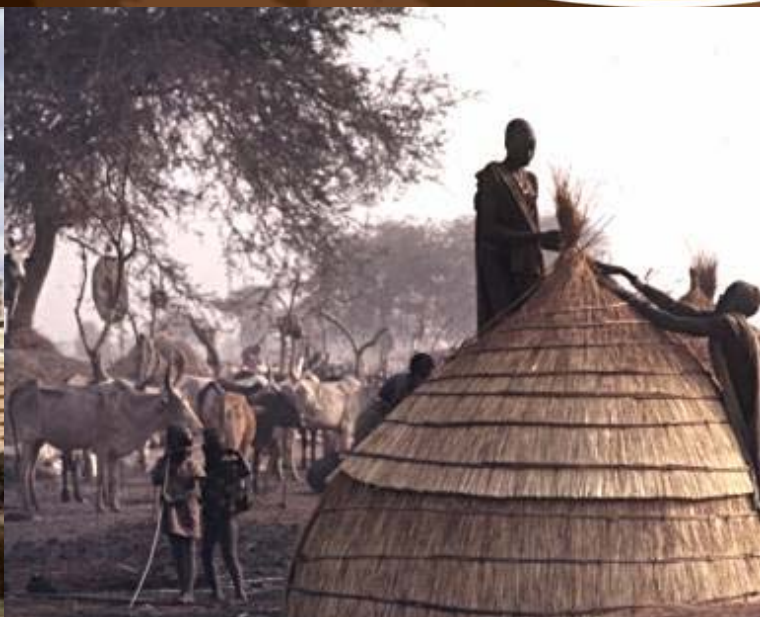


# CLEAR Newsletter



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## In This Issue

African Regional Seminar on Land & Resources Rights: Norwegian People's Aid	Page 2 –18
The Pastoralists and the Land question	Page 19-21
CLEAR joins NEPAD Task Force	Page 22-23
Launch of National Policy In Kenya Editor's Note	Page 24

## Point of Interest:

•CLEAR is to conduct a Gender audit of the NEPAD management structure and processes within the context of Article 5 of the Solemn Declaration on Gender Equality signed by AU Heads of States in July 2004 and make recommendations for its implementation.

## *African Regional Seminar on Land and Resource Rights-hosted by Norwegian People's Aid (NPA).*

This workshop was well attended by representatives of countries from the Horn of and Southern Africa and NPA officials from the head office in Oslo. The African countries included Tanzania, Sudan, Ethiopia, Eritrea, Somalia, Rwanda, Angola, Mozambique, Zimbabwe and South Africa.

The country presentations by participants focused on key policy challenges, needs and best practices. The discussions following each presentation focused on lessons learnt and identification of knowledge gaps and specific need for networking and exchange. Indeed, CLEAR found this, a great opportunity to network and begin relationships with other African organizations working for similar vision. CLEAR presented a paper on *Securing Land Rights for Women; customary land Tenure System or Independent ownership with a title deed?* It is also at this workshop that CLEAR together with RECONCILE and SPLA/SPLM presented the findings of the research of the Land Tenure Study in South Sudan.

### TERMS OF REFERENCE FOR THE CORE STUDY TEAM

#### Background

The objectives of the land tenure study are:

To identify the existing land tenure systems as applied by various communities in the Southern Sudan;

To understand how the different stakeholders perceive their land rights, and how to secure them;

To identify key traditional institutions for the sustainable management of land and natural resources, their strengths and weaknesses; and

To identify comparative experiences on land titling and land tenure reform from the African continent that can be useful in promulgating a land policy.

The study has been initiated by the Secretariat of Agriculture and Animal Resources (SAAR) of the SPLM - Civil Authority for the New Sudan (CANS) with financial support from Norwegian Peoples Aid (NPA). It shall be a first and important step towards the development of a comprehensive land policy and legal framework for just social and economic development in the New Sudan.

A multi-disciplinary Core Study Team (CST) comprised of two lawyers and an anthropologist has been engaged to undertake the study. Team members from neighbouring countries shall provide comparative information to enable the team learn from the experiences of those and other countries about land policy formulation processes.

The responsibility of the CST is to deliver the outputs of the study and for this purpose they shall:

develop and agree a work plan in consultation with the CT that incorporates logistics, data analysis and report writing;

organize and participate in a training for team building and to reach a common understanding on methodology for the study;

formulate a list of indicators based on the objectives of the study and develop methodologies to be used in data collection;

identify and select interpreters from the key areas of study (Upper Nile: Shilluk 2 persons, Nuer 3 persons and Others 2 persons; Western Equatoria 2 persons, Eastern Equatoria 3 persons; Central Equatoria 2 persons; Lakes Region 2 persons; North Bar-el-Ghazel 2 persons, Western Bar-el-Ghazel 1 person);

pre-test the data collection methodology together with the interpreters and make necessary revisions;

arrange for logistics and communications, informing Local Authorities about the study and the time schedule;

undertake the field study in the identified study areas;

analyse the data and produce an interim report;

review TORs for literature review team to reconcile it with these ToR;

identify and engage experts from specific neighbouring countries to undertake reviews of policy and land reform experiences from those countries to feed into the study;



PARTICIPANTS OF  
THE NORWEGIAN  
AID WORKSHOPS



synthesize, analyse and discuss the outputs by the experts to identify modern land policy formulation principles applicable to the New Sudan;

conduct a feedback workshop bringing together the SPLM leadership, experts from the region and the Coordination Team to provide feedback on the interim report;

Compile a final report incorporating the results of the field study, syntheses from the literature and policy reviews and the feedback from the workshop, making concrete recommendations for developing a land policy and legislation for the New Sudan.

In all the foregoing, the CST shall liaise closely with the CT. It shall submit the final report to the SAAR for onward transmission to the Secretariat for Legal Affairs and Constitutional Development for development of appropriate policy and law.

## **SECRETARIAT FOR AGRICULTURE AND ANIMAL RESOURCES**

(SAAR)

### **1. INTRODUCTION**

#### **1.1. Background**

This is a report of a preliminary survey of the land tenure systems in parts of Southern Sudan occupied by Sudan Peoples Liberation Movement (SPLM). The survey, commissioned by the Secretariat for Agriculture and Animal Resources (SAAR) of the Civil Authority of the New Sudan (CANS) was undertaken during the period September to December 2004 with the support of Norwegian People's Aid (NPA). The survey team of three persons included an anthropologist, a land policy specialist and a lawyer from the Secretariat for Legal and Constitutional Development of the SPLM/A.

The survey was conceived of in the run up to the signing of a comprehensive peace agreement between the SPLM/A and the Sudanese Government, as a first step towards the development of a national land policy for Southern Sudan. It was informed by the realisation that land is key to secure livelihoods as well as the promotion of economic, social and political development in Southern Sudan. The importance of land tenure has been underlined in the discussions around the agreement on oil and non-oil wealth sharing within the comprehensive peace plan.

The comprehensive peace agreement provides for the establishment of two Land Commissions, one of which shall be responsible for Southern Sudan. In preparation for the work of that Commission, the SPLM recognises the need to lay a foundation for the promulgation of a land policy, which shall provide a framework for managing the demands, opportunities and conflicts that are likely to be occasioned by peace and the return of refugees and internally displaced persons (IDPs).

#### **1.2. Objectives of the Land Tenure Study**

The land tenure study has four key objectives, i.e.:

- ✦ to study the existing customary land tenure systems in Southern Sudan in order to provide SAAR with a basis for the development of a comprehensive land policy and legal framework;
  - ✦ to understand how the different stakeholders perceive their land rights, and how to secure them;
- to identify key traditional institutions for the sustainable management of land and natural resources, their strengths and weaknesses; and
- to identify comparative experiences on land titling and land tenure reform from the African continent and beyond that can be useful to the SAAR in promulgating a land policy.

#### **1.3. The Context**

Most communities within SPLM-controlled parts of Southern Sudan still manage their land through customary norms, systems and institutions. This happens in spite of policy and legal interventions by successive governments in both the colonial and post-colonial era. These interventions have involved the passing of laws to transform the land tenure system by removing control of access from the communities and locating it in institutions of governance at both the central and local levels. That customary land tenure continues to prevail in SPLM-controlled Southern Sudan is thus attributable purely to the lack of capacity on the part of successive governments to enforce the laws they passed and to impose their will on the local communities.

Before the imposition of colonial rule, each community or tribe inhabiting a definite geographical area applied its own laws relating to land and land rights within its own territory. Competition for access to land within and between communities was minimal as there was adequate land for the use of all community for settlement and production. Where conflicts arose, they were managed by institutions of natural resource governance applying customary norms to which all members of the community were subject. Reciprocal arrangements existed by which communities were able to share the use of land and other natural resources as the need arose, say in the event of natural disasters such as floods or droughts. Such reciprocity and mutual support provided incentives for peaceful coexistence between communities, and minimised opportunities for communal conflicts over land and natural resources. These reciprocal arrangements still exist in parts of Southern Sudan, although interventions by colonial and post-colonial governments and two decades of war have had adverse impacts on the institutional framework that supported them.

### **.3.1. Legal intervention on land over the years**

The Turko-Egyptian regime of 1821 to 1885 failed to make much impact on the land tenure system in Southern Sudan as the indigenous communities resisted the foreign encroachment and interference with their communal land tenure system. The Anglo-Egyptian regime of 1898 to 1956 made a much more concerted effort to use the legal system to intervene in the management of land and natural resources. The first major legislation by that regime was the Land Ordinance of 1906, which made all land in the Sudan the property of the government. However, in practice the Ordinance only applied to the major towns of Northern Sudan. The lands lying outside these areas remained in the ownership and control of communities.

In 1925 a Land Settlement and Registration Ordinance was enacted, which stipulated that land in the Sudan was 'disputed' and required anyone claiming title to any land to submit a claim for settlement and registration. The application of the law was however limited to the land on both sides of the Nile situated between Khartoum and the Sudanese-Egyptian borders. As such, the tribes in the rest of the Sudan continued to own and control their lands through ancestral titles.

In 1928 the Prescription and Limitation Ordinance was enacted. It provided that anyone who had occupied a piece of land uninterrupted for a period of 10 or more years became entitled to the land by prescription and limitation. Other sectoral laws were enacted with reference to agriculture, mining and quarrying, but even these only applied to land on which the government established agricultural, mining and quarrying projects.

*Between 1928 and 1970, there was no serious legislation on land introduced in the Sudan. However, in 1970, General Numeiri passed the Unregistered Land Act, which provided that any land not registered in accordance with the provisions of the 1925 Land Settlement and Registration Ordinance was deemed to belong Government of Sudan. Had this legislation been enforced to the letter, all communities would have been dispossessed of their land, as community lands are not registered with the Central Lands Registry in Khartoum. The law was predictably opposed and challenged by most communities. Only those communities whose titles would not be affected or who expected to benefit from sales of land by government supported the legislation.*

Notwithstanding opposition to this law, the government selectively sold land belonging to communities in the Nuba Mountains and the Funj Region of Central and South Eastern Sudan because they were not registered and were therefore deemed to be government property. Prime lands were sold to Arab princes and princesses at a pittance using this legislation, with the result that whole communities have been displaced from their ancestral lands.

Even during the two decades of war, the Khartoum government continued to pass laws giving it power over land and thereby dispossessing communities of their lands. As recently as 1998, it enacted a new law declaring all land in the Sudan to belong to Allah (God) and giving the Islamic State, as the representative of Allah on earth, the power to dispose of land owned by non-Muslims.

All the laws on land since 1906 were made to apply to all communities, including those in Southern Sudan, and as far as the government in Khartoum is concerned these laws govern all land in Sudan. Indeed, in parts of Southern Sudan controlled by government forces, it is these laws that are applied in managing access to land. In practice however, the Khartoum government has never been able to fully implement these laws, and their legitimacy has remained a subject of controversy even within government of Sudan controlled areas.

The conflict in the Sudan bears testimony to the inability of successive regimes in Khartoum to subdue these diverse communities especially with respect to land and their land rights. As a result of the armed resistance, the government has never been able to establish sufficient authority all over Southern Sudan to enable it enforce its laws on land and natural resources. As such, different communities in Southern Sudan, even some within GOS-controlled areas, continue to apply their customary laws relating to land and land rights, despite the colonial and post-colonial legislation emanating from Khartoum.

In the peace negotiations, land became the main point of contention between the two parties in negotiating a Protocol on the sharing of oil and non-oil wealth. For the people of Southern Sudan, land ownership is at the heart of the war and the settlement of the land question is critical for the attainment of lasting peace. It is in appreciation of this that the parties to the peace talks agreed to the formation of two Land Commissions, which shall be responsible for claims to land rights in each tier of government in accordance with the provisions of the power sharing arrangements. Each tier of government shall apply its legal system with respect to land rights. The national government in Khartoum with representatives from Southern Sudan shall apply and enforce the land rights that have been maintained by successive governments since 1906, while the government of Southern Sudan shall apply customary laws on land and land rights during the transition period, pending agreement on a new framework of laws for managing land.

### **1.3.2. Importance of land**

The importance of land to the people of Southern Sudan cannot be overemphasized. The three decades struggle that has pitted the Khartoum government against the SPLM/A, has been defined by the determination of the people of Southern Sudan to secure their lands and natural resources from appropriation. Land is a critical resource both for the livelihoods of the people of Southern Sudan and for their economic, social political and institutional development. The availability of vast and fertile lands in Southern Sudan seen against the desert ecology of Northern Sudan reinforces the centrality of land and its management to the attainment of sustainable peace in Sudan.

The signature of a comprehensive peace accord between GOS and SPLM/A has opened up great opportunities for the exploitation of the land and resources of Southern Sudan for the benefit of the region's long-suffering population. But it also presents serious challenges for the equitable and sustainable management of land and natural resources. These challenges will come not only from the large number of returnees expected to come back from neighbouring countries and beyond, but also from investors, prospectors and other adventurers looking forward to having access to this vast resource base. That the people of Southern Sudan are indebted to

many countries in the region and beyond for their support during the war and in the peace negotiations, will only serve to complicate things for the administration of the region. The administration cannot purport to exclude nationals of these countries from sharing in the benefits of peace when they have worked so closely in the struggle to attain it.

The new government in Southern Sudan comes into existence at a time when globalization and liberalization have become the defining principles for the management of national economies and resources. These imperatives will present critical challenges to the new administration, especially in the light of the acknowledged land and natural resources wealth of Southern Sudan. The new administration shall need to engage with and manage these challenges from a national, regional and global perspective. The challenges, which are today overwhelming even for countries that have been self-governing for the past four decades, are bound to be particularly taxing for a new administration coming out of three decades of war.

The upshot of all this is that the SPLM/A needs to articulate more clearly a national land policy within the framework of the peace accord. To this end, the SPLM/A requires to capture the reality of land rights on the ground within the areas of Southern Sudan that it controls, with a view to better understanding the existing land tenure system, its challenges, constraints and opportunities. No study of that nature has previously been undertaken by the SPLM/A with the express purpose of informing a policy formulation process. The present survey is a first step to a comprehensive land tenure study that shall inform the process of policy formulation, and determine the appropriate policy incentives for sustainable land and natural resource use and development.

The survey outlines the existing customary systems of land tenure within SPLM-controlled Southern Sudan as well as the institutional framework and mechanisms for the management of land. It reviews and analyses the mechanisms for enforcement of rights of access to and control of land and natural resources as well as the dispute settlement mechanisms, their strengths and weaknesses.

#### **1.4. Methodology**

The land tenure study is to be undertaken in two phases, of which the survey reported on herein comprises the first phase. This first phase involved a preliminary assessment through interviews, focus group discussions and workshops with key informants mainly at regional centres within SPLM-controlled Southern Sudan.

The survey was undertaken by a team comprising a nominee of SAAR and two consultants identified and commissioned by NPA, at intervals over the period September to December 2004. The team visited specific locations within the SPLM-controlled parts of Southern Sudan (see annex 2 for the Itinerary and areas visited), and produced field reports for each of the regions visited, on the basis of which the present report has been compiled.

The locations were chosen on the basis of substantive and logistical considerations, including the need to gain insight into key land-based livelihood systems, principally agriculture and pastoralism, as well as accessibility and the availability of SRRS and NPA infrastructure at or within easy reach of the location. It is intended that the outcome of this preliminary survey shall help in identifying critical issues that need to be looked into in the subsequent in-depth phase two study, as well as case study locations and issues.

The outcome of the first phase shall be discussed at a workshop to be organised by the SPLM/A and to be attended by key stakeholders from within Southern Sudan, Eastern Africa and representatives of NPA. Participants at the workshop shall provide feedback on the report, as well as comparative perspectives from other countries in the region that will feed into the design and focus of the second phase.

In the second phase, a more substantive and in-depth study shall be undertaken. It shall involve comprehensive field surveys at the community level at key locations in Southern Sudan. It shall be defined by a locational and thematic focus that shall capture the diversity of systems and resources in Southern Sudan. A comprehensive methodology shall be developed for the phase once feedback is received on this report.

The methods used in this preliminary assessment are essentially qualitative and involved the use of a data-collection checklist developed and internalised by the study team before proceeding to the field. The instruments developed for purposes of the survey included a Questionnaire, and schedules for formal interviews, focus group discussions and case studies. The study team agreed on the units of analysis, research methods and research instruments before travelling to the field for the surveys (see Annex 3 for the data collection checklist).

#### **Limitations of the study**

There are two key limitations to this study, but which do not compromise the findings and their relevance for the purposes of establishing a national land policy for Southern Sudan. It is however important to keep them in mind in order to appreciate the context of the study and the levels of generality of the conclusions reached here.

Firstly, the study has been undertaken without the benefit of a literature review. Or more precisely, the literature review and the field study have not been linked. A process is under way to retrieve relevant literature from different Universities and libraries in the UK, principally the University of Durham, which has a reputable library on Sudan. The process, which is being undertaken by the Customary Law Steering Committee of the SPLM, is partly funded by NPA, on the understanding that once the literature is collected, the land tenure study team shall have access to it for purposes of enriching this preliminary survey and informing the substantive study in phase II.

This 'unorthodox' approach to the literature review was informed by two factors: firstly, in the run up to the comprehensive peace accord, the SAAR saw an urgency in commencing this exercise if the results were to be available early enough to inform the policy making processes that would follow the signing of the accord. Secondly, literature on Southern Sudan could only be accessed in that

appreciated that literature review and its analysis would in any event be of greater significance in the more substantive second phase of the study.

*Secondly, the preliminary survey has not covered the whole of Southern Sudan, indeed not even all of the SPLM-controlled Southern Sudan. An attempt was made to cover the areas that represent the key land-based livelihood systems, but the ambitions of this stage of the study were quite modest: i.e., to identify the key issues for substantive research and analysis in the second phase. So, no attempt was made to cover the whole of Southern Sudan, and any gaps occasioned thereby shall be addressed in the second phase of the study.*<sup>12</sup> LAND TENURE SYSTEMS IN SOUTHERN SUDAN

A land tenure system denotes how land is held in a specific locality. It defines “the methods by which individuals or groups acquire, hold, transfer or transmit property rights in land” (Ogolla and Mugabe, 1996:94). It is for this reason that land tenure is so integral to the social, cultural and political organisation of communities whose livelihoods depend on land and natural resources. They develop over time complex rules and institutional arrangements around land tenure.

It is the land tenure system that defines the nature of rules and institutions for the management of land and natural resources. It also defines how a community manages the relationships between different categories of land users. It is therefore closely associated with the culture and history of a community; so that, in order to conceptualise an appropriate land policy, it is imperative that there be a clear appreciation of the existing land tenure system. In this way, any changes proposed will be grounded on the objective reality of the land users.

It is important to appreciate the cultural specificity of land tenure, without losing sight of its dynamism. It is culture specific “because it is determined by the history, social organisation and land use patterns of a given community, which reflect among other things, the ecological characteristics of the region” (Ogolla with Mugabe, 1996:94). But it is also dynamic because it responds to the changes taking place within the community in response to both internal and external dynamics. In particular, as can be seen in the urban centres of Southern Sudan, in response to population pressure and increased levels of commercialisation, households increasingly acquire broader rights of exclusion and transfer (Migot-Adholla and Bruce, 1994)

The land tenure systems in Southern Sudan can be classified broadly into two broad categories, namely: customary and modern. Customary land tenure systems are those that are based on community norms and values, while modern land tenure systems are those that have been introduced by statute as part of the modern systems of government.

As intimated above, the persistence of conflict in Southern Sudan has impacted adversely on all aspects of society, and in particular aspects of governance. Thus, the application of statutory law has been greatly constrained by the insecurity and the absence of functional institutions of government in large parts of Southern Sudan. As a result, communities, especially in rural areas, have continued to apply customary norms in the management of land and natural resources even where statutory stipulations exist that establish a framework for their governance.

Urban centres in SPLM-controlled Southern Sudan present an interesting challenge in the definition of a land tenure system. Although the SPLM has not legislated a new land tenure system for the areas it controls, it is not keen to give effect to the stipulations of the law passed by the GOS. At the same time, the SPLM recognises that customary land tenure is not appropriate for the management of urban land, and wishes to introduce a sense of modernity to the management regime there.

Yet there is also recognition that the land question remains very sensitive to communities and has in many ways defined their struggle for liberation. Communities consider that the struggle has been waged to protect their rights to land and natural resources and to secure them not just against the GOS, but against all external interests. As a result, SPLM has settled for a transitional arrangement that gives greater say to the local populations but is nevertheless managed through the civilian administration established by the Movement.

While this arrangement appears to be working at the moment, it is important that it is regularised and fine-tuned through an elaborate land policy. It is unlikely that the expectations of the community and those of the SPLM leadership will always be in agreement on this matter. Indeed, while the local communities emphasise the control of the community over its own land and insist that this cannot be changed even in the post-conflict era, the SPLM leadership, especially at the national level is keen to emphasise the role of government in directing development and the importance of land as a productive resource.

### 2.1 Key characteristics of customary land tenure

One of the most important functions of a land tenure system is that it defines the location of authority and decision making over issues of access and use of land in a given area. Authority to allocate land for different uses and users, define and restrict use rights, and resolve conflicts are located in different institutions according to the prevailing land tenure system. The manner in which such authority is exercised from day to day is in turn dependent on values and systems that evolve over time.

**Table 1: key characteristics of customary land tenure**

community	land authority	means of access	women's rights	strangers
Kakwa	community through elders and chiefs, landlord	first clearance, inheritance by sons from fathers	access through male relatives	allocation on request
Zande	Community through chief and elders	Sons inherit, allocation by headman, elders	allocated land by headman same way as men	Allocation on request
(Buya and) Didinga	community	first clearance inheritance by sons from fathers	access through male relatives	
Nuer	community, clan and family	sons inherit from fathers or are allocated by family from clan land		allocation by the community
Dinka	community, clan and family	sons inherit from fathers or are allocated by family from clan land	access through male relatives	allocated by headman in consultation with Executive Chief
Toposa	community	allocation and inheritance by sons	access through male relatives	allocated by chief and elders
Shilluk	community through the King and his chiefs	sons inherit from fathers or are allocated by community		allocated by the King
Jur	community, <i>Bodo Yay</i>	sons inherit from fathers	access through male relatives	allocated by community, <i>Bodo Yay</i>

Although communities are diverse, so that it is possible to speak of different customary land tenure systems, there are nevertheless certain dominant characteristics that define customary land tenure systems, and which they share. Discussing the customary land tenure systems of Kenya, Ogolla and Mugabe have identified four of these characteristics, namely: the basis of access rights, the locus of decision making authority, the incidence of private investment in land, and the communal control of commons. These characteristics apply as well to the situation in Southern Sudan (see Table 1).

It is on the basis of membership to a social unit of production or political community (tribe, clan or family) that individuals and groups attain the right of guaranteed access to land or natural resources. Membership to the production unit or political organisation is pegged to the performance of reciprocal obligations that are enforced through sanctions which all members recognise and give effect to. Any 'outsider' who seeks to have access to land within the unit or organisation must assume the same obligations to gain such access.

Authority over land under customary tenure relates to the power to control access and use; and this is vested in the political authority of the production unit or political organisation. The nature of that authority depends on the kind of social or political organisation. The authority has sovereignty over the area, and exercises control for purposes of guaranteeing access to the natural resources over space and time. Administratively, the authority exercises powers of allocation, regulation and defence of the land against outsiders.

Once land is allocated to an individual or group, they exercise rights that are analogous to private rights over the said land in return for their investment of labour thereon. The right of the individual to his piece of land is greater than that of any other person or institution, as long as it is in use. In some communities such rights may include the rights of transmission and transfer.

The community retains collective control over land that is either not claimed by any individual or is required for shared uses such as pasture. Such land and resources are accessed communally and every member of the community has equal and guaranteed access to them.

The key principle in customary land tenure is access, and this is based on user needs. Every individual has guaranteed access to the land needed for the support of their livelihoods. The size of land available to the individual is dependent upon the total land available to the production unit or political organisation of which the individual is a member. The prevalent land use system, whether pastoralism, cultivation, fishing or hunting and gathering also plays a part in determining the size of land necessary for the support of livelihoods.

The concept of land ownership at the individual level is foreign to customary land tenure. Thus, the question, "who owns the land?" is a problematic one for people whose access to land is governed by customary land tenure. In the course of this survey, this question either elicited laughter ("how can land be owned by anyone? Who can own land?") or received a standard response that the land is owned by the community. In the end it was clear that this question did not make sense to the respondents, and that what they meant when they said the community owned land probably did not accord with what we had in mind in asking who owned it.

Under customary tenure, the individual owns the products of his labour on land, while the land itself is a heritage that he has



## .2 *Institutions for the management of land and natural resources*

Institutions for the management of land and natural resources are closely tied to the governance systems of the communities in Southern Sudan. Like all communities in which livelihoods depend on natural resources, the institutions that govern land and natural resources are also the key institutions of political governance. Their legitimacy derives from their close association with the history of the respective communities of which they are part. They combine political, administrative and spiritual functions, all of which are critical to the management of land and natural resources. Spiritual leaders play key roles in the institutions.

It is important to appreciate that the institutions that manage land and natural resources manage them on behalf of the community as a political and productive unit. They represent the communities in the decisions that they make and are expected to ensure that the interests of the communities are secured. Even where it is suggested that an institution or authority has absolute powers over land, such powers are deemed to be exercised by the community through the authority or institution. Thus, among the Kakwa, while there is talk about a 'landlord' who is the supreme authority over land, they also hasten to add that "it is the community which is the landlord of the particular land".

The institutions are at crossroads. They are under pressure from the forces of modernisation, particularly the establishment of the modern state with wide powers that encompass authority over natural resources. They have also been impacted upon by the war, which has shifted the balance of power within communities between the elders and the youth. Traditionally, age was the basis of power, influence and authority, and elders are deemed the most powerful people by reason of age and wisdom. It was the elders who controlled the warriors, determining when and where they could go to war. In modern times however, and with the war of liberation, the youth have joined the armed forces, have access to guns and look up to their commanders in the armed forces rather than the elders. The power of the gun has changed the power equation between the youth and the elders.

Yet because the vast majority of the population still lives in rural areas where customary institutions hold sway, it is clear that in the foreseeable future these institutions shall continue to exercise substantial influence in the management of land and natural resources. As such, it is important to appreciate the opportunities for using them and their values as the foundation for designing an institutional framework for managing land and natural resources in the New Sudan.

We have indicated the key institutions for land and natural resource management among the communities surveyed in Table 1 under the column on 'land authority'. Chiefs, spiritual leaders and elders are critical players in the management of land and natural resources, both as individuals and collectively. In most communities the chief is a hereditary position, although the members of the community through their elders have a part in determining who among the potential successors in a family takes over. Executive Chiefs are part of the modern civilian government and are appointees of the government. Spiritual leaders are hereditary positions that are handed down from one generation to the next, every spiritual leader identifying from amongst his offspring the one most appropriate to the task to take over from him.

In some communities, there were specific leaders with responsibility over specific resources. Among the Nuer, these were Land leader (*Kwar Mun/Bietb*); Spiritual leader (*Kwar Knoth*); Cattle Leader (*Kwar Weng*); Water Leader (*Kwar Piew*); Stick/Spear Leader (*Kwar Tong*). They worked together with other elders and chiefs to protect the interests of the community on the resources and secure them against invaders.

For monarchical systems like the Shilluk, the King is most important institution of land and natural resource management. All other institutions, including chiefs and elders derive their power and authority from the King. However, the powers of the King over land are not individual or absolute. He derives his power from the people and exercises them for the benefit of the people. He cannot, for instance, dispossess a person of his land. He sits with elders and spiritual or ritual leaders who also advise him and ensure that his actions are in acThe civil war between SPLM and the GOS has been going on for nearly three decades. It has led to great losses in life and limb, displacement of millions from their homes and villages, and denied the people and the region opportunities for social and political advancement. Although the greatest physical devastation has been in specific, especially urban centres, no part of Southern Sudan has been spared the deprivation resulting from war. Nevertheless, in specific terms different communities have suffered different impact or levels of the same impacts.

With respect to land, there is a sense in which the war has ensured that the communities have continued to retain control, especially of rural land. Structures of formal government are non-existent in much of rural Southern Sudan, with the result that customary institutions of governance are still pretty strong. This has enabled the communities to maintain control of their lands through their customary institutions of governance. For this reason, most of the respondents in this survey contended that the war has not affected how the communities control access to their land, even though they acknowledge that with the onset of peace, the communities will have to contend with new challenges in the management of their land and natural resources. In particular, they are aware that the return of those who have been in exile combined with the influx of people from other regions who wish to settle in the region will pose serious challenges for the institutions of governance.

One major impact of the war on farming communities has to do with the invasion of their lands by cattle keepers, especially the Dinka. From the Moro in Mundri to the Jur in Mvolo to the Zande in Yambio, there are complaints about Dinka pastoralists who have moved into these counties as IDPs but are increasingly becoming a problem for local livelihoods. There are complaints about their total disregard for the livelihoods of the local people, destruction of crops and farms, even rape and murders. For their part, the Bor Dinka also complain about similar treatment from the Nuer. The problem is acute and needs to be addressed urgently before it degenerates into further bloodshed (see Box 1, 2 and 3 below).

Among the **Kakwa**, it was reported that not much has changed. The position of the landlord and the role of the elders in securing land and natural resources remain the same. The local courts sit with and obtain guidance from elders in the determination of land disputes outside the boundaries of the urban centre in Yei. The respondents in Yei asserted that the land continues to belong to the

community, and is managed by institutions of the community, save for that portion that the community has ceded to the local authority for use in urban settlement.

Yei is an important centre with a strong SPLM presence. As a result, there are many immigrants who have settled in Yei from other parts of Southern Sudan, such as Upper Nile, Nuba, and Bar-el-Ghazel. Most of these have settled in the urban centre where access to land is managed by the civil authority. Those who seek land outside the boundaries of the urban centre have to comply with the rules of the communities regarding access to land by strangers.

For the **Moro** community of Mundri County, the war has undermined their livelihoods because of the influx of the Bor Dinka pastoralists who have taken over their prime land, destroyed their crops and continue to harass them.

#### **The Bor Dinka and the Moro of Mundri**

The Bor Dinka arrived in Mundri County in 1992, as guests, seeking refuge away from the insecurity of their homeland arising from attacks by the Arabs. Bishop Nathaniel Garang of the local Protestant Church persuaded the locals to accommodate them as they were sharing in the suffering of all the people of Southern Sudan at the hands of the Arab government in Khartoum. The Dinka Bor are cattle keepers, while the Moro are cultivators. When they first came they had few cattle, but over time the population of the cattle has grown. It is now estimated that they have up to 3 million cattle in the County. This number of cattle is not appropriate for the ecology of Mundri, which getting badly eroded as a result. What is more, the visitors have become a serious problem for the local community. They are armed and use the arms to harass the Moro, who are not armed. Their cattle destroy the crops and the herders show no respect to the local people. There have been reports of rape and other forms of harassment of both men and women leading to persistent conflict between the visitors and the indigenous community. They have taken over the beehives of the Moro and deny them access to these key resources. The Moro are now concerned about the continued stay of the Dinka in their midst. They have petitioned the SPLM leadership to repatriate them back to their homeland

*Discussion with community elders and chiefs, Kotobi 2<sup>nd</sup> October 2004*

*ordance with the values and traditions of the community.23.*

#### **IMPACT OF WAR ON LAND RIGHTS**

##### **Box 1: The Dinka Bor harass the Moro in Mundri**

Among the pastoralist **Toposa**, customary land tenure prevails. The pastoral way of life depends for its sustainability on intricate rules of access to key strategic natural resources, backed by rules and institutions that have evolved over time in response to the ecological challenges posed by unpredictable weather patterns. These rules are enforced by customary institutions that also operate as dispute settlement frameworks to address persistent conflicts over water points, grazing land, farms and sectional borders.

**Shilluk** Kingdom prides itself in being the frontier region between the other communities of Southern Sudan and the Arabs in the North. According to the King of Shilluk, *Reth* Kuong Dak, the Kingdom has always served as a barrier between the Arabs and the South, fighting the Arabs and stopping their expeditions into the South. As a result, they have suffered a greater impact from the war. The King points to the dwindling population of the Kingdom and the villages empty villages as evidence of the price that the Kingdom has paid for the defence of Southern Sudan. The Kingdom has many internally displaced persons who are expected to return to their ancestral homes once peace returns to the region.

Nevertheless, the Kingdom retains its control of the land and natural resources within its borders, access to which is managed by local institutions, principally chiefs and elders who exercise their powers at the behest and on behalf of the King. Fashoda, the palace and seat of the Kingdom's power, holds ultimate authority over all the land and natural resources of the Kingdom.

**According to the Jur community, the war has brought hunger to their land. While the major war has been fought between the Southern Sudanese and the Arabs in the North, the Jur who are farmers complain that this war has triggered many local level conflicts between them the neighbouring fishing and pastoral communities. The pastoralists from Yirol, Rumbek, Chuai, Bet and Bargeli move with their cattle into Jur county in search of pasture and water. While in the past, such movement would be negotiated and mediated by customary institutions to ensure that they did not disrupt the livelihoods of the local populations, with the war, the pastoralists, many of whom are armed, are said to behave like invaders.**

## Box 2: Impact war on the Jur community

### Cattle keepers terrorise the Jur

Cattle keepers have always come to Jur county when their lands dried up and they needed pasture and water. In the past, these movements were negotiated between Jur elders and the elders of the pastoralists. The cattle remained along the riverside and did not destroy the crops of the local population, and the herders showed respect and consideration to the locals. If the cattle destroyed any crops, there would be discussions and compensation would be paid to the local farmer. But these days, the cattle owners see themselves as more important and powerful than the local farmers, because they are armed, while the local farmers are unarmed. They come with guns and fishing nets. They take control of the rivers, and deny the local people access to the waters and the fish. They capture everything in the waters, even the egg laying fish and frogs. As a result, the number of fish in the local rivers – Wako, Geil, Yer and Mvolo has reduced. They rob the local farmers of their honey, and steal the grains, leaving them with no source of food. They force the local women to cook for them. They rape the women as their husbands look on, daring the men with their guns. They also fight among themselves, creating a lot of insecurity in the area. As long as the SPLM fails to disarm the cattle keepers, the local farmers will never have peace.

The **Nuer** complain that the war has destroyed some of their customs and social values regarding the management of land and natural resources. They have lost some of their land to the Arabs and have been internally displaced in search of security. Many people from Ribkona, Mayom, Ruweng, Koch and Gwit are living as internally displaced people in Bahr el Ghazel and other parts of the country. Their livelihoods have been compromised, as their movement has been restricted, denying them access to strategic natural resources that they depended on for cultivation and pasture. They look forward to returning to their ancestral homes once the peace returns to Southern Sudan.

The Arabs have been displaced the Nuer from their land, both to exploit its oil resources and to construct garrisons for the protection of oilfields and oil companies. Roads have been constructed on the land without any consultation with the Nuer and for the exclusive use of the Arabs. Many Nuer lives have been lost in the process of forced occupation of their land. This has created a very strong feeling among the Nuer about the war and a determination to reclaim their land. The women, while acknowledging that the war has decimated their land, declare “we shall continue to give birth to children who will defend this land for us even as our husbands die in the war”.

The **Bor Dinka** report that the war has disrupted their livelihoods, divided up families and created havoc with the environment. Many young men and women of the community been killed, while others have joined the war or gone into neighbouring countries as exiles. Families have been displaced internally into other regions away from their homes and farms. Their lands have been occupied by other communities who have themselves been displaced by the war. Places like Panyagor where there is access to food and other services offered by NGOs have become overpopulated, leading to ecological pressure and other adverse impacts on the land.

Displacement of people and insecurity has meant that land husbandry practices are no longer possible. As a result, floods which never used to be a problem among the Bor are now a common phenomenon “because the communities which used to control the water outlets and prevent floods are no longer living in their areas – they have been forced into migration by the war”. Another cause of the floods is the famous Jonglei Canal, where people were forcibly moved away so that dykes could be built. Now the dykes are not maintained with serious environmental consequences.

The war has disrupted the traditional mechanisms for managing access to land and natural resources both within the Bor Dinka community and between them and the neighbouring communities, resulting in increased resource-based conflict internally and externally. Conflicts between the Bor Dinka and the Nuer are caused by competition for access to grazing land. The Bor Dinka have conflicts with the Murle who they accuse of raiding their cattle and abducting their children.

## Box 3: Resource Based Conflict: Bor Dinka and Nuer

### The Nuer Do Not Respect Our Borders

The Nuer want to occupy our land by force. They want to bring their cattle into our land without our permission. When we give them permission, they do not want to obey the directions of our elders on how they shall use the land. This we cannot accept and is why we fight them. The major area of conflict is Pajut, because it is at the border between our two communities, and it is good grazing land during the dry season. We have clear borders with the Nuer, and they know these borders. There are borders between farmlands and borders between cattle camps. In the past everyone respected these borders and the directions of the elders. We were able to resolve any conflicts with ease, but now the authority of the chiefs and elders is not respected, leading to more conflict.

*Daniel Deng, Bor Dinka Elder, Panyagor 7<sup>th</sup> December 2004*

#### 4. INSTITUTIONS FOR MANAGING RESOURCE-BASED CONFLICTS

The communities that were surveyed for this report are mostly dependent on natural resources for their livelihoods. As such, competition for access to natural resources is a feature of these communities. Such competition increases as populations rise whether by reason of internal demographics or as a result of in-migration from other parts of Southern Sudan.

Conflicts and disputes arise at different levels within these communities, from intra-family to inter-community. The prevalence and nature of disputes depend for the most part on the livelihood system of the community. In farming communities, most of the disputes are about boundaries between farms. In pastoral communities, disputes abound over grazing lands and water points, especially during the dry seasons. In agro-pastoral communities, disputes arise between farmers and pastoralists when cattle graze on crops.

Within families, disputes land disputes arise in relation to distribution of land between the male offspring. At higher levels, disputes arise between different families about boundaries, and between different communities about access to strategic resources, especially grazing lands and water. While in the past inter-community disputes were resolved by elders from the relevant communities, increasingly, the SPLM intervenes to bring communities together and to facilitate dialogue leading to the resolution of such disputes. In the absence of such interventions, communities are no longer able to sit together and resolve their disputes.

Different communities have different mechanisms for managing conflicts and settling disputes at these different levels, but all the mechanisms are community based and involve institutions of the community, principally elders and chiefs. The operations and effectiveness of these customary institutions is presently compromised by the impact of the war, especially the proliferation of arms, particularly among pastoral communities like the Toposa and the Dinka. Centralised communities such as the Shilluk still have their systems operating effectively, probably because of the unifying effect of the King on the subjects.

In urban centres, there are courts that enforce modern laws under the civilian administration of the SPLM, but these deal mostly with crimes and contractual disputes arising in the urban centres, leaving the resource based conflicts from rural communities to the traditional institutions. Where such disputes reach the courts, the magistrates sit with lay elders to assist them with the interpretation of customary law.

The Table below shows the major types of conflicts by community and the mechanisms for their management.

Community	Parties	Nature of conflict	How resolved
Kakwa	members of one family	Inheritance, distribution of land	elders arbitration
	different families, clans	inheritance, boundaries	landlord, elders
Toposa	members of same family, different families,	water point, grazing land, cultivation land	arbitration and medication by elders and chiefs
	Toposa and host communities during drought	water points, grazing land	elders of both communities sit and arbitrate
Shilluk Kingdom	family members, different families, clans	boundaries, inheritance	sub-chief, chiefs and councils of elders, and
Nuer	family members, different families, clans	boundaries, inheritance	customary courts, high courts, committees of
Bor Dinka	family members, clans	boundaries	elders
	families	cattle camp boundaries	head of cattle camp
Dinka of Malual Kon	family members, families	boundaries	elders, neighbours, headmen
	clans	Boundaries, cattle camp disputes	Spiritual leader (Beny Bith), head of cattle camp, elders

#### 5. COMMUNITY PERCEPTIONS ABOUT THREATS TO LAND RIGHTS

## 5.1. Resettlement of returnees

A major challenge in post-war Southern Sudan is the settlement of returnees, those Southern Sudanese who have been living as exiles and refugees in neighbouring countries and abroad, as well as those who have been internally displaced and are living at different locations in the region away from their original homes. According to most respondents for this survey, there will be little problem in the settling of returnees as long as they do not try to settle where they do not belong and return to their original homes, where their family lands are situated. “All the returnees come from specific communities, and left their land or ancestral land when they went into exile. All they have to do is reclaim that land which belongs to them or to their ancestors”

What is important according to respondents is that there should be consultations with communities. “Any arrangements for returnees done without consulting the communities will not succeed, and may in fact lead to more conflict”. Different communities have different institutions and systems for managing land, and it is these systems and institutions that have the competence to oversee the resettlement of returnees, in consultation with local populations among whom the returnees shall live.

There is a measure of concern among community leaders that the SPLM government might seek to impose returnees on communities other than those from which they originated. As far as the communities are concerned, only those who come originated from those communities shall be resettled there. The respondents assert that the role of any NGOs and other organisations supporting the resettlement of returnees should be limited to providing logistical support, transportation and material assistance. “They should not try to determine where the returnees settle, as this can only be done by the communities”.

While all communities have mechanisms for settling strangers in their midst, this has to be done in accordance with rules and traditions of the communities. In particular such settlers are usually relatives or friends of members of the community, who introduce them to the community and are responsible for their complying with the rules of the community and respecting the community’s institutions. Communities have problems with the idea of entire groups of strangers coming into their midst. According to the King of Shilluk Kingdom, “this cannot be accepted here, as it would not be in line with the traditions of the Shilluk Kingdom”

There are instances where some people have taken over the land of those who went into exile, and in some cases, even developed those lands. In such cases, respondents indicated that the returnees will be entitled to their lands or compensation to enable them acquire new land. They expect to work with the SPLM and the local authorities in the case of plots within urban centres. It is within urban centres where most immigrants have settled, and where communities expect that most returnees expect to settle. There are worries about potential conflict in urban centres between returnees and those who have acquired properties and made developments on them during the war.

There are also concerns that some of the returnees will be coming back with new attitudes and other external influences, and that they may be favoured by the SPLM government and NGOs with support at the expense of those who remained behind. They shall however be expected to fit into the communities, abide by the rules and traditions of the communities, and respect their institutions. It also hoped that the government and the NGOs will consult with local leaders and ensure that the support given to returnees do not create inequality within communities and engender ill feeling against the returnees from those who stayed behind.

## 5.2. Role of government vis-à-vis communities in management of land

The communities interviewed in this survey recognise that with the onset of peace SPLM will form a government, which shall have responsibility for modernising the region and enhancing the livelihoods of the local populations. They also recognise that in its efforts to modernise Southern Sudan, the SPLM government shall rely heavily on land and natural resources wealth of the region. This raises key challenges as communities have strong feelings about their control of their lands. In this connection, they emphasise that the SPLM has fought the war of liberation on a platform of protecting the land for the communities.

All communities surveyed are emphatic that the land belongs to the communities and that they do not expect this to change even with the establishment of an SPLM government. Communities shall allocate land to the government for its purposes, including for attracting investment, as long as this is discussed and agreed with the communities. In such discussions, the communities will want to be sure that government will use the land for the benefit of the communities, and that the land shall revert to the communities at the end of any leases that may be granted on the land. Other than those lands specifically allocated to the government through these consultative processes, the communities expect to retain control of all their lands, and to manage them in accordance with their customs.

The feelings of the Shilluk, as expressed by their elders is indicative of how sensitive this issue is likely to be:

*“...what must be clear is that the land of the Shilluk belongs to the King. Anyone who wants to deal with this land has to come through the King. It is the King who will tell us what to do. Our land can only be taken in exchange for real services, and even then the land shall not be taken out of the authority of the King and the Shilluk. Ownership of the land remains with the Shilluk?”*

### 5.3. Investment on land

The communities recognise that the SPLM government will have to attract investors into the region, if it is to deliver on the expectation of the population on development, and that much of this investment shall target land and natural resources. There is apprehension among communities that 'prospectors' from countries that have invested heavily in the struggle for liberation of Southern Sudan and more recently in the attainment of peace are set to invade the region with the coming of peace. Communities fear that the region may become the new frontier for all manner of 'prospectors' unless the SPLM government puts in place policies that secure the interests of communities in the natural resources.

In particular, communities are concerned about the exploitation of the regions mineral resources. They would like to see the government put in place policies that shall secure both the interests of the communities in the land and profits generated by the mineral prospecting. They want to see policy provisions for resettlement and appropriate compensation to the communities whose land is taken over for mineral prospecting, as well as for benefit sharing and environmental management, including rehabilitation of the land once the mines are closed.

In this connection, communities assert that all the land in Southern Sudan is owned by specific communities, and that there is no *empty* land. Thus, the government must involve the relevant communities and their governance structures in any negotiations with prospective investors. It must ensure that local communities shall benefit directly from any investment in their land. "only in this way shall the new government show itself to be different from the old government that the people have fought all these years".

In particular the communities do not expect the SPLM government to forcibly evict people from land ostensibly in order to free it for investment. Such incidents would lead to conflict, because communities will not allow the new government to take over their land after they have freed it from the Arabs and the old government. As the Dinka of Yirol County declared:

*"We will only accept investments that shall benefit the community. We will not accept investments that displace communities, because we have nowhere to go when that happens. We do not expect the government to grant licenses to just any investors, but to protect the interests of the communities. It must be remembered that we went to war because we were unhappy about poorly planned investments initiated by the Government of Sudan without consulting us and without talking into account our interests and benefits. This land belongs to us as a community and should only be used for our benefit. It is our only source of livelihood"*

## 6. OPPORTUNITIES FOR INDIVIDUAL UTILISATION OF LAND FOR MARKET PRODUCTION

One of the key arguments against customary land tenure has been that it inhibits the individual from utilising the land to produce for the market and create personal wealth. In this regard, customary land tenure is seen to be more appropriate to subsistence production and it is suggested that in order for land to be used productively, customary land tenure must be transformed and give way to modern tenure that is based on markets. This argument has been discredited over the years by research that shows the dynamism of customary land tenure and how it responds to market opportunities. Nevertheless the argument continues to inform much of the development and land reform thinking across Sub-Saharan Africa (Bruce and Migot-Adholla, 1994, Quan, 2000, Deininger, 2003).

This survey sought to explore how communities perceive the use of land for personal investment and the opportunities for market-based access to land in the region. On the whole, the idea that land belongs to the community, and that the individual only has access to it for use defines land relations in the villages. The communities frown at the idea of land as a commodity to be bought and sold. As the Toposa put it, "land is not like tobacco to be bought and sold in the market place. An individual cannot sell land, not only because the land belongs to the community and not to any individual, but also because land is sacred. It is forbidden to sell land"

Even in towns and centres where there exist a fledgling market in land, the perception of the communities is that these interests are leaseholds for specific periods of time at the end of which the land reverts to the local authorities who hold the land in trust for the local community. Indeed, the communities insist that what the individuals own and can sell and transfer even in the town centres are the physical development that they have put up on the plots and not the soil itself, for this the individual can never own. The title documents issued by the local authorities for town plots are deemed to represent the value of the physical development, which the plot owner is free to sell and transfer. They insist that the land ultimately reverts to the community if the local authority no longer needs it for the reasons for which it was obtained from the community.

Communities appreciate that an individual may transfer an interest in land, but that interest would have to be the interest that individual holds, namely the right to use. Since the individual's use of the land does not take it outside the authority and jurisdiction of the community, he cannot enter into any transaction that would undermine that authority and jurisdiction. Even the idea of using land as collateral to obtain a loan from a bank is frowned upon because it carries with it the possibility of the land moving out of the realm of the community if it is to be sold for failure to service the loan. What can be pledged as collateral are moveable assets on land such as timber.

In all the communities surveyed, it is accepted that an individual can invest in land, and that he alone has a right to whatever comes out of that investment. Members of the community who wish to invest in land are allocated appropriate pieces. It is emphasised that the allocation must not be so big as to lead to the dispossession of other members of the community. The allocation is however subject to the same rules as govern the allocation of land for subsistence purposes. That is to say that the land itself continues to belong to the community and will revert to the community when the investment ceases.

*affect the interests of community members, and it is understood that the land continues to belong to the community. The idea of leasing land is accepted and practised even within communities. What is totally unacceptable across the board is the idea that land can be sold so that it is permanently removed from the control and authority of the community.*<sup>57</sup> **WOMEN'S LAND RIGHTS**

Like their male counterparts, women have guaranteed rights of access to land for their use to support their livelihoods. Indeed, in certain areas questions about women's land rights were considered inappropriate, and communities did not take well the suggestion that the rights of women to land should be discussed separately from the rights of all members of the community. It was suggested that rights to land are determined by the fact of belonging to a community, and gender and other issues are irrelevant as long as one is a member of the community. Thus whether one is a woman, child or disabled, that characterisation was not a material consideration in so far as the right to access land for use is concerned. They are entitled to land within the limits of community organisation just like any other member of the community.

It is clear however, that women do not access land from the community directly but on the basis of their relationship with its male members, whether these be parents, husbands or sons. They have no rights of direct inheritance of land, as only male offspring inherit land. They are not allocated land in their own rights whether within their community of birth or their community of marriage. Before marriage, the rights of a woman to land are tied to the access rights of her mother, whose rights are tied to those of her husband. The same considerations apply to unmarried women. It was contended that it is rare to get an unmarried woman, but where they exist, if they have children, then those children will belong to the family of the women's fathers, and will be entitled to land in the same manner as other children of the household.

After marriage, the woman assumes rights of access at her matrimonial home, through her husband. If a marriage collapses and a woman returns to her birthplace, she will be allocated land to use by reason of her descent, but her children are expected to lay claim to land at her place of marriage. Where a woman comes back with her husband and children to her birthplace, the community will consider the case on its merits, and where appropriate, land will be allocated to her by her family. The man, though a foreigner to the community, will be accepted with his family because of his wife, but will be expected to abide by the customs and practices of the community with respect to the management of land.

The women interviewed in this survey, while acknowledging that their rights are at a lower level than those of their male counterparts, did not feel that their rights are in any way insecure. They were clear that the communities and the institutions of the communities would protect them and ensure that they had access to land for use whether they were divorced or widowed. Once a woman is allocated land by her husband, she has a life interest in it and it cannot be taken away from her and allocated to, say her co-wife.

What a woman produces on her land belongs to her for use in her family. However, she cannot dispose of it other than for the benefit of the family without consulting with her husband. Conversely, the husband cannot appropriate the produce without consulting with the wife who has worked the land to produce it.

Within towns and centres, the status of women and their land relations are fast changing. Women are applying for and purchasing plots in their own names and putting up buildings. As these changes occur, questions are being raised, especially by women about the practices in the communities that deny women land in their own rights and pegs their land rights to relations with male counterparts. Women want to see the new government securing their rights as Southern Sudanese and in their own rights. They also want to become key players in the institutions that make decisions about land and land use, where they are presently marginal players.

## **CONCLUSIONS AND RECOMMENDATIONS**

The land tenure study seeks to inform the formulation of a national land policy for the New Sudan, that shall take into account the customary methods and systems of land and natural resource management. This preliminary survey set out to identify the key issues to be explored further in the substantive research. The findings of the preliminary survey shall be discussed by the SAAR and SPLM leadership to determine how to proceed with the substantive study.

The survey was conducted in Eastern Equatoria, Western Equatoria, Upper Nile and Bahr el Ghazel, and involved interviews and focus group discussions with key informants comprising community members and leaders, elders and chiefs, women, youth and SPLM officials. In Shilluk Kingdom an audience was held with the King at his palace in Fashoda. Apart from the interviews and discussions, which were based on the objectives of the study and the data collection checklist prepared ahead of the fieldwork, two case studies were conducted in Mundri and Mvolo, to understand the conflicts between herders and farmers in these locations. The following conclusions can be stated on the basis of the survey:

The land tenure systems in existence in Southern Sudan can be classified into two, namely customary land tenure and modern, statutory land tenure. Customary land tenure applies in the lands used by communities in the rural areas outside the town and urban centres, where modern tenure applies.

Customary land tenure is controlled by communities through their institutions of governance, which comprise chiefs and elders, and which apply the customs of the different communities in ensuring access to land and natural resources for the members of each community, subject to their abiding by the dictates of the community relative to the management of natural resources and fulfil their obligations. In the towns and other urban centres, the land is managed by the local administration, which allocates land to applicants and oversees the use thereof.

Under customary tenure, all land belongs to the community, which through its institutions allocates rights of use to individuals. Individuals cannot sell the land except in towns and urban centres. Nevertheless, the tenure system is dynamic and allows for possibilities of individual enterprise and investment as long as it does not undermine the community's control of the land.

The war in Southern Sudan has had various impacts upon the operation of the institutions that manage land and natural resources. It has introduced new dynamics into the social and political organisation of communities, and eroded some of the powers of the elders and customary resource management institutions. The war has undermined the effectiveness of customary institutions and led to increased conflict both within and between communities.

Nevertheless, customary institutions still play an important role in the management of conflicts over natural resources especially within communities. As for conflicts between communities, there is increasing recourse to the SLPM and its structures, which have competence across the region.

Communities are apprehensive that with the onset of peace, the government and other actors may seek appropriate the land and wrest it from the control of communities and their institutions, and ignore the role of elders and other community leaders in the management of land and natural resources.

Women are guaranteed rights of access to land for use in the same way as other members of the communities, but they do not have the right to inherit land directly. Their rights are based on relations with male members of the community, such as fathers, husbands, brothers or sons.

The following are the recommendations arising from the survey and the foregoing conclusions:

More studies need to be done on specific aspects of the issues that have been identified in this preliminary survey, while it will also be useful to disseminate the findings of the survey and engage with local communities on the emerging issues;

There is need for better understanding of customary land tenure and the customary institutions that manage it, and to make this a foundation for the creation of the land policy for the New Sudan;

Given the diversity of communities in the New Sudan, each with its unique customs and institutional framework for managing land and natural resources, it is important that the new government establishes a land policy that will define the relations between these institutions and the government, specify responsibilities at different levels, and create channels for consultation;

The new government needs to ensure that major decisions on the exploitation of the natural resource wealth of the region are made in consultation with local communities, and due consideration had to the rights of the communities and their expectations about benefits from such resources;

Mechanisms should be put in place as a matter of urgency to manage resource based conflicts between different communities, especially those pitting pastoralists against farmers

In designing a national land policy, comprehensive consultations should be had across the width and breadth of Southern Sudan to ensure that the concerns of the communities are taken into account.

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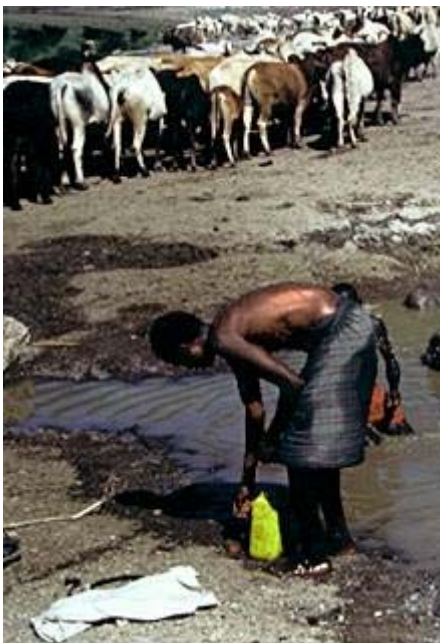


ITINERARY FOR FIELD WORK AND AREAS COVERED

<i>DATES</i>	<i>AREAS</i>
27 <sup>th</sup> - 30 <sup>th</sup> September, 2004	Western Equatorial – Yei
2 <sup>nd</sup> and 3 <sup>rd</sup> October 2004	Mundri County, Kotobi
5 <sup>th</sup> – 7 <sup>th</sup> October 2004	Yambio County
18 <sup>th</sup> -22 <sup>nd</sup> October 2004	Eastern Equatoria- meetings in Narus and Singaita
29 <sup>th</sup> November, 2004- Monday	Morning: Meeting with officials of SRRC, courtesy call on H.R.H the King of Shilluk at Fashoda  Afternoon: Meeting with the King, paramount chiefs and elders of Shilluk Kingdom at Fashoda  Evening: Meeting with representatives of women of
30 <sup>th</sup> November, 2004, Tuesday	Meeting with more chiefs and elders of Shilluk
2 <sup>nd</sup> December, 2004- Thursday	Mvolo County: meeting men, women, chiefs,
3 <sup>rd</sup> December, 2004- Friday	Travel to Western Upper Nile, Leer
4 <sup>th</sup> December, 2004, Saturday	Morning: meeting Nuer chiefs, elders and Local Authorities officials
6 <sup>th</sup> December, 2004- Monday	Upper Nile – travel to Panyagor
7 <sup>th</sup> December, 2004, Tuesday	Morning: Meeting elders, chiefs and SRRC County officials
8 <sup>th</sup> December, 2004- Wednesday	Northern Bar-el- Ghazal – travel to Malual Kon
9 <sup>th</sup> December, 2004-Thursday	Morning: meeting chiefs, and elders of five Aweil
10 <sup>th</sup> December, 2004-Friday	Yirol County - meeting chiefs, elders, women leaders and SRRC officials for Yirol West and
11 <sup>th</sup> December, 2004- Saturday	Meeting chiefs, elders, and youth at Akot Payam of Rumbek county

In Upper Nile, the Shilluk are politically divided between those with the GOS and those with the SPLA. It is important that each side of the divide is represented in the study in order to ensure overall legitimacy. Western, Eastern and Central Nuer shall have one representative each. The other places may be allotted to the Maban and Dinka Bor. In Western Equatoria, one representative shall come from the Zande and another from the Moro. In Eastern Equatoria there are three key tenure systems: the Toposa are predominantly pastoralists, the Didinga/Buya in Budi County and the population of Torit County are predominantly agropastoralists, while the population of Magwi County are predominantly agriculturalists. Central Equatoria is mostly Bari-speaking and have a uniform tenure system. In the Lakes Region, the team proposed to have one representative from Yirol and another from Tonj; while Aweil and Gogrial in Northern Bar-el-Ghazel shall have one field staff each. Western Bar-el-Ghazel has been allocated one person, although the team is aware that at the moment it would not be possible to do any work there on account of insecurity.

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# *The Pastoralists and the Land Question.*

## Project Summary:

### Project Objectives

- To promote and strengthen the rights of Pastoralists in the Kenya
- To promote the domestic implementation of national, minority rights standards
- To initiate, encourage and facilitate dialogue between Pastoralist representatives and government officials
- To promote participatory, inclusive and transparent planning and decision making processes
- To devise a regional advocacy strategy on common and cross-cutting issues
- To enhance the capacity of Pastoralist NGOs and communities to promote and protect their rights nationally, regionally and internationally
- Reduction of cattle rustling and inter-Pastoralist conflicts
- Improve gender equity

### Expected Results

- Better recognition and understanding about the Pastoralist way of life
- Greater implementation of legislation and policy which have a beneficial impact on Pastoralists and fewer laws and policies which have adverse impacts on Pastoralists' situation
- Access of Pastoralists to relevant international fora so that they can advocate and make interventions for their civil, political, economic, social and cultural rights
- More dialogue between Pastoralist NGOs and official institutions
- Accessibility of well-researched report and policy recommendations on Pastoralist situation and advocacy manual
- Greater inclusion and role for Pastoralist communities in the decision making process and incorporation of Pastoralist rights in development policy and practice
- Enhanced inter-Pastoralist co-operation and reduction of cattle rustling

### Main activities

#### 1- Report

CLEAR will commission a knowledgeable expert to research and publish a new, full-length report and a summary 4-page 'profile', in English, provisionally entitled Social, Economic and Political Marginalization of Pastoralists in the Kenya. The report will describe and analyse the situation and current concerns of Pastoralists in Kenya. It will identify common strands and district-by-district differences, and will conclude with recommendations for action based on international standards for minorities.

#### Aims

The aims of the report are:

To provide a conceptual map of the situation of Pastoralist communities in the Kenya, in particular to identify the key causes of their Marginalization and threats to their cultural identity and survival, and to enhance awareness and understanding of their needs, aspirations and unique culture.

To provide evidence, justification and a sound basis for advocacy in international, regional and domestic fora, involving policy recommendations that will help promote the minority rights of Pastoralists, encourage intercommunity understanding and co-operation and foster peace-building and conflict prevention.

Through the process of research, consultation, publishing and distribution, to assist CLEAR and its partners in developing relationships of trust and co-operation, laying foundations for further capacity-building and self-empowerment programme activities.

*To develop for and with Pastoralist organisations and communities a tool and an appropriate process for their own advocacy activities, and enhance their organisational capacity to promote their rights.*

#### Description

The report will be of approximately 20,000 words in length and is scheduled for publication in June 2004. Two thousand copies will be published first in English and a further 3000 copies subsequently in Swahili. CLEAR will also publish a four-page 'profile' outlining the major themes, issues and recommendations detailed in the main report. The 'profile' will act both as an executive summary and as an advocacy tool to be circulated widely to government and intergovernmental officials, international agencies and NGOs. The report will be the basis for a range of advocacy activities.



## **Contents**

One of the main aims of this report is to provide a 'conceptual map' of the current situation facing Pastoralists in Kenya, to identify key underlying problems and to suggest policies for promoting change consistent with international human and minority rights standards.

*The report will address the following issues, and feature:*

Demographic data, distribution and historical background

Cultural identity: similarities and differences between various pastoral communities in language, religion and way of life

Country survey: legal-constitutional position; government record of treatment; socio-economic and political situation; access to land, water, natural resources, education/ health care/media/housing; impacts of environmental deterioration; other forms of discrimination

Analysis of patterns of causation and underlying problems faced by Pastoralists

Inappropriate economic policies and their impacts on Pastoralist communities

Contribution of Pastoralists to the national/regional economy

The status and role of women among the Pastoralist communities

Pastoralists' responses and current trends; efforts and aspirations; Pastoralist organisations and self-help initiatives; relations with outside actors

Conclusions and recommendations

Bibliography; ethnographic map; relevant legal standards protecting minority rights in the region

## **Expert Peer Reviews**

As with all CLEAR reports, the draft script will be read by a panel of expert readers and Pastoralist representatives who will be asked to provide comments and suggestions to enhance the accuracy, scope and balance of the text and to ensure that it represents a diversity of experience and viewpoints. CLEAR aims to consult a panel of Peer Reviewers, including both Local Kenya National and African Regional academicians, scientists researchers from the six public universities in Kenya and representatives of Kenyan minority-based NGOs including Pastoralist community leaders, and research institutes in the Kenya. An equal gender balance will be sought. Besides ensuring a high-quality text, CLEAR intends that the Expert Peer Reviews process will enhance the development of partner relations for promoting the report and developing other programme activities.

## **Recommendations**

All readers of the report will be invited to contribute to the development of a set of recommendations for action to address the most critical issues identified in the report, although CLEAR will take ultimate responsibility for the final version, which will be based on universal/international minority rights standards. Instead, it is likely that a pattern will emerge in which the need for improvements will be apparent in all parts of the arid and Semi - arid regions of the country. CLEAR will consult broadly in the country regarding the wording of the recommendations.

## **Distribution, advocacy and target groups**

At least 1000 copies of the English edition of the report and 'profile' will be immediately distributed free of charge to a wide and well-targeted national and local district readership. Recipient organisations and individuals will include intergovernmental and governmental decision-makers and diplomats, international policy researchers and research organisations, donor/aid agencies, regional and in-country Pastoralist organisations, other advocacy and human rights organisations, parliamentarians and officials of central and local government, educational and research institutions, and journalists.

The report and 'profile' will be used in advocacy efforts around implementing international standards and in protecting the rights of Pastoralists and promoting inter-community co-operation, with the report recommendations forming the basis of CLEAR's advocacy work. CLEAR will make interventions at such fora as the UN Human Rights Commission, the Sub Commission on Prevention of Discrimination and Protection of Minorities and the UN Working Group on Minorities. CLEAR will also work with advocacy based NGOs within the Kenya and the Eastern Africa Region to ensure that they are able to use the report to good effect - for example, at the African Human and People's Rights Commission. This will complement CLEAR's broader programme of work in training and networking on national and regional advocacy strategies with minority-based organisations and human rights NGOs.

## **Swahili language edition**

The national and local impact of the report will be enhanced by translating it into Swahili, a language widely spoken in the Kenya and most of the Eastern Africa countries. The Swahili language edition will be published and distributed by the Department of Linguistics (Kiswahili Sub-Department) at the University of Nairobi.

## **2- Advocacy and capacity building training**

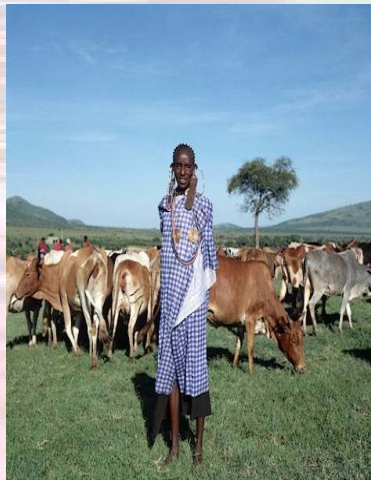
*CLEAR and programme partners will organise at least three specifically designed training sessions on advocacy and capacity building. The training sessions will accommodate 30 participants and will focus on advocacy strategy, methodology, tactics and the role of research. The training sessions will also cover areas such as programme planning and management, reporting and facilitating meetings. Each training event will also include a component to create awareness of gender inequalities within the Pastoralist communities and to enhance the role of Pastoralist women in the development of their community.*

*The three training sessions will take place in three different countries, organised by three different local partners. Each training session will be followed-up by three in-country follow-up events, organised by individual partner NGOs. In addition, at least six representatives of Pastoralist NGOs and communities will attend advocacy training over three years. This training seminar will be conducted once in each year over the project period and is aimed to provide minority representatives, including Pastoralists, with the opportunity to get a better understanding of international minority rights instruments and monitoring and implementation mechanisms, so that they will be able to effectively use these instruments and mechanisms to protect their minority rights.*

During the programme CLEAR, in collaboration with its partners, will research and compile a practical advocacy manual setting out national, regional and international legal remedies, advocacy strategy skills and case studies that are available to Pastoralists and publish and disseminate it widely in both English and Swahili.

### **3- Roundtable meetings**

*In the third year of the programme CLEAR and its partners will convene three round-table meetings in three different provinces in Kenya, whereby leaders of Pastoralist NGOs and communities will meet and discuss issues with government officials. The total number of participants at such meeting will be limited to 30 to try to ensure that the discussions are constructive and positive. These meetings will be carefully and professionally facilitated to ensure the best possible prospects for a positive and meaningful dialogue, and good networking and relationship building between the participants – who may at the outset mistrust each other.*



## *CLEAR becomes a member of the NEPAD Gender Task Force.*

The Gender and Civil Society Organizations (CSOs) Unit at the NEPAD Secretariat's has been working on a framework for gender mainstreaming of NEPAD policies, programmes and activities as well as developing a strategy of mobilizing CSOs participation in NEPAD's work. In order for the Secretariat to comprehensively address the gender requirements across all NEPAD thematic clusters, it has held a wide range of consultations to enable it put in place an appropriate mechanism that can draw from existing gender expertise in the continent under the overall guidance of the NEPAD Gender Advisor. Consensus has been reached that flexible mechanism in the form of a Gender Task Force would be the most appropriate mechanism. The Task Force is an ad-hoc arrangement that makes available a pool of gender experts in NEPAD priority sectors that could be called on a needs basis to assist sectors embarking on this important exercise. The goal of the Task Force is to develop gender mainstreaming tools, guidelines and protocols, provide technical assistance to sectors, conduct gender audit of the institutional structures and carry out a comprehensive needs assessment of NEPAD priority sectors, programmes, and implementation mechanisms in preparation for gender mainstreaming to be carried out in accordance with AU/NEPAD Gender Policy. The TORs for the Gender Task Force are:

Conduct a Gender audit of the NEPAD management structure and processes, within the context of Article 5 of the Solemn Declaration on Gender Equality signed by AU Heads of States in July 2004 and make recommendations for its implementation.

Carry out a comprehensive needs assessment of NEPAD priority sectors, programmes, and implementation mechanisms and make recommendations for gender mainstreaming per sector.

Develop gender mainstreaming tools,

guidelines and protocols for the NEPAD sectors to guide the mainstreaming exercise and engage implementation process

Provide technical assistance and gender mainstreaming expertise when called upon and give backup support during the implementation of step by step gender mainstreaming timetable developed per sector by the NEPAD Secretariat.

Submit reports, documents, materials and experience gained through the process to the NEPAD Gender and CSO Advisor, in line with agreed terms, conditions and timelines.

Share experience gained through the process in NEPAD dialogues, presentations and other relevant dialogues to NEPAD and AU interests.

Update their organizations and networks on NEPAD's gender mainstreaming efforts and publicize it at the national, regional and international levels in consultation with the NEPAD Secretariat.

Perform any other tasks that the NEPAD Secretariat may assign to the Task Force when in session.

The Gender Task Force was launched in July, 2005 at a workshop in Pretoria, South Africa in which CLEAR

participated. The focus of the of the workshop was to: Provide an overview on the mandate, framework and TORs for the NEPAD Gender Task Force; provide a better understanding of the relationship between NEPAD/AU/RECs; revisit tools for gender analysis and identify the most appropriate tool for gender mainstreaming in each priority sector; explore ways in which NEPAD can facilitate gender budgeting within gender mainstreaming agenda; provide an opportunity for the TF Members to meet each other and also the NEPAD sectoral staff and gain better understanding of various sector priorities and current programmes; agree on calendar of events and way forward; and participate in a field trip to test tools developed in the workshop.

### *ii) CLEAR becomes a member of the NEPAD Civil Society Organisation (CSO) Think Tank*

CLEAR became a member of the NEPAD/Civil Society Organisations' Think Tank.

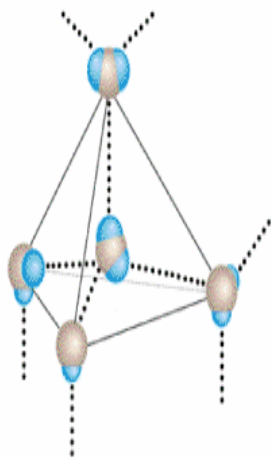
Article 41 of the NEPAD Foundation document calls for CSOs commitment among key partners in the NEPAD process, while Article 45 of the same document recognizes the efforts put in by the CSOs in reinforcing the call for greater democratization and good governance. This call is echoed by the appeal by the political leaders in the continent under Article 55 and 56 of the NEPAD document, to all the African people in their diversity to recognize the challenge facing the continent and rise up to it. For NEPAD Secretariat to implement mandates under the principle of popular participation and also related mandates under AU and NEPAD policy documents, it had to put in place a requisite institutional mechanism in the form of the Civil Society Unit. The Unit has a twin mandate to both spearhead the gender mainstreaming of NEPAD Policies, programmes and the entire implementation process and also ensure CSOs are mobilized to effectively participate in the NEPAD implementation process.

Within the context of ECOSOCC the Gender and CSO Unit has come up with a framework in the form of the NEPAD/CSO Think Tank, which can help build a bridge between the NEPAD Secretariat, RECs and the AU on one side and the wider CSOs constituency including those in



*...To ensure effective stakeholder participation*

**The Taskforce is an ad-hoc arrangement that makes available a pool of gender experts**



and the AU on one side and the wider CSOs constituency outside those in ECOSOC, compliment AU/NEPAD's advocacy and networking efforts at global, regional, national and community levels, facilitate the capacity building initiatives on NEPAD/AU at national and local levels and provide a framework that can identify best practices from CSOs that can be scaled up and replicated by NEPAD.

An induction workshop for the NEPAD/CSO was carried out on 13<sup>th</sup> and 15<sup>th</sup> December 2005 in Nairobi. It was attended by approximately 60 CSO participants drawn from 40 CSO representatives, across 20 African countries and an additional 10 representatives from the RECs, UN and the AU. They represented 7 CSO pockets of interest and 10 thematic clusters of NEPAD.

During this induction workshop, CLEAR was given an opportunity to address the issue of NEPAD's environmental priorities (see annex 2). This paper forms strategic intervention for CLEAR in the region particularly in the areas of: *Combating Land Degradation, Drought and Desertification; Conserving Africa's Wetlands; and Addressing Invasive Alien Species.*

*iii). CLEAR Facilitates Strategic Planning for NEPAD Kenya Secretariat*

NEPAD Secretariat Kenya selected CLEAR given its regional mandate to help facilitate a workshop towards its strategic plan. The meeting was held on 17<sup>th</sup> and 18<sup>th</sup> December, 2005. The key thematic clusters for intervention were identified as :

- Africa's Peer Review Mechanism
- Democracy and Governance
- Peace Security and Human Rights
- Partnership and Regional Cooperation
- Education
- Agriculture
- Trade, Market Access and Tourism

- Health, HIV/AIDS
- Gender Mainstreaming
- Environment and Natural Resources
- Science, Technology and ICT
- Infrastructure
- Human Resource Development.

CLEAR's role was to provide strategic direction in terms of: Programme and institutional direction and help develop a logical framework, financial and human resources required. In addition, given its mandate as a member of the NEPAD Gender Task Force, to provide technical assistance and expertise on gender mainstreaming CLEAR did not only facilitate this important process, but gave direction in two areas: Agriculture and Rural Development (see annex 3) and Gender Mainstreaming in NEPAD Programmes (see annex 4).

Promoting regional integration is a process rather than an event. CLEAR needed a formalized mode of integration with the RECs such as SADC, COMESA, EAC, and IGAD. CLEAR from the beginning initiated dialogue with SADC, COMESA and EAC through exchange of information by e-media. CLEAR's strategic plan for instance was shared with EAC and COMESA with proposals to define mutual areas of collaboration and support. So far not much has been concretized in the path to reaching a Memorandum of Understanding (MOU).

CLEAR's role was to provide strategic direction in terms of Programme and institutional direction and help develop a logical framework, financial and human resources required



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*The Centre is reaching out to organizations and individuals with interest in any issue dealing with Land the Economy and Rights of Women and their interaction and role in society.*

*Mainstreaming in all sectors is very important and an urgent duty to ensure equality and enhance greater knowledge among a wider group of people.*

We're on the web!

[www.clearwomen.org](http://www.clearwomen.org)

*Editor: Linda Mbatha*

## *Launch of National Land Policy in Kenya*



CLEAR's mission is to influence the formulation and implementation of gender sensitive policies, laws and structures on land/property and natural resources and as a result of the Centre's work on women's land rights, CLEAR was selected by the Government – Ministry of Lands and Housing to chair the **Socio- Cultural Equity Thematic Group of NLFP** whose TORs were: Examine the existing the customary rights; develop guidelines on joint ownership and propriety in common; address rural/urban, rural and cross boarder migrations; address attachment to land (Land

Complex Syndrome); address land productivity in Kenya; address impact of HIV/AIDS pandemic on land rights; review social injustices, historical injustices and human rights abuse with regard to land; examine the impact of socio-cultural factors on land holding and productivity and; develop recommendations for a national land policy on the issues identified. With guidance from CLEAR a **Land Issue Report** was developed to guide the formulation of a **National Land Policy**. CLEAR was further selected to participate in the '**Reference Team**' in

the

drafting the National Land Policy.

Throughout this process CLEAR will be engaged as a resource in several stakeholders workshops building

capacity of policy makers to generate gender responsive policies and networking with strategic partners to

strengthen policy analysis and advocacy on women's rights to land.