

## CHAPTER 8

# Going home: Land, return and reintegration in Southern Sudan and the Three Areas<sup>1</sup>

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*The end of the war between the Government of Sudan and the Sudan People's Liberation Army/Movement in 2005 has generated the return of an estimated 2.4 million IDPs and refugees to Southern Sudan and the three transitional areas (Abyei, Southern Kordofan and Blue Nile). Land issues have shown to be of central importance for the reintegration of the returnees both in rural and urban areas. The international community response to returnees has though lacked in-depth land related analysis, as well as adequate leadership and coordination of efforts. This chapter emphasises the importance of resolving land disputes to support reintegration and more broadly peace in Sudan, and discusses the role that humanitarian and development agencies can play to support these processes.*

### **Introduction**

Customary land rights have generally not been recognized by the Government of Sudan (GoS). Statutory legislation has often been used to bypass local customs and expropriate land in favour of elites. In the south, the Sudan People's Liberation Army/Movement (SPLA/M) and later the judicial systems of the Government of Southern Sudan (GoSS) have largely been based on customary legislation, especially when regulating access to land and dealing with land-related problems. During the civil war the SPLM rejected statutory law in its areas of control (De Wit, 2004). Today there is no unified legal framework of land tenure across Sudan. In the north, despite the fact that official land law has been transformed under successive governments, legislation is essentially founded on colonial land laws, according to which the title to land is vested in the government. The Power Sharing Protocol of the CPA signed by the two warring parties in 2005 enshrines parallel legal systems in Northern and Southern Sudan, though the situation in the contested areas (Southern Kordofan and Blue Nile) remains unclear.

Because of its complexity, the CPA defers the problem of land ownership to the post-agreement phase. It does not address the ownership of land and natural resources, but institutes a process to resolve this question through the establishment of a National Land Commission, a Southern Sudan Land

Commission and State Land Commissions in Southern Kordofan and Blue Nile. However, neither the National Land Commission nor the State Land Commissions in the transitional areas have been established as part of the implementation of the CPA. The CPA also envisages the right of each individual state to oversee the management, leasing and use of land belonging to the state, and legislative rights for the Government of National Unity (GNU), Government of Southern Sudan (GOSS) and state governments to proceed with urban development, planning and housing (Power Sharing Protocol, Part V). The CPA Wealth Sharing Protocol stipulates that the regulation of land tenure and usage and the exercise of rights in land are to be a concurrent competency exercised at the appropriate levels of government. These provisions have also been embedded in the Interim National Constitution and in the Interim Constitution of Southern Sudan. However, no new legislation has been passed to enforce and clarify these stipulations in practice. The complex and often unclear delineation of powers among GNU, GOSS and state and sub-state authorities over land regulation and administration is a major bottleneck in the resolution of land problems linked to the return of IDPs and refugees. The current legislative vacuum has also contributed to create tensions between GOSS, state governments and local communities in areas such as Juba.

This chapter illustrates the key problems faced by returnees in two areas of high return, namely Southern Kordofan (rural) and Juba (urban), and discusses the key importance of resolving land issues to sustain the reintegration of returnees.

### **Southern Kordofan**

In Southern Kordofan, competition over land and natural resources has long been a source of tension between different groups, often aggravated by central government policy on land. Legislation introduced in the 1970s and 1980s (particularly the Unregistered Land Act of 1970 and the Civil Transaction Act of 1984) strengthened the privileges of the state and allowed elites close to government to acquire land at the expense of rural people. Expropriations were particularly common in Southern Kordofan (namely in the Nuba Mountains area), where illiterate farmers and pastoralists saw their land assimilated into mechanized farming schemes or simply registered in someone else's name. By 2003, it was estimated that 3–4 million *feddans* (1,260,000–1,680,000 ha), or between 9 per cent and 12 per cent of the total area of Southern Kordofan, were under mechanized farming (Harragin, 2003). Half the total area of the fertile plains is taken up by these schemes. The mechanized schemes also cut across the transhumance routes of Baggara nomads, who frequently rerouted their herds through Nuba farmland. The most serious problems were around the Habila scheme, which according to IFAD data (2000) extends across 750,000 *feddans* (315,000 ha). These land grabs led to massive displacement and were one of the main reasons why, in the late 1980s, people in Southern Kordofan joined the SPLM insurgency.

Local-level conflict between different user groups has remained common during the war. The arrival of great numbers of returnees in Southern Kordofan (an estimated 600,000, according to UN data) has exacerbated long-running tensions between different land users. Four main types of land conflict prevail at present. Such clashes have generated a significant level of casualties between 2006 and 2008 (Pantuliano et al, 2007):

- *Conflict between pastoralists and farmers*, usually between Arab pastoralist groups such as the Misserya, the Humr, the Darajul and the Hawazma and farmers of Nuba origin. This type of conflict was at the heart of the war in Southern Kordofan and is resurfacing. It ranges from low-level tensions between communities in Shatt ed Dammam, El Buram, Angolo and Abu Hashim to incidents of more violent confrontation in the Lagawa area, where the number of pastoralists is higher and several Arab nomadic groups have their *dar* (homeland). The involvement of a number of pastoralist groups in pro-government militia during the civil war seriously damaged their relationship with farming communities of Nuba origin, since pastoralists were often involved in predatory activities and attacks on Nuba villages. Nuba communities today are not prepared to welcome pastoralists on their land again. In several areas, Nuba groups have been building homes on the old transhumant routes. In areas where this confrontation has become violent, insecurity has reduced farmers' capacity to cultivate all the available land, as they do not dare venture to farms further away from the village.
- *Conflict amongst agro-pastoralist communities, exacerbated by return*. Although less widespread, this is serious in some locations where more powerful groups are seen to be expanding their land holdings at the expense of others. In areas such as Saraf Jamous, small Nuba groups such as the Tacho have progressively been losing land to the more powerful Moro and other neighbouring Nuba groups such as the Achiroun and the Tira, with the result that the availability of land for Tacho returnees has been reduced. In the nearby Achiroun area, returnees have found their land occupied by residents who, during the war, lived on the hilltops, and who now were not prepared to return the land to its legitimate owners. Most returnees tend to settle in the valleys rather than on the hilltops, something that is also encouraged by the local administration. The increasing concentration of settlements in the valleys has created tension throughout the Saraf Jamous area. In a couple of locations in former SPLM-controlled areas, such as en-Nugra, returnees have found their land occupied by residents or other households who used to live in areas under SPLM control. Local authorities reportedly find it difficult to reclaim land from people who supported the SPLM during the war.
- *Conflict between farmers and traders*. Insecurity has significantly increased in areas where farmers are clashing with traders exploiting local natural resources, such as in Rashad and Abu Jebaha localities, where traders

have been illegally logging timber, gum Arabic and palm trees (*dileb*), with the complicity of the military. Banditry is also common in these areas. Insecurity deters returnees from coming back to these areas. Key informants attribute the insecurity to groups opposed to normalization for fear that stability would damage the timber and gum trade.

- *Conflict between returnees and labourers (sharecroppers) on mechanized farms.* Access to land for returnees in Rashad and Abu Jebeha is also impeded by the expansion of mechanized farms. IDPs within the state are unable to return to their home areas because their land is now part of a mechanized scheme. Many of these prospective returnees are unable to prove that they have title to land because they only hold customary rights. In Al Goz, near Saraf Jamous, returnees could not access land because merchants from Maflu village had exploited it for large-scale mechanized sorghum production. In Habila, young returnees have been harassing sharecroppers and demanding a payment of SDG3 (US\$1.4) for every ten *feddan* cultivated. Landlords have reportedly been paying because of fear that their crops would be burnt if they refused. Tribal leaders are unable to mediate these disputes as they do not have power over the traders.

### ***Current responses***

State authorities estimate that clashes around land, particularly between pastoralists and farmers, have resulted in between 200 and 300 casualties in Southern Kordofan between 2005 and 2007 alone. Killings and injuries related to land conflict are the single biggest risk to returnees as well as local communities. However, there has been very little effort to date to identify areas of highest insecurity and potential conflict, or to inform returnees where these are. In Southern Kordofan most of the return has been spontaneous, with the joint organized return process led by the GNU, the IOM and UNMIS/Return, Reintegration and Recovery Section (UNMIS/RRR) only reaching about 2 per cent of the total return flow in 2007 (Pantuliano et al, 2007). Some returnees have though been brought back through the joint organized returns to areas such as Habila and Lagawa, where tension around land is already extremely high. Land-related analysis does not appear to be prominent within UNMIS/RRR reintegration policy and field reports. NGO workers observed that there has been very little questioning by UNMIS/RRR of the low level of return to areas such as Kaw Nwaro and Hajar Jallaba, where land conflict is reportedly deterring people from going back despite the high agricultural potential of these areas. Land issues are central to UNHCR's policy for return and reintegration in Southern Sudan, and are recognized as key to the successful reintegration of returning IDPs and refugees.

Despite the lack of attention to land issues amongst the humanitarian community focused on return and reintegration processes, a number of external initiatives are under way in Southern Kordofan to help the state

government address land issues, particularly with regard to customary ownership of communal land. In former SPLM-controlled areas, attempts have been made to demarcate customary land holdings, supported by the US Office of Transitional Initiatives (OTI). Project staff asked communities throughout Southern Kordofan to identify their customary holdings in preparation for the work of the Land Commission. The process was enthusiastically supported, but it also created a number of problems because it led communities to believe that their land is now officially registered. This has heightened tension between Nuba communities living in 'border areas', such as the Ghulfan and Timaean in Dilling locality and Atoro-Lira-Abul in the Heiban area. An expansion of the project into former GOS areas and the establishment of 'boundaries committees' throughout the state had been planned, but the whole project appears to have been put on hold following an external review.

The CPA recognized that a durable solution to the conflict in Southern Kordofan could only be reached if rights and access to land were secured for the majority of people. The absence of an overall framework to deal with land problems is starkly apparent. A review of state land legislation and the establishment of the State Land Commission as well as procedures to arbitrate disputes arising from claims to occupied land are crucial to guarantee that underlying tensions around land are addressed and that returnees are allowed access to land. The demarcation of tribal lands and the opening up of pastoralists' transhumant routes are particularly urgent issues.

## **Juba**

Land issues are not limited to rural areas. IDPs and refugees are increasingly choosing to return to urban areas instead of moving back to their rural home areas. In Juba, the centrality of the land question for the reintegration of returnees cannot be overemphasized. The current legislative vacuum has led to increasing tension over land relations between GOSS, the government of Central Equatoria State (CES) and the Bari community.<sup>2</sup> Tensions with the Bari are mainly related to the allocation of new land to expand the boundaries of Juba and demarcate new parcels for services, investment, government offices, capital infrastructure and residential plots for returnees. Disputes are also rife over plots already gazetted (mostly pre-war or during the war), where ownership is contested as a result of prolonged displacement and ambiguous or absent land documentation. All gazetted land is owned and leased by the government, though leases are transferable once allocated. There is a large disparity between government and market lease prices, with the latter unaffordable for most returnees.

### ***Land and property disputes***

Land and property access disputes in Juba in most cases involve returnees trying to regain access to land they were forced to abandon upon displacement.

Disputes range from illegal occupation to double issuing of leases during the war and land-grabbing by the military or other powerful groups. Main problems include:

- *IDP occupation of abandoned property*: returnees are trying to claim back the land they legitimately owned, which has been occupied by IDPs for more than 15 years, for example in Lobonok, an area on the outskirts of Juba where people were displaced in the 1990s. Returnees with legitimate land titles are trying to regain access to their plots but most IDPs have refused to vacate the land. Many IDPs have also taken in returning relatives.
- *Plots being forcibly occupied by the military or 'powerful members of the community'*: this concerns both returnees and residents as a number of long-term residents are losing their land to soldiers occupying it by force. In a number of cases, long-term residents have lost their land to well-off returnees, who have used the military to force owners to give up their property. Land ownership documents mean little when threatened by a gun.
- *Multiple issuing of leases for registration of a single plot*: during the war Juba town was replanned and new titles were given out several times without any consideration for absentee land owners. This included areas demarcated as public spaces, such as roads and sport facilities. Land was normally used as a form of patronage and reallocations usually benefited individuals or groups close to the government. Plots belonging to individuals perceived to be SPLM supporters were particularly targeted. Such cases contribute to the backlog of land disputes in court. Multiple allocations are also reported since the signing of the CPA. Pre-war owners find it very hard to reclaim these plots, especially because in many cases they lack the appropriate documentation to support their claims. Even individuals with all the proper paperwork find it virtually impossible to retrieve their property since there are often another three or four claimants who consider their claim equally legitimate on the basis of titles issued during the war. People with the best connections usually win claims.
- *Unauthorized building on unoccupied plots*: unoccupied plots are illegally fenced and properties are built or renovated without authorization. Legitimate owners have great difficulty retrieving their land, and in the best-case scenario are expected to compensate those who have built on it. These compensation claims often end up in court (De Wit, 2004).
- *Illegal sale of land*: a number of returnees who had entrusted their plots to relatives have found their land sold upon their return and are having difficulties getting it back. Soldiers are also reported selling unoccupied plots without the knowledge of the owner.
- *Long-term occupancy without registration*: in areas on the periphery of Juba, especially in Munuki Payam, land allocation and registration have been

carried out by chiefs but not formally registered with the *payam* (local) administration. As a result, people who have occupied the land for years or decades are now being evicted by others who have land documents from the *payam*.

- *Women's rights*: despite more progressive provisions in the Interim National Constitution and the Interim Constitution of Southern Sudan, women find it difficult to uphold their rights to land. According to customary rules in much of Southern Sudan, women cannot own, control or inherit land unless they are widowed or disabled; even in the latter cases, their rights are usually limited to temporary usufruct rights. Returnee widows are facing problems trying to recover their land, usually because they do not have the necessary documentation. Resident women are also challenged in their claims to land. Women were not allowed to register land in their own names pre-CPA, and therefore many residents, often heads of household, do not have appropriate papers and are threatened with eviction as the land is registered in a male relative's name. A number of such cases were identified in Tong Ping.

There are also disputes over land access and use in rural areas of Juba County, largely because of encroachment by Mundari cattle onto Bari land. The Mundari complain that their land is occupied by Dinka Bor, obliging them to look elsewhere for pasture. Skirmishes between pastoralists and farmers are common and have resulted in low levels of cultivation. Returnees have little or no difficulty in claiming back their land, but face problems cultivating it because of the Mundari transhumance and increasing settlement in the area.

### ***Creating new plots***

Access to land and securing tenure in Juba is central to the successful reintegration of those who have chosen to seek a new livelihood in the town. The provision of new residential plots in Juba and other urban areas had been identified as critical to facilitating the reintegration of returnees since before the signing of the CPA, as it was apparent that there was a significant mismatch between the expected urban population and the number of available plots in the town (De Wit, 2004). Numerous studies and workshops were undertaken in 2004 and 2005 to ensure that legislative and administrative measures were in place to absorb the new arrivals and minimize disputes, but despite extensive research and preparation, the government has been unable to demarcate enough new plots ahead of the arrival of the returnees. This has largely been a result of unresolved tensions over the expropriation of Bari land for gazetting. Allegations of corruption have also been made, as prime land in Juba has reportedly been allocated to or grabbed by influential members of the community.

The Central Equatoria government has been trying to negotiate the demarcation of new plots in Juba, but has not been able to reach an agreement

with those Bari chiefs who have successfully established themselves as key intermediaries with government as well as international organizations and businesspeople. Returnees from Central Equatoria have been able to obtain undemarcated plots directly from chiefs in some areas (for example south of Lobonok and parts of Gudele), and have taken possession without official registration. But chiefs are only allocating land to Equatorians and are refusing land to other groups, particularly the Dinka.

The great majority of returnees are not getting access to plots and cannot afford commercial rents. Renting can also be risky as owners tend to raise rents at short notice or evict tenants if they need the property or can rent it out for more money. As a result, most returnees cram into relatives' compounds, where up to three families (usually 20–25 individuals) squeeze together in makeshift *rakubas* (shelters made of wood and grass) set up in courtyards. This makes for very congested living, with attendant health and sanitation problems and fire risks. Those who do not have relatives in Juba tend to illegally occupy empty spaces, often in areas designated for roads or public services, or in school courtyards. The Bari community is resentful of those who occupy land without their agreement. In a number of cases, such as in Gudele, SPLA soldiers are reported to be initiating construction without official land titles or the agreement of the local community. Many soldiers claim that they take precedence in ownership of land over those who fled since they were the ones who fought to win it back.

The government argues that, in order to stop land-grabbing, it needs to be able to demarcate new land to allocate it legally. Some officials maintain that predatory practices by powerful individuals are fuelled by the inability of senior government officials to have access to a plot to build a home for their families. The illegal occupation of land has put poorer, more vulnerable returnees at risk of eviction. In April and May 2007 a wave of evictions and demolitions took place in Nyakuron, which affected land-grabbers, but also returnees who were renting accommodation without knowing that it was illegal. People were traumatized, particularly returnees from Khartoum who had previous experience of this in their place of displacement. GOSS was receptive to NGO and UN representations and the demolitions were quickly stopped. The government did not offer alternative land to those evicted apart from suggesting that they move to Gumbo, an area considered too insecure because of incursions by the Ugandan rebel group the Lord's Resistance Army (LRA). A year later, people were still stranded in makeshift accommodation in Nyakuron.

Many returnees expect the government to provide land for them, since the government is encouraging them to return. Others believe it is the responsibility of the UN agency that facilitates their repatriation or return. A number of returnees have complained about the emphasis placed by GOSS on return in the absence of conducive conditions for their reintegration. They point out that land is more abundant in areas of displacement, and that prospective returnees are deterred by the difficulties of finding a plot in Juba.

### ***Town planning***

GOSS recognizes that it is incumbent on both the central and state governments to find a solution to the land crisis in Juba and ensure that returnees have access to land. The government aims at decongesting Juba and encouraging returnees to move back to their rural areas of origin by promoting a policy of 'taking towns to the people'. This was launched by the Southern Sudan Reconstruction and Development Fund (SSRDF) in 2007, as part of its strategy for rural development and transformation. It is based on creating two model towns for each of the 10 states, to include infrastructure such as a functioning market, community centre, primary school, health centre, water supply and electricity. It is an alternative to the normally scattered settlement pattern of Southern Sudan, and is designed as a more efficient way of providing services. The SSRDF describes it as similar to '*ujamma*' in Tanzania, but voluntary (SSRDF, 2007). Funding is expected to come from the Multi-Donor Trust Fund (MDTF), although this policy is still in the planning phase and has met with scepticism from donors.

At the same time GOSS aims to manage the growth of Juba according to detailed urban development plans which build on the colonial structure of the town. The colonial land classification system separates people by socio-economic status and creates cleavages in the community. Services are concentrated in the inner-urban areas where there is a prevalence of high-value, low-density large parcels, whilst high-density plots tend to be concentrated in the periphery away from key services and markets. This distribution has been retained in the master plans for the expansion of Juba, with the support of international donors (Japan International cooperation Agency (JICA) and USAID through Planning and Development Collaborative International (PADCO)/Gibb Africa, with the Gibb Africa plan focusing more on detailed planning in residential areas). The plans maintain the colonial plot zoning system and envisage that existing overcrowded populations will move to new areas in the periphery (USAID, 2007). The plans have been drawn up without engaging communities in the process. As a result, public services have been planned on areas occupied by IDPs and returnees. The Ministry of Physical Infrastructure is trying to reach an agreement with these communities to avoid forcible eviction, though forced removal was necessary to get the rehabilitation of the port under way.

A number of technical UN agencies and NGOs have expressed strong reservations about the top-down master plan approach, both because it fails to involve the community in the urban planning process and because its provisions have no legal basis. The Minister of Physical Infrastructure has pointed out that half the population of Juba would need to be relocated and/or compensated to implement the main master plan, which was developed with the support of JICA. UN-Habitat has called for a strategic spatial planning approach (UN-Habitat, personal communication) that builds on the existing physiognomy of the town, is fair and inclusive and aims to address

inequalities through a more equitable spread of infrastructure and services. In order to implement these policies, it is critical to identify new areas for residential housing to ease congestion in the current perimeter of Juba, build more service infrastructure and roads and make land available for investment. The local Bari community must be enlisted in the search for a solution to the town's development challenges.

### ***Tensions between the Bari community and regional and state government***

The acquisition of additional land appears to have become an intractable issue both for the Central Equatoria government and for GOSS, both of which are having problems with 'the Bari'. The government of Central Equatoria issued a call for land applications in 2005. It was inundated with applications, but did not proceed to allocate the land because Bari communities reacted angrily to the announcement, which amounted to a *fait accompli*. The government has since held several consultations with senior Bari figures, but the problem is still unresolved. A number of Bari chiefs have taken a leading role in negotiating land sales or allocations around Juba, which has led to criticism from some of their communities. Chiefs in CES have not historically had primary responsibility for land, which is instead associated with particular clans or spiritual leaders, who are not always being consulted during negotiations over land (Cherry Leonardi, personal communication).

Some senior government officials feel that the consultations on land access are being used as a delaying tactic by these chiefs. The state government has been trying to get land released in Gudele and Nyakuron, but now says that it is open to receiving parcels in other areas. Reportedly the only place the Bari chiefs have offered is Gumbo (Rajaf Payam), which is considered insecure. The Minister of Physical Infrastructure has pledged to improve security in Gumbo, but feels that land should be released in inner Juba as well.

The Paramount Chief of the Bari maintains that they would be prepared to give land to the government if a number of conditions were met. These include the provision of services on the parcels allocated and the reservation of one-third of the plots for the Bari themselves. The Bari are united in their refusal to see their land expropriated by the government and allocated on a commercial basis. They know the value of real estate in Juba and want to ensure that their community can benefit from it. Even if the government were prepared to compensate Bari communities financially for their land, it is not clear who would receive the money and how it would be redistributed. The lack of land in Juba town is making it impossible to introduce new services, including schools, primary health centres and boreholes. Investors are also unable to get land, crippling opportunities for development.

The wrangle between the Bari and the government also concerns GOSS. The GOSS Ministry of Land and Housing has requested land to develop an administrative district, but no location has been agreed. In 2006, GOSS asked for a 5x5 km plot in Tokimon, on the road to Yei. The transaction was not

finalized, according to Bari informants, because GOSS changed its mind. The Bari chiefs then offered land in Gumbo, but GOSS felt that insecurity made it an unsuitable location for government offices. Latterly GOSS has requested land on the island of Kondokoro, but the Bari chiefs are adamant that they will not release their community's best farming land. International organizations report that the plan for the administrative and business district in Kondokoro was announced without adequate consultation with the 'Bari community'.

The current impasse reflects the lack of an overall land policy and mechanisms to engage with concerned communities. Senior GOSS officials believe that there has been enough consultation, and that it is now time to formulate and implement a land policy. Ordinary Bari people in and around Juba complain that their educated leaders are too busy with 'politics' to really represent their interests. The notion of a single 'Bari community' is idealistic and conceals competing interest groups and their political linkages. It is unlikely that the chiefs alone could block the acquisition of land for the expansion of Juba without significant backing from higher authorities (Cherry Leonardi, personal communication). With some chiefs accused of being corrupt and allocating land to investors for their own personal gain, many Bari insist on a consultative mechanism that involves the whole community in decision-making. Consultation processes have been initiated by Pact and others, and these must be supported and expanded.

The success of Juba will be an important test for the unity of Southern Sudan. Returnees from other areas currently feel unwelcome in the regional capital and question the status of Juba as a symbol of a 'New Sudan' embracing all Southerners. For the Bari, land is not just an economic issue; it is at the heart of their identity, which they feel will be threatened if the expansion of Juba swallows Bari villages. Appropriate mechanisms to guarantee Bari rights must be found, for instance by entrusting land titles in the name of the Bari community and only granting the government time-bound leases.

### ***Individual dispute resolution***

The system of dispute resolution is a hybrid of customary and statutory forms, and there is currently no consensus about how customary and formal institutions should relate to one another. The guidance provided in the Interim Constitution for Southern Sudan is vague regarding the role of customary courts and traditional leaders, and makes state governments responsible for determining their jurisdiction. In Juba, customary courts continue to play an important role in the adjudication of land disputes. Interviewees reported that land dispute cases are first submitted to the chief of the area or the block leader. If the case remains unresolved, it is moved to the *payam* administrator, then to higher authorities in the state government and finally to a court. Local chiefs have significant power in land matters and usually make decisions without recourse to policy. They act as mediator and judge, and hold court in public so that the community can participate. Opinion is divided as to

whether the role of the local chiefs is beneficial. Some consider the courts transparent and accountable, and court decisions generally fair (International Rescue Committee/UNDP, 2006; UNDP Southern Sudan 2006, quoted in Mennen, 2007). However, submitting disputes to chiefs is expensive and decisions are often biased, prompting an increasing number of people to resist the involvement of local chiefs in land disputes. There is also a problem of capacity, as chiefs are often also called to testify in the courts and to refer cases to the Ministry of Legal Affairs. Chiefs are seldom able to arbitrate between soldiers and civilians, and usually discriminate against women.

### ***Current institutional framework***

With legislation on land yet to be approved, the roles of ministries, departments and institutions are still uncertain. The competencies of the Ministry of Physical Infrastructure of Central Equatoria State and GOSS Ministry of Land and Housing are unclear. The Ministry of Physical Infrastructure should be responsible for identifying and allocating new land, but GOSS can request the state government to confiscate land 'for public interest', though it has to offer compensation in return. The state government, more sensitive to the interests of the Bari, does not always respond to these requests. The confusion of roles between GOSS and the state government is discouraging investors, with instances of land allocated by GOSS not being released by the state government.

The role of the Southern Sudan Land Commission (SSLC), established by GOSS Presidential Decree no. 52/2006 in July 2006, also remains undefined. The decree set out the composition of the Commission, but did not elaborate on its role. The CPA and the Interim Constitution of Southern Sudan are equally ambiguous about the roles of both the National and Southern Sudan Land Commission. The National Commission is mandated to arbitrate land claims between willing contending parties, enforce the application of the law, assess appropriate land compensation and advise relevant levels of government regarding land reform policies and recognition of customary land rights or law. It is assumed that the SSLC would play a similar role in the South (CPA Wealth Sharing Protocol; Interim Constitution of Southern Sudan, Part Twelve, Chapter II; Interim National Constitution, Chapter II). State officials see the arbitration function as a duplication of the role already played by customary and statutory courts. The Commission is currently overly dependent on its chairman, who exerts a considerable level of authority. In turn, the chairman is frustrated about the limited powers vested in the SSLC and the restricted scope he is allowed by other actors, especially at state level. The Commission is now focusing on arbitration between individuals and the state, an issue that appears to be less frequently dealt with by the courts, and gives legal opinions to the states on how to proceed. The SSLC is waiting for a new Land Act to be passed before increasing the number of staff (currently 15)

and starting work on a land policy. It is however normal procedure for policy to precede law.

The draft Land Act is being held up at the Ministry of Legal Affairs, which is currently reviewing it. The courts are unable to operate properly because they do not have any laws to guide them. The law as defined by the old GOS is considered exploitative and GOSS does not want to use it. This has created a vacuum. Although there are reservations about the way the new Act has been drafted, as it is said to mix policy and implementation issues and to be overly focused on rural questions, a new law is essential to resolving the land crisis in Juba. No clear policy on returnees' access to land is set out in the Act or in any other document; furthermore, the Act is almost entirely lacking in articles tackling urban tenure issues. At the same time, the draft law provides an excellent basis for the regulation of land issues in rural areas and includes key articles that could be applied in urban areas, although these would need reshaping. Despite the shortcomings of the current draft, it is essential that a legislative framework is put in place as soon as possible, that the roles and responsibilities of the various actors are clarified and that institutions are given the power and resources to perform their functions.

### ***International assistance on land issues***

The government and international organizations operating in Southern Sudan had anticipated that land problems would arise as a result of the arrival of large numbers of returnees. A consortium of agencies including FAO, UNHCR and NRC undertook studies on a wide spectrum of land and property issues (Abdel Rahman, 2004; De Wit, 2004; El Sammani et al, 2004; Nucci, 2004) and organized workshops on land issues related to returns (FAO et al, 2004). Studies on urban planning were also undertaken by UNDP (Wakely et al, 2005) and USAID (2007). The studies produced abundant and valuable material, but they were not complemented by a clear agenda for action. This was mainly because of a lack of coordination amongst UN agencies (particularly UN-Habitat, UNDP and FAO) (Special Representative of the Secretary General (SRSG) briefing note prepared by the FAO Sudan Land Programme, 02/10/2006 and interviews with senior UNMIS official, Juba). Different UN agencies and donors (particularly USAID and JICA) have been providing technical assistance to different government bodies (including the Ministry of Physical Infrastructure in the government of Central Equatoria, the GOSS Ministry of Land and Housing, the GOSS Ministry of Legal Affairs, the Vice-President's Office and the Southern Sudan Land Commission). Technical assistance, ranging from rule of law to land administration, urban planning and arbitration and legislative reform, has reportedly not been harmonized. Humanitarian actors consider some of this assistance inappropriate and confusing, particularly the master plans developed by JICA and Gibb Africa. Some UN agencies and NGOs expected UN-Habitat to provide stronger leadership on land issues in Juba, but in the last two years the agency has had only one staff member on the

ground. Several expert missions were sent from headquarters. Their analysis and advice is generally well received, but the lack of an appropriately staffed and continuous presence on the ground has reduced the value of UN-Habitat's inputs.

NRC, FAO, NPA, USDA/USAID and UNHCR Protection have formed a Land Forum chaired by the chairman of the Land Commission. The group, meant to support the work of the SSLC, meets on an ad hoc basis, though agencies try to meet at least once a month. So far it has been engaged in supporting the preparation of land legislation through consultative workshops. The agencies involved report that workshops have not been systematically followed up.

A number of organizations have also been helping returnees overcome legal obstacles related to HLP issues. NRC has established Information, Counselling and Legal Assistance (ICLA) centres in two *payams* (Rajaf and Munuki). Although the mandate of the ICLA centres goes beyond HLP, NRC reports that 20 per cent of the cases referred to it by returnees and IDPs concern land. ICLA officials point out that, unlike in other countries, it is difficult to provide legal advice on these issues because no land legislation is in place. UNDP's Access to Justice project has been supporting the Rule of Law Promoters Association (RLPA) in Juba. RLPA is a local organization; its main activities include monitoring customary courts, legal assistance and referral and the management and operations of a Justice and Confidence Centre (JCC). Work by Pact to document the views of local communities on land issues in Juba has been mentioned earlier.

There are a number of areas where appropriate and well-coordinated technical assistance could play a critical role. Some senior government officials feel that the international community could provide support by facilitating a high-level political meeting including all key government and Bari decision-makers to discuss new land allocations, the competences of the different levels of government and the role of customary bodies. Others feel that the emphasis should be placed on involving communities in the search for a solution through more genuine consultation and participatory planning. This seems to be a prerequisite for any strategy, though a two-pronged approach may have some use.

The government of Central Equatoria stresses that most assistance to date has been provided to GOSS (apart from JICA's). However, support to reorganize the cadastre and register community land in rural *payams* of Juba County would be greatly appreciated. All *payams* have been registered in the Land Registry, but with broad maps and without a specific land-use plan. Training and advisory services for the Land Office and the Survey Department would enhance understanding and implementation of the land policy once it is finalized. State officials in the Ministry of Physical Infrastructure felt that UN-Habitat should be funded to provide technical assistance on these issues, mentioning the very positive experience they had with the agency in the 1980s.

A number of GOSS officials would also like to continue to receive technical assistance in the development of land legislation. They are appreciative of the inputs already provided by the EU, but point out that more technical support is needed from qualified individuals to develop the land policy and other legislation. Further refining of the draft Land Act is also required to make it relevant to Southern Sudan.<sup>3</sup> The development of further legislation will not however be sufficient to resolve the current impasse on land issues unless there is strong political will to do so. A complication in this regard lies in the fact that the few people in Juba who have the capacity and seniority to address the land question politically are already overstretched by important issues linked to CPA implementation. The land issue in Juba needs to be recognized as a priority requiring urgent attention at the highest levels of GOSS.

### **Conclusions**

The case studies presented here demonstrate that, across different contexts, the scale of land and property problems has grown as the rate of return to Southern Sudan and the transitional areas has increased. A significant number of displaced people have returned to their areas of origin, where they hold customary rights to land, but where this land is occupied or has been given away to investors land and property disputes have arisen. An even greater proportion of returnees have chosen to move to urban centres where opportunities are perceived to be greater. The Juba situation shows that arbitrary occupation of non-owned plots and commercialization of land currently occupied by IDPs have also resulted in a growing number of disputes. In Southern Kordofan, as in other areas of Sudan, the atrocities committed by some pastoralist groups during the conflict have made it more difficult to generate trust around a possible land settlement that would guarantee the rights to land and natural resources of all communities in the region. Given the lack of an appropriate legal framework and the weaknesses of the administrative system, it is reasonable to expect that land disputes throughout the country will remain largely unaddressed unless there is a considerable effort to tackle underlying problems.

There is a danger that actual or brewing land disputes could rapidly degenerate and add to the already significant number of violent clashes, especially in areas where land rights are derived from individual membership in a wider group. In these cases, individual disputes related to access to resources automatically become group conflicts. The history of Sudan also shows that land conflicts are ripe for political manipulation, as unresolved land disputes have consistently underscored wider conflict. Land issues could therefore once again become an easy way to foment unrest. This is a risk that should not be underestimated given the fragility of the CPA. There are reasons to be particularly concerned about growing tension in the transitional areas, where land issues have been a dominant feature of conflict in the past.

Adequately addressing land issues is a major task that underpins the entire reintegration and recovery process and should be addressed as an immediate priority by all relevant actors. Appropriate legislative, judicial and administrative reforms need to be urgently made that ensure greater respect for the rights of legitimate land owners and users, both in rural and urban areas, and make possible adequate settlement of existing and future disputes through restitution or appropriate levels of compensation. The complexity of the process means that success can only be achieved through the implementation of complementary and mutually supportive initiatives. It is therefore extremely important that the GNU and the GOSS prioritize the development of an appropriate policy framework around land issues. This should be underpinned by a coordinated and sustained effort by the UN, NGOs and donor governments to provide the necessary technical expertise and resources to facilitate this reform process at all levels. Humanitarian organizations involved in return and reintegration processes could help ensure that reforms are supported by genuine consultative processes with communities, and that appropriate solutions are developed that guarantee traditional community rights to land, both in rural and in urban areas. International organizations should also advocate for and support the development of legislation that includes safeguards for women's rights on land issues, particularly succession and matrimonial law. Appropriate technical advice on urban planning should also be made available, especially in areas of significant return. If humanitarian organizations involved in reintegration programming do not have the relevant expertise to offer appropriate advice, they should call upon the services of land tenure experts. The willingness of the GNU and the GOSS to promote a comprehensive reform to suitably address land issues will be a critical factor in effecting any change.

### Notes

1. This chapter draws on extensive research on Sudan's return and reintegration process carried out throughout 2007 and 2008 by the HPG (Pantuliano et al, 2007 and 2008).
2. Juba falls within Bari chiefdoms.
3. The Act was modelled on the Communal Land Acts of South Africa and Belize, the Tanzania Village Land Act and the Mozambique Land Act.

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