LAND GOVERNANCE ASSESSMENT FRAMEWORK IN SOUTH SUDAN

THEMATIC AREA 5: DISPUTE RESOLUTION AND CONFLICT MANAGEMENT
Theme 5: Dispute Resolution and Conflict Management

Indicators

LGI-20: Assignment of responsibility

Dimensions

- Conflict resolution accessible
- Informal dispute resolution
- Forum shopping
- Possibility of appeal

LGI-21: Low level of pending conflicts

- Conflict resolution affordable
- Conflict resolution timely
- Long standing conflicts
LGI-20 Accessibility of conflict resolution mechanisms

This indicator assesses the accessibility and adequacy of existing conflict resolution mechanisms.
LGI 20 Dimension (i) - Accessibility of conflict resolution mechanisms

Assesses level of and cost accessibility for institutions with a formal mandate to mediate land-related conflicts.

Assessment

A – Institutions for providing a first instance of conflict resolution are accessible at the local level in the majority of communities.

B – Institutions for providing a first instance of conflict resolution are accessible at the local level in less than half of communities but where these are not available informal institutions perform this function in a way that is locally recognized.

C – Institutions for providing a first instance of conflict resolution are accessible at the local level in less than half of communities, and where these are not available informal institutions do not exist or cannot perform this function that is locally recognized.

D – Less than a quarter of communities have institutions formally empowered to resolve conflicts and a variety of informal institutions may be available in the rest.
Findings

- S. Sudan has pluralist justice system with parallel systems of customary and statutory courts.
- Statutory courts mainly only accessible in and around urban areas. Most disputes handled by customary courts.
- Land disputes are far less prevalent in rural areas, aside from disputes between communities about their collective boundaries.
Recommendations

- Developing court circuits where one court travels between counties can help to increase access while additional statutory courts are being built.
LGI 20 Dimension (ii) - Informal or community based dispute resolution

Assesses clarity of interaction between formal and informal systems.

Assessment

A - There is an informal or community-based system that resolves disputes in an equitable manner and decisions made by this system have some recognition in the formal judicial or administrative dispute resolution system.

B – There is an informal or community-based system that resolves disputes in an equitable manner but decisions made by this system have little or no recognition in the formal judicial or administrative dispute resolution system.

C – There is an informal or community-based system that resolves disputes in a manner that is not always equitable and decisions made by this system have limited or no recognition in the formal judicial or administrative dispute resolution system.

D – There is an informal system or community-based that makes decisions that are not always equitable but have recognition in the formal judicial or administrative dispute resolution system.
Findings

- Customary law is applied to most family disputes in the formal system, including issues of inheritance or distribution of property upon divorce.
- Statutory and constitutional provisions recognize women’s right to own property and to inherit property from their deceased husbands (though silent on distribution of property upon divorce).
- Violations of women and children’s constitutional and statutory rights are common under customary law.
Recommendations

- Referrals of cases from statutory courts to customary courts should include instructions on applicable law, especially for cases involving women and children’s property rights.

- The Supreme Court should issue an advisory opinion that makes clear that customary laws that are inconsistent with the constitution cannot be applied in statutory or customary courts.

- A Family Law providing an alternative to marriages under customary law and detailing various aspects of property distribution should be enacted by the NLA.
LGI 20 Dimension (iii) - Possibilities for Forum shopping

Assesses pursuit of cases through parallel formal channels.

Assessment

A – There are no parallel avenues for conflict resolution or, if parallel avenues exist, responsibilities are clearly assigned and widely known and explicit rules for shifting from one to the other are in place to minimize the scope for forum shopping.

B – There are parallel avenues for dispute resolution but cases cannot be pursued in parallel through different channels and evidence and rulings may be shared between institutions so as to minimize the scope for forum shopping.

C – There are parallel avenues for dispute resolution and cases can be pursued in parallel through different channels but sharing of evidence and rulings may occur on an ad-hoc basis.

D – There are parallel avenues for dispute resolution and cases can be pursued in parallel through different channels and there is no sharing of information.
Findings

- The jurisdictions of statutory and customary courts are described in the 2008 Judiciary Act and the 2009 Local Government Act, in practice, responsibility for dispute resolution is distributed across many different forums, court rulings are shared in an ad hoc manner, if at all, and the entire process is poorly coordinated.

- It is very easy for parties to resurrect disputes in other courts if the first court does not give a decision that is to their liking.
Recommendations

- Need to improve linkages between statutory and customary systems. The Judiciary can issue an advisory opinion on how appeals and case referrals between the two systems are to be managed. The opinion should be promoted at the state and county level in areas that have formal courts.

- The Judiciary should establish better linkages with other land governance institutions, such as the state-level Ministries of Physical Infrastructure and the Survey Department. Improved information sharing can help to strengthen judicial processes and would lead to more efficient dispute resolution.
LGI 20  Dimension (iv) - Possibility of Appeals

Assessment

A – A process exists to appeal rulings on land cases at reasonable cost with disputes resolved in a timely manner.

B – A process exists to appeal rulings on land cases at high cost with disputes resolved in a timely manner.

C – A process exists to appeal rulings on land cases but costs are high and the process takes a long time.

D – A process does not exist to appeal rulings on land cases.
Findings

- There is an appeals process, but it encounters a lot of challenges.
- Often appeals will be heard based on lower court transcripts without offering the parties an opportunity to present arguments or new evidence.
- Appeals within the customary system can also be convoluted, and parties can sometimes bring suits in parallel courts.
- It is not uncommon to wait for years for matters to be dealt with in appeals courts.
- Court fees in first instance courts are typically 5%-10% of the property value and can reach 5,000 SSP and more.
Recommendations

- Need to revisit the manner in which court fees and lawyer fees are determined.
- Current fees seem excessive and are a major barrier to access.
Theme 5: Dispute Resolution and Conflict Management

**Indicators**
- LGI-20: Assignment of responsibility
- LGI-21: Low level of pending conflicts

**Dimensions**
- Conflict resolution accessible
- Informal dispute resolution
- Forum shopping
- Possibility of appeal
- Conflict resolution affordable
- Conflict resolution timely
- Long standing conflicts
LGI-21. Low level of pending conflict

This indicator assesses whether an efficient institutional framework can limit the opportunity for costly disputes to arise before they have a chance to become established, or where there are legitimate disputes, if the institutional framework can deal with those disputes in a reasonable time.
LGI 21 Dimension (i) - Conflict resolution in the formal legal system

Checks the proportion of land disputes in court cases.

Assessment

A – Land disputes in the formal court system are less than 10% of the total court cases.

B – Land disputes in the formal court system are between 10% and 30% of the total court cases.

C – Land disputes in the formal court system are between 30% and 50% of the total court cases.

D – Land disputes in the formal court system are more than 50% of the total court cases.
Findings

- The judiciary suffers from a severe lack of transparency. Information about caseloads and disposal rates is not published. Not a single judicial opinion has been published since the judiciary was established in 2005.
- There is some geographical variation in caseloads, but in Juba, land disputes comprise as many as 80% - 90% of civil disputes.
Recommendations

- Examine the use of specialized courts for land disputes. Explore options for operationalizing those courts along the lines of what is detailed in the Land Act.
- The Judiciary must establish a case reporting system. This is an important public service and could help to strengthen the common law system and better contribute to rights recognition through the courts.
- Promote ADR (as is called for in the Land Act) as a means of reducing the burden on the formal system.
LGI 21 Dimension (ii) - Speed of conflict resolution in the formal system

Checks if land conflicts are resolved within a reasonable amount of time.

Assessment

A – A decision in a land-related conflict is reached in the first instance court within 1 year for more than 90% of cases.

B – A decision in a land-related conflict is reached in the first instance court within 1 year for between 70% and 90% of cases.

C – A decision in a land-related conflict is reached in the first instance court within 1 year for between 50% and 70% of cases.

D – A decision in a land-related conflict is reached in the first instance court within 1 year for less than 50% of cases.
Findings

- Due to high caseloads, difficulties in getting necessary parties to show up at court and delays in obtaining land documents, court hearings can stretch on for extended periods of time.
Recommendations

- See recommendation about specialized courts for land disputes.
- Also need to revisit enforcement of judicial decisions, particularly against parties that wield military or political authority.
- Military justice has in the past assisted the civilian courts in enforcing decisions on military personnel that have grabbed plots. This relationship should be formalized and could be included in amendments to the Land Act.
LGI 21 Dimension (iii) - Long-standing conflicts (unresolved cases older than 5 years)

Assesses level of long-standing cases in the formal system.

Assessment

A – The share of long-standing land conflicts is less than 5% of the total pending land dispute court cases.

B – The share of long-standing land conflicts is between 5% and 10% of the total pending land dispute court cases.

C – The share of long-standing land conflicts is between 10% and 20% of the total pending land dispute court cases.

D – The share of long-standing land conflicts is greater than 20% of the total pending land dispute court cases.
Findings

- Precise statistics are not available, but there are many disputes that are still pending from 2005.
- The large-scale displacement from the civil war gave rise to numerous overlapping land claims that are very difficult to sort out.
- Land grabbing and the prevalence of informal settlements continue to add to the complexity.
Recommendations

- See recommendations concerning specialized land courts.
END