installation of irrigation systems as well as support for small businesses. By supporting specific individuals’ or groups’ use of land, aid can be at least perceived as legitimising claims over primary land rights to it.³ Critically, it can also change the value of the land.
- Allocating housing, land and property for resettlement of or use by displaced people: South Sudan has a long history of displacement, with many areas still seeing arrivals and departures on a simultaneous basis. This means that land owners are not always around to represent themselves. In this context, allocating HLP to new arrivals can be conflated with allocating HLP *rights*, thereby causing conflict as and when land owners return. Moreover, efforts to allocate land to displaced people could jeopardise communities’ land rights. When the government allocates land to displaced people, it effectively expropriates community land. It is therefore, important, that affected communities are consulted and compensated in accordance with uniform protections to prevent the escalation of conflict.
- Assisting women through land-based interventions: The Transitional Constitution, the Land Act, and the Local Government Act all explicitly recognize women’s rights to own and inherit housing, land, and property. However, cultural norms and customary land tenure law often pose barriers. This typically leaves land-based assistance targeting women reliant on support from male-dominated customary mechanisms – and this support is not always forthcoming. In such cases, aid actors may be forced to adapt their targeting and activities, thereby running the risk of further entrenching harmful gender dynamics. Moreover, despite

² Daniel Norfolk, ‘Evolving Political, Economic, and Security Dynamics in Malakal PoC Site and Malakal Town’, October 2018 (forthcoming)

³ For more on primary and secondary land rights, see Martina Sanchez and Cherry Leonardi, Rift Valley Institute, ‘[Dividing Communities in South Sudan and Northern Uganda](#)’, May 2016

legal provisions, women's rights to land remain largely conditional upon their marital or childbearing status. Combined with an increased number of women-headed households since December 2013, this means that a growing number of women lack the security of tenure necessary to achieve sustainable livelihoods and durable solutions.

Determining HLP ownership and access rights

In South Sudan, HLP ownership and access rights are determined in different ways in different places. However, with just four percent of land titled, customary tenure systems (that use other means of determining HLP rights than just physical title deeds) are the most prevalent means. Customary tenure systems are context-driven, and unique to their respective localities. This means that aid actors undertaking land-based interventions cannot take a standardised countrywide approach to determining HLP rights. However, a number of standard factors can be considered to determine local perceptions of legitimate ownership of and access to land. These include:

- Different land tenure systems: 'Customary tenure systems gain their legitimacy from the trust a community places in the people and institutions that govern the system.'⁴ In some parts of the country, these customary systems can come into conflict with new, sometimes contradictory land ownership systems.. Authorities in Malakal and Renk (Upper Nile) are reportedly demarcating empty land for titled sale. Such revenue-raising policies may represent a wealth transfer from displaced individuals to the government⁵ in cases where the land was previously owned, while also consolidating the political strategy behind the 32 states model.

Competing and contradictory legal systems reflect a tension between traditional customary law and institutions enshrined under the 2011 Local Government Act, with considerable confusion and at times competition over their respective remits, roles and responsibilities resulting in varied application across the country. Intervening in this context without first establishing a comprehensive picture of community perceptions

of legitimate HLP rights may inadvertently legitimise one contested claim over another, thereby contributing to tensions and resulting conflict.

- Different livelihood groups: Agriculturalists and pastoralists have different uses for land at different times. Where these different agendas meet, tension and conflict often ensues. To manage this, many customary tenure systems already include mechanisms to address these tensions. Following on from the previous example, pastoralists from Tonj and Gogrial and farmers near Wau signed the so called Marial Bai agreement in November 2016, which outlines mechanisms for resolving cattle migration related conflict, procedures for seeking permission to move cattle, and compensation for crops eaten and cows killed.⁶

Local capacities to manage HLP risks

Determining HLP ownership and access rights takes time. Coupled with the pressure of short project timeframes and required spending (or 'burn') rates, this often leaves aid agencies caught between the need for due diligence and the need to deliver. While all aid actors face this pressure, the associated risks are more severe for local staff. As local citizens, local aid actors are best placed to navigate local tenure systems. However, they are also more vulnerable to local pressures to reflect certain perceptions of legitimate access and ownership over others.

The vast majority of the more than 100 aid workers killed in South Sudan since December 2013 were national staff, and primarily from local rather than international aid agencies. As such, this is more than a transfer of risk, because the risks faced are greater for locals. 30 donor and aid agencies committed to providing 'more support and funding tools for local and national responders' by 2020 under the 2017 Grand Bargain. Despite this, the institutional capacity – broadly, staff, policies, systems and training – required to manage the risks of increasing leadership of sensitive issues like determining HLP rights has insufficient support, with funding typically covering activity costs only. Transferring risks and responsibilities to local

⁴ Tiernan Mennen, NRC, '[Customary Law and Land Rights in South Sudan](#)', March 2012

⁵ For more on wealth transfer, see CSRF's Joshua Craze, CSRF, '[Displacement, Access and Conflict in South Sudan](#)', May 2018

⁶ UNMISS, '[Marial Bai agreement to regulate relations between farmers and pastoralists in Wau area](#)', December 2016

partners without sufficient investment in their ability to manage them inherently undermines the Grand Bargain and with it, local humanitarian leadership.

Recommendations

A common inter-agency conflict sensitive approach to HLP issues should be adopted where possible. However, different organisations have different mandates, different conflict sensitivity ambitions, and different risk thresholds. As such, aid agencies should reflect on their own remits and objectives and make contextually-informed decisions about when, where and how to approach aid interventions interacting with housing, land and property.

- **Before intervening, aid agencies should ascertain, to the best of their ability, a comprehensive picture of local perceptions of legitimate HLP rights.** Perceptions assessed should include those of current, previous and seasonal occupants, as well as local authorities. These perceptions may at times conflict, reflecting conflicting motives and interests among stakeholders.
- **The Inter-Cluster Working Group/Protection Cluster HLP sub-cluster/interim HLP taskforce should call for local assessments of HLP rights and customary tenure systems.** These assessments should then be disseminated and made accessible to all partners as ‘public goods’ via appropriate channels such as mailing lists, cluster meetings and websites.
- **If, following assessment of local perceptions, determining HLP rights still proves challenging, aid actors should seek support from organisations with notable HLP expertise,** including the interim HLP taskforce, the anticipated HLP sub-cluster of the Protection Cluster, IOM, the Norwegian Refugee Council (NRC), Norwegian People’s Aid (NPA) and UNMISS Rule of Law.
- **When considering where to locate collective and/or inter-communal resources like water points, aid agencies should engage with customary tenure systems and their stakeholders,** which may include regional land alliances, community leaders, church leaders and peace commissioners.
- **Aid agencies should look at cattle migration patterns and changes to them based on changing rainfall patterns** to inform indicators to monitor

competition (and thus potential conflict) over the resources they have established.

- **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. To support this, international aid agencies should conduct joint risk assessments together with local partners.
- **Aid actors should use the 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 men and women within communities to ensure community buy-in.

Existing resources

IOM, [Integrating Housing, Land and Property Issues into Key Humanitarian, Transitional and Development Planning Processes](#), 2018

Matthew Pritchard, NPA, South Sudan Law Society, State Land Alliances, [Land Disputes in Urban and Peri-Urban South Sudan](#), 2017

Peter Justin & Han van Dijk, [Land Reform and Conflict in South Sudan: Evidence from Yei River County](#), 2017

Cherry Leonardi & Martina Santschi, Rift Valley Institute, [Dividing Communities in South Sudan and Northern Uganda: Boundary Disputes and Land governance](#), 2016

UN Habitat, [Framework for Evaluating Continuum of Land Right Scenarios](#), 2016

NRC & IFRC, [The importance of addressing Housing, Land and Property \(HLP\): Challenges in humanitarian response](#), 2016

Tiernan Mennen, NRC, [Customary Law and Land Rights in South Sudan](#), 2012

David Deng, Land Deal Politics Initiative, [“Land belongs to the community”: Demystifying the ‘global land grab’ in Southern Sudan](#), 2011