

# Policy and legal frameworks for sustainable management of communally used natural resources in post-war Southern Sudan

S Watts<sup>1</sup>, T.N. Holmes-Watts<sup>2</sup>

## Abstract

Land is indisputably an important resource in post-war Southern Sudan. Ownership and rights to use land affect the sustainability of subsistence agriculture and natural resources which are intricately linked to land. Policy and legal frameworks that internalize the benefits and costs of sustainable management of land and embedded resources in rural communities are necessary for community-based biodiversity conservation. This recognition is evident in the Interim Constitution of Southern Sudan that came into effect in 2005. However, the ongoing application of the customary law in the judiciary system of Southern Sudan hinders sustainable management of land resources in the face of social engineering that occurred during the 21-year old war. This is exacerbated by the misunderstanding of the constitutional directive which states that every citizen shall have the right to freedom of movement and the liberty to choose their residence in Southern Sudan. Freedom of residence has caused conflicts over natural resources primarily between sedentary cultivators and livestock herders. More conflicts are expected to arise in rural areas where internally displaced persons with locally incompatible livelihood strategies are unwilling to return back to their areas of origin. These, combined with the land grabbing activities of armed ex-combatants and financially and politically powerful individuals disenfranchise rural communities and hinder the sustainable management of common pool resources. Consequently, we recommend a broad-based land reform program for Southern Sudan that is sensitive to rural people's livelihood needs. The land reform program should convert the current customary land use rights to statutory land ownership and use rights for rural communities. Ownership and rights to use land must carry sufficient incentives to facilitate sustainable management and use of land resources. This is because ownership of natural resources has the ability to influence human behaviour in an environmentally positive manner.

## 1. Background

In Sudan, land is a central issue to all rural communities. Almost all the land in Southern Sudan is under communal ownership. Individuals of the same clan, community, or ethnicity only own it through continual use. There are hardly any disputes arising over land use except among cattle owning groups or between livestock herders and sedentary cultivators. Land in Southern Sudan is the means for basic survival and a source of individual and tribal pride. Ayoub (2006) rightly stated that land is the most important resource in Sudan whether it is used for crop cultivation, herding livestock or for exploiting underlying natural resources, such as minerals, oil or water. Land belongs to a particular clan or ethnic group, resulting in the strong relationship between an ethnic group and its homestead or area of origin (Ayoub, 2006). Land rights are traditionally obtained from ancestors and the land

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<sup>1</sup> Lecturer: Conservation Ecology & Entomology Department, Faculty of AgriSciences, University of Stellenbosch, Private Bag X1, Matieland 7602, South Africa

<sup>2</sup> Professional Officer: Human Capital Development, National Research Foundation (NRF), PO Box 2600, Pretoria 0001, South Africa

property is communally owned by the community or a tribe (Gouraud, 2006). It is thus not surprising that land featured in the Beja Congress's political demands for resolving the armed conflict in the eastern Sudan. They would like restoration of land rights to their traditional land that was expropriated by the Government of Sudan (Lunn, 2006). It suffices to mention that Sudan's customary ownership of land resources in the rural sector was greatly undermined by the British Colonial Administration which declared any landscape under customary ownership that was not under immediate use a vacant land. Laws were enacted to bring all unoccupied vacant landscapes under effective state control and ownership.

This practice was not limited to Sudan, but to all other African countries which were colonised by the British. Rahhal and Salam (2006) rightly noted that Sudan has many land ownership problems in common with other African countries. The influence of the British Colonial Government on the ownership and use of rural land resources ownership in Sudan can be traced to a principle that was introduced in 1898. That principle inappropriately assumed all unregistered land and associated resources to be owned by the state (Rahhal and Salam, 2006). Further politicization of land ownership in Sudan occurred in 1923, when the colonial administration divided the lands of the country into tribal homelands, especially in the northern parts of the country. This somewhat legitimized the ownership of the land along tribal or ethnic lines. The colonial government entrusted tribal leaders with legal, administrative, and financial authority over their respective land resources. The administration considered these traditional leaders as their appointees and expected them to maintain law and order and the territorial and demographic integrity of the areas under their jurisdiction. They were also entrusted with the responsibility for allocating land resources under their custodianship (Ayoub, 2006). "This is closely bound up with the principle of native administration (Rahhal and Salam, 2006).

Worse for Sudan, successive post-independence governments in Khartoum followed in the footsteps of their colonial master, confiscating land using dubious land legislation. Rahhal and Salam (2006) stressed that successive land laws from the colonial period up to 1990 strengthened the privileges of the state and wealthy and powerful individuals usually with strong ties to the government to the detriment of rural people. For example, section 4 of the Unregistered Land Act of 1970 transferred the full ownership of unregistered land resources, whether occupied or not, to the state. Ayoub (2006) affirmed that that law proved to be more repressive than colonial laws, as it empowered the government to use force in safeguarding its interests in land, including the accumulation of land by few rich investors (Ayoub, 2006). The 1990-amendment to the law further consolidated the state ownership of land resources. The first section of the amendment confirmed that all unregistered land effectively belongs to the state; it must be considered as if it was registered in the name of the state. The second provision of the act brought an unprecedented change, stating that no court of law or authority should consider any plea, petition or procedure concerning state-owned land that was established by the act (Rahhal and Salam, 2006).

While the politicization of the ownership of land resources was taking place in the northern parts of Sudan, the British Colonial Administration implemented a "Closed District Ordinance" for Southern Sudan, preventing non-southerners from settling there in the 1920s. Furthermore, the British developed and implemented the 'Southern Policy' that stressed that the South should be developed along 'African' lines in 1930. The primary purpose of the 'Southern Policy' was to use indigenous governance structures, laws, and customs or norms to rule the South (Johnson,

2003). It aimed to protect the traditional tribal lifestyles which had predominated for centuries from enslavement, exploitation, or islamization by the North (Sconyers, 1978). Suliman (1996) rightly affirmed that the colonial government created self-contained ethnic groups under the leadership of traditional chiefs in the South. This mimicked the early intervention in the northern part of Sudan that led to the division of land along ethnic lines, as described by Ayoub (2006).

However, the South was not managed along 'African' lines as intended by the 'Southern Policy'. In fact, the Southern Policy failed to create mission-educated southern elite capable of running the affairs of the region. The British Civil Secretary (Sir James Robertson) was convinced that decisions as to the future of the South could no longer be postponed by 1946. He reversed the 15 years of the Southern Policy implementation and lumped the South's future with that of the North when the quest for independence of Sudan was gaining momentum in the North. It seemed that his knowledge of the South was sketchy (Sconyers, 1978). One observer commented that he "couldn't really be bothered with the South, he was bored with it, didn't know the answer and didn't care." (Sconyers, 1978:93). This appeared not to be a popular decision with the British officials working in the South at the time. Nonetheless, a conference was held in Juba in June 1947 to assess the sentiments of tribal chiefs in the South. This decision was considered a sellout by southerners in the Juba Conference (Sconyers, 1978), and as a result, it opened the South to the encroachment and mining of its land resources by successive governments in the North. According to Ayoub (2006), southerners fought to resist the North's policy on state-ownership of land resources.

## **2. Land resources use and ownership in Southern Sudan**

In Southern Sudan, land and the embedded resources in rural areas are owned by ethnic groups, communities or tribes. Land tenure or ownership is essentially ethnocentric like elsewhere in Africa. The laws and rights are peculiar to communities or ethnic groups; and changed as the communities enlarged and expanded or as they contracted and diminished (Adeyoju, 1991). The land of a given ethnic group can further be decomposed into chieftainships, clans, villages or families for administrative purposes. It was administered by a chief, headman, or elder responsible for land rights to be worked or grazed by clan and family members (Watts, 1996). Land resources in rural areas are administratively under the customary land tenure system which mainly allows for communal use and management, and a limited individual ownership. The principle of a common interest is most evident in the use of land for grazing, drawing of water, collecting firewood and construction timber, hunting and fruit gathering. However, there are individual rights to cultivated crops, although these rights could be forfeited when the land is not effectively under any form of use, including fallowing and reverts back to the common pool. Communal land resources ownership and use acts as security insofar as one can easily return to the rural area of one's origin and work on family land upon retirement, retrenchment, or failure to secure employment in towns (Moyo *et al.*, 1993). Disputes over communally owned and used land resources are arbitrated at the local level by chiefs, sub-chiefs, or council of elders. Working land resources together ensures the sense of community and group solidarity, which are important service assets in rural areas (Watts, 2003). In Southern Sudan, land belongs to the different communities, ethnic groups or tribes (Okuk, 2008). The land does not

belong to just any ethnic group or community, but to those who have consistently inhabited it from time immemorial (Losuba, 2006).

A large diversity of customary laws exists in Southern Sudan for administering people-and-land relationships. This wide assemblage of traditional laws or norms reflects the differences in ethnicity, tradition, geography and livelihoods of the Southern Sudanese. Despite the intrinsic differences in customary legal systems, these laws share the main characteristic of being unrecognized oral traditions. This attribute disfavours the system by lending itself to simplification and overruling by conventional and often centralized government institutions. Notwithstanding, the customary laws in Southern Sudan, as elsewhere, have proven their legitimacy and validity through the persistent use and demand by an overwhelming number of rural communities in the face of uncertainties over centuries. The customary legal system exhibits flexibility and undergoes constant innovation and interaction and hence begs for consolidation and official recognition (Nucci, 2004).

### **3. Significance of land resources to rural communities**

Land is the primary factor of production for rural communities, source of employment, power, and wealth (Vogelgesang, 1998). It has enormous socio-economic and symbolic significance. Access to land, its use and ownership often define one's livelihood, wealth and power (OECD, 2005). Land is a crucial factor of production in the agricultural sector, which is the mainstay of the rural economy (Ondiege, 1996) in Southern Sudan where the majority population resides. For example, UNEP (2000) has appropriately recognised that land is the significant resource and the basis for survival for most African people. Land is a social asset, crucial for cultural identity, political power, and participation in local decision-making processes (Watts, 2002). This explains why the liberation wars staged on the African continent, including the most recent one in Sudan were fought closely around the land issue. The ongoing land conflict in Zimbabwe where the landless with the support of the Zimbabwean Government have been invading commercial farms is a case in point (Watts, 2002).

Land is a very important socio-economic asset, especially in poor communities where its control and access to, define people's wealth and survival (USAID, 2004). Access to land and control over its use are the basic requirements for food and income production in rural areas. Land ownership is crucial to household wellbeing, especially for rural dwellers. In rural areas, those who control land rights exert certain amount of power over those who have no control irrespective of whether land is perceived as an important cultural resource or a productive factor and capital asset (Lastarria-Cornhiel, 2005). Land has profound cultural and socio-political dimensions in addition to being a means of livelihood and basic survival in Sudan (Pantuliano, 2007). It is a critical socio-economic factor where there is a strong sense of community ownership in Southern Sudan (Okuk, 2008). Hincks (2006) stressed that land is crucial to Africa's renaissance. Consequently, in Southern Sudan, certain ethnicities derive their identities from their land, for example, Dinka-Bor, Juba-na-Bari (Juba of the Baris), Kakwa of Yei, and so forth. In fact, among the Southern Sudanese, many people introduce themselves by their homelands. Ajak (2008) appropriately affirmed that there is a strong bond between a tribe and its homeland. Land is part of the tribal identity in Southern Sudan and any attempt from outsiders to move ancestral boundary lines flares up deep emotions that hinge on honour and dignity of the tribe (Ajak, 2008).

#### **4. Effects of the most recent war on land resources use and ownership**

The most recent 21-year old conflict, like other wars fought elsewhere, caused much social engineering among urban and rural people by removing them from their familiar surroundings to unfamiliar environments. For example, the predominantly cattle-owning Dinka were displaced from the low-lying flood plains of Bor in the Jonglei State to the Great Equatoria (Eastern, Central & Western Equatoria states) where they have had been sharing land resources with mainly crop cultivators. Many southerners were also displaced to the North, especially to the Khartoum State where many dwell in displaced persons camps. Similarly, a considerable number of southerners sought refuge in other countries where they acquired bona fide refugee status. Of particular concern are the internally displaced persons (IDPs) in Southern who often are in loggerheads with host communities due to incompatible economic activities. Even where there are convergences in economic activities, issues of land resources sustainability result in conflicts between IDPs and host communities. Chenje and Johnson (1994) noted that displaced people like refugees live for today, rather than for tomorrow and in so doing overexploit the natural resources in their vicinity.

Lack of cultural attachment to land and intrinsic natural resources as well as lack of skills for sustainable exploitation of new environments also cause displaced communities to adopt more destructive resource harvesting methods (Chenje and Johnson, 1994). Cultural attachment refers to land resources tenure security. IDPs lack incentives to use natural resources prudently in the settled areas because they lack tenure security, i.e., the resources do not belong to them; they are the host communities'. Thus, Barraclough and Ghimire (1995) consider resource tenure security crucial in determining resource sustainability. This is because land ownership and security has the effect of unconsciously influencing human behaviour in an environmentally positive or negative manner (Convery, 1995). For example, families or communities who own the land that they farm or graze make efforts to conserve land resources to realize sustainable livelihoods. Household or community rights to land influence farming and grazing systems, agricultural productivity, and local environmental security (Ondiege, 1996).

It is therefore appropriate that property rights to land and associated resources are regarded key to sustainable management of natural resources in rural Africa (Bakema, 1994). However, where the authority and responsibility for the use of natural resources and the underlying land are weak, as is the case of IDPs, individual profit maximization attitude develops. This strains land resources, threatening local environmental security. For example, local people bear the costs of deforestation in terms of soil erosion, lack of fuelwood, timber, and non-wood forest products in the vicinity of their settlements. However, without security over land resources there is little incentive for them to effectively participate in controlling the overexploitation of resources or increase supply by planting trees (Dewdney, 1996). This is because individuals lack a sense of stewardship toward the local environment (Watts, 2003). This vividly describes the situation in IDP-settled areas, especially in the Eastern and Western Equatoria states of Southern Sudan, where there have been violent confrontations between IDPs and host communities.

There are also concerns that communities who inhabit low-lying areas would have bigger ecological footprints when they are displaced to high-lying terrains. It is noteworthy that protracted destructive use of land resources by IDPs in host

environments is likely to influence their resource harvesting and utilization techniques more permanently in their areas of origin in peacetime Southern Sudan. IDPs also bring about considerable changes in the social and economic welfare of host communities in addition to land resources degradation. Consequently, Smirnov (1989) stated that environmental considerations are not top priority concerns during and after the war. Nevertheless, when the war is over, both short- and long-term consequences of the war are by and large present (Smirnov, 1989). This is particularly evident in less developed countries in Africa where there is a heavy dependency on land resources (Sogge, 1992), more so in Southern Sudan. Overall degradation of the environment in refugee or IDP-hosting areas is caused by a high demand for natural resources such as arable land, construction poles and fuelwood, water, and pasture (UNEP, 2000). Shortening of fallow periods due to high demands for arable land and overgrazing by the cattle of IDPs have placed unprecedented stress on land resources, especially in the Eastern and Western Equatoria states. Proliferation of small arms contributed to the decimation of wildlife in areas that hosted IDPs. There are concerns that the environment in these IDP-hosting sites has been badly transformed. This is consistent with the findings of most researchers that agree that refugees and IDPs have negative effects on the environment through the increased use of local lands, water, plants, and animals (Bishop and Garnett, 2000). Such increased use is consequent to the increasing human population in areas of settlement. However, whether such use remains unsustainable over the long term, remains to be determined (Bishop and Garnett, 2000).

The prolonged stay of IDPs with large herds of cattle in post-war Southern Sudan has led to complete breakdown of communal management and use of natural resources for the host communities. Shambaugh et al. (2001) affirmed that the breakdown of law enforcement and traditional local controls makes the sustainable management of land resources a more challenging task in a war or post-war situation (Shambaugh et al., 2001). More challenges to sustainable resource management arise when IDPs fail to conform to local traditional norms. This is particularly valid as some of the IDPs like the Dinka-Bor came to Equatoria with their own customary administrative norms as observed by Murphy (2005). They occupied farmlands and grazing areas of Equatoria ethnic groups who felt that the IDPs were acting with impunity due to their perceived political protection from the leadership of the Sudan People's Liberation Army/Movement (Murphy, 2005). Consequently, Tombe (2006) affirms that the Government of Southern Sudan (GoSS) turns a blind eye to all criminal acts orchestrated by tribes that control GoSS. These tribes inappropriately consider themselves to be the liberators of others and hence have the prerogative to dispose of the rightful owners of the land and associated resources, especially in Equatoria (Tombe, 2006). For example, "a Madi man returning from Uganda goes to the land he farmed before being displaced, and finds a Dinka living in his house. He demands that the Dinka return his house and land. In response, the Dinka points to a date inscribed above the doorway. 'On this date, I liberated this house from the Arabs', he says. 'Where were you?'" (Branch and Mampilly, 2005:1). Such and many inflammatory reactions define relationships between the Dinka-Bor IDPs in Equatoria and the host communities. This, coupled to the perception of Dinka dominance within SPLA/M (Unger and Wils, 2007), may cause many to believe that certain GoSS officials condone forced land occupation or grapping by Dinkas in Equatoria.

It would be fair to state that there are huge cultural differences between IDPs and host communities in Equatoria. For example, a conference that was organized from 19<sup>th</sup> to 24<sup>th</sup> April 2006 to resolve inter-ethnic conflicts in Yambio, the state

headquarters of the Western Equatoria State found that IDPs displayed more aggressive behaviour toward host communities and have different expectations for the way in which land and water resources are used. They also lack respect for host communities and their leadership, resulting in renaming of places and communities, and forced marriages in their new environments. In fact, there is a general perception in Southern Sudan that Dinkas are predisposed to violence. Unger and Wils (2007) noted references to the violent aspects of Dinka culture, among others, in understanding the reasons behind the high violence in the Lakes State. Violent attacks against peaceful Jur people in April 2006 by a group of heavily armed Dinka in the southern tip of the Lakes County and many similar attacks against farming communities (Tombe, 2006) appear to substantiate this violent culture.

## **5. Potential for and land-related conflicts in post-war Southern Sudan**

Land is both a direct and indirect driver of conflicts (OECD, 2005). There are indeed increasing concerns about land-related conflicts in Africa where land offers a key source of livelihood to the majority of African populations (Lund *et al.*, 2006). The description of what goes on in most African countries in respect of land resources by Lund *et al.* (2006) fits the situation in Southern Sudan well. For example, they stated that while customary system of land use and management are being undermined and weakened in most African countries, more formal regulatory tools are still underdeveloped. This means that for many rural and urban dwellers land rights have increasingly become insecure and unclear, with the most vulnerable being the hardest hit (Lund *et al.*, 2006). In Southern Sudan, the most vulnerable appear to be unarmed individuals or communities who cannot confront armed ill-disciplined soldiers and the often armed internally displaced persons (IDPs). The U.S. Agency for International Development (USAID) (2004) acknowledged that fight over land resources is of historic nature. Human population growth and environmental stresses have increased the perception of land as a scarce resource among users, drawing a strong link between land and violent conflict (USAID, 2004).

There are concerns that land resources-based conflicts could become a major threat to the much desired peace in Southern Sudan. This threat 'from below' could arise as IDPs return home to claim land and water use rights that now have 'new owners' (Polloni, 2005). This could be exacerbated by the issuing of long-term land leases over community lands to privileged citizens and foreigners without consultations with the traditional or customary owners of the land in Southern Sudan by SPLM (De Witt, 2004). Similarly, Lunn (2006) stated that the return of IDPs and refugees is likely to worsen conflicts over access to ancestral lands. Keen and Lee (2007) also affirm that returning refugees are asserting claim to land that has been occupied by hundreds of thousands of displaced Dinka. GoSS would boost its authority and legitimacy if it succeeds to give land back to the returning refugees, otherwise it risks sowing the seeds for a renewed conflict in Southern Sudan (Keen and Lee, 2007). In fact, the host communities in Equatoria expected Dinka IDPs to immediately return to their traditional areas of birth after the signing of the Comprehensive Peace Agreement between the Government of Sudan and SPLA/M. The continual refusal of IDPs to return to their original homelands resulted in violent clashes between IDPs and Equatoria ethnic groups notably in the Eastern and Western Equatoria states (Wassara, 2007). During the most recent Southern Sudan Governors' Forum, the Governor of the Eastern Equatoria State blamed current security threats in the state on Dinka-Bor IDPs. It was stated that IDPs with

approximately 10,000 cattle refuse to return to their home areas and are causing problems to host communities who are predominantly agriculturists (Dak, 2008).

According to the Sudan Tribune (2007), some of the Dinka-Bor IDPs are occupying land that returnees expect to reclaim around the border town of Nimule in Eastern Equatoria. Recent attempts to repatriate them to Bor in the Jonglei State failed. One local official stated that “they don’t want to get out; the vehicle went empty” (Sudan Tribune, 2007). Similarly, the Dinka-Bor IDPs that arrived to Yei as a result of the Azande-Dinka conflict in the Western Equatoria refused to return to Bor in the Jonglei State despite the UNHCR assistance (UNHCR, 2006). Accordingly, the resentment of the Dinka ethnic group in Nimule which is the heartland of the Madi people is that they occupy local people’s land, hold key positions in the military, police and customs to the disenfranchisement of the local people (Sudan Tribune, 2007). The Magwi County Assessment Mission stated that there is a potential for land and property conflicts as many IDPs occupy land that belongs to dislocated local communities in the county (UNHCR, 2006). The high propensity for violent conflicts over land resources between IDPs and Equatoria ethnic groups is seemingly a huge disincentive for the voluntary repatriation of the latter. For example, Jooma (2005) stated that many communities are fearful of the rampant lawlessness of various armed groups, making it more difficult for people who were dislodged during the war to return to their ancestral grounds to claim land and associated resources.

These conflicts resulted in loss of lives and property, with either belated or passive reaction from GoSS officials. Obioha (2008) reported that very little attention is given to these land resources-related conflicts; relevant authorities only intervene militarily when large-scale killings and injuries have taken place (Obioha, 2008). This appears to explain the ongoing lack of attention to land-related conflicts between livestock herders and sedentary cultivators in the Eastern Equatoria State, especially in Acholi and Madi areas. The ferocity of interactions between ‘supposedly’ Equatoria ethnic groups and the Dinka on forums like the southsudannation.com shows the potential for land to instigate war among southerners if land issues are not addressed in ways that restore full ownership and rights to the original owners of the land. However, Johnson (2001) lamented the SPLA/M’s inability to resolve community land problems. The organization has not explicitly shown protection to local land tenure systems under its control; it lacked radical blueprint for the future (Johnson, 2001). Ironically, Polloni (2005) maintained that the SPLM judiciary system is primarily founded on customary legislation, i.e., land belongs to the respective communities.

The passive stance of GoSS on land-related conflicts in Equatoria between IDPs and host communities may prove to be an inappropriate and costlier political decision. Okello et al. (2004:9) emphatically stated that “the problem of land ownership ‘in Sudan’ represents one sticky issue that contributes to conflict”. For southerners, the sense of origin and land ownership is strong. Thus, choosing to settle in an area that belongs to another ethnic group without seeking the permission of the competent community that owns the land in peacetime Southern Sudan is tantamount to the declaration of an inter-ethnic war. Ngowi (2005) reported that the war may be officially over, but for many others there is no peace without restoration of ancestral land. Losuba (2005) stresses that occupation of land in Equatoria by non-Equatoria ethnic groups reflects a mentality of occupation, especially as these groups portray themselves as liberators of Equatoria. De Wit (2004) affirmed that there is a tendency to resort to ‘easy and fast’ military solutions to resolve social and economic problems, with the land providing a fertile substratum for such conflicts. Political opportunists use land to seed unrest for different reasons (De Wit, 2004).



Furthermore, wartime promises to combatants to lay claim to any land in Southern Sudan, especially in Equatoria from where certain non-Equatoria ethnic groups felt forcibly removed by the policy that resulted in the decentralization of the South in the mid-1980s, provide the best explanation to the sustained refusal of certain IDPs to return to their ancestral lands. This, coupled to the misunderstanding of section 31(1) of the Interim Constitution of Southern Sudan has emboldened the desire of IDPs notably from Bor not to return home despite the incompatibility of economic activities between them and host communities. For example, IDPs are predominantly cattle-owning while the host communities are fundamentally crop cultivators. Wassara (2007) refers to the conflict between these two categories of resource users as occupational conflict. Fighting for land resources in Equatoria between certain IDPs and Equatoria ethnic groups is likely to worsen, especially in the climate of stressed traditional systems and a 'weak' government. Traditional governance institutions in IDP-hosting communities were undercut by the social engineering works of the 21-year old war. These institutions are somewhat dead in areas currently occupied by IDPs. The three spheres of GoSS also appear to be weak even in providing basic services. Storey (2005) noted the emergence of conflict as a result of weak government and stressed traditional systems in Pacific Island countries.

### **5.1 Freedom of movement and residence**

Section 31(1) of the Interim Constitution of Southern Sudan states that "every citizen 'has' the right to freedom of movement and the liberty to choose his or her residence in Southern Sudan..." (GoSS, 2005:11). There are concerns that this section of the supreme law of Southern Sudan is being misconstrued to entrench the ownership of Dinka-Bor IDPs over the traditional lands of certain Equatoria ethnic groups. This is evidenced by the silence of the competent environments in the Government of Southern Sudan (GoSS) on land-related conflicts between the concerned IDPs and the Madi and Acholi ethnic groups in the Eastern Equatoria State. In fact, this perception has been substantiated by the outcomes of interaction with key informants in the Great Equatoria. Nonetheless, forced occupation of one community's land by another need not occur despite this constitutional directive. For example, section 21(2&3) of the South African Constitution establishes the freedom of movement and choice of residence for South Africans anywhere in South Africa (Government of South Africa, 1996). However, this constitutional provision does not mean that the Xhosas could move from the Eastern Cape with their livestock to go and settle in the areas occupied by the Venda people in the Limpopo Province and vice versa. Currently, the Restitution of Land Rights Act No 22 of 1994 is being used to restore lost community ownership and rights to land resources, especially ownership and rights which were lost after the 19<sup>th</sup> June 1913. This act allows communities to lay claim to their ancestral lands. Similarly, the Communal Land Rights Act No 11 of 2004 was enacted to bring order to the management of lands owned by local, geographically specific communities.

The war in Southern Sudan that caused massive internal displacement can be likened to the Group Areas Act No 41 of 1950, which established separate homelands and townships for non-white South Africans. This act caused much social engineering by evicting non-white South Africans from their ancestral grounds and settling them in predetermined settlements. For many communities it was indeed a catastrophic internal displacement, comparable to the war-induced internal displacement of Dinka-Bor to Equatoria. However, when the apartheid regime was

dismantled in 1994, many of these socially engineered communities hungered for their ancestral lands. Accordingly, laws were formulated to facilitate the return of these politically and racially displaced communities to their birth places. Many communities organized as juristic persons, using the Communal Property Associations Act No 28 of 1996, to manage their respective community land resources. GoSS could draw from the South African sense of urgency in addressing land issues after the apartheid. Moreover, land provides a unique opportunity for post-war socio-economic reconstruction of Southern Sudan if appropriately managed. It could also become a source of further conflict in Southern Sudan if there are no appropriate mechanisms for managing relationships between communities and land resources. Okuk (2008) cautioned that land in Southern Sudan is a critical socio-economic asset that cannot be tempered with. Similarly, Green (2006) affirmed that lack of attention to the numerous political conflicts over land, could result in full-scale violent conflict. It suffices to state that natural resources, including land fuel and motivate violent conflicts. This needs to be considered in post-war conflict prevention, resolution and peace building. Consequently, governance and management of natural resources are crucial for conflict prevention (United Nations, 2004).

## **6. Implications of land-related conflicts for communal management**

The 21-year old war fragmented many Southern Sudanese communities, with others becoming internally displaced persons (IDPs) and refugees in neighbouring countries. These communities established traditional governance systems, consisting of chiefs and their assistants in the areas where they were displaced. They have also acquired new values, skills and knowledge, in addition to being sensitized to participatory democracy and women's rights, which are relegated in typical Sudanese traditional governance institutions. The return of these dislocated people to their ancestral lands is causing conflicts between themselves and the traditional governance institutions in their homelands. The contradictions between these two governance institutions have been the basis for community-based conflicts in many parts of Southern Sudan (Wassara, 2007). The struggle between traditional institutions founded on hereditary leadership and the 'new' local institutions premised on participatory development is likely to affect the management of common pool resources in Southern Sudan. Nhancale (2006) found such a conflict in land resources administration, mainly between customary leaders and elected or politically appointed community leaders in a rural area in the Limpopo National Park within the Great Limpopo Transfrontier Park. This polarizes communities and often militates against developing common vision, strategy or approach to sustainable management of communally owned and used resources.

Self-organized or traditional resource governance regimes are vulnerable to both exogenous and endogenous threats. Major migration into an area is always a threat that may or may not be countered effectively (Ostrom, 2000). In-migration like by the IDPs into Equatoria ethnic groups brought new resource users who do not trust host communities and do not appreciate their social norms for resource access and use that have developed over a considerable period of time. Baland and Platteau (1996) maintained that some self-organized resource regimes in areas of rapid settlement have broken down within relatively short times. This is because collective action for common pool resources is largely based on mutual trust (Baland and Platteau, 1996). Animosity, rather than trust, appears to define the relationship between the Dinka IDPs and Equatoria ethnic groups. Katz (2000) shows that communities whose social bonds have been disrupted by migration of outsiders are

less likely to undertake long-term collective action for resource improvement. Migration diminishes social bonds of reciprocity and trust (Curran and Agardy, 2002). Movement into a community exerts pressure on resource extraction and diminishes trust, reciprocity, exchange and social bonds within communities (Ostrom *et al.*, 1999).

It is also important to note that migration to Equatoria by rural non-Equatoria ethnic groups undercuts traditions of community service and disrupts the integrity of local development networks, including traditional governance institutions for common pool resources in their areas of origin. Mutersbaugh (2002) found such a scenario in a Mexican village that was experiencing outmigration, thereby depleting the village's human capital and associated networks. Migration weakens the village governance institution by permitting villagers to evade leadership appointments and labour duties, and by disrupting the complex local networks of village-state and village-NGO linkages that support local development and subsistence (Mutersbaugh, 2002). In fact, cattle owning IDPs' social capital, i.e., successful experiences in natural resources management is in their areas of birth in the flood plains of the Nile River in the Jonglei State not where they were displaced by the war and adopted an opportunistic attitude to land resources use.

Furthermore, traditional governance institutions for sustainable management of communally owned and used natural resources develop and function in a politically stable environment conducive to law enforcement. However, the presence of cattle owning IDPs, mainly in Equatoria is often accompanied by insecurity and violent actions (see Branch and Mampilly, 2006; Keen and Lee, 2007; Tombe, 2006; Unger and Wils, 2007). Letters posted by Majuk (2008), Eremugo (2008), and Taban (2008), among others, state that the Dinka-Bor IDPs in Acholi and Madi land in the Eastern Equatoria State were supplied with guns to defend the land and associated resources that they occupied during the 21-year old war. This offsets the re-establishment of local self-governing intuitions for sustainable management of communally owned and used natural resources to pre-war times by Acholi and Madi communities. Many SPLA soldiers are also undisciplined and do not heed the rule of law. For example, the Governor of the Central Equatoria State who is an SPLM member pointed out that the SPLA soldiers who are mostly from cattle camps misuse their guns to terrorize and kill innocent people (Vuni, 2007). Land is undeniably becoming a major source of conflict among southerners in the post-war period. There are incidents where the original owners of land and associated property have been threatened with a gun (Staff Writers, 2007). It appears that the protracted war has institutionalized the culture of violence and lawless in Southern Sudan to the extent that the competent authorities for law enforcement, corrective behaviour and discipline begin to see violence and lawlessness as normal. This is exemplified by the passive or extemporized, rather than proactive reaction of the relevant authorities in the Government of Southern Sudan to land resources-related inter-ethnic conflicts. It is therefore difficult or impossible for traditional governance institutions for sustainable management of natural resources to develop under the climate of uncertainty and inter-ethnic violence.

## **7. Conclusions and recommendations**

The breakdown of social cohesion and trust is ostensibly one of the most destructive legacies of the 21-year old armed conflict in Southern Sudan. Wartime violence and lawlessness have decimated social cohesion, polarizing the Southern Sudanese society along ethnic lines, wartime alliances, or on the basis of 'who fought in the

war' and 'who did not'. This situation hinders the restoration of traditional governance institutions for effective management of land resources in the absence of a comprehensive government land policy for Southern Sudan. This has created conflicts and the atmosphere of lawlessness in Southern Sudan, with many armed internally displaced persons (IDPs) and ex-combatants seizing land and associated property from Equatoria ethnic groups. The presence of many armed people, including IDPs remains a source of lawlessness, a threat to peace and stability, and potential renewed conflict. Consequently, post-conflict reconstruction should first and foremost focus on resuscitating effective state authority; acknowledging and correcting past human rights violations, including land and property grabbing; and promoting social reconciliation among southerners. Reconstruction is building trust, and hence it is a social capital. In normal political situations, the need for at least a small degree of trust among the governed and between them and the state is indisputable. Trust can improve interaction among people and with government officials, reduce transaction costs, increase the citizen compliance with statutory instruments, and contribute to political support for the government. Conflicts shatter people's sense of trust and a sense of fear and insecurity continues to linger even when open hostility has formally ceased. This explains the ongoing land resources-based conflicts between IDPs and Equatoria ethnic groups, making it difficult for Equatoria IDPs and refugees to return to their ancestral grounds to resume normal life.

Reconstruction, when accompanied by improved governance, accountability and transparency could improve society-government relationships and increase the legitimacy of the state in the eyes of citizens. There is an immediate need to repatriate IDPs who currently squat on properties of other dislocated persons to their areas of origin, considering the strong sense of ownership and usage of land resources along ethnic lines in Southern Sudan. This is likely to establish the legitimacy of the Government of Southern Sudan (GoSS), especially in the eyes of southerners who accuse the government of safeguarding the interests of only few ethnic groups. This should be followed by a comprehensive land resources survey to identify existing or current state-owned lands such as protected areas and the territorial scope of land resources owned by the different communities in Southern Sudan. This survey should also provide useful information for identifying areas that play key roles in soil, water, and biodiversity conservation, which are not under statutory state ownership or effectively managed to secure national and international externalities. Laws could be developed to remove the ownership and authority of all lands which are associated with major externalities from communities to GoSS. Similar laws could be developed to dispossess communities of land earmarked for urbanization and other public infrastructure, such as roads, power lines, dams and so forth. Such legal dispossessions could be linked to a comprehensive compensation arrangement reflective of both the direct and indirect values of the concerned land resources to local communities.

The survey data should inform a broad-based land reform program that vests the ownership of land and associated resources in communities as juristic persons. Implicitly, laws also need to be formulated to allow rural persons to organize into associations to hold property as corporate entities. This is, nonetheless, not a call for revisiting the principle of native administration in its typical format. The principle vests the collective security of the land in the tribe within which individual rights to land are recognized and can be inherited, but without the power to alienate land from the ownership of the tribe. The need for departure from the hereditary traditional leaders

is because the leadership of traditional governance institutions disenfranchises women and discourages the development of participatory processes in rural areas. As a result, there is a need for separation of powers between traditional leaders and other conventional local institutions formulated by the inputs of the populace to address contemporary developmental issues in post-war Southern Sudan. For example, traditional leaders could play ceremonial roles in communities just like how monarchies operate in democratic society. Conversely, the hands-on management of natural resources at the village level should become the prerogative of democratically elected community representatives who are conversant with framework laws that shape the ownership, management and utilization of natural resources at the grassroots. These local democratic institutions could develop locally relevant laws or guidelines for the ownership, management and use of community lands. Land ownership and use rights could be privatized for individual community members within the community land, with the aim of internalizing social benefits and costs associated with land use. The members and the leadership of local democratic institutions could also be responsible for leasing land and for entering into contractual agreements with both internal and external private entrepreneurs. Similarly, they could play pivotal roles in the post-war resettlement of IDPs and refugees from their respective communities. Leaders from these grassroots organizations could represent their constituencies on higher forums like natural resources management committees at the county level and beyond.

In fact, establishing land tenure security after years of social dislocation and engineering and insecurity is a crucial step in a post-war situation (Bruce, 2007). Insofar, as land is often a significant factor in violent conflict, it is also an important element in peace-building and economic reconstruction in a post-war situation (USAID, 2004) like Southern Sudan. Hetz et al. (2007) warned that seeds of future conflicts could unwittingly be sown by well-intentioned and inexperienced officials, if land tenure and property rights do not feature in IDP and refugee resettlement and reintegration initiatives. This seed of discontent would be worsened if post-war policies, laws and strategies do not address the issues of land rights security to both traditional ethnic groups and individuals (Hetz *et al.*, 2007). The access of returning refugees and demobilized soldiers to natural capital, such as arable and grazing land, water, forests, fisheries, and game, is critical to both poverty reduction and social peace. Land issue needs much greater attention, as problems are accumulating over time (Addison, 2001). There is indeed need for an urgent land reform program, especially in the face of the predatory tendencies of the Sudan People's Liberation Army (SPLA) soldiers in Southern Sudan (Pantualiano, 2007). After all, there is enough proof that disputes and even violent clashes are often premised on land rights and issues of access to associated natural resources.

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