



Housing Land and Property Technical Working Group Retreat Report

27 September 2019

UNHCR Main Conference Room

Juba South Sudan

Introduction and Background

The Housing, Land and Property Technical Working Group (HLP TWG) was established in December 2018 with the TNLA Committee on Land and Physical Infrastructure, Protection Cluster and Shelter/NFI Cluster as co-leads. There are 14 organizations serving as members of the HLP TWG.

The primary aim is to bring together organizations working on HLP matters in order to ensure coordinated interventions.

The primary aim of the HLP TWG, as determined by relevant actors (Government of South Sudan, UN agencies and inter-/national NGOs) is addressing emerging and critical HLP issues which require the immediate realization of programs and projects under the SSHF (HRP), as well as coordinating support for national law and policy reforms. Reflective of the cross-cutting nature of HLP issues, the TWG is an inter-sectoral working group, with a dedicated advisory role to the Protection and S/NFI clusters, while extending advisement and technical expertise – as requested – to UN and NGO coordination structures, such as the Solutions Working Group.

The overall objective of the TWG is to facilitate a more systematic approach to identifying, understanding and addressing HLP issues affecting persons of concern, while directly impacting the work of clusters and organizations at national and sub-national levels. The HLP TWG serves to promote collaboration and complementarity amongst relevant government and non-governmental entities involved in HLP issues, and works to provide technical support and expertise where required. The TWG recognizes that the Government of South Sudan has the primary responsibility to protect and promote the HLP rights of all individuals within its jurisdiction, in accordance with its international and national legal obligations.

The work plan of the TWG focusses on three key pillars:

- (i) Strengthening operational engagement and assessments,
- (ii) Supporting legislative and policy reforms and
- (iii) Strengthening information management, awareness raising and capacity building.

Purpose of the HLP TWG Retreat

Nine months have passed since the inception of the TWG. Cognizant the evolving displacement situation in South Sudan— which includes increased IDP returns and the identification of refugees in several areas—the need for equitable and durable HLP solutions is increasingly critical. The Retreat therefore served as the opportunity to review the TWG’s progress and challenges in meeting current HLP-related demands and planning for the future.

Key Milestones by HLP partners include:

- (i) UNMISS Rule of Law, IOM and the Parliamentary Committee on Land and Physical Infrastructure thoroughly reviewed and amended the National Land Policy (2014) to reflect the current political and humanitarian situation, advancing it to final review and imminent passage by members of Parliament.
- (ii) DRC successfully conducted an HLP assessment and monitoring to better understand salient HLP issues in Bentiu and evidently inform programmatic planning and response.
- (iii) DRC and UNHCR established a referral pathway and “one-stop-shop” for identification, counselling and referrals for HLP cases in Bentiu.
- (iv) IOM developed the HLP Due Diligence Guidelines which provide HLP and shelter practitioners crucial instruction in the information-gathering and communication processes required to minimize the risk of humanitarian intervention further contributing to land disputes in South Sudan.
- (v) GREDA provided legal assistance to 11 HLP-related claimants whose cases were heard in the Bor High Court, and undertook awareness raising on HLP rights with communities in Bor.
- (vi) FAO and UN-HABITAT assessed community-based land ownership practices and finalized a report on women’s land tenure issues in Wau. FAO and UN-HABITAT also supported the Land Commission in drafting procedures guiding equitable, transparent and gender-sensitive land allocation.
- (vii) UNHCR completed a comprehensive mapping of HLP needs at household level in all PoC sites and Leer TPA, as well as in all urban IDP sites of Juba, Wau and Bentiu, covering 17,328 households/ 89,093 individuals.

- (viii) In Juba PoCs 1 and 3, and collective sites, UNHCR and HDC provided legal assistance to IDPs for restitution of land rights. Over 300 land plots were handed over to owners through alternative dispute resolution mechanisms. Awareness raising activities on HLP rights through mobile legal aid clinics are ongoing
- (ix) UNMISS Rule of Law (RoL) compiled a compendium of HLP resources and tools for use by partners, including materials addressing advocacy for increased engagement, awareness and programming to address HLP concerns to support returns.
- (x) On behalf of the Parliamentary Committee on Land and Physical Infrastructure, IOM and UNMISS Rule of Law, with the support of HLP TWG partners, organized two groundbreaking national workshops addressing land rights in South Sudan. The first, a three-day forum on Women's Land Rights, was informed by more than a dozen FGDs held across South Sudan with women living inside and outside displacement sites. Their recommendations and challenges served as the basis for a national discussion on strengthening and operationalizing women's land rights. The second workshop, held a month later, brought more than 90 MPs together to concretely discuss amendments to the National Land Policy, now slated for imminent passage.

HLP Challenges include:

- (i) Funding challenges: HLP interventions are often supported by emergency funding, while, by their very nature, durable and sustainable HLP interventions require longer funding cycles and cannot be "pushed through" hastily. HLP is also a significant component of post-conflict and recovery programming, requiring long-term, sustained support, including linkages to peacebuilding and development.
- (ii) Insecurity and a lack of functioning, transparent and accessible local authorities in many areas make it difficult to implement effective HLP programming.
- (iii) As the amended Land Policy has not yet been adopted, ambiguity regarding the authority, interaction and applicability of customary and statutory land laws pervades HLP interventions and discussions, particularly in matters of rightful governance, ownership, allocation, record-keeping and use of land.
- (iv) The right to restitution is significantly hindered by scarce and costly legal representation. Additionally, the vast majority of individuals in South Sudan are not well-acquainted with their constitutionally-guaranteed land and property rights. Furthermore, due to the sensitivity of land cases, conveyance lawyers are reluctant to pursue land cases for fear of reprisals from local authorities.

Main recommendations emerging from the retreat include:

Retreat attendees agreed that the three operational pillars remain relevant and that the HLP TWG has served as a useful coordination body over the past months to coordinate discussion and interventions. It will continue to facilitate effective preventive, responsive and remedial action on HLP matters, while strengthening the capacity of all relevant stakeholders, including humanitarians, government and community structures. Moving forward, the HLP TWG must

focus on enhancing the accountability, predictability and effectiveness of HLP-related resp. It was envisaged that a country-wide HLP strategy would to be developed to harmonize humanitarian, civil society and government approaches, assessments and tools.

The immediate establishment of field-based HLP TWGs, under the guidance of the National HLP TWG, is necessary to promote better coordination and intervention on the ground. The participation of development partners should be strengthened at the field level, as concern for HLP matters should be embedded in relevant resilience and development initiatives.

The need to strengthen HLP assessments in areas of return, information management and awareness raising were salient recommendations. Additionally, the need to further strengthen evidence-based HLP interventions was highlighted. The group also recognized the importance of strengthening informal dispute resolution mechanisms, in line with rights-based approaches which promote transparent, equitable security of tenure. Area-based Best Practices in HLP interventions should be documented and promoted including possibilities of replicating such approaches in other locations

There should be broader involvement of government actors in the HLP TWG, especially representation from line ministries (Ministry of Land and Physical Planning; Gender, Child and Social Welfare) in order to promote the greater realization of HLP rights. Once the amended Land Policy is adopted, clearer guidance regarding land and property will be codified into law. This includes guidance on, *inter alia*, land administration (including assurance that gender is mainstreamed and equitably handled; the acquisition of land by government for development purposes; individual and community access to legal representation and dispute resolution; environmental/ climactic responsiveness; and specific protections and rights for women and vulnerable people. The importance of ensuring that HLP interventions reach women and child-headed households was also emphasized in the HLP retreat, including an intention to strengthen HLP interventions which support persons with specific needs.

On advocacy, the HLP TWG was tasked to ensure that a donor meeting is called to update governments and donor agencies on ongoing HLP interventions, while seeking more predictable funding to support long-term interventions.

Recommendations in detail:

1. HLP assessments

- (i) HLP assessments conducted in areas of potential return should be strengthened in light of population influxes and movements.

- (ii) Areas of return or potential return areas already mapped by other clusters / organizations should be utilized to help in the prioritization of HLP interventions.
- (iii) Share the aforementioned assessments with local Solutions Working Groups (SWG) in the field to ensure a coordinated response and synergy building between clusters and stakeholders for prepared and timely interventions.
- (iv) Assessments must take into account conflict sensitivity and risks analysis – those conducting such assessments must be guided by a conflict sensitivity tool on HLP to be developed by the HLP TWG.
- (v) Assessments must also map existing community capacities in order to build on existing community structures rather than duplicating or creating new community engagement structures.

2. HLP Interventions:

- (i) **Repairs and reconstruction of houses** – Scale up coordinated efforts in supporting rehabilitation, repairs and reconstruction of houses. Advance verification of security of tenure and ownership of property are crucial to ensuring that repairs and reconstruction are done without legitimizing secondary occupations.
- (ii) **Secondary occupation** - Additional data on secondary occupations should be gathered and shared through comprehensive assessments. The HLP TWG should take the lead on conducting comprehensive assessments to identify secondary occupation hotspots across the country:
 - a. Ensuring security of tenure
 - b. Legal interventions
 - c. Supporting alternative dispute resolution mechanisms

(iii) The importance of ensuring that HLP interventions reach women and child-headed households was also emphasized in the HLP retreat, including an intention to strengthen HLP interventions which support persons with specific needs.

3. Conflict sensitivity in HLP – HLP interventions should consider the needs of returnees and host communities to avoid tension and conflict. While HLP interventions should be need-based, community level interventions that benefit both returnees and host populations should be promoted. Conflict sensitivity is a particularly important consideration during planning and implementation of the HCT guidance note on returns and relocations.

4. Advocacy and awareness raising

- a. The HLP TWG should develop an advocacy paper on the relevance and importance of HLP considerations across government, donors and partners.
- b. HLP advocacy should lead to incremental and measured intervention among all governmental actors and the unification of land related legislation across states towards a national policy.
- c. Organise donor briefings to raise awareness on HLP needs and solicit support.
- d. The TWG should also work with the Community leaders who administer land issues and focus on institutional capacity building.
- e. As part of the advocacy, the HLP TWG should map areas where returnees cannot access due to insecurity and lack of services and seek the endorsement of the HCT.

5. Land tenure documentation – The HLP TWG should work with the government to advocate for greater understanding on acceptable evidence of land ownership in cases where documentation has been lost as a result of conflict.

- a. Mechanisms to verify ownership especially when chiefs and other community leaders have also been displaced are recognized in the forthcoming national Land Policy. The HLP TWG must raise awareness about the legal acceptability of alternative evidence.

6. Legal services – Prioritization of funding for legal services must continue in order to raise awareness among communities of their legal rights and referral pathway options.

- a. Paralegal counselling should also continue, with more women being trained as counsellors in order to reach fellow women and help other vulnerable individuals through the legal system.

7. The HLP TWG membership – should be extended to include relevant government and development partners.

- a. Extended membership will create an avenue through which the HLP TWG can advocate for the integration of HLP into the UNCF for South Sudan and other relevant development frameworks.

ACTIONS AND TIMELINES

Recommendations	What action must we take	By Whom	Timeline
<p>1. HLP assessments</p> <p>(i) HLP assessments conducted in areas of potential return should be strengthened in light of population influxes and movements.</p> <p>(ii) Areas of return or potential return areas already mapped by other clusters / organizations should be utilized to help in the prioritization of HLP interventions.</p> <p>(iii) Share the aforementioned assessments with local Solutions Working Groups (SWG) in the field to ensure a coordinated response and synergy building between clusters and stakeholders for prepared and timely interventions.</p> <p>(iv) Assessments must take into account conflict sensitivity and risks analysis – those conducting such assessments must be guided by a conflict sensitivity tool on HLP to be developed by the HLP TWG.</p>	<p>HLP TWG to develop assessment guidelines if not already available and Appointment and training of local Counterparts (both women and men) in assessment methods and strategies to work with relevant humanitarian agencies in areas of need.</p> <p>If needs are already identified, develop an implementation strategy for those areas; with a resource-based workplan with roles and responsibilities, including the local authorities, and affected communities; as to who should contribute what (contribution can be in-kind such as labour and local materials).</p> <p>Same as in (ii) above</p> <p>As per guidelines developed in (i) above.</p>	<p>MHADM, SSRRC. MHL&UD and Humanitarian Agencies.</p> <p>Local Government represented by (SRRC), Local and affected communities and Humanitarian agencies</p>	

<p>(v) Assessments must also map existing community capacities in order to build on existing community structures rather than duplicating or creating new community engagement structures.</p>	<p>Community capacities needed and structures to be part of the tools included for mapping in the assessment guidelines as recommended in (i) above)</p>		
<p>2. HLP Interventions:</p> <p>(i) Repairs and reconstruction of houses – Scale up coordinated efforts in supporting rehabilitation, repairs and reconstruction of houses. Advance verification of security of tenure and ownership of property are crucial to ensuring that repairs and reconstruction are done without legitimizing secondary occupations.</p> <p>(ii) Secondary occupation - Additional data on secondary occupations should be gathered and shared through comprehensive assessments. The HLP TWG should take the lead on conducting comprehensive assessments to identify secondary occupation hotspots across the country:</p> <ul style="list-style-type: none"> a. Ensuring security of tenure b. Legal interventions c. Supporting alternative dispute resolution mechanisms 	<p>Issues to do with tenure security and secondary occupations must be resolved before any physical rehabilitation takes place.</p> <p>Security of tenure can only be strengthened through a transparent land allocation and registration procedures to be defined by Land Regulations.</p> <p>Alternative dispute resolution using local cultural mediation mechanisms; should be encouraged and to precede formal litigation mechanisms.</p>	<p>A clear National Government's directive on secondary occupations to the States and Local Governments is required, based on the recommendations of the Land Policy.</p> <p>MHL&UD to develop regulations as soon as the Land Policy is adopted by Parliament and local land authorities and given the necessary training in their use.</p> <p>MHA&DM, SSRRC and</p>	

<p>(iii) The importance of ensuring that HLP interventions reach women and child-headed households was also emphasized in the HLP retreat, including an intention to strengthen HLP interventions which support persons with specific needs.</p>	<p>The prioritization criteria in allocations of HLP rights should be clearly set out in the assessment procedures and latter strengthened by Regulations.</p>	<p>Humanitarian Agencies.</p>	
<p>3. Conflict Sensitivity in HLP</p> <p>HLP interventions should consider the needs of returnees and host communities to avoid tension and conflict. While HLP interventions should be need-based, community level interventions that benefit both returnees and host populations should be promoted. Conflict sensitivity is a particularly important consideration during planning and implementation of the HCT guidance note on returns and relocations.</p>	<p>HLP-related conflicts are very common in urban centres for various reasons (<i>Community cultural needs to settle in urban centres as tribes and next of kin to support each other, while an urban centre should be cosmopolitan in character. Plus the economic potential of land in urban centres; which leads to land speculation</i>). Methods to curb this practice need to be developed. This also needs to be emphasized in the land policy and during the information dissemination process to Local Authorities and Communities.</p>	<p>MHL&UD, MHA&DM, SSRRC; HLP TWG and Local Authorities</p>	
<p>4. Advocacy and Awareness Raising</p> <p>- The HLP TWG should develop an advocacy paper on the relevance and importance of HLP considerations across government, donors and partners.</p>	<p>develop an advocacy paper to be submitted for review by the HLP TWG.</p>	<p>Parliamentary Land Committee, Land Commission; MHL&UD; Other Land-use-related Line Institutions and HLP TWG Partners.</p>	

<ul style="list-style-type: none"> - HLP advocacy should lead to incremental and measured intervention among all governmental actors and the unification of land related legislation across states towards a national policy. - As part of the advocacy, the HLP TWG should map areas where returnees cannot access due to insecurity and lack of services and seek the endorsement of the HCT. -Identify best approaches in HLP interventions currently underway, or undertaken, for promotion and possible replication elsewhere. - The TWG should also work with the Community leaders who administer land issues and focus on institutional capacity building. - Organise donor briefings to raise awareness on HLP needs and solicit support. 	<p>Land Regulations should specify that Land registration procedures and format must be uniform across all levels of government and across all the States and Local Governments.</p> <p>Ministry of Interior with States and Local Authorities; SSRRC and HLP TWG Partners .on ground to provide security-related information.</p> <p>Initiate a Pilot Project in areas where security is favourable; the outcome; lessons learned and proposed improvement methods can be replicated in other areas of return.</p> <p>Land Regulations to be very explicit about the Community Leaders in urban centres which must first be legally endorsed by available regulatory framework and not as currently in Juba; which has led to land grabbing motivated by urban land deals..</p> <p>Parliamentary Land Committee with support from HLP TWG Partners to develop a Briefing Note to solicit Donor support.</p>	<p>MHL&UD with technical support from HLP TWG Partners</p> <p>SSRRC, Local Authorities and Communities and HLP TWG.</p> <p>Land Commission and MHL7UD; with technical support from HLP TWG Partners.</p> <p>Parliamentary Land Committee and HLP TWG Partners</p>	
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<p>5. Land Tenure Documentation</p> <ul style="list-style-type: none"> - The HLP TWG should work with the government to advocate for greater understanding on acceptable evidence of land ownership in cases where documentation has been lost as a result of conflict. - Mechanisms to verify ownership especially when chiefs and other community leaders have also been displaced are recognized in the forthcoming national Land Policy. The HLP TWG must raise awareness about the legal acceptability of alternative evidence. 	<p>Organize and build partnerships (as opposed to authoritative) between National and Local Land authorities and encourage a building of mutual respect and trust;</p> <p>Facilitate and engage civil society organisations, Local County land administration officials, and chiefs in capacity building training on land rights issues and awareness raising of rural communities through dissemination of land rights-based information over the media such as radio, TV and through workshops.</p>	<p>Land Commission. MHL7UD, Judiciary and HLP TWG Partners.</p> <p>Land Commission, CSOs, Local Authorities and HLP TWG Partners.</p>	
<p>6. Legal Services</p> <ul style="list-style-type: none"> - Prioritization of funding for legal services must continue in order to raise awareness among communities of their legal rights and referral pathway options. - Paralegal counselling should also continue, with more women being trained as counsellors in order to reach fellow women and help other vulnerable individuals through the legal system. 	<p>This must be embodied in the Land Regulations to avoid undefined protracted litigation process.</p> <p>Paralegals need to be trained in both traditional alternative dispute resolution as well as modern legal dispute resolution.</p>		
<p>7. The HLP TWG Membership</p>			

<ul style="list-style-type: none"> - Should be extended to include relevant government and development partners. - Extended membership will create an avenue through which the HLP TWG can advocate for the integration of HLP into the UNCF for South Sudan and other relevant development frameworks. 	<p>All land-use-related line institutions need to be included in the HLP TWG.</p> <p>Encouraging partnerships through an integrated approach to HLP issues would go a long way in strengthening the delivery of HLP Programming.</p>		
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