ABSTRACT

In South Sudan, food security highly depends on secure access to land. Currently, most farmers (agrarians or pastoralists) rely on customary tenure systems based on community landownership. Local customary institutions often deal with conflicts due to competing claims on landownership, contests over regulation of access to land, or land use, and need to be strengthened for more effective dispute resolutions. However, these institutions have become stretched by violence, insecurity and movement/resettlement of refugees/IDP. As a result, farming communities have been destabilized and denied the opportunity to cultivate their crops. Land is also a contentious issue for its mineral resources, as oil represents the biggest engine for development. Overall, there is a political interest to attract foreign investors and large-scale land acquisitions are on-going. But, these processes lack transparency, and have been source of conflict during the interim period following the signing of the Comprehensive Peace Agreement, and after the South Sudanese independence. Barely before the country celebrates its third independence anniversary, contestations among elites of the ruling party (SPLM) resulted in violent confrontations that led to a nationwide civil war. This in turned resulted in the displacement of hundreds of thousand rural communities, resulting in more tensions between the displaced and host communities, mainly on land issues. At institutional level, the war diverted the government’s attention from building its institutions to focus more on the war. Land governing institutions became among those neglected or given lower priorities.
This country factsheet was prepared under auspices of LANDac – The IS academy on land governance – and was originally compiled by the Royal Tropical Institute (KIT – Thea Hilhorst and Nicolas Porchet) at the request of the Ministry of Foreign Affairs – The Netherlands. In 2015, the factsheet was updated by Peter Justin (Postdoc researcher at the African Studies Centre in Leiden) in collaboration with LANDac (Gerard Baltissen, KIT; Gemma Betsema, LANDac; Jur Schuurman, Utrecht University-IDS) with support from the Food and Business Knowledge Platform (F&BKP) as part of the LANDac/F&BKP knowledge agenda on land governance and food security.
Regulatory land governance framework
By 2013, the Republic of South Sudan (ROSS) aimed to develop, disseminate and implement a Land Act and related legal frameworks. The work of South Sudan Land Commission, established in 2006 as part of the implementation of the CPA, is integrated in the Natural Resource Sector Plan for 2011-2013. Programme 4 of the action plan concerns land management.

The South Sudan Land Commission (SSLC) drafted the Land Act that was passed by Parliament in 2009. Other laws passed by the Parliament that have relevance to landholdings included the Local Government Act of 2009, the Investment Promotion Act of 2009, and the Petroleum Act of 2012 (Deng, 2011). In February 2011, SSLC developed a draft of Land Policy which would help to amend the Land Act and the other legal frameworks on land, and also to help in the establishment of land governing institutions at all levels of the government. Ever since, the draft of the Land Policy is not yet passed, and in 2014 returned by the Presidency to the Parliament for further deliberation before this is signed into a law. Other priorities in the policy include strengthening of women’s rights on land ownership, and development of a Community Land Act.

For the development of the draft of the land policy, nationwide consultations were carried out in 2010, covering all the ten states of South Sudan. In this draft version, access to land is identified as a ‘social right” and there is support for community ownership.

<table>
<thead>
<tr>
<th>Law</th>
<th>Content</th>
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<tbody>
<tr>
<td>The 2009 Land Act</td>
<td>All land is owned by the people of southern Sudan, and the state is responsible for regulating use of the land.</td>
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<tr>
<td></td>
<td>Provides for the registration of land in southern Sudan; all land, whether held individually or collectively, shall be registered and title granted.</td>
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<td>The Land Act classifies land as public, community, or private land.</td>
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<td></td>
<td>Public land is land owned collectively by the people of southern Sudan and held in trust by the state. Public land includes land used by government offices, roads, rivers and lakes for which no customary ownership is established, and land acquired for public use or investment.</td>
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<tr>
<td></td>
<td>Community land is land held, managed, or used by communities based on ethnicity, residence, or interest. Community land can include land registered in the name of a community, land transferred to a specific community, and land held, managed, or used by a community.</td>
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<td></td>
<td>Private land includes registered freehold land, leasehold land, and any other land declared by law as private land.</td>
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<tr>
<td>The 2009 Local Government Act</td>
<td>Calls for a local government council, established at the county level, to be the primary institution managing land issues within rural communities</td>
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<td></td>
<td>calls for land committees, within the local government council, to be responsible for the mediation of consultation processes of land lease between the community and other investors</td>
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<tr>
<td>The 2009 Investment Promotion Act</td>
<td>Act lays out the procedures for certifying and licensing foreign investors to operate in South Sudan.</td>
</tr>
<tr>
<td></td>
<td>Explicitly limits foreign investments in agriculture and forestry to renewable terms of 30 and 60 years, respectively.</td>
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<tr>
<td>The 2012 Petroleum Act</td>
<td>Prohibits mining in private or community land, and such mining can only be undertaken in accordance to terms and conditions mining licenses granted. Compliance with the provisions of the 2009 in respect to land acquisition is fundamental to these terms and conditions.</td>
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<tr>
<td></td>
<td>The Act obliges the state to consult with landowning communities or individuals, and to reach an agreement before licensing this to a contractor</td>
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<tr>
<td></td>
<td>The Act obliges the state/contractor and carry to out Social and Environmental Impact Assessments (SEIA), and communities that will be affected should be promptly and justly compensated</td>
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<tr>
<td></td>
<td>The Act requires that the Land Act of 2009 should be followed with respect to land acquisition, and such land should be acquired on rental or easement basis</td>
</tr>
</tbody>
</table>
**Land tenure forms**

Following the signing of the Comprehensive Peace Agreement, new long-term leases over community lands were issued by the authorities or in collaboration with traditional leaders, to commercial interests and well-connected individuals without consulting local populations or obtaining their consent. By default, land over which no private ownership including customary ownership is established is declared public (LA 2009, TCSS 2011). This move greatly affected land rights and livelihoods of many rural communities; and in some cases, contributed to conflicts between the state and the society, or among different communities sometimes along ethnic lines.

The existing Land Act (2009) protects customary land rights in south Sudan, and expressly requires consultation with communities in the area of land acquired for investment (Pantuliano 2007; GOSS 2009a). In practice however, community consultation has been lacking or poorly conducted.

<table>
<thead>
<tr>
<th>Type</th>
<th>Characteristics</th>
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<tbody>
<tr>
<td>Customary</td>
<td>Covers most of rural areas. Is used for residences, agricultural, forestry, and grazing. May be granted for life to landholders and inheritable. Can be subject to usufruct rights and sharecropper agreements but cannot be alienated. Allocated by traditional authorities subject to pre-notification of local government authorities and pre-approval of local government authorities for non-residential land over 250 feddans (about 105 hectares)</td>
</tr>
<tr>
<td>Private</td>
<td>Held in perpetuity and includes the right to transfer and dispose of the land.</td>
</tr>
<tr>
<td>Public</td>
<td>Land pertaining to the State, including roads and other public transportation thoroughfares; watercourses over which community ownership cannot be established; and forest and wildlife areas formally labeled as national reserves or parks. By default, land over which no private ownership including customary ownership is established is declared public.</td>
</tr>
<tr>
<td>Leasehold</td>
<td>Leaseholds can be obtained for customary and freehold land. Leases can be granted for periods of 99 years or less. Leases of more than 105 hectares of customary land must be approved by two local government bodies.</td>
</tr>
</tbody>
</table>

**Institutional framework**

The Comprehensive Peace Agreement provided for the establishment of South Sudan Land Commission (SSLC), which should be devolved to all levels of the government as stipulated in the Land- and the Local Government Acts. Accordingly, each State will have a State Land Commission SLC), each County a County Land Authority (CLA), and each Payam a Payam Land Council (PLC). A Payam is the 2nd tier of the local government which falls immediately under a County. Payams (headed by head-chief) are subdivided to Bomas (headed by executive chief) and Bomas to sub-bomas (headed by sub-chief). In some cases, sub-bomas are subdivided to villages headed by a headman. In most cases, a Boma or sub-bomas comprise of a clan, which can also be referred to as a community.Land in most Payams is based on customary landholding, and access to this is gained through one’s membership to the landowning community or usufruct rights to ‘outsiders’ in agreement with the stakeholders. A major achievement of the SSLC so far is the development of the 2009 Land Act. Efforts to have the Land Policy enacted into a law are ongoing.

Customary land tenure systems are dominant and the point of departure of the 2009 Land Act. Customary rights are recognized as equal to formal land rights in force and effect. These systems vary throughout South Sudan, such as pastoralists dominated tenure in the North, semi-feudal systems close to the Nile, and other different practices amongst southern and western ethnic communities. Overall, land is owned by a community (ethnic group of a clan) and its custodianship vested in the authority of traditional leaders (chiefs); and cannot be sold. Use-rights are retained by a household and can be inherited. Tenure systems for land (residence, farming) and natural resources (grazing, hunting) are distinct. Local authorities determine who has right of access to land and other natural resources and who must seek permission for use (Rahhal and Salam 2006; Jok et al. 2004; Rolandsen 2009).

The management of (rural) land allocation may rest with customary institutions. This authority of traditional leaders (subject to oversight by local government) is sanctioned by the 2009 Land Act, provided that customary land rights held by individuals or groups prior to the enactment of the Land Act are recognized. In such cases community members have a right to access land to use for a residence and farming whereas traditional leaders have the authority to allocate land to members of the community (GOSS 2009a; De Wit 2004; Bruce 1998; Shanmugaratnam 2008).
The land administration systems and laws are developed by the SSCL and other institutions; notably, the Ministry of Justice (formerly Ministry of Legal Affairs and Constitutional Development MOLACD), and the Land Policy Steering Committee whose members comprised of government Ministers from 13 different Ministries and members of some INGOs (Pantuliano 2007; Rolandsen 2009; UNMIS 2010; ARD 2009b; EVD et al. 2009; Giampaoli 2010).

Contrary to the plans to devolve SSLC and the other land governing institutions to the different levels of the government, most of these institutions are yet to be established. At the national levels, SSLC is poorly staffed, and lacks the capacity to be fully operational. At the state levels, a couple of states managed to establish land commissions, but as it is the case with the SSLC, those established lack the capacity and the finances to develop and implement programs. Likewise, a few Counties and Payams managed to establish land governing institutions at their levels, but are barely functional. Furthermore, there are no clear procedures for establishing such institutions. Local Government Councils are responsible for planning and allotment of all Local Government Council land, leading the acquisition of land for government use, regulation of seasonal access to land (pastoralists, agriculturalists, etc.), establishment of Council Land Committees or Authorities and undertaking land management.

The Land Policy proposes development of a Community Land Act that would give more recognition to rural land rights under customary landholding as a way of improving livelihoods of rural communities. This will build on the Land-Authorities and Councils provided for by the existing Land Act. These are envisaged as civic authorities, established and empowered by law and subject to various regulations and that would act as trustees and administrators of community land rights. Traditional authorities may serve on Land Authorities and Land Councils, including in the role of Chair. But importantly, the trusteeship and administrative responsibilities over community land should be legally vested in the Land Authorities and Councils, and not in traditional authorities.

There has been considerable conflict between County, Payam officials and residents over boundaries between Counties and between Payams. Disputes are widespread, contributing to insecurity and in some cases the delay of investment and development. Authorities at appropriate levels need to be empowered and assisted to mediate boundary disputes and adjudicate boundary determination fairly and accurately.

Registration of community land (group rights) can be done in the name a traditional leader, a clan or family, or a community association as trustee for the community. Individual community members may be entitled to register individual rights to certain portions of community land once registered, (GOSS 2009a).

Land rights of women, youth and other vulnerable groups

Though the 2009 Land Act states that women shall have the right to own and inherit land together with any heirs of the deceased, women’s land rights are at present highly insecure (De Wit 2004; Pantuliano 2007; GOSS 2009a). Obstacles abound for widowed women when trying to claim inherited leasehold rights from the government. Divorced women are particularly disadvantaged as most of this category loose custody of their children and subsequently, access to land. Reliance on customary law might marginalize women because customary tenure systems offer only indirect right of access to land either through their parents and brother, or through their husbands when married (USAID, 2010). During the consultations for the new land policy in 2010, special workshops on improving women’s access to land and property were organized. But putting this to practice continues to be problematic, partly because the land policy is yet to be passed and signed into a law.

Land right of youth and other vulnerable groups continues to be problematic as well, and needs to be strenghted. Though the patreneal nature of the customary landholding in South Sudan gives inheritance right of land to male children, priority of inheritance is often given to married males, excluding a great deal of youth from having free access to land. Likewise, vulnerable groups such as people with disabilities gain access to land through their dependents (parents, brothehrs or sisters). Securing land rights of these categories of the society will continue to face some challenges as long as these are not properly articulated in national policies and laws. Surprisingly, none of the existing legal frameworsks on land has explicitly addressed land concerns of youth and other vulnerable groups.

Foreign direct investment

Foreigners cannot own land in southern Sudan but can lease land for periods up to 99 years (GOSS 2009a; Rolandsen 2009). For agricultural investments, leases are up to 30-years and renewable, for forestry this period is up to 60-years renewable. Prior to a lease a consultation with affected communities is required and an environmental impact assessment carried out.
Although the 2009 Investment Promotion Act explicitly limits foreign investments in agriculture and forestry to renewable terms of 30 and 60 years, respectively, many government institutions are not aware of this restriction and continue to issue 99-year leases to foreign investors for agriculture and forestry investments (Oakland Institute, 2011).

The size of large-scale investments in agriculture varies between studies. Deng (2011:15) identifies 28 cases for investment in agriculture and forestry/carbon credit that are being negotiated or completed between 2007 and 2010. According to the Oakland Institute (2011), the extent is much larger as deal or negotiation over large-scale investments would cover 5.15 million hectares (ha) of land, more than 8% of the total land area of the country. The reality is still difficult to assess as most of these investments are not yet operational. It is argued that these investments are made on doubtful legal footing and may contribute to conflict (Deng, 2011). Indeed, a number of unpublished reports suggest these investments are increasingly contributing to violent conflicts between groups; sometimes between communities with no history of violence along ethnic lines, or among clans and families of the same ethnic groups (Justin & De Vries f.c; Justin & Van Dijk f.c).

In South Sudan, the military, land speculators, and elites have taken land without regard for customary rights. However, land grabbing is identified as a problem in the draft land policy (Deng, 2011).

FOOD SECURITY

Policies and gaps
Improvement of the food security situation in South Sudan remains a high priority in the agenda of the government and of donor agencies. Food security in South Sudan is directly related to the question of land reform, both of which are linked to the general security situation. The land question played a big role in the protracted north – south civil war which was ended only in 2005 through the Comprehensive Peace Agreement (CPA) (e.g. Jawondo, 2013; Johnson, 2003). As a result, land question became a central theme to the South Sudanese government, at least in theory, with improvement of food security as its ultimate goal (LA, 2009; LGA, 2009).

But the outbreak of the civil war which started in December 2013 made many parts of the country, to once again, experience different levels of violence (e.g. De Vries et al., 2014), severely affecting food security situations in the war-affected areas. Displacement of many civilians from their homestead to settle elsewhere as refugees or internally displaced persons (IDPs) is among the direct impact of the war on the food security situation in the country and particularly in rural areas. The war has further made the government to shift its focus from institutional reform to winning the war, which has greatly impacted on the general food security situation in the country.

At policy level, South Sudan had developed a number of legal and institutional frameworks that would contribute to the improvement of food security situation of the country. Fundamental of those include the Agriculture Policy Framework of 2006, the Animal Resource Framework of 2006, the Fisheries Framework of 2006, and the Trade and Industry Policy of 2009. Earlier on, the government had planned to develop, distribute and implement policy legislations relating to food security, which was to be achieved by 2013. But as it is the case with the Land Act, the Local Government Act, and other associated policies, most of these policies were barely implemented, either due to lack of funding or institutional capacity to translate programs to activities. The civil war exacerbated this further as most resources were (and still are) directed to funding the war. In addition to other factors, this has made the food security situation in the country to be in a very awkward position.

The food security situation of the country
Food security situation of South Sudan continues to be in a bad shape. In October 2015, an alert released by the Integrated Food Security Phase Classification (IPC), also endorsed by the government, suggested that food security situation of other parts of the county had deteriorated to ‘catastrophic’ and ‘emergency’ levels; threatening to expand to areas less affected by the civil war. Accordingly, 3.1 million people were severely food insecure, with up to 30,000 at ‘catastrophic’ level facing extreme conditions; an increase of about 80% increase in severity level compared to 2014\(^1\). Projections for 2016 are not encouraging either, with likelihood that food security situation of the country might deteriorate further.

\(^1\) http://www.ipcinfo.org/ipcinfo-countries/ipcinfo-eastern-middle-africa/south-sudan/en/
Despite the fact that the government and the opposition forces have signed an agreement on secession of hostilities to end the two-years long civil war since August 2015, most parts of this agreement remain largely unimplemented, continuously impacting on the general food security situation. As a result of the deteriorating insecurity in many parts of the country, IDPs continue to settle alongside their host communities, periodically resulting to certain levels of frictions and conflicts. In October 2015, the president issued a decree to increase the number of states from ten to twenty-eight. This, in many areas, has resulted in heightened political tensions, often with negative consequences on the IDPs who are yet to get resettled to their original areas of displacements. This is particularly the case where this decision is locally perceived as a strategy by the government for some communities occupy lands that do not traditionally belong to them. At the higher, the parties to the conflict (the government and the opposition forces) are yet to agree on the implementation of this agreement, though the president argues it is a ‘redline’ that cannot be discussed. Though the opposition forces might reach a compromise with the government on the implementation of the twenty-eight states, this is likely to result to tensions at local levels, which could disrupt agricultural activities and livelihoods and many communities.

**Food security and land governance**

Fundamental to reconciliation, food security, and economic reform, access to and control over land following conflict can present significant challenges to a peace process. The importance of land to peacebuilding and food security is especially relevant in South Sudan, where decades of civil war has triggered large-scale displacements, exacerbated multiple famines, and led to the complete breakdown of socio-political and economic institutions. Although ongoing food insecurity is driven by a number of interdependent factors, interventions in agricultural production and dispute resolution at the policy and project levels have largely ignored the fundamental challenges posed by overlapping customary and statutory land tenure systems. In a country where eighty percent of the population relies on subsistence production, widespread disputes over land holdings, as well as uncertain and contradictory statutory policies, need to be addressed in order to stabilize agricultural production and increase food security (Pritchard, 2013).

Ongoing commitments to food and livelihood security of rural subsistence-based populations in South Sudan could be significantly improved by including comprehensive support for land tenure reforms – at both policy and program levels – alongside farmer education and training in dispute mitigation and resolution. The goal here is not to prioritize land reform over agricultural production, but to recognize that the two are inherently linked, and cannot be separated at the policy/project or national/household level.

Despite repeated commitments to improving agricultural production and food security, the GoSS and international donors have thus far (as of September 2013) not begun to plan, research, or draft a national Agricultural Policy. Rather, the agricultural goals outlined by the Government have no legal backing, and remain hollow commitments that simply introduce how key institutions and actors would like to see rural areas develop in the future. Although the lack of progress on a national Agricultural Policy can be attributed to a number of interdependent factors (i.e. lack of funds and a backlog of policies in Parliament due to a slow and contentious approval process), key informants in the national and state Ministries of Agriculture note that the main impediment is the lack of a Land Policy. While the GoSS approved an initial Land Act in 2009, the Land Policy required to guide re-settlement and widespread reforms to customary and statutory practices has (thus far) not been approved by Parliament. Land use, access, and management, therefore, present significant impediments to the development and application of comprehensive agricultural reforms, and in doing so, remain key obstacles to improvements in the livelihood and food security of rural subsistence-based populations (Pritchard, 2013).

**Realities on the ground**

In December 2013, political contestations among elites of the ruling party, the Sudan People’s Liberation Movement (SPLM) in Juba escalated to a violent conflict, which resulted in a nationwide rebellion led by Riek Machar, a former vice president of the country (De Vries & Justin, 2014). Shortly after its start, this conflict moved and concentrated in the three states of Unity, Upper Nile and Jonglei, and later spread to most parts of the country. This has resulted in the displacement of hundreds of thousands of civilians from their ancestral land, disrupting their livelihoods. Displacements resulting from those conflicts have also contributed to serious land disputes between the displaced and host communities in areas which are relatively peaceful, resulting in insecure land tenure. Prior to the start of this war, violence has been an issue of major concern (Mc Evoy & LeBrun, 2010), which has been affecting tenure security of many rural communities. The outbreak of this war exacerbated this further.

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2 http://www.sudantribune.com/spip.php?article56581
Farming communities have been destabilized by continuing violence and insecurity in some States – denying them the opportunity to cultivate their crops. Unclear land tenure systems often spark conflicts especially among livestock herders and sedentary farmers consequently reducing agricultural production (USAID, 2010). Local customary institutions often deal with conflicts due to competing land uses and over land rights and land allocation. It is important to strengthen local and traditional conflict resolution bodies for alternative dispute resolution and the participatory approach for natural resource management.

A major challenge to effective land policy is the continuing violence and insecurity in several regions of Southern Sudan. As a result, a large numbers of IDPs are unable to return to their place of origin because of the political conflict and occupation by newcomers. In areas housing IDPs and refugees, the scale and complexity of the problems cause severe stress to customary institutions (Noragric/Shanmugaratnam, 2010). New friction can come from the return or resettlement of IDPs, which can turn into ethnic conflicts.

South Sudan is a new country with new institutions that have inherited land governance issues scarred by a long civil war. Though legislation is being produced, implementation is still largely absent. In many cases, the new institutions have been slow to develop and often lack clear mandates, regulatory frameworks, necessary levels of funding, and the human capacity for their own establishment and effective operation (World Bank 2007; Rolandsen 2009; Giampaoli 2010). The communication channels between GoSS and the States have not been clearly charted out, resulting in limited information flow.

Land grabbing is regarded a problem. Large-scale land acquisitions by foreign investors are taking place but actual investments have not yet been realised. The process of negotiation is marked by lack of transparency and may lead to more conflict over land. Reversing land-grabs committed in the transitional period and ensure community consent for development schemes is important for peace building.

South Sudan is likely to be food insecure in the foreseeable future and particularly in 2016. Projections by donors and NGOs suggest this year (2016) is not likely to be any different than the previous two years, or could be even worse. Lack of the implementation of cessation of hostilities agreement between the government and opposition forces is yet another hurdle in improving the food security situation of the country. With up to 98% of the budget of the country depending on oil revenue, the falling oil prices in the international markets coupled with the declining production capacity, South Sudan is not likely to effectively contribute in addressing food security situation of the country. There are even fears that the oil production might stop altogether as Khartoum continues to demand transport fees of $24.00 per barrel despite the current market price of $28 per barrel.

RESOURCES AND OTHER INFORMATION

Related country profiles
USAID (Sudan): http://usaidlandtenure.net/usaidltprproducts/country-profiles/sudan/

Laws, policy and regulations search engines

Maps and databases
http://www.fao.org/nr/water/infores_maps.html
Portals and other resources
Landportal: http://landportal.info/search/apachesolr_search/south%20sudan

Donor support programs

- The SSLC is supported by USAID.
- The World Bank is planning to implement a land governance assessment framework.
- Other development partners also support the dissemination of the Southern Sudan Land Act and trainings on effective land management.
- Among others, the Norwegian People's Aid (NPA) is among the most active to disseminate the Land Act and other information perceived as relevant for local communities.

Civil Society Organizations working on land governance
Of recent, Civil Society Organizations in South Sudan have started to lobby on land issues. Following a report by the Norwegian People's Aid (NPA) on large-scale land acquisition in South Sudan published in 2011, Civil Society Organisations in the ten states organized and started to lobby for land rights of rural communities, and particularly of vulnerable groups such as women, youth and people with disabilities. In 2012, the State Land Alliances formed an umbrella network, the South Sudan Land Alliance (SSULA). Under the support of the NPA, SSULA got engaged in the dissemination of a simplified version of the Land Act of 2009, awareness raising on women's right to land, and got involved in the drafting of the land policy which is yet to be passed. In 2013, SSULA became a member of the Ugandan Land Alliance (ULA) and Rwandan Land Net (RLN); and in 2014, a member of the International Land Coalition (ILC) based in Rwanda. With funding from the United Nations Development Program (UNDP) and ILC, SSULA is, since 2015, engaged in carry out pilot projects on registration of community land in Central Equatoria State (CES) and legal support for land rights of rural communities in Western Equatoria State (WES). Other community-based organizations outside the realm of SSULA, such as the land committees in various states, are increasingly getting involved on land advocacy as well. Like other civil society organisations in South Sudan, SSULA's capacity in carrying out its campaigns on land rights remains weak and needs to be strengthened.

REFERENCES


De Vries, L. & Justin, P.H., (2014): A failure of governance: Understanding South Sudan’s conflict dynamics beyond the political and humanitarian crisis. Politique africaine n° 135 • octobre 2014 • p. 159-175 (In French).