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# Land, Security and Peace Building in the Southern Sudan

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# **Land, Security and Peace Building in the Southern Sudan<sup>1</sup>**

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## ***Executive Summary***

Violence and insecurity threatens peacebuilding in the Southern Sudan and the 2011 referendum on self-determination. The Sudan's interim period which started with the signing of the Comprehensive Peace Agreement (CPA) 9 January 2005 is now reaching its final phase but communities in the South still face multiple types of violence stemming from local and regional tensions as well as conflicts at the national and even international level. The underlying causes of this predicament are a tense political setting, a highly militarised society in terms of access to weapons and a lowered threshold to settle disputes with violence, and, finally, lack of institutional capacity to provide security and to prevent, contain and solve conflict in the Southern Sudan. This situation invites the use of violence as a means to further the interests of groups and individuals. The solution lies in a two-stage process starting with short-term drastic measures and proper planning of long-term measures addressing the underlying factors causing this predicament. Only when this first stage is finalised will long-term measures have the desired effect.

The year 2009 has proven to be a particularly difficult year in the South, surpassing Darfur in terms of violent deaths. Although there are different sources of violence and insecurity in the Southern Sudan, local conflicts is by far the one cause affecting most people on a daily basis. Because of their political overtones and potential for overturning the CPA, clashes between Sudan Armed forces and Sudan People's Liberation Army as well as attacks by militias have in previous years received considerable attention from journalists and foreign diplomats. Now however, local violence has come into the limelight as it has become a threat against stability in the Southern Sudan as such. At the local level people are denied the essential peace dividend of tranquillity and security. In addition, local insecurity hinders the provision of most other benefits of peace. At higher political levels local insecurity hinders

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<sup>1</sup> The paper is a part of the PRIO project: 'Peacebuilding in the Sudan: Current status, future directions' (generously funded by the Norwegian Peacebuilding Centre). It is based on oral and written sources gathered during field work in the Southern Sudan during May and June 2009, which includes visits to: Mwole/Akot, Bentiu and Malakal. Special thanks to Norwegian People's Aid and UNDP for facilitation in the field and to the participants at the small workshop organised by the Norwegian General Consulate in Juba, 10 June 2009. I am also grateful for comments and suggestions from Jacob Høigilt, David Deng, Tor A. Benjaminsen, Åshild Kolås and John Ashworth.

implementation of two important components of the CPA: national elections in 2010 and the 2011 referendum over the future status of the Southern Sudan. Continued local violence has also fuelled the debate over whether the Southern Sudan would be a 'viable' independent state.

Differences in religion and ethnicity, centre – periphery tensions, and interventions from neighbouring countries have been at the forefront in the analysis of conflict in the Sudan. Recently issues related to environmental degradation and climate change have also been discussed as underlying factors explaining the war in Darfur. Still, with the exception of oil and the Nile, issues related to land and natural resources have rarely been taken into consideration when discussing conflict in the Southern Sudan.<sup>2</sup> This is an oversight which needs to be addressed in the current post-conflict setting in the Southern Sudan. Disputes over ownership and authority to administer land and resources are often cited as causes of local violence. But, connections between conflict and insecurity on the one hand, and land and natural resources issues on the other, are often complex and influenced by post-war dynamics and government policies (or lack of such). Delays in establishing a transparent and coherent land administration regime and a general lack of clarity on government intentions have led to misunderstandings and uncertainty at the local level. In particular, there is confusion over the actual implications of Sudan People's Liberation Movement/Army's (SPLM/A) slogan 'land belongs to the people'. Also, there is a common belief that the CPA warrants the use of local borders as of 1 January 1956 for local border demarcation. Misunderstandings and lack of clear government policies create uncertainty and this state of affairs is likely to be exploited by members of local elites as well as external actors pursuing their own agendas.

The report distinguishes between short-term and long-term recommendations. The Government of Southern Sudan (GOSS) should immediately, in collaboration with the UN and in particular the UN Mission in Sudan (UNIMS), deploy the necessary amount of forces to the areas affected by local violence (first and foremost the states of Upper Nile, Jonglei and Eastern Equatoria). These units will primarily deter future attacks, but against perpetrators of local violence it is also necessary to have small mobile units with the adequate

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<sup>2</sup> One cause of friction in the three contested areas of Southern Blue Nile and Southern Kordofan (Nuba Mountains and Abyei) has been land grabbing by merchants and other investors for the purpose of establishing mechanised farming schemes, combined with intensified disputes over rights to grazing and farming land.

training to tackle peace time operations. It is important that these units receive the necessary training to avoid that the SPLA-units themselves exacerbate rather than calm situations. It is only when sufficient protection from the government is provided that civil disarmament can be effective. On a somewhat longer term, the responsibility to protect has to be handed over to the civilian police forces and units stationed in rural areas with the possibility to mobilise well-trained and disciplined home guards when the need arises.

Concurrently, adequate systems of local arbitration must be strengthened and given the necessary institutional support by the Government of Southern Sudan (GOSS) and national and international agencies. These should also facilitate a combination of regular meetings between local representatives of neighbouring groups, and systems for dispatching fact-finding and negotiation teams at short notice. Land legislation must be clarified and institutions for land administration should be expanded and strengthened by Southern Sudanese authorities. There must be a continuous dialogue between GOSS institutions and representatives of local communities to ensure an interpretation and administration of new laws that take local practises into consideration. It is worth noting that several of the main recommendations from this report are in line with the Resolutions from the Kings, Chiefs and Traditional Leaders conference held in Bentiu in May 2009.

The report first discusses different aspects of violence and insecurity in the Southern Sudan, focusing on local violence and current measures to address these challenges. In the next part it presents some issues related to land and natural resource management and suggests some linkages between these issues and the growing local insecurity. Finally the report discusses some possible measures to be taken in order to improve this situation.

## ***1. Violence and Insecurity in Southern Sudan since 2005***

‘My worry, and the fear of many thousands of people I have spoken to across Southern Sudan in the past year, is that the current escalating violence will add to the current disputes between the National Congress Party (NCP) and the Sudan People’s Liberation Movement (SPLM) over the North-South border and the Abyei Protocol, that are already threatening to cause the CPA to collapse. If the CPA is not guaranteed now, war can start again all too quickly, during which a return to peace will be incredibly difficult, the Sudanese people will be further devastated and the whole region will be destabilised. If you are guarantors of the CPA, then why is the international community allowing this violence to continue? I beseech you to act now to prevent it and protect the peace of my people.’<sup>3</sup>

This statement by Archbishop Daniel Deng Bul exemplifies a growing concern among Southern Sudanese over the security situation in the Southern Sudan. In previous years clashes between the Northern Sudanese government army and the SPLA or between the two sides’ contingents to the Joint Integrated Units (JIU) received considerable attention.<sup>4</sup> Also, violence attributed to the Ugandan Lord’s Resistance Army (LRA) has been followed closely. However, since January 2009 an increasing number of violent local clashes have drawn attention to the problem of continuing local insecurity and post-war violence in the Southern Sudan.<sup>5</sup> One of the most important dividends of peace – absence of violence and insecurity – is denied a large number of people in the Southern Sudan. The situation also hampers provision of other dividends such as education, health, freedom of movement, and economic development. A better understanding of local violence and the attempts at curtailing it is needed and is there the main focus of the first part of this report.

### *Background*

Historically, the level of state penetration in the Southern Sudan has been limited. Government institutions and agents continue to be regarded as foreign forces that bring some benefits to local communities, but also as perpetrators of destruction and violence.<sup>6</sup> This trend continued during the second civil war in the Southern Sudan, which officially started with the

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<sup>3</sup> Archbishop Daniel Deng Bul, ‘Appeal to the International Donor And Diplomatic Community in The Sudan’, Episcopal Church of Sudan (ECS), 4 May 2009.

<sup>4</sup> New incidents are continuously reported in Sudanese news sources (e.g. *Sudan Tribune*, *The Citizen*, *Juba Post*) and discussed in online forums.

<sup>5</sup> See e.g. Human Rights Watch, ‘No one to intervene: gaps in civilian protection in Southern Sudan’, New York, June 2009; IKV PAX Christi, ‘The State of Sudan’s Comprehensive Peace Agreement’ (CPA Alert No.1, Utrecht, NL., September 2009); UN Security Council, ‘Report of the Secretary-General on the United Mission in the Sudan’ (S/2009/357, 14 July 2009).

<sup>6</sup> Cherry Leonardi, “‘Liberation’ or capture: Youth in between ‘hakuma’, and ‘home’ during civil war and its aftermath in Southern Sudan”, *African Affairs* 2007 106 (424): 391-412; Sharon E. Hutchinson, *Nuer dilemmas: coping with money, war, and the state* (Berkeley, Calif.: University of California Press, 1996).

army mutiny in Bor, 16 May 1983. By the late 1980s SPLM/A controlled most of the countryside and a varying number of towns while the government held a few garrison towns and some surrounding outposts. With the exception of a period of set-backs following the 1991 split within SPLM/A, this pattern of areas of control continued throughout the war.

Although civilians were living under different degrees of insecurity, most of the time they did not experience direct violence or military operations in their areas and they were in many areas mostly left to their own devices. A majority of the estimated two million deaths attributed to the war was a result of indirect causes such as malnutrition and diseases. Still, the war was highly disruptive and civilian branches of the government were subordinated to military priorities on both sides of the war. In areas controlled by the Sudan Armed Forces, mostly garrison towns, people were living under a reign of terror and suffered under food shortages. In areas controlled by SPLM/A, the Movement established skeletal governance structures.<sup>7</sup> Albeit SPLM/A area commanders saw themselves as paternalistic protectors of the civilians in the areas under their control, these structures were mostly used for extracting supplies and manpower. Few and unevenly distributed relief and social services were provided by NGOs and church organisations. The hierarchical system of local chieftainships, institutionalised (and sometimes even created) during the colonial period, has been the only stable government institution in most of the Southern Sudan. Now, almost five years into the CPA, most of the rural Southern Sudan remain lightly governed with weak police and court systems. The chiefs and church leaders manage to solve some conflicts, but local vigilantism is also common. As a consequence, most people in the Southern Sudan today remains distant from modern government structures and they do not fully trust the post-CPA regime and remain wary of its intentions.

The CPA was an important and necessary step towards a normalisation of the security situation in the South. The change from war to peace has however been more gradual than commonly appreciated. There was no significant fighting between the two parties from autumn 2003 until the clash between different parts of the Malakal Joint Integrated Unit (JIU) in autumn 2006. It took months and in some cases years before the Sudan Armed Forces (SAF) officially withdrew from their positions in the South. Most importantly, the CPA mainly addressed the security problems related to hostilities between regular forces, and to

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<sup>7</sup> Øystein H. Rolandsen, *Guerrilla government: political changes in the Southern Sudan during the 1990s* (Uppsala: Nordic Africa Institute, 2005).

some extent the parties' associated militias. It is however important not to underestimate the impact of the CPA on the general perception of the security situation in the South, including the freedom of movement. The problem of low standard of roads and presence of land mines which initially hindered the movement of people and the return of displaced persons, have – as one of the few success stories of the post-war interventions in the South – been comprehensively addressed through extensive de-mining and road rehabilitation. This all adds to the notion of not being at war, which constitutes a significant difference from the pre-CPA period.

The CPA has been characterised as more akin to a ceasefire agreement than a permanent solution to the conflict between the NCP and the SPLM/A.<sup>8</sup> Several issues formally addressed by the peace agreement have either not been implemented or were not actually solved. These include:

- The dispute over Abyei.<sup>9</sup>
- Border demarcation between North and South.
- Bringing the JIUs up to a functioning level where this force becomes a symbol of cooperation and a good start to the merging of SAF and SPLA.
- Sharing of oil revenues.
- Inclusion of the SPLM in decision making processes at the national level.
- Delays in the National Elections
- Delays in the planning of the 2011 Referendum.

In addition to an increasingly hostile tone between the two parties to the CPA, these issues have also formed part of the background for open confrontations between the two parties and their local allies, and they continue to be a source of insecurity in the border areas between the North and South. In previous years skirmishes and tensions between the SAF and the SPLA received considerable attention as they directly and immediately threatened the CPA.

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<sup>8</sup> IKV PAX Christi, 'The State'.

<sup>9</sup> Fortunately, it appears that the Permanent Court of Arbitration ruling of 22 July 2009 over the demarcation of Abyei's borders has been accepted by the parties in words if not in spirit. It is expected however that Abyei's referendum over whether it belongs to the north or south of the Sudan will spark new controversies. Already the question of whether the oil belongs to Southern Kordofan State or Unity State has cropped up.

*Violence and insecurity in the Southern Sudan involving SAF, SPLA, JIU, former militias and LRA since 2005*

The period 2003-2007 represented a gradual reduction of violence and insecurity caused by para-military forces in the Southern Sudan. It was agreed in the CPA that Other Armed Groups – basically government-allied militias in the South – were to be disbanded or absorbed in to either SAF or SPLA. But, further negotiation was required before this could be achieved. A significant step forward was made with the 2006 South-South peace agreement which incorporated a number of militias and their leaders into the SPLM/A; most significantly, Paulino Matiep's Nuer militia and Clement Wani's Mundari fighters. The militias were gradually integrated into the SPLA.<sup>10</sup> Some of the Other Armed Groups merely disintegrated or became passive (and may quickly be reactivated in the future),<sup>11</sup> while other groups were integrated into the Sudan Armed Forces. The substitution of regular SAF soldiers with previously pro-government militias in the Joint Integrated Units has proved to be a source of friction and in the case of Malakal the fighting within JIU in November 2006 and January 2009 has had tragic consequences. Furthermore, formally disbanded ex-combatants from Other Armed Groups are likely to be a factor intensifying local violence (e.g. animosities between Lou/Murle, Mundari/Bari, Messiriya/Nuer).<sup>12</sup> In addition, during the war SPLM/A provided weapons to some communities for their own protection (notably the 'gelweng - cattle guards' in Lakes area).<sup>13</sup>

LRA was supplied and trained by the Sudan government during the civil war. This support was officially discontinued in 2001 and the Sudan government allowed Ugandan armed forces to fight LRA inside the Sudan. Still, LRA was not flushed out and remained in southern parts of the Central and Eastern Equatoria states in the years following the signing of the CPA and contributed towards destabilising this area.<sup>14</sup> During 2007 and 2008, LRA relocated to Ri-Kwangba, a remote game park area on the border between DRC and Western

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<sup>10</sup> When push comes to show, the ex-militia members' loyalty to their former leaders may still be stronger than their willingness to follow orders originating from the SPLA GHQ. Cf. Mareike Schomerus, 'Violent legacies: insecurity in Sudan's Central and Eastern Equatoria', Working Paper No. 13 (Small Arms Survey: Geneva, July 2008), 59.

<sup>11</sup> *Ibid.*, 56, 60-1.

<sup>12</sup> For further details on the Other Armed Groups after 2005 see: Small Arms Survey/ M. Arnold and M. LeRiche, 'Allies and defectors: an update on armed groups integration and proxy force activity', (Geneva, May 2008).

<sup>13</sup> Adam O'Brien, 'Shots in the Dark: The 2008 South Sudan Civilian Disarmament Campaign' (Geneva: The Sudan Human Security Baseline Assessment (HSBA), January 2009), 25.

<sup>14</sup> Although a share of the violence officially attributed to LRA in this period was actually carried out by other rouge elements in the area.

Equatoria State.<sup>15</sup> Peace negotiations between the Government of Uganda and LRA led by the South Sudan Vice-President Riak Machar started in July 2006. Five separate agreements were signed, but two attempts at gaining a final signature from LRA leader Joseph Kony failed in both April and November 2008.<sup>16</sup> NCP has been accused of continuing its support to LRA, but solid proof has yet to be presented.<sup>17</sup>

In December 2008, the GOU, GOSS and DRC opted for an armed solution and attacked known LRA camps from the air and subsequently through ground assault. Although declared a success, Operation Lighting Thunder did not reach its objective of defeating LRA or eliminating Kony. The operation has contributed to a deteriorating security situation in areas both in DRC and in Western Equatoria state.<sup>18</sup> It has now become almost impossible to get in contact with LRA and to reboot the peace process in the foreseeable future will be difficult at best. One consequence of Operation Lighting Thunder is that the population on the Sudanese side has lost confidence in the SPLA's capacity and willingness to protect them. Consequently local village militias, 'arrow-boys', have been established (more systematically on the DRC side of the border than on the Sudanese). These are condoned by local and state authorities, and sometimes operate in concert with the UPDF or SPLA. Arrow-boys got arms and ammunition from UPDF during the above mentioned December offensive.<sup>19</sup> This development is disquieting. Although established for 'legitimate' defensive purposes, such groups may constitute a security risk. A symptom of the GOSS inability to police the area, these groups also lessen local people's confidence in the Southern government and ultimately the CPA.

### *Local violence*

Since 2006 violence involving army units and Other Armed Groups has been reduced significantly and inter- and intra-communal fighting has become the main source of violence and insecurity in the Southern Sudan (although in some cases related to or coinciding with

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<sup>15</sup> IKV PAX Christi/Van Puijenbroek and Plooijer, 'How enlightening is the thunder'? Study on the Lord's Resistance Army in the border region of DR Congo, Sudan and Uganda' (Utrecht, NL., February 2009), 6.

<sup>16</sup> M. Schomerus and K. Tumutegereize, 'After Operation Lightning Thunder: protecting communities and building peace' (London: Conciliation Resources, April 2009), 4.

<sup>17</sup> Lewis, 'Skirting the Law: Sudan's Post-CPA arms flows' (Geneva: The Sudan Human Security Baseline Assessment (HSBA), September 2009), 50-1.

<sup>18</sup> Schomerus and Tumutegereize, 'After Operation Lightning Thunder'.

<sup>19</sup> *Ibid.*, 11-2; IKP PAX Christi, 'How Enlightening', 16-9.

other types of violence discussed in the preceding paragraphs).<sup>20</sup> Since before the introduction of the Condominium government, local conflicts have occurred from time to time in most areas in the Southern Sudan. Apparently, such conflicts take place more frequently among agro-pastoralists and between agro-pastoralist and farmers, than among the farmers of the Southern Sudan. Many have correctly pointed to the increased severity of these conflicts as a result of access to modern arms. Also, military training and combat experience probably increase the deadliness of the local engagements.

There has been a noticeable increase in occurrences of intense local violence in several places in the South in the period January-October 2009.<sup>21</sup> Some local conflicts have received considerable attention because of a high death toll while others have occurred between communities believed to be on good terms. In 2009, incidents on a larger scale have taken place in and around Malakal, in Western Equatoria State (Mwolo and the border to DRC) and in Jonglei State (Akobo and Pibor).<sup>22</sup> However, also in many other areas the level of locally induced violence and insecurity in the Southern Sudan appears to have been rather high throughout the interim period.<sup>23</sup> Some larger incidents have been reported while smaller issues have only been mentioned in Sudanese media notable *Sudan Tribune*. Part of the problem is that the insufficiently armed and manned police units are no match for local raiding parties.<sup>24</sup> The result is that one major benefit of peace, i.e. security, has been denied a majority of the people of the Southern Sudan and that it is only military institutions that have the necessary capacity to stem local violence.

A better understanding of the nature of local insecurity and violence in the Southern Sudan is needed. Although most societies in the world can quickly mobilised parts of the civilian population for military purposes, the level of militarisation and preparedness to use violence in the Southern Sudan is unusually high. One common error therefore is to make an artificial distinction between civilians and military personnel in the Southern Sudan when discussing

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<sup>20</sup> It is difficult to estimate the extent of local violence as incidents, at least until recently, have often been under-reported. Still, Human Rights Watch (HRW) has in recent years addressed this issue in two reports: “‘There is no protection’” (New York, February 2009); ‘No one to intervene: gaps in civilian protection in Southern Sudan’ (New York, June 2009).

<sup>21</sup> HRW, “‘There is No Protection’”.

<sup>22</sup> *Ibid.*

<sup>23</sup> E.g. in Eastern and Central Equatoria, Schomerus, ‘Violent legacies’. See also: HRW, “‘There is No Protection’”. Also, in the states of Lakes and Warrap, Manyang Mayom, ‘Wulu conflict displaces over 600’, *Sudan Tribune*, 7 June 2009; Manyang Mayom, ‘20 reported killed and 37 wounded in Lakes-Warap herders conflict’, *Sudan Tribune*, 27 April 2009.

<sup>24</sup> HRW, “‘There is no Protection’”, 21-2.

local violence. A large share of the male population has received military training of varying length and intensity. Many people regarded as ‘civilians’ have been a part of local SPLM home guards or other kinds of militias. Most men – especially in agro-pastoralists areas – are capable of participating in organised violence. This unusually high military capability of Southern Sudanese ‘civilians’ may be illustrated by the following example from Eastern Equatoria:

‘In May 2007, cattle raiders (allegedly Toposa) attacked a Didinga community in Ngauro Payam (district), Budi County, killing at least 50 civilians and looting an estimated 400 cattle and 400 goats. Most of the dead were women and children. Observers noted a complex ambush involving around 1,500 attackers wearing SPLA military and police uniforms. They advanced from three directions and were reportedly armed with a variety of weapons including a 12.7mm heavy machine gun, PKM general-purpose machine guns, Kalashnikovs, and G3 rifles.’<sup>25</sup>

In this example there is clearly an ambiguity related to whether the assailants are soldiers or civilians and the report does not specify whether the uniformed participants were in active service. Irrespective of the attackers’ official status, the report portrays the ambush as motivated by local issues: access to pastures and gold or retaliation for not joining an alliance with the Toposa and Boya.<sup>26</sup> This confusion over the status of the attacker – bandits or government representative – also makes it difficult for those being ambushed to know the consequences of resisting the attack. The civilian-military dichotomy is further blurred by SPLA being a former guerrilla army which has not yet reached the standards of a regular army. At the same time the capabilities of the locally organised groups fighting neighbours may not be much less than that of SPLA.<sup>27</sup> SPLA’s lack of superiority has in some cases made it extremely dangerous and even impossible to hinder local violence.

The SPLM/A leadership continuously suggests that it is the ‘enemies of peace’, i.e. agents of the NCP leadership, who stir up conflicts and animosities. Allegations are made of secret

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<sup>25</sup> Claire Mc Evoy and Ryan Murray, ‘Gauging fear and insecurity: perspectives on armed violence in Eastern Equatoria and Turkana North’, HSBA Working Paper No. 14 (Geneva: Small Arms Survey, July 2008), 24. See also Human Rights Watch, ‘The Impact of the Comprehensive Peace Agreement and the new Government of National Unity on Southern Sudan’ (New York, March 2006), 16-9.

<sup>26</sup> There were also men in SPLA and police uniforms among the Lou attacking Likwongole (Murle area) in March 2009; prompting allegation of SPLA and police involvement, HRW, ‘No one to intervene’, 7.

<sup>27</sup> On 2 August a group of Murle ‘civilians’ attacked settlements of Lou Nuer IDPs along the Geni River in Mareng 40 km south-west of Akobo. 185 were killed including 12 SPLA soldiers who were part of the force supposed to guard the IDPs, Philip Thon Aleu, ‘Bloody day in Sudan’s Jonglei, U.N. chief condemns violence’, *Sudan Tribune*, 4 August 2009, (<http://www.sudantribune.com/spip.php?article32026>). See also HRW, ‘No One to Intervene’, 11-2.

arms shipments from the North to some local communities in the South and to the LRA along the DRC-Sudan border.<sup>28</sup> When analysing the increased local violence in the Southern Sudan it is important to distinguish between background for conflict and its triggers. Local conflict is often *triggered* (and escalated) by specific incident e.g.: cattle raiding and the use of forces to access or deny access to pastures; abduction of women and children; and, accidental or premeditated murders taking place in the process of these raids. Such incidents may then initiate vendettas and counter-raids. However, the *background* for these initial attacks is often complex and may extend to regional and national politics. For instance, some communities are seen as being under the protection of the government or local strongmen (e.g. politicians, former commanders and militia leaders) while other groups see themselves as marginalised.<sup>29</sup> An attack by members from the well-connected groups against the members of the politically marginalised group is then interpreted as condoned by the government representatives (e.g. County commissioner or Governor) or strongmen associated of the strong groups. The marginalised group then seek other patrons in order to protect themselves either politically or to get access to arms. As will be discussed more thoroughly in the next section, frictions caused by land and local border issues can also contribute towards enmity between communities. Local tensions are also open for exploited by Southern politicians or by others in pursuit of political ends at a higher level (e.g. sabotage of the 2011 referendum). It is also possible that cattle raiding are motivated by an increased commercial market for beef and other animal products following the peace agreement. External involvement has been difficult to verify and it is possible that these conflicts are mostly related to internal Southern affairs.

There may also be a problem that enmity between certain groups within the SPLA and the local population lead to violence. For instance, in the case of the Lou Nuer attack on Likwangle in Pibor County during 8-9 March: when the Lou Nuer raiding party attacked the local SPLA garrison was ordered not to intervene. Then, the garrison protected forty-five Lou Nuer attackers who gave themselves up in order to avoid revenge from the local population. A majority of the officers and foot soldiers in the local SPLA force were themselves Lou

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<sup>28</sup> For a summary of these allegations and accompanying 'evidence': IKV Pax Christi/Ashworth, 'The State', 7-9.

<sup>29</sup> It is difficult to find specific verifiable information regarding the background for local violence, in particular the relations between local groups and their alleged patrons. Therefore, no cases are referred to here, but it is hoped that future research will provide further substance to the general patterns outlined in this report.

Nuer from Akobo, and the local population saw this as the main reason why they were protecting the attackers instead of them.<sup>30</sup>

The general lack of protection from violence for local communities has resulted in organisation of informal protection forces, which are in many ways similar to the aforementioned 'arrow boys'. Lacking the capacity or willingness to deal with the security threats, local authorities turn a blind eye to these groups and in some cases even condone them. Although the existence of local armed groups within the community may deter eventual nearby aggressors, there is little guarantee that these groups will not turn into aggressors themselves and become a menace to neighbouring communities as well as their own.<sup>31</sup> Local protection groups also become a potential problem if or when local government institutions manage to build the capacity to properly police the area. Local armed groups may resist regulation and the mere existence of a proper police force may contribute further towards distancing ordinary people from the government.

The main problem is however the social and institutional setting that makes the initiation and escalation of these conflicts possible. The lack of confidence in the state's capability to protect the population and to deal with perpetrators, combined with commoners' military capability and the war's lowered threshold for resorting to violence results in lawlessness and vigilantism. These are the structural causes of local violence and insecurity. To address these issues a comprehensive and multi-dimensional effort is required.

#### *Current measures taken against local violence*

Improvement of this situation is first and foremost the responsibility of relevant government institutions, but in the case of the Southern Sudan it has been acknowledged that a considerable amount of external assistance is required. The potential problem of post-war local insecurity and violence was recognised at an early stage of the planning for the interim period. A World Bank-led planning exercise – the Joint Assessment Mission – was conducted parallel to the final phase of the CPA negotiations. Albeit based on a superficial analysis, the report identified security provisions and the need to establish rule of law and civilian law

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<sup>30</sup> Fact Finding Committee, 'Report on the 8th. March. 2009 Lou Nuer Attack on Likwangole Payam in Pibor County to Dr. Riek Machar Teny Dhorgon' (Juba, 20 March 2009).

<sup>31</sup> Schomerus and Tumutegyreize, 'After Operation Lightening Thunder', 11-2.

enforcement as important priorities.<sup>32</sup> There was a strong emphasis on improving court, police and prison functions, but there were hardly any plans for how to deal with the immediate problem of militarily capable ‘civilians’ and the almost complete lack of policing capacity. The most important short-coming has however been delays in the implementation phase of the Multi-Donor Trust Fund (MDTF) programmes.<sup>33</sup> The process of establishing the World Bank managed MDTF has been slow and inefficient. The MDTF was to provide both financial support and capacity building for the GOSS sector institutions. Four years into the interim period an inadequate number of police have gone through proper training and most newly recruited policemen are veterans from SPLA. The UN contribution, mostly channelled through UNDP, has also been slow to pick up momentum.

Three military entities are potentially available in the Southern Sudan to address the more immediate security problems: the SPLA, the Joint Integrated Units (JIU) and UNMIS. The JIUs consisting of a total of 30 000 soldiers at full strength was part of the CPA compromise on security and was compensation to Khartoum for SPLM/A being allowed to keep its guerrilla army. The JIU consists of an equal number of soldiers from SAF and SPLA and was supposed to be a symbol of cooperation between the two parties to the CPA, but also the embryo of a united government army in the case of a Southern vote for continued unity. Instead, the JIU is largely non-functional, lacking equipment and support, and has become a source and a symptom of the problems with the implementation of the CPA. It has become a political battleground and a security liability in itself. If anything, it has proved that a full integration of SAF and SPLA is far into the future.<sup>34</sup> JIU is therefore not ready to deal with local violence.

Different from most recent UN missions, UNMIS has a Chapter VII mandate, personnel and a substantial budget. It could to a larger degree been employed in the effort to protect civilians against local violence. The UNMIS mandate says the following on protection of civilians:

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<sup>32</sup> Joint Assessment Mission Sudan, ‘Governance & Rule of Law’, 18 March 2005.

<sup>33</sup> For a summary and list of recent reports on MDTF and international assistance to the Southern Sudan: W. Fenton and M. Phillips, ‘Funding mechanisms in Southern Sudan: NGO perspectives’, *Humanitarian Exchange Magazine* (ODI) (Issue 42, March 2009, <http://www.odihpn.org/report.asp?id=2999>). Cf. MDTF progress reports available on the MDTF web-site: (<http://www.mdtfsudan.org>).

<sup>34</sup> Although during the negotiations the JIU solution was insisted upon by the government in Khartoum, it has been the SAF that have in most cases failed to timely provide its share of soldiers and supplies.

‘Acting under Chapter VII of the UN Charter, the Security Council also:

(i) decided that UNMIS is authorized to take the necessary action, in the areas of deployment of its forces and as it deems within its capabilities, to protect UN personnel, facilities, installations, and equipment, ensure the security and freedom of movement of United Nations personnel, humanitarian workers, joint assessment mechanism and assessment and evaluation commission personnel, and, without prejudice to the responsibility of the Government of the Sudan, *to protect civilians under imminent threat of physical violence* [author’s emphasis];<sup>35</sup>

The mandate of the uniformed part of UNMIS has however been interpreted narrowly (a Chapter VII prerogative). The uniformed personnel’s activities have focused on only monitoring implementation of the CPA’s military aspect, which has also turned out to be difficult to execute in a satisfactory manner.<sup>36</sup> This narrow focus may partly be explained by the context in which the terms of the UNMIS force were negotiated. The government in Khartoum was reluctant to accept deployment of a considerable force of foreign soldiers within the borders of the Sudan. It is therefore mostly the civilian part of the UNMIS operation that has been involved in community protection and conflict prevention. The military part of UNMIS could have played a more active role in preventing community violence by a closer interaction with local communities and local government officials, active patrolling and temporary stationing of troops in volatile areas.<sup>37</sup> It appears that a process of including civilian protection in reviewing and possibly extending the scope of the mission is currently taking place.<sup>38</sup> Recently military personnel was temporarily deployed to Akobo and Pibor in order to “contain the violence” in the area. It is however too early to assess whether these measures will have any permanent impact on the ground.

In several cases of local violence and insecurity the SPLM/A leadership have decided that the SPLA should not be used to address local security issues. To what extent this is a result of tactical considerations or, as suggested by HRW, strictly following written regulations, may be difficult to establish.<sup>39</sup> It is possible that the SPLM lack the manpower to deal with these

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<sup>35</sup> (<http://www.un.org/Depts/dpko/missions/unmis/mandate.html>)

<sup>36</sup> On difficulties relating to monitoring arms stockpiles of the two parties: Mike Lewis, 'Skirting the law', 58-61.

<sup>37</sup> HRW, 'No one to intervene', 13-4.

<sup>38</sup> UN Security Council, 'Report of the Secretary-General on the United Mission in the Sudan' (S/2009/545), 21 October 2009; Ibid. (S/2009/357), 14 July 2009, 8; HRW, 'No One to Intervene', 13.

<sup>39</sup> HRW, 'There is no Protection', 22. Apparently there are several recent documents with relevance for the SPLA’s conduct in relation to local violence and it is still unclear how these regulations relate to each other and how they will be interpreted. Small Arms Survey and Saferworld, 'Conflicting priorities: GoSS security challenges and recent responses', Sudan issue brief (Geneva: Small Arms Survey, Mai 2009), 3 (Box 2).

issues as most of the elite units have allegedly been moved to the North-South border.<sup>40</sup> In addition, SPLA soldiers are trained for wartime operations and lack the necessary training in dealing with local conflicts during peacetime.<sup>41</sup> The SPLA has for instance been criticised for an operation against assumed criminals in two villages in Eastern Equatoria. In this case excessive and indiscriminate use of violence resulted in displacement, looting and casualties among the local population as well as the SPLA.<sup>42</sup> Military units intended to deal with local violence need to have a strengthened discipline and a considerable amount of ‘reprogramming’ in order to contribute positively towards increasing local security.

*Disarmament: creating more security?*

The small arms proliferation in the Southern Sudan is one issue that the GOSS has attempted to address. Although considered to be extraordinarily high, there are no reliable figures on the number of guns on private hands in the Southern Sudan. It is assumed to vary across communities; ‘civilians’ in Western Equatoria state is believed to have few guns while people in Lakes, Jonglei, Eastern Equatoria and Upper Nile states are regarded as considerably better armed. A state monopoly on violence is almost impossible without controlling civilians’ access to and possession of weapons. This creates a dilemma in an unstable post-war situation like the Southern Sudan where there is a widespread and well-founded distrust in the authorities’ ability to police and protect the population. Without guns to protect themselves civilians perceive themselves and their possessions as vulnerable. This is particularly the case when one local group is disarmed while another keep their guns or have the opportunity to restock. A survey done in Eastern Equatoria suggested that a majority considered guns important for their security and the people consulted were divided over the question of whether a future disarmament would make them feel more secure.<sup>43</sup> There has also been a

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<sup>40</sup> Small Arms Survey and Saferworld, ‘Conflicting Priorities’.

<sup>41</sup> During the war, it was not only government forces and pro-government militias that were involved in indiscriminate violence and looting such transgressions; it could also take place on the rebel side. Since a general amnesty was issued as part of the peace agreement there have not been any legal consequences of these actions. Cf. HRW, “‘There is No Protection’”, 26-7.

<sup>42</sup> Steve Paterno, ‘SPLA destruction of villages must stop’, *Sudan Tribune*, 23 June 2008 (<http://www.sudantribune.com/spip.php?article27611>); Schomerus, ‘Violent legacies’; HRW, “‘There is No Protection’”, 23-5.

<sup>43</sup> Mc Evoy and Murray, ‘Gauging Fear’, 49-51.

problem with crime and insecurity in urban areas.<sup>44</sup> For instance the so-called 'Nigger' gangs were a serious problem in Juba during 2008-09.

Since there is a general fear of a return to civil war, a comprehensive Southern Sudan wide disarmament campaign may not be backed by a census among leaders within the SPLM/A. It is assumed that armed civilians will be an important supplement to regular SPLA units in a future war effort. Since 2006 the GOSS and its lower echelons have conducted several disarmament campaigns in different parts of the Southern Sudan. In 2008, President Salva Kiir issued an Operational Order initiating a Southern Sudan wide campaign, and GOSS plans another co-ordinated effort in 2009.<sup>45</sup> These initiatives lack clearly stated objectives (beyond gathering firearms), they are legally dubious and suffer from bad planning and execution. The 2008 campaign was supposed to cover the whole of Southern Sudan, but the degree of implementation varied considerably and even in the states with the most comprehensive effort the results were limited. A standard procedure for the disarmament operations seems to be to cordon off a town or village without forewarning and conduct a house-to-house search.<sup>46</sup> In the Lakes State a phase of voluntary handing in of weapons was half-heartedly implemented and gave meagre results. The subsequent house-to-house searches proved to be violent and antagonising. In the case of Rumbek town the whole operation got out of hand and soldiers pillaged, beat up people and even raped a woman.<sup>47</sup> In Unity State the army forcefully extracted weapons from all except one county, but only a small number of guns were collected.<sup>48</sup> When the area was visited in June 2009 it was clear that it was practically only the SPLA that could carry weapons in the towns and villages or along the roads. It is however probable that many have hidden their weapons and that they are available for people herding the cattle. It is still an achievement to prevent people from carrying guns openly in such a volatile part of the South.

Overall, however, civilian disarmament initiatives in the Southern Sudan have not served their purposes. One reason is that people have access to replacements for their confiscated arms (although the price of guns varies and they are supposedly relatively expensive in some areas). There seems to be another motivation for the GOSS disarmament campaigns: to

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<sup>44</sup> Isaac Vuni, 'Nhial tells S. Sudan MPs: "SPLA trained to fight rather than keep order"' (February 11, 2009, [http://www.sudantribune.com/spip.php?page=imprimable&id\\_article=30130.](http://www.sudantribune.com/spip.php?page=imprimable&id_article=30130))

<sup>45</sup> O'Brien, *Shots in the dark*, 30.

<sup>46</sup> Ibid.

<sup>47</sup> Ibid., 23-34.

<sup>48</sup> O'Brien, 'Shots in the dark'.

reduce the threat from communities assumed to harbour only a limited degree of support for the CPA and the new government, and, therefore, being potential spoilers and NCP allies. Choosing the Murle and Lou Nuer areas in 2006 as the first targets of disarmament in Jonglei state appears to have been motivated by such considerations. The military threat posed by potential spoilers is a motivation for the SPLM/A leadership to speed up disarmament. But, forced disarmament without compensation – combined with an inadequate police force adds to the grievances of these groups – making it even easier to recruit them to spoiler groups and making it increasingly difficult to hinder rearmament.

## ***2. Land, Natural Resources Management and Local Insecurity***

Land and natural resources are increasingly contested in the Southern Sudan and in the volatile post-conflict setting these issues trigger and fuel local violence. Controversies are related to, *inter alia*, the return of IDPs and refugees, urban expansion and increased competition for land and access to natural resources, partially incompatible interpretations of SPLM/A policy of 'land belongs to the people', and institutional fragmentation and dissolution of administrative capacity. This mix of land and resource related factors creates uncertainty for ordinary people and provides political entrepreneurs with considerable room to manoeuvre. Violence or the threat of violence is in some cases used to 'solve' such disputes. The GOSS continues to face numerous immediate challenges with extremely limited administrative and planning capacity. Within this context, land and resource issues have not been given sufficient attention by either the Government of Southern Sudan or analysts. Foreign governments, NGOs and the UN have provided some assistance related to development of legislation and local resource management. A brief discussion of earlier land policies provides historical depth to these questions.

### *Background*

Historically the Anglo-Egyptian Condominium government in Khartoum ruled according to the principle that all land belongs to the state, supplemented with long term leases. In the Southern Sudan this land regime had few consequences as the state had limited reach and economic interest in the area. Communal systems continued as the *de facto* principle of local land management. Most of these systems bestowed local chiefs or land priests with the responsibility of administering resources and allocating land. A common principle was that tenants kept their plots until abandoned. This claim could often be extended if trees had been planted or other improvements had been made to the plot. Other natural resources such as grazing areas, fish ponds and forests were also managed locally where some were recognised as the rightful users, while others could ask the former permission to utilise these resources.<sup>49</sup> However, the state could at any time decide to allocate these areas to plantations, development schemes or other rural enterprises. In such instances the local people had few

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<sup>49</sup> In the case of Abyei, Douglas H. Johnson distinguishes between 'dominant rights' to land and 'secondary' or seasonal rights, 'Why Abyei matters: the breaking point of Sudan's Comprehensive Peace Agreement?', *African Affairs* 107, 426 (2008), 13.

rights if any. In the Southern towns leases which resembled free-holdships were given to merchants, missionaries and other urban residents.

After independence in 1956 until 1983 there were few changes to land administration in the South; mainly because of unrest and the first civil war, which gave the government little opportunity for or interest in active land and resource management. The second civil war has to some degree affected land management. Government archives containing proofs of ownership have in many cases been destroyed and land leases obtained during the war may not be considered valid anymore.<sup>50</sup> Providing IDPs and SPLA soldiers with land around urban areas in Equatoria – regarded by the local population as temporary wartime arrangements – have become a problem after the signing of the CPA. Since the “newcomers” in many cases have lived in the areas for 15-20 years they reckon they have a right to stay if they so desire. In the case of Juba this problem is amplified by the rapid urban expansion, and in several instances areas of long-term IDP accommodation have been levelled by government bulldozers.<sup>51</sup>

The full consequence of state ownership of land may not be generally known in the Southern Sudan, but many Southerners fear that, if given the opportunity, ‘Northerners’ will appropriate and exploit the land and natural resources of the Southern Sudan. This fear was compounded by the central government’s handling of oil discovery and the process of building the Jonglei Canal during the short peace period 1972-83. This may partially explain the strong desire among ordinary people to maintain systems of communal land ownership. This desire could also be related to a need to assert ownership vis-à-vis neighbouring communities and even to secure a share of future revenues from natural resources and land use in their locality. Consequently, SPLM/A’s policy where ‘land belongs to the people’ has been popular, although the implications of this policy is somewhat contested.

#### *Current land and resource management issues*

It is commonly believed that the notion that ‘land belongs to the people’ is embedded in the CPA and that the CPA reinforces established practise and recognises communities’ right to administer and own ‘tribal’ land. The CPA and the interim constitution are, however, vague

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<sup>50</sup> *Land Act*, Section 78 states that land rights may be restored in the case of people being displaced by the last civil war.

<sup>51</sup> ‘Demolition, Thematic Report’, Returnee and Protection Monitoring Central Equatoria State (International Rescue Committee, September 2009).

on how land is to be administered in the Southern Sudan. Land issues were delegated to the Southern Sudan Land Commission, which has been understaffed and lacking in funding. A positive development has been the passing of *The Land Act, 2009* in February.<sup>52</sup>

The Act is comprehensive in scope, but it is generally accepted that it needs further clarification and interpretation. It establishes that “all land in Southern Sudan is owned by the people of Southern Sudan and its usage shall be regulated by the Government”. Three tenure systems are listed: communal, freehold and leasehold. In addition there is public land which ‘is land owned collectively by all people of Southern Sudan and held in trust by the appropriate level of government.’ Freehold is defined as ‘a form of land ownership held in perpetuity with the rights to transfer and dispose of such land,’ although the procedure for obtaining freehold is not explicitly described in the act.<sup>53</sup> Foreigners are not allowed to own land, but may lease for a period up to 99 years. A substantive section of the Land Act is concerned with the issue of leases which may indicate that this is foreseen as an important component of the land administration system. The Act has been criticised for not using the existing administrative apparatus as its point of departure: land registration has been moved from Judiciary to the Ministry of Housing, Physical Infrastructure and Development. There is a fear that this change will reduce the capacity of the office during a crucial period and open up new opportunities for corruption and malpractice. Also, land disputes is supposed to be solved at the State High Court level, which is understaffed and will not have the capacity to deal with these challenges.<sup>54</sup>

Communal land tenure is also given considerable attention in the Land Act. Without any of the key terms defined, consequences of communal land ownership become vague. For instance, although a key term in the Land Act, ‘community’ is not included in the long list of definitions. ‘Traditional authority’ is defined as ‘a body of traditional community with administrative jurisdiction within which customary powers are exercised by traditional leaders on behalf of the Community [*sic*] as stipulated in Article 174 of the Interim Constitution of Southern Sudan.’<sup>55</sup> Of course, it is important to recognise that practises vary and change over time, so a certain level of plasticity is required to avoid an unworkable ‘one

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<sup>52</sup> Juba, Government of Southern Sudan.

<sup>53</sup> *Land Act*, Ch.1, Section 4 Interpretations. Cf. Section 58.

<sup>54</sup> David Deng has provided valuable input to this paragraph from his fieldwork in Juba during summer 2009.

<sup>55</sup> *Land Act*, Ch.1, Section 4 Interpretations. The Interim Constitution does not provide further clarification of these issues.

size fits all'-solution. Nevertheless, as long as communal ownership competes with state ownership and freehold, the boundaries between these types of tenure need to be clarified. Communal land is to be registered during a three-year period following the signing of the law by the President of GOSS, but it is not clear how areas of communal ownership are to be distinguished from claims made by individuals or private entities (e.g. corporations and organisations). These questions are particularly relevant for areas within or close to urban centres. The extent to which collective owners of communal land may influence decisions related to expropriation of their land is also not clearly defined. The government is obliged to consult with the communal owners but does not need an approval.

Moving from the judicial level to the realities on the ground, it is important to be aware that all institutions at all levels of government in the Southern Sudan, including land administration, are weak indeed. The GOSS planned a huge “decentralisation” programme to begin to link with local and traditional authorities in 2009, but was overcome by the budgetary shortfall due to the drop in oil prices. The GOSS ability to impose uniformity in the administration of land is equally limited and there are indications of state and county administrations adopting diverging systems of land administration. The multi-tiered system of government set up by the CPA – GOSS, state government, local government – has also been problematic. This is probably one of the sources of tension in urban areas. In the larger Southern towns often three different levels of government (as well as individuals and the “community”) compete to allocate land. Dissemination of the contents of the CPA let alone the interim constitution or the new Land Act is virtually non-existent. It is still an open-ended question whether this will change in the foreseeable future.<sup>56</sup>

Neither investors, politicians at the national level or bureaucrats tend to support communal ownership. The SPLM/A leadership’s goal is to wrest control over land in the South from the central bureaucracy in Khartoum. Although opening up for ‘consultations’ with the local community, the SPLM/A leadership and government authorities at state and county level interpret ‘land belongs to the people’ in an indirect way. Some assume it is not the local communities and their leaders, but the Government of the Southern Sudan and its local branches which is to administer land on behalf of ‘the people’. Moreover, controlling land administration – land allocation in particular – is also a source of local political power and

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<sup>56</sup> John Ashworth has provided valuable input to this paragraph.

revenue as well as personal gain. This may be one reason why local officials are reluctant to hand over the land portfolio to ‘communal’ administration. So far these conflicting perceptions of land ownership have led to friction, mainly in relation to urban and semi-urban land, in different parts of the South, most noteworthy in Juba.<sup>57</sup> When investors and government begin the search for rural land for agricultural schemes and other large scale rural interventions, protest and grievances may also start to accumulate in rural areas. In particular, this may occur if people are evicted without proper compensation from – or are denied access to – areas they believe belong to them and which they argue that they have the right to administer. In this case the ‘land belongs to the people’ policy and its conflicting interpretations may increase grievances, as people may feel that their perceived rights are being ignored.

#### *Links between local conflict and land and resource issues*

Demarcation issues are a source of grievance and conflict between communities. There are hardly any areas which can be considered *terra nullius* – ‘no mans’-land. Most of the territory in the Southern Sudan is regarded as belonging to someone in the sense that someone claim the authority to regulate access and utilisation of specified areas and its resources. In many cases local procedures for negotiation and conflict resolution ensures that tension and disputes between neighbouring groups are solved peacefully. The anticipated formalisation of local communal ownership – combined with varying degrees of access to connections ‘in higher places’ – has intensified disputes over communal boundaries – in the Southern Sudan context often referred to as ‘tribal boundaries’ – and has in some cases opened up for opportunistic expansionism. Both sides in such disputes present historical narratives emphasising their group’s autochthony vis-a-vis the other. If the claimants do not currently live on the land, the narrative includes an old agreement where the land was ‘lent’ to another group. Control over urban land also appears to be contested. People have been killed in disputes related to ownership in Bentiu and Malakal. In the case of Bentiu it was the Jikany and Leek Nuer disputing the ownership of Bentiu town and areas along the Nam River.<sup>58</sup> What kinds of benefits beyond prestige that are assumed to be derived from ‘ownership’ of urban land remains unclear. There is a widespread notion that in the case of utilisation of new

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<sup>57</sup> 'Land, Thematic Report', Returnee and Protection Monitoring Central Equatoria State (International Rescue Committee, September 2009).

<sup>58</sup> Group interviews with Leek and Jikany chiefs and elders in Nhial Diu, Kwer Guina and Guit, 26 and 27 May 2009.

areas the government or others are supposed to compensate the original owners and consult with these. Also, areas not regulated by the government at the fringes of urban areas would also be administered by the communities acknowledged as the 'traditional' owners. It is, however, still doubtful to what extent these notions will have any substantial consequences.

Disputes over communal boundaries may also be exasperated by a second local demarcation issue related to a tendency of increased administrative fragmentation at the local government levels. Since the 2002 most counties, *Payam* and *Bomas* have been sub-divided creating a large number of new local government institutions. This fragmentation requires additional formalisation of local borders. It turns out that these borders are contested and attempted demarcation adds to local tensions and conflicts. For instance the town of Mongalla has become a bone of contention between the counties of Juba and Terakeka. The commissioner of Terakeka ordered the hoisting of the county flag in Mongalla, an action that led to outrage in Juba. People in Juba claim it is indisputable that historically Mongalla has 'always' been a part of 'Juba'. These and similar claims elsewhere in the South are based on another assumption related to the CPA: It is assumed that the colonial border as of 1 January 1956 – the basis for the demarcation of the North- South border – also applies for the demarcation of local borders. The CPA does not explicitly establish this principle and it is not necessarily the official GOSS policy. Even if local colonial boundaries were to be used there is still a general lack of documentation and cartographical material to end these disputes.<sup>59</sup>

There is a certain degree of overlap between the two demarcation issues mentioned here as administrative boundaries are connected to the territories used by the communities living within a given unit. A dispute between the states of Central Equatoria and Eastern Equatoria may serve as an example. The Kit River area along the Southern part of the states' shared border is contested. It is assumed that this area is rich in natural resources. The ownership of the area is disputed by the politicians in the South Sudan Legislative Assembly, local 'big men' and the local communities of Acholi and Madi.<sup>60</sup> The Southern Sudan Legislative Assembly is supposed to make a ruling on the issue, but it is unclear what will be the basis for the assembly's decision.

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<sup>59</sup> Local colonial borders may also harbour perceived injustices and may therefore, even if becoming accessible, not solve local disputes.

<sup>60</sup> Interviews in Juba during May-June 2009. See also: Isaac Vuni, 'Community border row in Equatoria to be addressed by committee,' *Sudan Tribune*, (Mars 9, 2009, <http://www.sudantribune.com/spip.php?article30444>).

During the planning for the interim period in 2004-05, it was assumed that friction caused when people return to their pre-war homes and find them occupied by others was going to be the main land issue. It has been estimated that four million Southerners fled during the war and a majority is expected to return home. Subsequently some effort was put into preparing for these anticipated problems. Land management related to returnees proved in general to be much less of a challenge than expected. This lack of conflict can be attributed to the fact that the local systems of communal land management within the agro-pastoral communities are rather flexible and are still relevant in rural areas. In addition, some members of the family often stayed behind to look after their interests. Another reason is that people returned more gradually than anticipated.

Problems did occur in the cases where people returned to find land and, in urban areas, houses they had vacated during the war occupied by people from other parts of the South. In these cases local systems of land allocation had been ignored. This was chiefly happening in the Equatoria states where IDPs and SPLA soldiers from the regions of Bahr el-Ghazal and Upper Nile occupied land and residences.<sup>61</sup> There are multiple reports on how previous, and assumedly rightful, owners upon return have been told that by fleeing they had forfeited their rights to the land. And, moreover, that the current owner had paid for the CPA and, implicitly, the house or land plot with 'buckets of blood'. There are few, if any, reports of violence related to this problem, but it has clearly generated local friction and dissatisfaction, which again serves to stir up local conflict.

#### *Land and natural resources in the large context*

The splitting up of administrative units at all government levels and the recent development in rural land administration since the signing of the CPA has created an impetus for a clear demarcation of borders and a stronger sense of ownership. Moreover, politicians and local strongmen within the administration and military find it opportune to exploit this impetus for personal benefit.

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<sup>61</sup> Sara Patuliano, 'The Land Question: Sudan's peace nemesis' (Humanitarian Policy Group, London, December 2007); Cherry Leonardi, "'The blood of your brother becomes your own money': local-level views of peace in Southern Sudan' (work in progress presented at African Studies Association UK Biannual conference 2006); Adam Branch and Zachariah Cherian Mampilly, 'Winning the war, but losing the peace? The dilemma of SPLM/A civil administration and the tasks ahead', *J. of Modern African Studies*, 43, 1 (2005), 1–20.

The immediate challenges facing GOSS are related to avoiding a new war with the North and to deal with the lack of law enforcement capacity and conflict resolution mechanisms in the South. Nevertheless, the tendencies presented above should alarm Southern Sudanese policy-makers as well as planners of foreign assistance. At the moment, land and natural resource management issues are only one set of factors within several inter-related processes fuelling local violence in the Southern Sudan. Peace – with its potential for social and economical change and typical expansion state capacity – increase the demand for land and harbours, ironically, a considerable potential for initiating and exacerbating disputes over land and natural resources in the Southern Sudan. If or when GOSS and its lower echelons gain effective administrative control over the territory of the South, one of the first issues on the agenda should be management of land and natural resources. How the GOSS chooses to approach this issue will be decisive for whether peace will prevail in the long run. If the government continues on its current track of only paying lip service to the notion of communal ownership, the future is dark indeed.

### ***3. Future Challenges and Possible Solutions***

The security situation in the Southern Sudan appears to worsen and there are no comprehensive plans for addressing these problems. Violence and insecurity in the Southern Sudan is already at a level where the CPA is threatened, and it is likely that the process towards up-coming national elections and the 2011 referendum will have an additional negative impact. In the final section below further challenges to internal security in the South and possible future measures are discussed.

#### *Further challenges to local security*

The current level of violence and insecurity in the Southern Sudan will be an obstacle to the execution of the national elections planned for April 2010. A certain level of stability is needed for the voters' registration, for campaigning, and for setting up and running the polling stations. The elections can also cause increased in violence and insecurity in the South. Firstly, violence and intimidation may become a part of the repertoire for the candidates in search of support, or in trying to reduce that of their competitors. Also, protest against an undesirable outcome, or suspicion of rigging, may trigger violent reactions. Finally, on a more long-term basis a flawed election may add to a general dissatisfaction in the South and provide verbal ammunition for agitators who seek to recruit followers.

Another possible source of instability is the GOSS' high dependency on oil revenues and its vulnerability to the fluctuation of oil prices. During the spring of 2009 the GOSS experienced a decrease in oil revenues. These revenues constitute more than 95% of the GOSS income. Since no buffers were established during the preceding period of unexpectedly high revenues, the whole government apparatus in the South is extremely vulnerable to decreases in oil prices.<sup>62</sup> A sizeable share of the government budget is spent on salaries to the army and a considerable civil administration. The salary level within the army is especially high and the number of soldiers has soared as various other armed groups have been absorbed into the SPLA. The cost of these salaries drains the government budget and it creates expectations among the soldiers that are difficult to satisfy when there are short-falls in revenues. A

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<sup>62</sup> Since production costs remains static even small changes in the oil price affects the amount of revenue significantly.

general increase in armed robberies in the South is attributed to the delay or complete lack of payment to soldiers for several months. A consequence of the reduction in state income and non-payment of salaries is that teachers and health personnel do not show up for work. Investments and development projects are also halted. In addition, decreasing revenues have consequences for the programs that are to be co-financed by the GOSS and the Multi-Donor Trust Fund. The short-fall in social and developmental peace dividends will possibly increase the general disenchantment with the CPA and provide fertile ground for anti-SPLM armed resistance.

There appears to be an increase in military mobilisation in local communities as a consequence of the escalation in violence. In the case of the 'arrow boys' in Western Equatoria these activities are even condoned by the government. This trend challenges the desire for disarmament and increases the probability for future violence. The general volatile situation can be exploited by spoilers and other kinds of conflict entrepreneurs. Forces within NCP prefer to keep the South preoccupied with internal issues, and fermenting local hostilities in the South may be one way of achieving this. Also Southerners who are not necessarily allied with the NCP may consider the use of violence and forming of armed groups as a way to reach their objectives. Until now there has been no attempt at establishing any organised armed opposition against the GOSS, but if the current trend continues it will become increasingly difficult for the GOSS to neutralise such groups should they emerge. This would then be a stepping stone to a full-fledged civil war.

*Recommendations: containment and prevention*

The problems in the Southern Sudan are complex and any solution would require a mix of short- and long-term measures focusing on both the prevention of outbreaks and escalation of violence, as well as containing and solving cases where violence has already broken out. In the current situation with local insecurity level resembling that of the previous civil war, blunt short-term measures could be introduced for the purpose of establishing basic security for the population of the Southern Sudan. These measures should however be limited in time and have in-built mechanisms for gradual introduction of more long-term and sustainable policies.

- Facing the current situation UNMIS should re-interpret its mandate to include a much more active protection of civilians. This will be particularly important if the UNMIS is extended beyond its current mandate, which ends in 2010. A future UNMIS must improve its capacity, either by re-prioritising resources and personnel or by increasing the scope of the mission in terms of the number of soldiers and the scope of the budget. It is important that the units allocated to more active peace keeping and peace enforcement duties have the skills and capacity necessary to engage in such activities. These activities should be carried out in conjunction either with especially allocated SPLM/A troops or JIU units, where the long-term aim is to build up a South Sudanese capacity to deal with local outbreaks of violence. The mission must also establish better routines for information gathering and interaction with local community representatives so that they may react pre-emptively when local violence is predicted, and to make sure that input is provided efficiently.
- More SPLM/A troops must be garrisoned in insecure areas, primarily as deterrence against attacks. This will not necessarily stop large and organised contingents by well armed assailants, but garrisons may deter smaller raiding parties. It is also important that the standing orders of these troops are sufficiently clear so that the kind of inaction during the attack in Likwangole in Pibor County during 8-9 March is not repeated.<sup>63</sup> Such protection forces are also potential sources of insecurity and it is important that they receive awareness training and that they are adequately monitored and paid.
- Implementation of the Kings, Chiefs and Traditional Leader's conference resolution of strengthening the chiefs' police must be ensured by close follow-up from relevant authorities at the GOSS level and given the necessary financial and technical support. The chiefs' police are the only law enforcement and protection units available in most rural areas, as the regular police rarely ventures outside towns. This measure will however increase the power of the chiefs and if unchecked this may open up for abuse. It should therefore be a long-term goal to merge the chief's police with the regular police.
- The GOSS must delay all disarmament campaigns until a basic level of security is established. Short-term measures should include:

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<sup>63</sup> Fact Finding Committee, 'Report on the 8th. March'.

- Ensuring a consistent and comprehensive enforcement of the prohibition on civilians carrying firearms.
- Start planning of a simultaneous South Sudan-wide voluntary disarmament campaign and begin sensitization of local leaders (chiefs, church authorities, local NGOs, women and youth organisation) to the importance of disarmament.
- Set up mobile units for the decommissioning of weapons at the sites of collection.
- Stop troops from carrying arms except when on duty
- Ban weapons from major towns
- Explore ways in which arms can be safely stored in villages, perhaps under the authority of the chief or a police force, to be used only when needed in self-defence

Long-term measures would be to establish a sufficient level of security and law enforcement which convinces local communities that they do not need to protect themselves or resort to vigilantism.

- Disband all autonomous local defence groups and ban all kinds of encouragement from government representatives to maintain or establish such groups. The need for mobilising civilians for local defence purposes should be assessed. If this assessment concludes that such units are necessary or can substitute regular SPLA garrisons (for instance in border areas), then the local defence groups must be integrated into the command structure of the SPLA or the police. They should be recruited among demobilised soldiers and given initial training, and participate in exercises at regular intervals. Ordinary members of such groups should not have access to firearms when not on active duty.
- Local mediation and fact-finding must be further encouraged and supported. While the UNMIS, SPLA and police hinder the use of violence, local peace negotiations can take away the motive for fighting. Teams of chiefs, elders and other local community representatives (representatives of women and youth, NGOs and church leaders) should be identified and made ready to travel on short-term notice to participate in spontaneous peace negotiations after violent attacks. Fact-finding missions have already been carried out in recent instances of local violence (e.g. Nuer/Murle, Mundari/Bari), but they need further protection and facilitation. There should be regular meetings between

representatives of the most conflict prone communities. Initially these meetings may have to take place as often as every month, but less frequently in the long run. The role of local government representatives and UN/UNMIS in these meetings should be decided in each instance. In many cases it will probably be advantageous if government representatives and external agents were limited to facilitating the meetings by providing venues and transportation, in addition to monitoring the implementation of agreements and decisions made at the meetings. To the extent needed, relevant training (negotiation techniques, conflict management, law, etc.) should also be provided by GOSS or other competent agencies.

- The current fragmentation of local administration into an increasing number of local units must be halted, and a process of demarcation of the units must be initiated. GOSS should consider decoupling this process from the determination of land rights and control over related natural resources. The determination of primary and secondary rights to grazing areas, agricultural land, fishing spots, forests, etc. should be established through local mapping processes involving representatives from the relevant communities. These processes must be adequately facilitated and provide room for negotiation over contested areas and resources. Since little local surveying has been done after the time of the Condominium and the borders established during this period appear still to be legitimate in many localities, these borders may be used as a point of departure for the demarcation exercise. However, it is not to be expected that a consistent definitions of local borders will be found in any archive, and there must therefore be room for adjustments. There are also lessons to be learned from Norwegian People's Aid's COREMAP pilot project where mapping technology has been combined with local workshops and data gathering to tally local resources and their utility in selected localities in the South.
- An inclusive and extensive process of establishing the principle of urban and rural land administration and ownership should be initiated by the Government of Southern Sudan. The provisions of the new South Sudan Land Act must be clarified and a balance must be struck between the government and commercial land requirements and the interests of local communities. The issue of free-holdership versus state ownership of land with the opportunity for long-term lease must be further clarified. The legacy of previous land regimes must also be dealt with to avoid disputes over ownership.



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