

# report

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## Land, livelihoods and identities: Inter-community conflicts in East Africa

By Laura A. Young and Korir Sing'Oei





**Turkana children collecting water from a well dug in a dry river bed in Northern Turkana, Kenya.**

Robin Hammond / Panos.

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## Contents

Executive summary	2
Map	3
Introduction	4
Overview of minorities in East Africa	5
Current access to land and natural resources	8
National legal and policy frameworks	8
Local administrative enforcement	11
Customary access and management regimes	12
Non-recognition of indigenous peoples' livelihoods	13
Women's access to and control over resources	14
Patterns of conflict	17
Inter-ethnic conflict on traditionally held lands	17
Community in conflict in towns	17
Community in conflict with state and corporate interests	18
Conflict triggers and exacerbating factors	18
Impact of conflicts on minority women	23
Successful conflict mitigation	25
Community-initiated conflict resolution	25
Inter-ethnic conflict in a post-conflict context	26
Conflict with state or corporate actors	27
Role of regional and international mechanisms	29
Conclusion	32
Recommendations	33
References	35
Notes	37

# Executive summary

In resource-scarce East Africa, minority groups face major challenges over the control of and access to land and other natural resources. Despite national policy regimes that are developing in a positive direction, the reality for minority groups and their neighbouring ethnic groups is that land and natural resources continue to be a major trigger of violence. Minorities find themselves competing with other communities, with the state, and with corporate interests for control of resources upon which they depend for their livelihood, cultural integrity and future development.

As globalization, population explosion, and climate change converge to increase the demand for land, water, forest products and mineral resources within territories inhabited by minorities in East Africa, these groups are forced to find new ways to cope with different types of conflict at once.

This report describes the situation of selected minorities and their neighbouring groups in Kenya, Uganda and South Sudan's Jonglei State. Each group has unique characteristics, including extreme livelihood challenges, vulnerability to conflict, and ongoing discrimination, which are common across communities and countries. Decades of discrimination against minority groups, often as a result of state policy starting in the colonial era, has rendered minorities in East Africa poorer and with more precarious access to land and natural resources than other communities.

Minorities face such serious challenges for numerous reasons: legal regimes remain unimplemented or result in further discrimination against minority groups; there are existing conflicts between formal and customary laws; population pressures and climate change; lack of coordination in conflict resolution programming and donor support, and non-recognition of indigenous livelihoods by states.

Resource conflicts and discrimination lead to negative consequences for women from these communities in particular, as they face double discrimination because of deeply entrenched patriarchy. Conflicts between formal and customary laws often leave women with limited options to protect their access to land and natural resources. Given the place of women in the social system of most minority groups, in which they are responsible for production of food, denial of access has negative effects on the community overall and specifically on women and

children. Women also often bear the brunt of conflicts over natural resources. Security operations to quell violence or evict communities expose women to multiple violations of their rights. Moreover, violence between communities leads to attacks on women and children and directly impacts women's particular property rights within traditional community structures.

The research for this report reveals that communities often struggle with multiple types of conflict at once: inter-ethnic competition; conflict with the state; and conflict with corporate actors. Each of these types of conflict requires a different method of resolution. The report highlights that communities themselves are initiating the most effective conflict resolution methods when it comes to inter-ethnic violence, most often associated with cattle raiding in pastoralist communities. Effective conflict-resolution strategies often draw on customary practices, integrated with modern technological advances. The report highlights that national law and policies often contradict and undermine customary practices. Moreover, current conditions of land scarcity, state intervention and resource extraction are straining or obliterating customary management in many communities.

State-led policy initiatives to resolve conflict between communities and state or corporate actors have not proven successful because of lack of implementation and failure to effectively consult minority communities' traditional governance structures. Accordingly, many communities, such as the Endorois, have been forced to become legal adversaries of the state, addressing conflict through litigation at the national and regional level.

This report recommends that governments in the regions discussed take urgent action to adopt and implement their national policy directives on land and natural resources. These policies are generally progressive with respect to minority rights and provide a strong basis for supporting the other recommended actions in the report.

Among other key recommendations, this report urges national governments to develop guidelines on what constitutes participatory and effective community consultation around land and natural resource extraction, based on free, prior and informed consent; and recognize the value of indigenous peoples' knowledge of resource management and of customary practice, especially related to women's rights to hold and use land.

# Uganda, Kenya and South Sudan





# Introduction

The purpose of this report is to provide a detailed overview of the current status of minority groups in relation to natural-resource conflict in East Africa, specifically examining Kenya, Uganda, and South Sudan's Jonglei State.<sup>1</sup> These three areas present a diverse array of communities dealing with conflict of multiple types, from mineral extraction to cattle rustling, to drought, to post-conflict inter-ethnic violence, to the creation of national parks for tourism.

This report first lays out the national legal provisions and policy frameworks that are most relevant to resource-based conflict. Just as important for minorities, however, are the customary management regimes that they have employed for centuries on the lands that they have traditionally inhabited. As a result, this report describes key examples of these regimes and also discusses means by which these practices can be effectively deployed as part of conflict mitigation efforts.

Another important aim of the report is to examine common patterns in conflict and conflict resolution across communities in the three countries under study. Field research revealed that minorities confront conflict in three main zones – inter-ethnic conflict on traditional lands, conflicts with other communities in population centres, and conflicts with state and corporate actors over land management and acquisition – and that they often deal with conflicts in multiple zones at one time. These conflicts have differential impacts on minority women, as described in detail. In addition, conflicts are triggered and exacerbated by factors that are common across communities and national borders.

Despite the proliferation of conflict and frustrations in finding comprehensive solutions, minority

communities and activists cited various successful means of conflict resolution. Importantly, the successes they cite incorporate traditional cultural practices while adapting them to the current circumstances of communities. This report describes examples of successful conflict-resolution strategies, highlighting important characteristics that can be used by other communities. Finally, the report places the conflicts confronting minority groups in the context of international and regional mechanisms that minority communities can use to support and complement their on-the-ground attempts at conflict mitigation.

## Methodology

This report is based on field research carried out by the authors in Kenya, Uganda and South Sudan between June and August 2011. Country visits were facilitated by Minority Rights Group's local partners, including the Centre for Conflict Resolution (CECORE) in Uganda, the Boma Development Initiative in South Sudan, and the Ogiek Peoples Development Programme and Endorois Welfare Council in Kenya. The authors conducted focus group discussions in minority communities, including women-only sessions, interviewed community leaders and activists, and met with representatives of governments and independent bodies, as well as non-governmental organizations. The authors also carried out site visits to locations of importance to the communities, such as water access points, mineral extraction sites, temporary settlements and other locations. The report also draws extensively upon secondary literature and resources.

# Overview of minorities in East Africa

Minorities are disadvantaged ethnic, national, religious, linguistic or cultural groups who are smaller in number than the rest of the population and who wish to maintain and develop their identity. Many minority groups in East Africa can often also be described as indigenous peoples, whose livelihood, culture, and identity is intimately linked with their traditionally occupied territory. Minority

groups in Kenya, South Sudan, and Uganda represent a diverse mix of livelihoods, community size and structure, community governance, and land tenure status. Table 1 describes the general characteristics of the minority communities and their neighbours discussed in this report. The table also briefly describes the types of conflicts that each community confronts.

**Table 1:** Community Characteristics

Kenyan Groups	Location; Population; Livelihood	Land tenure status	Conflicts
Endorois	Areas surrounding Lake Bogoria and the Mochongoi Forest; 65,000; <sup>2</sup> agro-pastoralist.	Some traditional land held as trust land by county council. Evicted from a majority of traditional lands, but a recent decision from the African Commission ordered return of their land.	Intermittent conflict over water use and grazing with neighbouring communities and individuals. In the process of negotiating with the government for return of their ancestral land.
Ogiek	Parts of Mau Forest and Mt. Elgon; 25,000 people made up of 12 clans; <sup>3</sup> Traditional hunter/gatherers, have adopted agriculture.	Mixed. Much Ogiek land has been allotted to other communities.	Intermittent conflict with neighbouring ethnic communities over land; in litigation against individuals and the government over land loss.
Olkaria Maasai	Rift Valley, specifically 16,000 ha in and around Hell's Gate National Park and Lake Naivasha; 3000 families; pastoralist. <sup>4</sup>	Court judgment recognized ancestral claim to land, but ordered individual allotment instead of communal land holding; appeal is currently pending.	Constant conflict with local government and neighbouring ethnic community over land boundaries and individual allotment process.
Turkana	Northern Rift Valley around Lake Turkana and up to the Uganda/South Sudan borders; 988,592; <sup>5</sup> pastoralists.	Traditional lands held in trust by county council.	Intermittent conflict with neighbouring ethnic communities over cattle rustling and border demarcation.
Laikipia Samburu	Laikipia district; 3,000 families; pastoralists. <sup>6</sup>	Evicted from communal lands in 2009; currently squatters near Nanyuki; previously held land in communal tenure with all members having legal rights to use the land.	Currently in litigation against former President Moi and an environmental conservation group over their forced eviction.

**Table 1:** Community Characteristics (continued)

Ugandan Groups	Location; Population; <sup>7</sup> Livelihood	Land tenure status	Conflicts
Batwa	Kisoro, Bundibugyo; 6,738; traditionally hunter gatherer, currently engaged in subsistence agriculture and minimal trading of forest products.	Largely landless squatters, evicted from traditional lands, occupy some plots that have been leased or purchased for them, but title held by others.	Constant harassment by majority ethnic groups in district; ongoing conflicts with Uganda Wildlife Service and government to recognize Batwa rights.
Iteso (Odoto Parish)	Katakwi district in Iteso region; 1.5 million Iteso in Uganda as a whole, 298,000 in Katakwi; agriculturalists.	Community land with customary tenure, some individual title.	Decades of border conflict with neighbouring Karimojong from Moroto.
Tepeth	Karamoja region, on the slopes of Mt. Moroto along the Kenyan border; 21,534; traditionally hunter-gatherers, currently agro-pastoralists.	Communally held land, no formal title.	Intermittent conflict over grazing with neighbouring ethnic groups. Ongoing conflict with corporation over quarry operation on Tepeth land.
Basongora	Kasese district in Western Uganda; 10,599; pastoralist.	Have been resettled onto government land after decades of repeated eviction and gazettement of their traditional lands as national parks or farming areas.	Ongoing conflicts with state authorities and neighbouring communities over grazing access, environmental degradation and security concerns.
Karimojong	Multiple districts in the Karamoja region; 260,117; pastoralist.	Communally held traditional land, much traditional territory has been gazetted by the government as reserves.	Regular conflicts with neighbouring ethnic groups over grazing and water access. Conflicts with Ugandan army as a result of disarmament.



**Table 1:** Community Characteristics (continued)

Jonglei, South Sudan Groups <sup>8</sup>	Location; Population; <sup>9</sup> Livelihood	Land tenure status	Conflicts
Kachipo	Southeastern Jonglei on border with Ethiopia; less than 30,000; agriculturalists.	Majority is customary tenure on community land.	Regular conflicts between ethnic communities, focused on taking over Kachipo territory which is seen as more secure.
Murle	Southeastern, central Jonglei; 110,000; agro-pastoralist.	Majority is customary tenure on community land.	Ongoing conflicts between ethnic communities, mostly focused on cattle raiding and revenge raids.
Nuer (Lou)	Notheastern Jonglei; 666,795; pastoralist.	Majority is customary tenure on community land.	Ongoing conflicts between ethnic communities, mostly focused on cattle raiding and revenge raids.
Dinka Bor	Western Jonglei; 448,111; pastoralist.	Majority is customary tenure on community land.	Ongoing conflicts between ethnic communities, mostly focused on cattle raiding and revenge raids.
Jie	Southeastern Jonglei, less than 30,000; pastoralist.	Majority is customary tenure on community land.	Ongoing conflicts especially with the Toposa, mostly focused on cattle raiding and revenge raids.
Anyuak	86,201; Eastern Jonglei on the border with Ethiopia; agriculturalists.	Majority is customary tenure on community land.	Ongoing conflicts between ethnic communities, mostly focused on cattle raiding and revenge raids.

# Current access to land and natural resources

Minority groups' access to land, water, forests and other natural resources in East Africa is dependent on national legal regimes, state practice and customary frameworks within minority communities. Formal laws include constitutions, national and local laws, as well as policies and administrative regulations. Customary frameworks on the other hand can include allocation and access management processes based on longstanding cultural norms, intercommunity land use agreements, and traditional dispute resolution mechanisms. Customary frameworks generally are officially recognized in national constitutions or laws in East Africa, but often are subject to a number of restrictions and conflicting provisions. Governmental policy frameworks and local administrative enforcement bodies are often designed to navigate between these systems and resolve emerging land and natural resource conflicts, but implementation of these systems is patchy at best and subject to cooptation by powerful interests. This often leaves minorities' access to land, water, and other natural resources subject to the discretion of local officials or the short-term interests of powerful and politically connected actors.

Making matters more complex is the fact that national legal regimes in Kenya, South Sudan, and Uganda are all undergoing change. Kenya is in the process of implementing its 2010 Constitution through a proliferation of new laws and incorporating a national land policy that was adopted in 2009. Kenya's Constitution states in Article 68 that 'Parliament shall revise, consolidate and rationalize existing land laws' – this has yet to happen. South Sudan – as the world's youngest state, having achieved independence in July 2011 following Africa's longest civil war – is in the process of developing a permanent constitution, a new land policy, and multiple laws related to land management.<sup>10</sup> Although Uganda's constitution was amended most recently in 2005, the country is in the process of reviewing and revising many of its laws and policies on land and natural resource management, including a new land policy tabled in Parliament in early 2011.<sup>11</sup>

## National legal and policy frameworks

For minority groups, the most progressive legal developments are emerging in the form of national land

policies. These policies are designed to provide an overriding framework through which to harmonize legislation and develop institutional capacity to manage land conflicts. However, implementation remains a major challenge.

The following sections discuss the defining features of each country's land and natural resource law and policy regimes, in particular as they relate to key protection for minorities, including women.

## Kenya

The defining feature of land law and policy development in Kenya is the new Constitution that was promulgated in 2010. The Constitution is a response to a long history of land injustice in the country, beginning with colonial policies of forced removal and resettlement, to a post-independence land grab that saw much of the country's resources consolidated in the hands of a few groups and individuals to the exclusion of the majority. Kenya's Constitution vests land in communities which may be identified on the basis of 'ethnicity, culture, or similar community of interest.'<sup>12</sup> The new Constitution also mandates the National Land Commission (yet to be established) to encourage the use of traditional dispute resolution mechanisms in land conflicts.<sup>13</sup> Provided that these provisions are implemented effectively, they could have important impacts for minority communities confronting conflict over land and natural resources.

Kenya's Constitution also contains powerful provisions related to minority rights. Apart from important protections for equality and non-discrimination, the constitution mandates affirmative action programmes to ensure that minorities and marginalized groups participate and have representation in government, have special opportunities for education and employment, can develop their culture and language, and have access to water, health services, and infrastructure.<sup>14</sup> The definition of a marginalized group in the constitution specifically includes minority groups that have been excluded because of a 'relatively small population' as well as indigenous communities such as hunter-gatherers and pastoralists.<sup>15</sup> These constitutional provisions are a powerful development for minorities in Kenya, especially pastoralists and hunter-gatherers, who are specifically mentioned in the definition.

In the next few years, the National Land Commission and the Parliament will have to harmonize Kenya's array of land legislation to bring it into line with the new mandates of the constitution, including minority rights protections. To help guide this process is the National Land Policy that was promulgated in 2009. The National Land Policy includes numerous positive developments: it recognizes the importance of protecting the land rights of minority, marginalized and vulnerable groups; acknowledges minority communities have lost access to essential land and resources; and calls on the Government to develop a legislative framework to secure individual or collective rights to access and use land and land-based resources, and to handle land restitution. However, implementation of the land policy has yet to be effectively operationalized.

Importantly, changes in Kenya's complex legal framework will need to be made to ensure equity in land access for women. The policy notes that land is crucial to the attainment of gender equity in Kenya, and describes how the disinheritance of women is one of the key results of the land problem.<sup>16</sup> The policy includes some specific requirements for how the government must address women's rights including: repealing discriminatory legislation and drafting new legislation, enforcing the Children's Act to ensure the rights of girl children, and ensuring proportionate representation of women on all institutions dealing with land.<sup>17</sup> The Kenya Land Alliance, an advocacy organization based in Nakuru, Kenya, recommends, in addition to these changes, that specific provision be made in law for family land which should 'include land that has ordinarily been occupied, shared, developed and from which the family earns its livelihood and is known as home for the family (couple and their children)' and which cannot be sold or transferred without the consent of family members.<sup>18</sup>

Many minority communities in Kenya have been dispossessed of land over the years because it contains substantial natural resources of value either to other communities, the state or corporate interests. Conflicts over water, forests and mineral extraction are common and are described in greater detail in the case studies throughout the report. Reflecting the colonial vesting of resources in the Crown, resources such as water, forests and subterranean minerals are held by the state in trust for the people.

Forests in Kenya – with the exception of local authority forests and private forests – are also held under state ownership.<sup>19</sup> Kenya also recognizes customary rights to forest products as long as the customary use is not for the purposes of sale.<sup>20</sup> Previous forest law was heavily criticized for transferring forest management away from the local communities, failing to recognize traditional management regimes and criminalizing local communities' resource use.<sup>21</sup> But consequent law reforms in 2005,

borrowing heavily from emerging international consensus on sustainable development, incorporated a substantial body of principles to ensure greater participation of communities in forest management.<sup>22</sup>

## Uganda

Uganda's constitution mandates that the government must protect and enhance 'the right of the people to equal opportunities in development... regulate the acquisition, ownership and use of land and other property, in accordance with the Constitution' and 'take special measures in favour of the development of the least developed areas.'<sup>23</sup>

The constitution also explicitly protects the right of 'Minorities... to participate in decision-making processes, and their views and interests shall be taken into account in the making of national plans and programmes.'<sup>24</sup>

These provisions, if effectively implemented would provide important gains for minority groups in Uganda. As described in the case examples throughout this report, these provisions are not always reflected in the operation of policy at the community level.

Like Kenya, Uganda's land policy framework operates against a backdrop of decades of colonial and post-colonial land injustices. Uganda has gone through several land laws and policies in the recent past. The Land Act was amended in 2001, 2004, and 2010. A final draft of the national land use policy was tabled before Parliament in March 2011 (Draft 5),<sup>25</sup> but has yet to be approved by the Cabinet.<sup>26</sup> Another important feature of Uganda's land framework is the constitutional recognition of customary tenure, which accounts for 70–80 per cent of land holding in Uganda.<sup>27</sup>

The 2011 land policy contains important recognition of the rights of minorities and, moreover, of pastoralists. For instance, the policy recognizes ethnic minorities as 'ancestral and traditional owners' and further makes clear that development of natural resources often 'takes place at the expense of the rights of such ethnic minorities.'<sup>28</sup> Under the as yet unapproved policy, the Ugandan government commits to pay fair compensation to ethnic minority groups displaced from their ancestral lands, both in the past and into the future.<sup>29</sup> In a stark departure from previous policy documents that have not recognized pastoralism, under the 2011 policy draft the 'rights of pastoral communities will be guaranteed and protected by the State.'<sup>30</sup> While the proposed strategies appear promising, the policy presents no framework for the participation of pastoralists in many of the policy decisions that will affect them.<sup>31</sup> Nevertheless, if this policy is adopted it could reflect an important shift in the attitude of the Ugandan government.

In relation to women's rights, the land policy recognizes that previous legal reforms have failed to redress

inequities in land distribution and ownership in Uganda. The policy states that women's and men's equal rights should be protected 'before marriage, in marriage, after marriage, and at succession' and that the government must adopt legislation to protect 'the right to inheritance and ownership of land' for women.<sup>32</sup> However, the policy does not specify how legislative reform under this new policy will avoid the failures of past legislative efforts.

As in Kenya, resources on the land generally are vested in the state. For instance, Uganda's 2003 Mining Act.<sup>33</sup> provides that 80 per cent of state revenue from mining goes to central government, 17 per cent to local governments, and 3 per cent to landowners.<sup>34</sup> In order for communities to become landowners, however, they must form a community association and then proceed through an extensive application process. Activists in Uganda note that this process is out of reach of the majority of communities and can lead to misappropriation of land by the few.<sup>35</sup>

## South Sudan

Unlike Kenya and Uganda, South Sudan has not seen the long-term consolidation of traditionally held lands into the hands of a few key actors or groups. Accordingly, its policies are less focused on having to redress historical land injustices. The basis of South Sudan's land framework instead goes back to the ethos of its national independence leader, Dr John Garang. Garang used the notion of communities controlling their land, in opposition to the centralized control coming from the regime in Khartoum, to gain support for the Sudan Peoples' Liberation Movement.<sup>36</sup> Accordingly, the Transitional Constitution, the Land Act and the draft national land policy all reflect the fact that the majority of land in South Sudan is owned by communities. Indeed, the constitution provides for customary law, a strong basis of communal land ownership, to have equal force with formal law.

The Constitution makes clear that communities 'enjoying rights in land shall be consulted in decisions that may affect their rights in lands and resources',<sup>37</sup> and that they 'shall be entitled to prompt and equitable compensation on just terms arising from acquisition or development of land in their areas in the public interest.'<sup>38</sup> The Land Act provides that community land includes forests as well as cultivation and grazing areas that are held by communities on the basis of ethnicity, residence or interest.<sup>39</sup> This provision ensures that ownership is 'vested with communities' on the basis of use and occupation,<sup>40</sup> which is a powerful legal development for minority and indigenous groups, especially in comparison to legal regimes in Kenya and Uganda that require registration or government allocation in order for communities to own their traditionally occupied lands.

In another important legal development, Chapter X of the Land Act specifically protects pastoral lands in South Sudan.<sup>41,42</sup> The law also makes it a crime for any person to obstruct water access or restrict grazing rights, except for those who do so with permission after acquiring land for investment purposes.<sup>43</sup> It is important to note, however, that South Sudan's law is so new, and is vague enough in relation to how pastoral rights relate to investor's rights to develop land, that confusion over interpretation of the law could negatively impact pastoral rights and lead to future conflict.

In addition to protecting pastoralist rights and customs, the Transitional Constitution contains important directives on community consultation. Based on their ownership of land, communities can enter directly into lease agreements for development purposes.<sup>44</sup> Any investment activity in South Sudan, however, must reflect an important interest for the people living in the area, must contribute to the development of the local community, and the views of the community relative to any acquisition of land must be taken into consideration.<sup>45</sup> Moreover, the ministries, the state government and the investment authority must consult the community concerned on any decision related to their land.

Despite these important provisions, detailed guidance on how to implement these protections for communities is limited. Moreover, it appears that the government and investors are ignoring the requirements of the law in many instances. In Jonglei State in particular, large land deals appear to have taken place with little or no community consultation. An Emirati company has leased more than two million hectares, comprising Jonglei's Boma National Park, reportedly for a tourism development project. A study by the South Sudan Law Society and other reports indicate that community consultation, defined as involvement of a large cross-section of the affected community and community feedback being incorporated into the design of the investment, did not take place.<sup>46</sup> According to the same report, the company promised to provide education and health facilities for communities around Boma National Park, but has not yet provided anything in the more than two years it has held the lease.<sup>47</sup>

South Sudan also provides for community consultation related to mineral exploitation in its legal framework, but as with land acquisition, communities have not been adequately consulted or compensated.<sup>48</sup> At the time of writing of this report, most mining in South Sudan had been put on hold pending the drafting of a new mining law and accompanying regulatory framework.<sup>49</sup>

## Conclusion

Despite progressive constitutional and national policy statements, it remains a huge challenge for minority groups to use these legal regimes to deal with conflict over

land and natural resources. Instead, the formal law is often used against communities to dispossess them of their land and other resources, leading to conflict. Many have looked to increasing local control over land resources as a policy response to this issue. Accordingly, Kenya, South Sudan and Uganda all have laws that provide for land management at the local level. Unfortunately, all countries have trouble implementing their local level land laws, policies, and management structures.

## Local administrative enforcement

### Kenya

Land at the local level in Kenya, especially traditionally held community land, is often managed under the Trust Lands Act. Under the act, Trust lands are held by local county councils for the benefit of the local residents or in the public interest, for example, for forests, parks and towns. Land and resources are supposed to be administered under customary laws. However, most county councils have erroneously interpreted the meaning of 'holding in trust', to mean that the council owns the land and the resources thereon, thus disregarding customary laws.<sup>50</sup> The National Land Policy notes that Councils 'have in many cases disposed of trust land irregularly and illegally.'<sup>51</sup> To address the failure of the Trust Land regime to protect community property rights, the 2010 Constitution transforms all land under trust, except for public forests and national parks or reserves, into community land to be held by specific communities in accordance with an organic law yet to be drafted.<sup>52</sup>

Local administrative enforcement also presents challenges for minority groups trying to resolve conflicts when a minority group is apportioned between different administrative units within the state. The Olkaria Maasai community lives in an area that straddles two administrative districts in Kenya. One Maasai clan is in danger of displacement as a result of geothermal energy development. This community resides in Naivasha district, which due to migration and population transfers is presently dominated by the Kikuyu community. The leadership within the larger Olkaria Maasai community resides in Narok district. As a result, when the clan asks for elders to intervene on their behalf, the elders come from Narok to speak with government officials in Naivasha. However, the administrators in Naivasha, most of whom are non-Maasai, ignore these elders because they do not come from Naivasha. Similarly, the administrators in Narok, have no interest in the plight of a clan living outside of their district. Because of this disjuncture of formal administrative and traditional governance

structures, the Maasai near Hell's Gate have been shut out of administrative processes that might resolve their land conflict. As Maasai elder Kareno Ole Nakuro put it, 'No chief can listen to our grievances, the government of Naivasha has rejected us.'

### South Sudan

In South Sudan the Land Act provides for Land Councils at the state, county and *payam* level. The *payam* Land Council, which is at the community level, is vested with the role of protecting communal grazing land, forests, wetlands and water.<sup>53</sup> However, according to the Chairman of the South Sudan Land Commission, very few of these entities have actually been established throughout the country and there is political resistance from state and county level officials to doing so.<sup>54</sup> In addition, knowledge about the provisions of the Land Act is extremely low among rural populations,<sup>55</sup> inhibiting their ability to use any structures that do exist.

### Uganda

Uganda's constitution creates district land boards, which are constitutionally recognized as independent from the national land commission. The land boards are mandated: '*(a) to hold and allocate land in the district which is not owned by any person or authority; (b) to facilitate the registration and transfer of interests in land; and (c) to deal with all other matters connected with land in the district...*'<sup>56</sup> However, local land boards are underfunded and don't function effectively, and parish level land recorders are largely non-existent.<sup>57</sup> Local level land tribunals in Uganda were in place until 2007, at which point they were all suspended because of implementation problems and a backlog of 8,000 cases.<sup>58</sup>

In Uganda, there is evidence that local government officials have little capacity to enforce effective management regimes or address resulting conflicts. Both Tepeth and Iteso in Uganda reported that they had brought their land-related concerns to local officials with no ultimate resolution. In the case of Tepeth, the community sought assistance from the Local Council to secure their rights in relation to a mining operation on their traditional lands. The community reported in focus groups that their concerns seem to have been ignored.<sup>59</sup> In the case of Iteso, the community obtained a judgment from the local council in 2003 that Karimojong settlements on their land were illegal and that the settlers were subject to eviction.<sup>60</sup> This result, however, engendered more conflict because the Local Council had no means to enforce its own decision. When the Karimojong refused to leave their homes in what had been determined to be Iteso territory, Iteso community members responded by burning the Karimojong houses to the ground.<sup>61</sup> Since that



time, Iteso have been subject to revenge attacks by armed Karimojong warriors when they try to leave their centralized camps and access their traditional homesteads and fields near the territorial border.<sup>62</sup>

## Customary access and management regimes

Despite the continuing proliferation of land and natural resource laws, policy frameworks, land commissions, and land boards etc., communities always have had and in many cases continue to have their own customary management regimes. In the past, these management regimes often controlled both intra- and inter-community access to resources.

If Kenya, South Sudan, and Uganda are to effectively address conflicts around land and natural resource access and management, a key component will be the effective development of systems of legal pluralism, including recognizing the value of customary practices and indigenous peoples' knowledge of resource management. Although many policies are written with these principles in evidence, effective implementation is a continuing struggle.

For example, the Samburu of Laikipia District in Kenya use the *Lkiama* system to administer traditionally held lands. The land tenure system is communal and community members have rights to use the land, but no rights to permanently dispose of land. Land is considered an intergenerational asset. Under the *Lkiama* system, elders administer the use of common property so that no one is denied access to land and resources to the detriment of others. The principle of *Lkiama* is 'is use according to need.' Land is acquired through negotiation between clans, and conditions for land holding and use are mutually agreed upon. Then agreements are sealed through communal ritual, including sharing a meal of goat. Although the decision-making process was largely hierarchical, with male elders at the top, women (especially married women) were also engaged in the decision making around land use and allocation.<sup>63</sup>

This customary process has been used not only within the Samburu community but also for negotiations with other ethnic communities including Tugen, Pokot and agricultural communities such as the Kikuyu. Binding peace agreements, called *lmumai*, have bound together these communities. For example, a *lmumai* between the Pokot and Samburu lasted for more than a century, and is currently being renegotiated.<sup>64</sup>

In South Sudan, Dinka community forestry practices are long-standing and employ rules that protect trees based on functional use and on spiritual association.<sup>65</sup>

*Our customs say very specifically which tree you can cut down and which tree you cannot cut...our customs or the traditional authorities would have standing orders, like for example, don't cut a tamarind tree. Then there are some medicinal trees and plants, which are conserved or put aside because of the fact that they have curative properties. So customs say very clearly whether you can cut, or whether you should conserve.*<sup>66</sup>

The spiritual value of trees also protects them under Dinka custom and certain trees play an important role in conflict resolution. The Adoth tree is used to spray water onto disputing parties after they have resolved their conflict. Leaves of the tree are also chewed to seal the resolution and to keep conflict away in the future.<sup>67</sup> Community members grow up understanding the norms of tree protection and use. Social taboo and social approbation, as well as specific punishments involving compensation to the tree's owner, enforce this system that has developed over centuries. For instance, a song about one's lack of respect for trees may be composed and spread through the community – being the subject of such public disdain is a powerful mechanism of social control amongst the Dinka.<sup>68</sup>

Dinka customary beliefs and practices related to trees led communities to protect forests during the civil war. When loggers from Uganda or from neighbouring communities attempted to exploit community forest resources during the chaos of the civil war, communities resisted and protected their trees as an asset for their post-war development.

It is important to note that customary land allocation and management systems, such as those described above, developed under conditions of less land and resource scarcity than currently exist in East Africa.<sup>69</sup> These systems have been flexible and adaptable over time, but current conditions of land scarcity, high monetary value for land, and state intervention are straining or obliterating customary management regimes in many communities. In addition, the case example below demonstrates that, similar to mediation of any type of dispute in any legal environment, traditional mediation of disputes works most effectively when the parties to the dispute have more or less equal power in the negotiation. When there are substantial power inequities in the dispute, as with minorities and state-supported corporate investors, traditional dispute resolution and social control is rarely effective.

### Case Study: Tepeth, Uganda

Tepeth customary management strategies for communally held land present a helpful example of a community in



which customary management regimes still operate relatively effectively. The relatively small Tepeth community occupies a territory that extends from the slopes of Mount Moroto in Uganda outward onto a flat rangeland toward the south, and to the Kenyan border to the east. Tepeth traditionally were hunter-gatherers in the forests on the mountain slopes.

*The Tepeth like staying on the mountains, they don't like staying on the plains. Mountains have a lot of resources...there's a lot of water... Tepeth were attracted to the mountains by the resources, a lot of forests, honey, animals, a lot of fruits.*<sup>70</sup>

Over time, however, Tepeth have adopted a more agro-pastoral livelihood pattern. Elders described how Tepeth carefully regulate the use of grazing land and water amongst the community through policies developed by the elders during meetings in the *kraals* (traditional animal enclosures). Regulation regimes vary depending on the season. During the rainy season, access to watering holes for livestock is open to all at anytime, but key grazing areas are reserved so that they may be available for dry-season grazing. During the dry season, the community establishes a systematic water sharing regime and each family is given a designated time at water access points so as not to exhaust the supply. Community members who violate this regulatory regime are punished by the elders, usually by caning and sometimes by being forced to slaughter a favourite bull. Focus group participants report that this regime still functions effectively within the community.<sup>71</sup>

Additional discussion amongst community members, however, revealed that customary management has been less effective in the face of mineral extraction on Tepeth land. In 2000, Tororo Cement began extraction of a unique subsurface rock on Tepeth land. The area where the extraction takes place was mostly grazing land but there also were some Tepeth families settled there. The introduction of this commercial activity has caused conflicts within the community, because it is perceived that those individuals who had settled on what became the quarry site are now benefitting more from the quarry operation than other members of the community. Tepeth are paid for their labour in extracting the rock and loading it onto trucks for Tororo. Focus group participants report that those families who are settled in the vicinity of the quarry do not always share the benefit of this opportunity to gain some meagre income through labouring in the quarry. Women also report that it is difficult for them to fight for space in the quarry because they are not as strong as the men.<sup>72</sup>

Elders have tried to intervene in these disputes, but with less success than in the management of grazing and water access. Elders have also been largely unsuccessful in

negotiating with the company for community rights in relation to the quarry operation. According to the community, there has never been any written agreement as to compensation or anything else between the company and the community.<sup>73</sup> Requests for fairer compensation for labour, provision of safety equipment, and the drilling of a borehole to provide drinking water for labourers in the quarry have not been acted on by the company.<sup>74</sup>

For the Tepeth, and many other communities in similar circumstances, when the formal system of land leasing for corporate use is superimposed on a geography in which customary structures have controlled resource allocation, then both individual community members and the corporation choose the system that operates to their advantage. For companies and community members who are in a position to benefit from the corporate activity, the most beneficial system generally is the formal law, and customary practices are ignored as a result.

## Non-recognition of indigenous peoples' livelihoods

Related to the lack of real recognition for customary law and governance, recognition of key types of livelihood practiced by minorities remains an advocacy challenge. Even when recognition is written into draft policies, effective implementation is a continuing struggle.

### Pastoralism

Many of the minority communities described in this report are pastoralists. This mode of livelihood has been present in East Africa and many other regions of the world since time immemorial. Misunderstanding of pastoralism is a major concern amongst activists across Kenya, South Sudan, and Uganda. For example, in Uganda, communities and activists alike report that government policy from the local to the national level rejects pastoralism as a valuable livelihood model that contributes positively to Uganda's identity and economic development. At the local level, activists report that anti-pastoralist ordinances and policies are being passed to condemn pastoralism and prevent freedom of movement.<sup>75</sup>

These local actions reflect a national policy coming from the highest levels of the Ugandan government. The First Lady of Uganda, Janet Museveni, who is also Minister of Karamoja Affairs, says on her website that 'development partners have been urged to support the Government's programmes aimed at transforming and enabling the Karimojongs [to] stop nomadism and settle permanently...' <sup>76</sup> and that the 'dangers of nomadism as shown by the Karamoja situation, outweigh its benefits.'<sup>77</sup>

Pastoralism activists in Uganda, however, assert that the government's policy of sedentarization will be

disastrous.<sup>78</sup> They note that such policies fail to take account of research that supports pastoralism as the most sustainable livelihood model in dry rangelands.<sup>79</sup> Pastoralism makes the most of minimal water resources in dry areas:

*Grazing follows water resources in a complex system to ensure water conservation. During the wet season, grazing is concentrated in hilly areas where the cooler climate and mist means livestock can survive with the moisture present in the vegetation.... As the dry season advances, camps tend to concentrate around the permanent water sources such as boreholes and natural wells. In drought, people settle around boreholes.*<sup>80</sup>

Pastoralism activists and community-based organizations are continuing to work to influence policy at the national level, such as educating policy makers and parliamentarians, creating awareness events such as Pastoralists Week, and bringing pastoralist groups together in networks to more effectively advocate on their own behalf.

### Forest-dwelling hunter-gatherers

Hunter-gathering livelihoods are similarly disregarded by governments, as evidenced by the experience of Ogiek in Kenya and Batwa in Uganda, often in the name of conservation. The Ogiek's traditional livelihood system has a low impact on biological diversity. 'When we wanted an animal, we took just one, not all at once.'<sup>81</sup> The Ogiek organized the forest into clan territories. Through a totem system, each clan was allocated an animal to protect and no member of that clan would hunt that animal.<sup>82</sup> An elder described that he 'was born in 1942. At that time we gathered the honey and hunted the animals in the forest.'<sup>83</sup> But Ogiek also described that there were strict rules about hunting across clan boundaries in the forest, designed to assure equitable resource allocation and to prevent conflict between clans.<sup>84</sup> Indigenous bee-keeping by the Ogiek also helped pollinate and regenerate the forests.<sup>85</sup> However, Ogiek are being evicted from the Mau Forest in the name of conservation.

The Mau Forest provides a watershed that impacts water resources across East Africa and reports indicate that almost a quarter of the forest has been degraded.<sup>86</sup> Although much of the forest degradation is a result of state policies related to resource extraction and land allocation, the Ogiek are now losing their traditional lands through eviction, with disastrous consequences for their culture. 'God gave us stories; but we are losing these stories... Perhaps it is why others despise us, so we despise ourselves. We have forgotten the stories of our fathers.'<sup>87</sup>

Batwa forest knowledge and management practices have also been documented in Uganda as well as in other countries where the Batwa traditionally reside. Because of the Batwa's reverence for the forest as the dwelling place of their ancestors, they developed a livelihood system that was compatible with forest conservation.<sup>88</sup> Batwa livelihoods did not conflict with the main conservation goal in the forests, that of protecting gorilla populations there; but almost all Batwa have been removed from the forests.<sup>89</sup> Batwa hunted small animals, and collected food and other items to meet their basic needs including wild fruits, honey, medicinal herbs, meat, mushrooms, and yams.<sup>90</sup>

Recent research supports the fact that indigenous forest use practices can be an important contributor to conservation. For instance, a 2011 study found that 'forest reserves that allowed for sustainable use by local population were even more effective, on average, than strictly protected areas focused exclusively on conservation. Most effective of all were indigenous areas, which were estimated to reduce deforestation by about 16 percentage points over the period of 2000–2008.'<sup>91</sup>

Despite such research, governments in Kenya and Uganda have not effectively integrated indigenous minority groups into the policy development and implementation process. In Uganda, several reports document the exclusion of Batwa from forest management policy discussions.<sup>92</sup> Even in the design and development of programmes intended to benefit the Batwa, such as the Multiple Use Programme which was established in 1993, the community was not permitted to collaboratively negotiate with the Uganda Wildlife Service on forest access.<sup>93</sup> To date the programme benefits only a very few Batwa in a marginal way.<sup>94</sup> Similarly, the Ogiek report that they are still waiting to be included effectively in discussions about the management of the Mau Forest. In 2008 the Office of the Prime Minister established the Interim Coordinating Secretariat for the Mau Forests Complex. Ogiek elders have been appointed to the 'Council of Ogiek Elders', but elders report that the process has not reflected genuine consultation, in relation to boundary delimitation as well as other matters.<sup>95</sup> In South Sudan, it remains too early to tell how indigenous groups will be integrated into forest management.

### Women's access to and control over resources

The gender dynamics of resource-based conflicts that affect minority communities are complex, involving customary and statutory systems of land and property ownership as well as women's cultural, economic, and political role in communities, among other factors. Much

research on women's land rights in Africa focuses on the difficulties that women face in gaining ownership or title to land under both customary and statutory systems, as well as land grabbing.<sup>96</sup> For minority women, their land rights are largely dependent on custom within the community and are dependent on the community as a whole maintaining control over traditional territory.

A common assumption about customary tenure in Africa is that women cannot own property under such systems. The reality is substantially more complex. Women's rights to land under customary systems include use and access rights. Women's customary rights to occupy or use land are relational (and not always solely dependent on marriage). This does not mean that they are necessarily weak,<sup>97</sup> but relational rights can be problematic because they are less stable as relations change. For example, in certain customary systems, land is held by families, in which the ability of any family member to sell or lease out the land is subject to the other family members' rights of use and occupation, specifically the wife.<sup>98</sup> Moreover, customary rights and obligations are deep-rooted and generally well-understood by women, who seek redress through their relational community networks for violations of their rights.<sup>99</sup> This is not to say that customary rights are never violated by more powerful family or community members. Those actions, however, do not reflect the norms governing rights in the community, but rather a violation of those norms.<sup>100</sup>

Formal legal obligations transferred to women through statutes may be less well known and understood by women, especially those in rural or minority communities. But knowledge is increasing, giving women more options to claim their rights. During a meeting in Lodwar, northwest Kenya, a Turkana woman described how when her husband died she was chased away by her husband's family, even though she had five children. Her husband's brother took all the goats and cows that she and her husband had owned. Her children weren't able to go to school because she had no livelihood to pay the fees. However, a friend who was an elder woman in the community came to her and asked, 'what has happened to all these goats? Where are your cows?' When she was told what had happened, the elder woman took the widow to the local chief (the chief in Kenya is actually an administrative position within the formal governance structure, not a purely traditional position). The elder woman reminded the Chief of traditional custom as well as inheritance law in Kenya, which protects the rights of widows to marital property. The Chief called the husband's brother to account and demanded that the livestock be returned or he would be subject to arrest and detention. The brother-in-law returned the livestock and

the widow reported that she has been able to send her children back to school.<sup>101</sup>

Women interviewed for this study reflected the diversity of ways in which the intersection of formal and customary law impacts women's rights to hold, access, and use land. Women reported anger at violations of their land rights in some instances but also security about their access to land in other instances. Interviewees in Kenya, Uganda, and South Sudan all made clear, for example, that under customary systems women who are widowed stay with their families on the plots that they have occupied with their husbands, retaining access rights.<sup>102</sup> However, enforcing the rights of widows is often difficult. In South Sudan, one interviewee noted that the ability of widows to enforce their rights under customary systems 'depends in reality on the wealth of the family.'<sup>103</sup> Although families traditionally are obligated to care for and maintain widows, if the family is too poor to do so they may demand that the widow returns to her family home.

Enforcing women's rights, especially widows' rights, can become even more challenging when male relatives use the formal courts.

*For the vast majority of married women, interests in family land are held on account of the marriage relationship, which for most women is based on customary law. The precariousness of customary land rights in the eyes of a legal system that pretends to be blind to the reality of plural and overlapping rights to land is obvious...In the absence of legal recognition of customary interests in registered land, the entitlements of women...derive from the title-holder's interests, and their security depends primarily on the stability of their relationship with the title holder.<sup>104</sup>*

This reality is despite the protections for customary law and tenure in the constitutions of the countries under study. Encouraging a deeper understanding of the customary norms that protect women's rights is critically important.

Detailed information about land management practices and community decision-making procedures is often available only through oral tradition and may actually be known in its entirety only to a few members of the community. However, the value of documenting basic customary principles, in a manner that reflects community consensus and retains flexibility, becomes evident when the formal and customary systems intersect as described above in relation to women's rights or community land conflicts.

In the Teso region of Uganda, a non-governmental organization has worked closely with Iteso leaders over a period of years to document customary land rights and management practices in Iteso clans. The result is a

booklet, *Principles and Practices*, that is available to community members and others.<sup>105</sup> Designed to assist traditional and formal courts in resolving land conflicts, *Principles and Practices* highlights the detailed ways in which Iteso regulate land use and transfers. For example, provisions on sale of land in Teso specify that:

*Customary land in Teso region is vested in the respective clans of Teso to hold and manage in trust for the people of Teso.*

- a) Customary land in Teso is not for sale by any individual or head of family entrusted with the management of land for the benefit of members of family and future generation.*
- b) Land can only be sold if it is for 'good reason' and with the permission of the majority of all the family members, whether present or absent, permission of the clan committee and consent of the wife or wives.*
- c) The clan committee must not allow the sale of land for 'bad reasons.'*
- d) The land where the head of family is an orphaned minor must not be sold without the permission of the parish clan committee.*
- e) Consent will be assumed not to have been given if any of the wife or wives with rights to the land refuses to grant consent and if the majority of the adult children refuse to grant consent.*
- f) Consent will be assumed not to have been given if the majority of the members attending the parish clan committee meeting vote against the sale of land of an orphaned minor.<sup>106</sup>*

This documentation process – to be distinguished from the codification processes that were prevalent for several decades throughout Africa and largely discredited – is based on long-term community consultation and consensus-building and accounts for the flexibility and adaptability of customary law.<sup>107</sup> Given the reliance of East African constitutions, laws, and policy frameworks on customary tenure, providing documentation of the nature of those customary regimes and decision-making structures is an important means of making the law functional for communities and of resolving conflicts in a way that includes community participation.

### **Box 1. Gaining land access in a community-based system**

Grace Chepkurui is a member of the Endorois community in Kenya. Grace's mother was married with nine children, living in Radad, a small community several kilometres from Lake Bogoria. When her children began to die from illness, Grace's mother was abandoned by her husband. When

only Grace was left alive, her mother abandoned her property, fearing that unless she moved Grace would die as well. Grace's mother returned to her uncles in the neighbouring community of Sendai. Land in Sendai is held in trust for the Endorois by the government and is administered by the local council. Grace and her mother lived on her uncles' land until Grace reached adulthood and had children of her own. Grace then went to her uncles and requested their assistance in obtaining an allocation of land on which she, her mother, and her children could live. Although not all her Uncles were helpful, some promised to go to the local council and advocate on her behalf. Ultimately Grace was allocated a plot of land near the centre of town, fronting on one of the main streets. Grace has constructed a house and a small shop on the land. She sells traditional medicines and runs a tailoring business from her shop. Grace also leases a farm plot in another area, where she grows crops for subsistence.

Grace asserted that obtaining her land allocation has given her pride in her life because she has a home, is able to support her family, and is able to interact with the larger community through her shop. Grace said she had no concerns about her security on the land that she had been allocated – she feels confident that she will remain on that land as long as she needs it. She described how many women in the Endorois community had received the assistance they needed because they spoke up and made their needs clear throughout the community, drawing on all their social networks. But, she also described how women who relied entirely on their male relatives and who were less able or willing to speak up for themselves were less likely to receive the help they needed.<sup>108</sup>

In the policy discussion over how different ownership systems impact women's rights, it is important to recognize that in minority communities often no one, male or female, has a formal legal title to land in the community and some communities do not even have a communal claim to their land and natural resources. Indeed, certain communities, such as Batwa, have been rendered virtually landless. Tepeth report that no one in their community has formal title to land, whether male or female. While women may be relatively secure in their rights within their community structures, it was clear in interviews that they feel very insecure in the ability of their communities to retain or regain traditionally held lands.

Overall, minority women have serious concerns about their access to land, water, and other key resources. These concerns are largely as a result of their communities' marginal status and ongoing fear of loss of control over and access to traditional lands. Conflict over natural resources, whether because of conflicts with the state or other communities, has serious negative repercussions for women.



# Patterns of conflict

Discussions with minority communities in East Africa revealed that they are confronted by conflict in main areas, which can be termed 'zones' of conflict. These zones relate to the spheres in which minorities find themselves interacting with other groups in society, specifically, (1) community-to-community interactions on traditionally occupied lands, (2) interactions with other communities in towns or population centres, and (3) community interactions with the state or corporate actors, generally related to large-scale land acquisitions. While each of these zones of conflict is rooted in access to land and natural resources, each also has some unique features, generates distinct types of coping methods, and requires different policy responses. These multiple zones make addressing minority rights in relation to land and natural resources extremely complex. Moreover, many minority groups are simultaneously coping with conflict as a result of all three of these types of interactions, putting further stress on communities who already are pushed to the edge by marginalization and underdevelopment. An example of each zone of conflict is provided below.

## Inter-ethnic conflict on traditionally held lands

### Case Study: Iteso, Katakwi Region, Uganda

Iteso, meaning people of Teso, are an agro-pastoralist community that resides in eastern Uganda. Iteso are spread across a large territory in Uganda, comprising multiple districts. In the Katakwi district on the border of the Karamoja region, however, Iteso feel that they are a targeted minority and are losing access to their traditional lands. As the result of a border dispute between the Iteso of Katakwi and the Karimojong of Moroto that is more than a century old, the two communities have lived under constant threat of conflict. The Karimojong, who are a pastoralist cattle-keeping community, regularly move into Teso territory in order to find grazing land and water. Because the rain that falls in the mountains near Moroto runs off quickly and drains into the wetlands in Teso, the Karimojong are known to say that they are following 'their water into Teso'.<sup>109</sup> Pastoralists in Karamoja have repeatedly requested that the government develop more water access

points, either through valley dams or boreholes, but there has been little improvement in this regard.<sup>110</sup>

Recently, Karimojong have also been settling in what Iteso consider to be their territory based on a colonial-era map; Karimojong see the border differently. The border conflict has led to Karimojong raids into Teso territory, during which there are killings and property destruction. Iteso in turn have burned down Karimojong settlements in Katakwi that they believe to be illegal.<sup>111</sup> This type of traditional territorial conflict creates an escalating cycle of violence. Multiple efforts have been made to address the border conflict, through local government arbitration, negotiations between elders and regional officials, community-based initiatives,<sup>112</sup> and even appeals to President Museveni himself.<sup>113</sup> Despite these efforts, the border conflict continues to create negative repercussions for both communities.

The communities' appeal to President Museveni reflects the breakdown in the ability of local systems to resolve the conflict. Iteso have placed their faith in the power of a Presidential decree as to the border demarcation to resolve the conflict and stop Karimojong raiding. A government surveyor was sent to the region a few years ago to demarcate the border, but there is conflicting information as to whether the project was ever completed.<sup>114</sup> Whatever the underlying reality, President Museveni has remained silent on the border dispute.

## Community in conflict in towns

### Case Study: Murle, Bor Town, South Sudan

Murle are an ethnic community in South Sudan whose traditional territory is in the south eastern portion of Jonglei State. They make up a small proportion of the national population, about 4 per cent. The Murle regularly come into conflict with other ethnic communities in Jonglei, primarily as a result of cattle raiding, broken peace agreements, and child abductions. In recent years, small numbers of the Murle community have migrated to the regional capital, Bor, seeking work at the new state institutions that are being established there or fleeing conflict in rural areas. About 200 Murle community members now live in Bor, which lies deep

within the traditional territory of the Dinka, a group with whom the Murle are regularly in conflict.

Because of this long-standing ethnic conflict, Murle report that they are unable to access housing or land in the town.<sup>115</sup> One interviewee said that, 'If I were to go out and try to buy a plot here to build a small house, it is all Dinka land, I would be beaten and chased out.'<sup>116</sup> As a result, the entire Murle community in Bor live in a one-acre compound with only two houses on it, built by the government for the Murle ministers from the district to stay in. Murle report that when there is violence in the outer lying cattle camps, Murle living in Bor are subject to revenge attacks. Murle also report that they are harassed in town and insulted when they are heard using their own language.

For minorities who leave their traditional home territory in search of employment or to escape violence, access to land and other resources can become a serious challenge. This kind of discrimination flies in the face of important constitutional provisions on equality before the law and in non-discrimination related to property rights. It also reflects the conflict between customary tenure regimes that put land fully under the control of communities and the need for states to develop multicultural population centres where all can have access to the services and employment opportunities of government.

## Community in conflict with state and corporate interests

### Case Study: Olkaria Maasai, Lake Naivasha, Kenya

Inside Hell's Gate National Park near Lake Naivasha, the Olkaria Maasai are confronting land acquisition and natural resource development by the Kenyan government and a parastatal energy company, KenGen. KenGen began operating in the Hell's Gate area in 1982 and the national park was established in 1984. The national park and the geothermal energy development affects multiple Maasai settlements, including some 20,000 people.<sup>117</sup> The Maasai are also in conflict with the neighbouring Kikuyu community over ownership of parts of the land.

In 2009, the Olkaria Maasai in Maiella won a court decision recognizing their traditional claim to the land they occupy on the border of Hell's Gate. But the court ordered that the land be individually allotted between Kikuyu and Maasai families, instead of being held in common by the Maasai community as has traditionally been done. Efforts by the local government and the courts to proceed with the allotment have met with conflict, protests, and ultimately violence that resulted in the

deaths of over 100 people.<sup>118</sup> According to community leaders, several members of the community have been 'bought out' and wish to proceed with the allotment so that they can sell their allotted portion to corporate interests.<sup>119</sup> In April 2011, a surveyor brought in to carry out demarcation as part of the allotment process was killed by community members.<sup>120</sup> As a result of community protests, the local government has stationed a rapid response unit of the Kenyan police in a tented camp on a hill overlooking the community.

The community now lives in the shadow of a constant police presence. In June 2011, police raided the community and used teargas to disperse community members.<sup>121</sup> Eleven men were detained and reported beatings and other forms of harsh treatment during detention at the police camp.<sup>122</sup> Any community gathering is the subject of police intervention.<sup>123</sup> In fact, when the authors of this report were interviewing community members, all sitting in circles on the grass, police armed with rifles came down off the hillside to investigate the meetings.

The Olkaria Maasai represent a common situation for minorities and indigenous communities who resist the acquisition and exploitation of their lands. They often are displaced, harassed and forced to become legal adversaries of the state or large corporations.

## Conflict triggers and exacerbating factors

The examples of the Olkaria Maasai, the Murle in Bor, and the Teso/Karamoja border conflict demonstrate the overlapping zones in which minorities experience conflict. In each zone, conflicts are exacerbated and triggered by a number of factors, including population pressure and climate change; low state capacity to provide security; weapons proliferation and dangers of disarmament; lack of coordinated conflict-resolution policies created by short-term donor funding; and programmes targeting minorities that can lead to a backlash. The following section will discuss each of these factors in detail.

### Population pressure and climate change

Kenya, South Sudan, and Uganda are at the confluence of two global crises – population growth and climate change. Kenya's growth rate is about 2.7 per cent; Uganda's is over three per cent, placing both countries in the top 25 nations with highest population growth. Data for South Sudan as separate from greater Sudan is not yet available, but data for pre-independence Sudan reflects a 2.5 per cent growth rate.<sup>124</sup> In concrete terms, for Kenya this rate of growth translated into the addition of a million people each year over the past decade.<sup>125</sup> As human population



increases so does the population of livestock. Reports on pre-independence Sudan, for example, indicate that livestock population increased 400 per cent over the past 40 years.<sup>126</sup>

In addition to more people and animals across Kenya, South Sudan and Uganda, average temperatures are predicted to rise by between 0.5 and 2 degrees Celsius by 2035.<sup>127</sup> These climatic changes, in conjunction with ineffective state policies to mitigate the effects of variations in rainfall, can lead to crises. During the field research for this report, the Horn of Africa, including Northern Kenya, was in the grip of one of the worst droughts and subsequent famine in decades. Kenya was already identified as a water scarce country in 2005 and pre-independence Sudan was categorized as water stressed.<sup>128</sup> However, reports suggest that South Sudan has extensive untapped ground water reserves.<sup>129</sup> Parts of Uganda and South Sudan are predicted to see decreases in precipitation of up to a centimetre by 2035, whereas Kenya's precipitation is predicted to remain constant.<sup>130</sup> According to South Sudan's Minister of Agriculture, Anne Itto, climate change is already having a negative impact on planting because of changes in rainfall patterns.<sup>131</sup>

The increasing scarcity of land and water in a region that is becoming warmer as a result of climate change can be a major contributor to conflict. During the 2010–11 drought in north-western Kenya, Pokot herders moved from the areas they normally occupy and created new villages along the river Turkwell, which is traditionally Turkana territory.<sup>132</sup> Because of the severity of the drought, the Turkana gave the Pokot permission to stay near the river. However, after the drought had receded somewhat, the Turkana expected the Pokot to leave. When they did not do so and instead started giving the locations Pokot names, the Turkana took their case to the local authorities, who then went to the Pokot and told them they had to vacate the area. According to Turkana interviewees however, the Pokot have refused to go despite the local government order. The Turkana fear that this state of affairs will lead to increased conflict along an already sensitive border between the two communities.<sup>133</sup>

As populations increase and more and more people seek land to provide for themselves and their families, traditional systems of land management that were developed under conditions of relatively small population and land abundance begin to break down. Moreover, increasing monetization of land as a result of corporate mineral extraction has strained customary allocation systems that took little account of the monetary value of land.<sup>134</sup> In the absence of effective and well-enforced state policy to regulate land allocation and use, conflicts erupt within communities and between communities in both rural areas and in population centres.

Exemplifying the problem, Batwa living in Uganda are victims of population pressures, among other issues. Kisoro district, home to the Rwamahano Batwa community, has one of the highest population densities in Uganda, with 324 people per square kilometre.<sup>135</sup> Only major metropolitan areas around the capital city, Kampala, Jinja and Mbale have substantially higher population densities. Batwa, who are prohibited from residing on their traditional lands in the forest, often are forced into becoming squatters. A few Batwa have been allocated small plots, sometimes of less than an acre, that have been purchased for resettlement purposes by charitable groups. However, given the land scarcity in the area even these tiny plots are subject to land grabbing by stronger neighbours from other ethnic communities.<sup>136</sup>

### Low state capacity to provide security

The lack of state capacity to provide adequate security is a major concern in all the three countries under study, though the problems vary substantially in degree across the countries.

Capacity problems are most severe in South Sudan's Jonglei State, where much of the region becomes virtually inaccessible during the rainy season. In addition, there is less reliable cell phone coverage compared to other parts of the region, the government is nascent and still struggling to develop capacity, and renegade leaders from the civil war still contest the power of the central government. A chief from Uror County said they are 'still waiting for the promise [the] of Minister of Interior... that he would send 4,000 police [or] army forces to create a buffer zone... We demand that politicians... get back to us and solve the problem by providing security that they promised.'<sup>137</sup>

A women's representative at the same meeting described how because of the limited phone network they cannot communicate with government officials when there is conflict and when they try to send messengers they are 'killed on the way before reaching the state headquarters.'<sup>138</sup> Perhaps most reflective of the lack of state control is a description by an Anyuak leader of other tribes disarming police during raiding between the Nuer and the Murle that spilled over to affect the Anyuak. The 'Nuer entered the kingdom and disarmed all the 26 policemen guarding the kingdom and the king, and took away 26 rifles which were officially assigned by the government. In the same raid, the Nuer looted 250 houses and displaced 370 people from the palace at Odonge Payam.'<sup>139</sup> This lack of capacity results in escalating cycles of violence.

In Kenya, the state has more capacity to provide security in many regions where minorities reside, such as the Nakuru and Naivasha regions which are relatively close to Nairobi. But communities say that there is little political will to assist marginalized communities. In more

remote regions, especially in pastoralist areas, the ability and willingness to intervene as conflict erupts is even lower. According to one Turkana leader, the presence of state security forces on the Kenyan side of the border in the Karamoja cluster is noticeably lower than on the Ugandan side. He noted that there is little incentive for security forces to intervene when the population itself is very heavily armed. 'We have to somehow create incentives for security personnel to actually provide security.'<sup>140</sup>

In Uganda, by contrast, the security presence in Karamoja is substantial – the Uganda People's Defense Force (UPDF) have established bush camps throughout the region and soldiers are regularly seen on patrol in the area. However, this policy of increased military presence and ongoing disarmament is not without serious challenges, as described below.

### **Weapons proliferation and dangers of disarmament**

Cattle raiding, carried out by groups of youth warriors is a cultural practice that has been in place for centuries amongst the pastoralist communities of Kenya, South Sudan and Uganda. Raiding is a rite of passage into adulthood and also supplies the herds of cattle needed for dowry.<sup>141</sup> In the past several decades however, the availability of small arms and light weapons has increased the deadly nature of these raids.

*Raiding used to be done with spears and arrows, but small arms proliferation has changed the whole nature of raiding. In the past, in South Sudan, when one was caught there would be a fine of seven cows per one cow stolen. This lowered the incentive for raiding because you would lose everything if you were caught. But with the gun, everything is different.<sup>142</sup>*

Cattle raiding has also become interlinked with other regional conflicts, such as the war of independence in Sudan and the war in Northern Uganda.<sup>143</sup> These regional conflicts have flooded all three countries with weapons, which in turn has undermined traditional conflict resolution and social control mechanisms based on the power of the elders. 'In the past, elders in Jonglei could control the situation, at least until the government could arrive to make a resolution to the conflict. But today with all these guns and after all these years of struggle, the youth disregard the elders often.' Another interviewee echoed this sentiment, noting that 'the chiefs used to sit down and understand each other, but now with the guns everywhere, what can they do?'<sup>144</sup>

Governments in Kenya, South Sudan, and Uganda have all responded to inter-community conflict,

particularly in pastoralist areas, through disarmament programmes at various times. In Uganda, disarmament has been a critical component of state policy in Karamoja – security is seen as a critical prerequisite for the state's development plans for the region. As of 2009, the army had collected more than 29,923 guns from Karimojong warriors.<sup>145</sup> 'Now you can drive on this road and feel secure. Just last year it was closed for security reasons and there was no way to move without an armed escort.'<sup>146</sup> Although security has improved in Karamoja, the use of military operations to forcibly disarm communities can lead to human rights violations and escalating violence. 'Military counter-raiding and cattle recovery operations seem to be a blunt instrument in that often innocent parties have their livestock confiscated leading to further conflicts and sometimes deaths.'<sup>147</sup>

In South Sudan, disarmament has proceeded as part of demobilization and reintegration (DDR) operations to demilitarize the population after the civil war with the north – disarmament was specifically authorized in the 2005 peace agreement that ended the conflict. However, the programme has been criticized for focusing on the modernization of the Sudan Peoples' Liberation Army, rather than community security, as well as being too centralized.<sup>148</sup> Centralization has resulted in a lack of understanding of the varying local contexts of disarmament, a particular problem in Jonglei. Disarmament in many instances has been managed by the primarily Dinka-led state authorities, which has exacerbated ethnic tensions.<sup>149</sup> Jonglei was the site of some of the first disarmament campaigns in post-war South Sudan. The first attempt to disarm Nuer pastoralists in Jonglei resulted in the collection of more than 3,000 weapons, but also led to the deaths of an estimated 1,200 Nuer warriors and more than 200 civilians.<sup>150</sup> Another complicating factor in disarmament programmes in South Sudan's Jonglei State is that local 'militia' commanders tend to rearm the population almost immediately.<sup>151</sup>

The other well-documented problem with disarmament programmes is that they tend to operate unevenly, leaving disarmed communities vulnerable to attack from armed neighbours.<sup>152</sup> Both Ugandan Tepeth and South Sudanese Murle interviewees reported this concern, having been the victims of what they saw as attacks that were carried out specifically because neighbouring communities knew they had been disarmed.<sup>153</sup> Murle from Pibor described their perception that an attack was a direct result of the community being left defenceless after disarmament. 'Army commanders who are sent by the government to disarm the civilians always take a tribal line, as seen in the recent disarmament of people of Lekuanglei who were left defenceless to such a horrible massacre from the same Nuer community

whose sons control the army in Murle land.<sup>154</sup> Reports indicate that Nuer in Jonglei similarly see themselves as having been attacked after being disarmed at various points in the past several years.<sup>155</sup>

Because the South Sudanese government has little capacity to provide protection to disarmed communities in Jonglei,<sup>156</sup> communities resist disarmament and rearm quickly. In Uganda, past disarmament programmes encountered similar problems, with communities quickly rearming and resisting the forcible disarmament campaigns. Recently however, the security situation appears to have improved somewhat, with roads that previously were closed for security reasons now open for general use and communities reporting somewhat improved conditions.

Finally, disarmament programmes are often not coordinated regionally between the governments of Kenya, Uganda, and South Sudan.<sup>157</sup> This is a particular problem in what is termed the 'Karamoja cluster,' where the borders of the three countries intersect. Because of the cross-border ties between ethnic communities in the region and the ease with which borders can be crossed, disarming a community only on one side of the border has relatively little effect. The International Conference on the Great Lakes Region is making some headway in this regard, holding regional consultative meetings to try to coordinate disarmament and reduce the availability of small arms across Kenya, Uganda, South Sudan and Ethiopia.<sup>158</sup> Experts agree that in this region armed cattle raiding is intimately linked with resource scarcity, lack of development, and few alternative livelihoods.<sup>159</sup> The need for holistic disarmament programmes that are regionally coordinated, respect the human rights of communities, incorporate sustainable natural resource management, and are linked to livelihood programmes targeting youth in particular are the only way to break the cycle of violence in the region. As one interviewee in South Sudan put it, 'idleness and the power of the gun is a lethal combination.'<sup>160</sup>

## Ineffective conflict resolution frameworks

When describing the cycle of revenge raids in Jonglei State in 2011, a Murle interviewee said that 'no one was talking peace.'<sup>161</sup> Though there have been multiple attempts to resolve the violence in Jonglei and elsewhere, this statement reflects the fact that there is no effective, comprehensive resolution framework for conflicts over land and natural resources in the region.

Current strategies to mitigate inter-community conflicts in East Africa are an ad hoc mixture of government disarmament programmes (particularly in pastoralist areas), government peace-building programmes

such as the creation of local peace committees, donor agency/NGO facilitated peace 'conferences' with traditional leaders and local government officials in response to crises, a variety of NGO-driven community-based conflict mitigation and rights-based education and livelihoods programmes, along with community-initiated negotiation efforts. Coordination and sustainability of these efforts is the greatest challenge for both communities and policy makers, because when applied in an uncoordinated manner these conflict resolution strategies can engender more conflict in the long term.

There have been multiple efforts to enhance regional responses to violent conflict in East Africa. The Eastern Africa Police Chiefs Organization promulgated a Protocol on the Prevention, Combating and Eradication of Cattle Rustling in Eastern Africa in 2008.<sup>162</sup> However, by 2011 governments had not yet ratified the document. As described above, the International Conference on the Great Lakes also has been attempting to coordinate disarmament and link it with development priorities.

The Intergovernmental Authority on Development (IGAD) established the Conflict Early Warning and Response Mechanism (CEWARN) in 2001. But the crafters have noted that 'cooperation in the field of early warning and early response is only likely to be achieved gradually, as confidence in the system grows ... It is for this reason that the mechanism's initial focus is conflict in pastoral areas along borders.'<sup>163</sup> However, even this has proven a challenge. A conflict resolution practitioner from Turkana noted that he has seen little impact from CEWARN other than the collection of data,<sup>164</sup> which is not always made available in a timely manner. Data collection is hampered by the fact that CEWARN monitors are not always members of the ethnic community from which they gather data.<sup>165</sup> The director of CEWARN indicated that the programme is attempting to provide more comprehensive analysis of data they have collected since 2003.<sup>166</sup>

Despite these initiatives, violent conflict over natural resources remains a reality in the daily lives of minority groups and their neighbours across East Africa.

## Challenge of short-term donor funding

One of the most commonly reported challenges by those implementing conflict resolution programmes in the region was a failure of donors and governments to recognize the need for long-term support to programming.<sup>167</sup> Experts across the region reported that they had been seeing success from programmes they set up, but then the funding ended. Interviewees particularly associated this problem with 'peace conference' models where traditional leaders, government officials, and other stakeholders are brought together to address crises and outbreaks of violence. These conferences result in

negotiated peace agreements designed to be adhered to by the communities in question. However, there is rarely funding for pre-conference preparation, in particular with youth warriors, or for follow-up support for implementing agreements and monitoring structures. As a result, interviewees reported instances of peace negotiations being concluded and then warriors executing raids 'before the elders' signatures had dried on the paper.'<sup>168</sup> This has been a major problem in South Sudan's Jonglei State, with numerous reports of broken peace agreements.

Other practitioners noted that donors are moving to much more short-term funding, for terms of only a year. This type of funding cycle makes the long-term work of conflict resolution almost impossible.<sup>169</sup> Moreover, the lack of funding for follow-up, monitoring and long-term engagement undermines community confidence in conflict-resolution initiatives, making success harder to achieve as time goes on.

### Programmes targeting minorities can lead to backlash

For minorities, specialized programmes to address their livelihood needs are often proposed as a mode of conflict resolution. But interviewees expressed that sometimes programmes that target minorities for special benefits can lead to frustration and backlash on the part of majority groups if not managed carefully. Recognizing the unique challenges faced by minority groups, it must also be recognized that many majority communities in East Africa also struggle to meet their basic needs. When they observe minority groups receiving targeted assistance from NGOs, and when they themselves receive no benefit, it can lead to a backlash against the minority group.

This has been the case, for example, with certain programmes designed to benefit the Basongora in south-western Uganda. The Basongora are a pastoralist community with a long history of displacement. They have traditionally occupied the Kasese region of Western Uganda. The community was initially displaced during the colonial era when their communally owned grazing lands in Uganda were first taken by the colonial government as a game park and then were gazetted as Queen Elizabeth National Park.<sup>170</sup> The community was further squeezed as its traditional grazing lands were split by the border between Uganda and Democratic Republic of the Congo (DRC), and then diminished by the creation of Virunga National Park in DRC. Searching for new pasture land, many community members moved into Tanzania and the DRC. In recent decades the community has been evicted from those countries and many have returned to Uganda.<sup>171</sup> When the Ugandan government announced plans to resettle them on land that had been allocated for a refugee settlement, leaders of the majority

Bakonzo community in the area objected. They noted that many in the majority group also were landless and had not been considered in the resettlement scheme.<sup>172</sup> Failure to vacate the land that had been allocated for Basongora resettlement led to violent clashes between the communities.

NGOs and CBOs working with minority groups on strategies to enhance their capacity and provide alternative livelihoods as a means of conflict resolution must be aware of minority/majority dynamics and design programmes accordingly. A related problem cited by activists in South Sudan is that international NGOs are crowding out local CBOs. International groups often have less understanding of the local context, especially inter-ethnic relationships, which can lead to backlash from inadequately designed programmes.<sup>173</sup>

#### Box 2. Lack of political representation for hunter-gatherers

For all minorities, lack of political representation is a major concern in relation to land and natural resource conflicts. In resource-scarce East Africa, communities without a political voice have little means through which to negotiate and protect their rights to land, resources, and thus livelihoods. Historical marginalization creates a generation of individuals whose voices are absent from the processes that impact their community's development. For hunter-gatherer communities, which tend to be smaller and highly marginalized, effective political representation is something they may have never experienced. Both Ogiek in Kenya and Batwa in Uganda described how their lack of political representation was directly linked to their land loss and lack of development. An Ogiek elder, Justus Kuresoi, described the long list of Ministers of Parliament (MPs) and administrative chiefs who have represented and administered the Ogiek region since colonial times, none of whom have been Ogiek.<sup>174</sup> According to Kuresoi, 'Even now, the chiefs and all the assistant chiefs are from other communities. Not a single person has ever come to know our problems. We should have God as our MP, not a person, because at least God knows us.'<sup>175</sup> The administrative district where the Ogiek reside, Nakuru, has many settlers from other communities and regions of Kenya. When 'opportunities arise and there is a quota for each district, the other tribes tend to gain both in Nakuru district and their home districts. The Ogiek, whose only homes are within Mau, are outnumbered and stand no chance of getting into the district quotas.'<sup>176</sup> This lack of political representation allows for other communities to take their land with impunity and locks them out of development opportunities, such as county development funds, educational bursaries, and other benefits.



For women in particular in the Ogiek community, political representation that might lead to increased recognition of their rights to land and other natural resources is a major challenge. Ogiek women are traditionally considered to be the equivalent of children – they cannot stand in front of men to address them, and young women in particular do not have the right to address older people in public.<sup>177</sup> Although these cultural norms are being challenged by some women leaders, they remain an added barrier to Ogiek’s women’s true participation in political life.

For Batwa in Uganda, historical discrimination has led to a severe lack of representation at any level of administration. As described in an African Commission human rights report:

*Tax exemption for this group is taken as a sign that the government does not recognize them. Although other minorities are presented in parliament through [nongovernmental organizations] and [community-based organizations], the Batwa pygmies are not. Other ethnic groups despise them.*

...

*Most acutely, there is no institutional mechanism by which Batwa people, in the future, could be involved in such political or decision-making strategies.*<sup>178</sup>

In Kisoro, Batwa described the fact that because of quotas requiring appointment of members of local councils who have disabilities, one Twa man is now a member of the Local Council (LC5). However, he is not understood to be on the council to represent Batwa interests, but instead to represent the interests of those with disabilities.<sup>179</sup> Batwa described the fact that their lack of representation makes it impossible for them to seek justice for land grabbing or other human rights violations and, as with the Ogiek, locks them out of development opportunities.

## Impact of conflicts on minority women

Conflicts over land and natural resources have disparate impacts on minority women and girls, who confront double discrimination on the basis of their minority status and gender. Women identified many aspects of land and resource conflicts that impact them directly and in unique ways. In pastoralist and agro-pastoralist communities in East Africa, women are often not land-owners in the formal sense but they consider themselves to be property owners nevertheless. Interviewees reported that women are

owners of the family home, the household goods and furniture and garden plots, as well as the produce from the garden.<sup>180</sup> Accordingly, land conflicts that result in raiding, eviction, or other forms of displacement can have a disparate impact on women’s specific property rights. For example, when Endorois in Kenya were evicted from their traditional territory to make way for a game reserve, many Endorois houses were destroyed by the government. This resulted in women in particular losing all of their possessions.<sup>181</sup> Iteso women from Uganda described the fact that during raids, not only do warriors from neighbouring communities steal cattle, which traditionally is a measure of male wealth, but they also uproot cassava and other garden plants, a serious blow to women who have laboured to plant the crop.<sup>182</sup>

Women interviewees also reported other serious violations of their basic human rights, perpetrated by state actors and by members of other communities, as a result of conflicts over land and natural resources. Iteso community members reported assault and rape of women during raiding.<sup>183</sup> Endorois women reported being assaulted and beaten by government agents during evictions.<sup>184</sup> Tepeth women reported that girls and women were sometimes killed by neighbouring communities during cattle raids.<sup>185</sup>

### Abuses by security forces

When conflict breaks out between communities, or between governments and communities, security forces often move into the area to try to quell the violence. This often has a negative impact on women and girls. One Tepeth focus group participant described how when the Ugandan People’s Defence Forces (UPDF) conduct forcible disarmament operations, the men leave the communities to sleep out in the bush so as not be caught up in the cordon and search exercises. This leaves the women and children vulnerable and unprotected in the villages, and subject to being roughed up by the security forces. In addition, cordon and search exercises round up women, children and men equally according to Tepeth community interviewees.

*The night raids are terrible. The army comes and makes everyone, even women and children sit outside in the cold for hours in the middle of the night. During one operation I had to sit outside all night and then in the morning was forced to go and count the cows for the army men. I started counting and then the army man slapped me and told me I wasn’t counting right and that I would have to start again.*<sup>186</sup>

Iteso in the Katakwi district of Uganda have for the past several years confronted ongoing raids from

Karimojong. When Iteso sought state protection from the raiders, local security forces suggested that they move into less dispersed settlements where they could be more easily protected. Iteso moved into what they term ‘Internally Displaced Persons (IDP) camps’ for their own protection.<sup>187</sup> According to community members however, this displacement has had devastating effects, primarily for women and girls in the community. Because of the community’s new proximity to security forces, young women from the community are more easily drawn into sexual relationships with members of the security forces, which has led to early pregnancy, sexually transmitted infections, and school drop-outs.

Olkaria Maasai women also report negative consequences from living under constant police supervision. Police reportedly use the threat of harassment and sexual assault against the women in the community as a means of social control over the men. Men being detained were told that if they continued to resist arrest the police would fetch the women of the community and ‘do whatever they wanted to the women.’<sup>188</sup> The constant police presence places women under immense stress. Women said, for example, that ‘if someone was working on a house, they have stopped out of fear, because no one knows whether they will be allowed to stay on the land.’<sup>189</sup> Women feel as though they ‘are in prison,’ and the stress distracts them from their daily activities such as caring for children and their homes because they never know what the police will do next.<sup>190</sup>

### **Conflict-related displacement**

Conflict over land and natural resources often creates new occupiers of land, as communities are forced to flee conflict and others seize the opportunity to occupy their abandoned property, and accordingly communities are displaced. Ongoing cattle raiding in South Sudan’s Jonglei State for instance, regularly displaces thousands of people. Raiding in Karamoja has also led to displacement of the Iteso community as described above. They report that their traditional structures for protecting the interests of young women have been eroded during their displacement. Iteso people have lost much of their community wealth as a result of the raids and thus cannot afford to send girls to school. In addition, traditional mechanisms of social control and gender roles have broken down because the community has been forced into crowded living conditions. The community described that when they were able to live safely outside of the camps,

families had sufficient space on their traditional lands to build gender-separated huts; this separated living was an important part of young adults’ development. In the camps however, families are forced to all live in one small hut. For Iteso families, there has been a direct relationship between this displacement and a breakdown in gender roles and social order within their community.

### **Risks due to women’s traditional role in resource management**

Conflicts over land and natural resources particularly affect women and girls because of their traditional role in procuring water, fuel and traded goods for the family. Inter-ethnic conflict often disrupts access routes and trading relationships. As a result, women have to travel longer distances to access water, fuel and traded goods. A Nuer women’s representative from Uror County in South Sudan’s Jonglei State described how during ethnic conflicts women and children are ‘facing starvation.’<sup>191</sup> In Uganda, conflict between Batwa, who were evicted from their traditional forest lands to make way for a national park, and Bakiga, whose territory Batwa have been forced on to as squatters, has resulted in severe problems with access to water. A NGO project designed to build a shared Batwa/Bakiga watering point has routinely been undermined by some members of the Bakiga community who drain all the water.<sup>192</sup> Instead of being able to access the nearby water source designed for joint use, Batwa women are forced to spend more than half a day walking five kilometres or more to access an alternative source where they have to purchase water.<sup>193</sup>

Maasai and Ogiek women in Kenya also reported that conflicts over land prevented them from being able to trade for goods with neighbouring communities, forcing them to travel longer distances to access needed goods, or simply do without.<sup>194</sup> Long periods of travel to access basic resources for subsistence create serious risks both for women and their children. One such risk was described by interviewees in South Sudan. In Jonglei State the shortage of water access points is acute and women may be forced to travel up to 10 kilometres to find water during the dry season. Abduction of women and children during raiding in South Sudan’s Jonglei State is a major concern, with sometimes hundreds of women and children being taken in a single raid.<sup>195</sup> When women are out searching for water, young children may be left alone at home, which can elevate their risk of abduction.<sup>196</sup> Women also are abducted or otherwise injured as they search for water for their families.



# Successful conflict mitigation

Resolving conflicts over land and natural resources can be extremely challenging, as demonstrated by the discussion above. Communities and activists can become frustrated, especially given the lack of political will, power imbalances, and cycles of violence. Nevertheless, communities interviewed for this report described important gains, even if seemingly small or short-term. Some of these successful strategies are described below.

In considering conflict resolution models, it's clear that different strategies are required for each of the zones of conflict described above – inter-community conflict on traditional lands, conflicts between minorities and the state or corporations, and minorities trying to access lands in population centres. Minority groups themselves are well aware of this fact, and describe the different strategies they use to address the multiple conflicts they face, often simultaneously. Clearly, many conflicts overlap and merge into one another, especially when powerful political or corporate interests exploit ethnic differences for economic gain. This reality underlines the need for comprehensive and holistic strategies to bring peace to communities. The case studies below demonstrate varying conflict resolution methods used by communities in different zones of conflict.

## Community-initiated conflict resolution

Many interviewees discussed the use of 'peace conference' models to resolve interethnic conflict. These aim to bring elders and government officials together to negotiate and agree on principles to prevent conflict. However, interviewees said that these models often failed because they did not involve the entire community in preparation for and monitoring of the agreement. But Tepeth community members in Uganda described a ground-up model of inter-community negotiation that has been successful.

### Case Study: Tepeth, Uganda

When Tepeth and Matheninko communities from Karamoja District were experiencing high levels of conflict in early 2011, Tepeth community members themselves began reaching out to their neighbours. First contacts were made by phone. Women reported that they often make

the first contact with their fellow women from the neighbouring community, then the men follow suit. Women can also lead the way and prepare the Tepeth community for peace by composing and singing songs for peace in the community.

Men then called their neighbours by mobile phone to negotiate various issues. Though phone-based negotiations were helping, it was taking too long according to community members, so they decided to bring people together in one place. The community asked for assistance from a NGO to provide transportation for community members to the meeting site, which was a commonly used grazing area; the NGO agreed and also offered to facilitate the meeting. Government officials were also invited to witness the agreements between the communities. Community members agreed on a number of measures, including the development of a joint *kraal* settlement that both communities would work together to build. After that had been successfully accomplished, the communities agreed to progress toward creating jointly cultivated fields and ultimately a joint settlement where the communities could live together. Government officials offered to help build a school building and a health centre to be shared between the two communities, once the joint settlement had been established. Community members also reported that the government would assist with enforcement. Any individuals who violated the peace agreement would be arrested by government security forces in the area. Elders said that in addition to peace negotiations it would be critical to identify and sensitize youth to other livelihood options, apart from cattle raiding. Local NGOs had provided support in this way through funding for youth enterprises, such as a granary.<sup>197</sup>

The experience of ground-up negotiation between the Tepeth and the Matheninko reflected several characteristics that were reported as being important to success by a number of interviewees in Kenya, South Sudan and Uganda, specifically: community-initiated; participation of all sectors of the community, including women, men, youth and elders; traditional negotiation methods adapted to modern circumstances; support from other local stakeholders, such as NGOs; engagement of government officials, inter-community resource sharing projects; effective enforcement provisions, and integration of youth and alternative livelihood programmes. These

components also reflect successful conflict-resolution strategies as reported in other literature.<sup>198</sup>

The Tepeth–Matheninko negotiations also touch on one of the concerns raised by many activists relative to peace building programmes, specifically funding. This negotiation was initiated by the community, without any funding, and required only small inputs to facilitate. However, long-term supports for the agreement, such as alternative livelihood programming for youth, labour-intensive community projects, and government creation of infrastructure require a long-term commitment of resources by all stakeholders involved. Looking at peace agreements as the seed of the peace-building effort, instead of the outcome, can help conceptualize how these efforts should be funded. Funding needs to be allocated not solely for an event designed to create the peace agreement, but instead to support implementation of what can start as a very low-cost community-initiated agreement.

### Case Study: Turkana, Kenya

Another important success story was described by a member of the Turkana community in Kenya. The Turkana and Matheninko have been observing a peace agreement that was concluded in 1973 – the agreement has been honoured up to the present. Some of the reasons for the success of this measure include the fact that even more than 35 years later, members of the community remain aware of the fact that the agreement was sealed using traditional methods, which included burying a spear. In addition, each year herders from both communities renew the agreement through the spearing of a bull and eating the meat together out in the *kraals*.<sup>199</sup>

The agreement requires that Turkana from Kenya seek permission in advance from Matheninko leaders on the Ugandan side to bring their animals into Matheninko land to graze during the dry season. Turkana leaders have observed this request, going each year to negotiate not only with the Matheninko, but with the local council in Moroto and with the Ugandan People's Defense Forces for access rights. Turkana report that they leave their guns on the Kenyan side when they go into Uganda to graze and that as a result of the long-standing agreement, they feel safe.<sup>200</sup>

In addition, the communities have worked diligently to monitor the agreement. They have had donor support to use new technologies. For instance, in the previous decades the communities were supported in establishing radio relay stations to transmit information between communities along the Kenya–Uganda border. As a result, security forces are alerted, community leaders are called, and communities enhance their security by moving women, children, and livestock to alternate locations. More recently, communities have begun replacing radios with telephone communication and warnings. In order to

enhance the effectiveness of this system, a donor agency assisted the communities to approach two Kenyan cellular telephone providers to build signal boosters in the area. The phone companies were very responsive and now conflict resolution programmes are able to effectively use cellular communication to gather information from individuals who are out in the *kraals* and may be hearing about potential raids.<sup>201</sup>

### Box 3. Improving water access to resolve conflict

Access to potable water has been recognized as an implicit component of the fundamental human right to health by the African Commission on Human and Peoples' Rights.<sup>202</sup> Interviewees in Kenya, South Sudan and Uganda spoke about the need to increase the number and effective distribution of water access points to reduce potential conflict. For example, joint community building of water access points has helped to mitigate conflict between the Turkana and Samburu in Northern Kenya.<sup>203</sup> In South Sudan, an NGO programme to build a variety of water access points in a consultative community development process has been successful.<sup>204</sup> In this case, communities worked to create valley dams for cattle and infrastructure to salvage waste water from boreholes into run-off troughs for goats. For human consumption, boreholes were drilled after extensive community consultation. Communities were consulted about where new access points were most needed and where they could be placed so as to avoid new conflict. After the community consultation process, a hydroengineer would be brought in to assess the options for locating the borehole. Community members would also be trained in maintenance of the borehole and a water-users committee would be created to oversee management of the new resource.<sup>205</sup>

## Inter-ethnic conflict in a post-conflict context

### Case Study: civilian protection in Jonglei State

Conflicts in South Sudan's Jonglei State are at an entirely different level of severity from those in Kenya and Uganda. As in Uganda and Kenya, conflicts between pastoralists and agro-pastoralists in Jonglei have a basis in culture and tradition – cattle are the basis of bride price, raiding is seen as a passage into manhood – and in resource scarcity – conflict tends to increase during the dry season when communities need to travel long distances

and may cross into other ethnic territories to graze and water cattle. However in Jonglei, raids are carried out by thousands of heavily armed warriors, who are experienced fighters who have been at war for the past several decades during South Sudan's independence struggle.<sup>206</sup> Hundreds are killed on a regular basis in a single raid. Women and children are abducted in the hundreds as well, and tens of thousands of cattle are taken. Raids are regular and cyclical, happening on an almost monthly basis.

Moreover, the logistics of operating in Jonglei's vast, undeveloped rural areas make it virtually impossible for the new government to provide security to the population. The types of interventions that have been attempted in other countries in East Africa, even in other states of South Sudan, have not had lasting effects in Jonglei. Disarmament has led to violence and communities have rearmed. Peace treaties negotiated between communities regularly collapse.<sup>207</sup> The local police and military security forces are seen as ethnically biased and have limited capacity to respond to heavily armed populations of former fighters.<sup>208</sup> In addition, South Sudan's army launched a major operation against a rebel leader in Jonglei, George Athor, in March 2011, which is contributing to ongoing instability.<sup>209</sup>

One successful intervention has been intensive United Nations deployment through long-range patrols, and in particular Temporary Operating Bases (TOBs) that were established in Jonglei over a period of a few months in 2009. The TOBs were in the small towns of Akobo and Pibor, and were established in response to violent clashes between the Murle and Nuer. Although these types of operations are very resource intensive and logistically challenging, they reportedly provided peace for the local populations.<sup>210</sup> However, the temporary bases were closed after only a few months due to logistical constraints and complaints about the conditions from some of the countries who were contributing staff.<sup>211</sup> In 2011, a report noted that United Nations Mission in the Republic of South Sudan (UNMISS) was no longer seen as a major player in providing on-the-ground security for local communities, but instead was seen 'to be the people who come to count the dead after violence took place.'<sup>212</sup>

Organizations have recommended the redeployment of TOBs, or another comparable field presence, along with deployment of additional civilian staff to the bases.<sup>213</sup> This type of deployment would allow a break in the cycle of violence, so as to provide the opportunity for other holistic conflict resolution mechanisms to begin to take hold. After massive raids in August between the Murle and Nuer that left more than 600 people dead in Jonglei, UNMISS has deployed additional troops and roaming teams and is continuing regular surveillance flights.<sup>214</sup> It is unclear whether these troops will be deployed in a manner

consistent with the past success of the TOBs, but reports that the South Sudan army asked the UN in March 2011 not to deploy in certain areas so that they could carry out operations against Athor,<sup>215</sup> suggest the UN's operational flexibility may be limited. Given the level of violence in Jonglei and the lack of state capacity, it is critical that the international community find creative ways, to improve security, in consultation with the communities affected, in areas where civilians are most at risk.

## Conflict with state or corporate actors: community empowerment through litigation

### Case Study: Endorois, Kenya

The Endorois community in Kenya presents a successful example of a minority group using strategic litigation as the lynchpin of a comprehensive conflict resolution strategy. The Endorois pastoralist community has traditionally lived on the shores of Lake Bogoria and in the Mochongoi Forest. Since the 1970s, when Lake Bogoria was designated as a game reserve by the Kenyan government and the Endorois were evicted, they have been advocating for the return of their ancestral land. Despite promises by the Kenyan government to ensure that the community was compensated for their losses and to ensure that they directly benefitted from the creation of the reserve, none of these guarantees were ever implemented.

After attempts to negotiate with the government, the Endorois began litigation in the domestic legal system. When it became clear that litigation through the Kenyan system would fail to yield a fair hearing, the community formed a partnership with a Nairobi-based NGO, the Center for Minority Rights Development, and with Minority Rights Group International that focused on bringing their case to the African Commission on Human and Peoples' Rights.<sup>216</sup>

The African Commission found that the Kenyan government had violated certain fundamental rights of the Endorois community protected under the African Charter on Human and Peoples' Rights (the 'African Charter') and other international instruments and declared that 'the alleged violations...go to the heart of indigenous rights – the right to preserve one's identity through identification with ancestral lands.'<sup>217</sup>

In light of the findings, the African Commission declared that the Government of Kenya should recognize rights of ownership of the Endorois, restitute Endorois ancestral land and ensure that the Endorois community has unrestricted access to Lake Bogoria and surrounding sites for religious and cultural rites and for grazing. In

addition, the Commission recommended that the government pay compensation to the community and pay royalties to the Endorois from the profits of the reserve.

Apart from the litigation strategy, which was designed to resolve the conflict with the state, the process of engaging the community throughout the seven years of litigation enhanced community capacity around conflict prevention generally. The Endorois were concerned that a ruling in their favour might lead to a backlash against the community. The Endorois engaged in a specific strategy to reach out to as many different indigenous communities and civil society groups as possible, in Kenya and the region. The community used traditional networks to keep other communities informed at multiple levels about the case. This strategy ensured that these groups would gain ownership over the decision as one that could positively impact all indigenous groups, instead of simply leading to benefits for the Endorois alone.<sup>218</sup> This also involved working with the media to attempt to influence coverage in a way that would mitigate any potential conflict. The strategy was effective, as evidenced by the thousands of individuals who joined the Endorois in a celebration of the ruling – indigenous communities from across Kenya and the region came to Lake Bogoria to congratulate the Endorois and celebrate the historic ruling.

Looking ahead to extensive negotiations with the government of Kenya over implementation of the African Commission's decision, the Endorois have developed a participatory community structure to prepare for this process and mitigate intra-community conflict. Individuals from all sectors of Endorois society, including elders, women, elites, and youth have been engaged in a comprehensive effort to prepare documentation and evidence that may be required as part of the implementation negotiations. Groups of community members are working together on demarcation of boundaries, documentation of losses, and recommendations as to compensation, preparation for wildlife management and conservation, as well as revenue sharing. In being well prepared, the Endorois feel they will negotiate with the government from a position of strength that will help to mitigate and conflicts or potential divisions within the community.<sup>219</sup>

#### Box 4. Using community media for conflict resolution

Communicating about issues across ethnic boundaries can be an important conflict resolution strategy. In East Africa, community radio is a critical communication tool used to educate communities and engage in discussion on a wide range of issues. Minority communities also are using this strategy to mitigate or prevent conflict. Radio is a particularly effective communication tool for rural communities in which literacy rates are low.

In pre-independence Southern Sudan, community radio was used in a programme designed to reduce natural resource-based conflicts among pastoralists. A UNDP project broadcast a weekly radio magazine on pastoralist issues, conflict mitigation strategies, and natural resource management. The radio programmes also broadcast the results of research studies that were conducted during the project and used the findings as a basis for radio debates on the issues.<sup>220</sup> Other programmes in South Sudan have provided solar-powered crank radios to particularly vulnerable groups, such as women and the elderly, to ensure their access to the messages.<sup>221</sup>

During the Endorois case in Kenya, community members regularly spent time on radio talk shows to provide updates about the case.<sup>222</sup> This technique allowed other ethnic communities in the area to stay informed and also provided the opportunity for them to interact with Endorois and to ask questions about how the case might affect them. This strategy was an important part of conflict prevention methods used during the case.

In Uganda, groups working on the Teso/Karamoja border conflict also use community media to support conflict resolution.<sup>223</sup> Radio programmes allow community members to describe how the border conflict and escalating violence affects them. Programmes also provide a forum for facilitated dialogue between individuals from the two communities, as a means of modelling conflict resolution strategies. The programmes also allow an opportunity for people to express frustration in a non-violent way. Iteso community members cited this strategy as a helpful means of diffusing conflict.<sup>224</sup>

# Role of regional and international mechanisms

Conflicts impacting minority groups take place not only within the framework of national legal institutions but also within the larger framework of international and regional policy development designed to protect minorities and to address land and natural resources

management. Table 2 outlines key international and regional instruments as well as mechanisms and programmes related to minority rights, a few of which are discussed in more detail below the table.

**Table 2:** Key mechanisms related to minorities and natural resource conflict

United Nations Instruments, Policies, and Mechanisms	Africa-wide Instruments, Policies, and Mechanisms	East African Instruments, Policies, and Mechanisms
Convention on the Elimination of all Forms of Racial Discrimination	African Charter on Human and Peoples' Rights	Agreement Establishing the Intergovernmental Authority on Development (IGAD)
Convention on Economic Social and Cultural Rights	Protocol on the Rights of Women in Africa	Protocol Establishing a Conflict Early Warning and Response Mechanism (CEWARN)
Convention on Civil and Political Rights	Africa Union (AU) Policy Framework on Land	Pact on Security, Stability and Development in the Great Lakes Region: <ul style="list-style-type: none"> <li>• Protocol for the Prevention and the Punishment of the Crime of Genocide, War Crimes and Crimes Against Humanity and all forms of Discrimination</li> <li>• Protocol Against the Illegal Exploitation of Natural Resources</li> <li>• Protocol on the Protection and Assistance to internally Displaced Persons</li> <li>• Protocol on the Property Rights of Returning Persons</li> </ul>
United Nations Collaborative Programme in Reducing Emissions from Deforestation and forest Degradation in Developing Countries (UN-REDD)	AU Policy Framework on Pastoralism	
United Nations Declaration on the Rights of Indigenous Peoples	Resolution on the Protection of the Rights of Indigenous Women in Africa (2011)	
International Labour Organisation No.169	Special Rapporteur on Refugees, Asylum Seekers and Internally Displaced Persons in Africa	
Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people	Working Group on Indigenous Populations/Communities	
United Nations Universal Periodic Review (UPR) Process	New Partnership for African Development/CAADP	

Uganda and Kenya have ratified or signed on to each of the treaties identified above in grey. South Sudan is expected to accede to many of the treaties which the Khartoum government had ratified, but South Sudan's status in relation to many of the treaties and agreements above remains unclear. While all of the mechanisms above are important for minority rights and provide unique avenues for advocacy, certain frameworks are particularly

relevant to land and natural resource conflicts, and are discussed below.

## African Commission on Human and Peoples' Rights

The main African human rights treaty is the African Charter on Human and Peoples' Rights (African Charter).<sup>225</sup>



The African Charter is a critical instrument for protection of the rights of minorities and indigenous peoples because of its strong emphasis on group rights. The African Commission on Human and Peoples' Rights monitors and interprets the Charter, and hears complaints about specific cases of violations. The recent Endorois decision from the African Commission, described in detail earlier, is a landmark in that it recognized and defined the nature of indigenous communities in relation to traditionally held territory, noting the interrelationship between land, identity, culture, and religious expression as well as the right to development. The African Commission has also decided other key cases related to natural resource and land conflicts. The case of Centre on Housing Rights and Evictions (COHRE) v. Sudan, provided important developments around the right to water as well as the right of peoples to be protected from violence and forced eviction by their government. The Commission found that the destruction of homes, livestock and wells amounted to a violation of the right to the highest attainable standard of health.<sup>226</sup>

The African Commission is also linked to the recently formed African Court of Human Rights. The African Commission is empowered to submit cases to the court when states fail to comply with recommendations issued by the Commission. Accordingly, use of the African human rights system to address minority rights is an important avenue for minorities to exploit, especially when dealing with violations that are a result of direct state action such as large-scale land acquisition or environmental degradation. It must be noted however, that the Commission issues non-binding recommendations to states, making implementation a challenge.

## United Nations REDD Programme

The UN-REDD programme on Reducing Emissions from Deforestation and Forest Degradation (REDD) was launched in September 2008 to assist developing countries to prepare and implement national strategies to prevent deforestation. REDD is an effort to create financial value for the carbon stored in forests, offering incentives for developing countries to reduce emissions from forested lands by preserving forests and investing in low-carbon sustainable development. Both Kenya and pre-independence Sudan are UN-REDD partners, which means that, though not currently receiving funding for national programmes, they participate in many REDD activities and will likely have the opportunity to seek funding for national programmes in the near future. Uganda is in the process of developing a REDD proposal.

UN-REDD can be an important mechanism for minorities, especially those who depend on forests for

their livelihoods. But minorities and activists must be vigilant in relation to the way in which states engage, or fail to engage, with communities in the REDD process. In Uganda for example, as the government prepared its REDD efforts, a review of the consultation process revealed that the Batwa had not been effectively included in the consultation process.<sup>227</sup> Once included through NGO facilitation, however, the Batwa had important recommendations to make. Specifically, the Batwa recommended clarification of carbon rights in law before funds from the programme start flowing in the state, that the government of Uganda should use any potential revenues to ensure benefit to local communities, in particular supporting alternative livelihoods for Batwa, and that revenues from any programme should flow directly to the Batwa instead of being administered through local government institutions which have engaged in historic discrimination.<sup>228</sup>

## Great Lakes Pact

The Great Lakes Pact and its associated protocols were adopted in 2006. Countries that agree to be bound by the Pact must also adopt all of the associated protocols without reservation – Kenya, Uganda, and pre-independence Sudan all did so. The Great Lakes Pact and its protocols include important directives on illegal natural resource exploitation and on development-induced displacement. Article 5 of the Pact's IDP Protocol mandates that, among other measures, states allow displacement only for a compelling public interest, use all means to minimize displacement, obtain free, prior and informed consent of those effected, provide adequate and habitable sites for relocation, and ensure participation of the effected peoples including women in their relocation, resettlement, or return.

Because the Great Lakes Pact is relatively new, knowledge about its provisions is low at most levels, from communities to policy makers. Each member state is required to have a coordinating body to implement the pact, but relatively few civil society organizations are engaging with this process. In Kenya in particular, where the new constitution incorporates all ratified treaties as part of domestic law, advocacy and litigation around implementation of the provisions of the Pact could be a helpful avenue for addressing conflicts over land and natural resources. In Southern Sudan, ensuring that the Pact is ratified by the new state should be a priority.

## African Union policy frameworks

African Union policy frameworks were mentioned by minority rights activists and policy makers as helpful

instruments for informing their efforts at the national level.<sup>229</sup> In an era of ‘African solutions to African problems’ these home-grown policy models can be particularly powerful for national advocacy efforts. In particular, African Union policies on land<sup>230</sup> and pastoralism<sup>231</sup> are of particular relevance to minority rights and land and natural resource conflicts.

The African Union Framework and Guidelines on Land Policy in Africa addresses the legitimacy of indigenous land rights systems.<sup>232</sup> The Chair of the South Sudan Land Commission noted that the AU framework had formed the basis of South Sudan’s draft land policy.

The African Union Policy Framework for Pastoralism is a powerful recognition of the value of pastoralism across the continent.<sup>233</sup> Using the Framework to push for recognition and policy change at the national level is being undertaken by civil society in Uganda, as part of Uganda’s process of developing pastoralism and rangelands policies.<sup>234</sup> Kenya has followed a slightly different route, through development of a Draft National Policy for Sustainable Development of Arid and Semi-Arid Lands (ASAL).

From the array of instruments in Table 2, it seems clear that there exist strong policy frameworks and special mechanisms for integrating human rights, land and natural resource management, and conflict resolution in

the three countries under study. The mechanisms present non-violent modes of conflict resolution through which minorities and neighbouring communities, governments, and corporations can address conflict. However, minority communities often have little if any knowledge of these frameworks and are unable to access them directly because of resource and other capacity deficits.

Communities and advocacy organizations are making efforts to use many of the mechanisms mentioned above. For example, Minority Rights Group International has focused resources on enabling minority communities and indigenous people to effectively bring communications to the African Commission on Human and Peoples’ Rights. The International Work Group on Indigenous Affairs (IWGIA) works closely with the African Commission’s Working Group on Indigenous Populations/Communities to facilitate the working group’s visits to indigenous communities across Africa. Development actors are working in partnership with IGAD/CEWARN to bring local conflict-resolution actors from across the horn of Africa together to share best practices and conflict resolution models that can be adapted to other contexts or adopted as state policy.<sup>235</sup> Nevertheless, much work remains to ensure that minorities can claim their rights through these frameworks.

# Conclusion

Land and resource conflicts facing minority communities are complex. Conflicts emerge when minority communities interact with majority groups or with state and corporate actors. Minorities confront multiple conflicts simultaneously, and develop different strategies to address their vulnerability, including drawing on traditional dispute resolution mechanisms, taking advantage of modern technological advances, engaging in strategic litigation, and linking basic development goals such as water access and alternative livelihoods to conflict mitigation. It is clear from visits with communities across Kenya, South Sudan, and Uganda that they are working to find creative solutions, but that they require support from the government and civil society to help address power imbalances that emerge as a result of their minority status and historic discrimination.

At the centre of many of the conflicts described in this report is state failure to formulate responsive mechanisms that would facilitate respectful consultation with minorities and indigenous peoples and that would recognize their fundamental human rights. It is critical for

states to take an interest in developing and deploying coordinated national and regional mechanisms to mitigate conflicts that are negatively impacting minority communities, as well as their neighbouring communities. Because of the transitional and developing nature of the legal contexts in Kenya, South Sudan and Uganda, there currently are important opportunities to push for much needed reforms and policy innovation.

Most important, there is a great need for these mechanisms to emerge rapidly. Many communities are extremely vulnerable and face losing more of their cultural identity if measures are not taken immediately. Apart from leading to loss of culture and identity, the conflicts highlighted in this report lead to loss of life on a scale that is entirely unacceptable. Especially in a post-conflict context such as South Sudan, urgent measures must be taken in order to prevent further escalation in violence that has already claimed thousands of lives. Recommendations below are designed to provide some measures to address these needs.

# Recommendations

## To the governments and parliaments of Uganda, Kenya and South Sudan:

- Work with civil society to immediately provide social protection to hunter-gatherer communities, given their extreme vulnerability, small population numbers, and experience of severe discrimination. This protection should be in the form of immediate food, water, housing, medical and educational supports flowing directly to the community and formal recognition of land tenure.
- Ensure that government and private entities that engage in land acquisition abide by existing laws, policies and international human rights standards that require prior community consultation.
- Develop programmes with a range of stakeholders to enhance the participation of minority women and girls in decision-making on land and natural resource management.
- Ensure that disarmament programmes do not leave communities vulnerable to others who retain their weapons (including those from across national borders), and do not result in human rights violations, especially the rights of women and girls to be free from violence during disarmament.
- Given the requirements in all three national constitutions that formal legal systems take account of and be bound by customary systems for land allocation, collaborate with non-state actors to create mechanisms to provide information on customary systems to communities and the formal courts. This must go well beyond a traditional codification process, and should engage the entire community in a participatory and consensus-based process to assess and document the key principles through which land allocation takes place in a given community, especially related to women's rights to hold and use land.
- Dedicate resources to building capacity among non-state actors and communities to monitor and provide feedback into the implementation of UN-REDD and associated programmes through the World Bank and FAO, so as to ensure protection for minority rights and to mitigate conflict from misallocation of the

substantial resource flowing through the REDD mechanism.

## To humanitarian actors (governments and NGOs):

- Allocate funds to increasing water access points in water-stressed, conflict-prone areas, including boreholes, collection ponds, and valley dams. The process of determining locations for water access must be consultative so as to minimize any potential conflict, particularly with any downstream users in the case of valley dams. Women and girls in particular, as main users of water resources, should be comprehensively engaged.
- Allocate resources dedicated to developing and implementing a plan to promote mechanisms for participation in decision-making of hunter-gatherer communities so they can influence policies that affect them.
- Develop programmes to ensure that minority communities who are in conflict with state or corporate actors have effective access to accurate information about how land and natural resources have been allocated. Programmes should assist communities to conduct research and synthesize information in an accessible way related to relevant legal provisions, contracts or leases, revenue and other agreements that affect their traditionally occupied lands.
- Support and encourage parliamentary bodies focused on equal opportunity and land issues to visit minority communities to document their concerns and then to engage with the state on minority concerns. Adopt a preventive approach to land conflicts by assisting and funding efforts to delimit the boundaries of land held by minority groups. This might include programmes to carry out formal land surveys, but should also involve community-based efforts to demarcate customary plots through planting of trees or other comparable means of boundary creation.
- Engage in programmes to benefit minority communities must be cognizant of the potential for backlash and must use a programming approach that engages with and provides tangible benefits for dominant communities.

- Create dedicated funds to promote exchanges between isolated minority communities that provide opportunities to share conflict coping and resolution strategies that apply in each of the zones described in this report.
- Given the proliferation of legislation and policies related to land and natural resource management both nationally and regionally, donors should consider increasing their efforts and allocation of resources towards policy enforcement and effective implementation.
- Urge governments to develop detailed guidelines on what constitutes participatory and effective community consultation around land and natural resource extraction and transactions. These guidelines should take account of traditional community governance structures, international human rights standards requiring free, prior and informed consent, and participation of all sectors of the community including women and youth. Given the race to grab land in Kenya and Uganda, and especially South Sudan, this is an urgent priority.
- Organizations working with minority communities should prioritize assistance that will enable those communities to engage effectively with legal systems to obtain legally binding solutions to their land conflicts. This would include training lawyers to handle minority land claims, developing a holistic approach to litigation related to minority land claims, developing legal literacy, and creating a strategy for community empowerment around the litigation process.

## To minority communities and civil society:

- Minority communities and their allies should actively engage in monitoring the development of policies related to land, housing, and water access in urban areas to ensure that these policies incorporate minority rights and minimize ethnic enclaves and marginalization.



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# Notes

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- 208 'Security Promotion Seen from Below: Experiences from South Sudan', Peace Security and Development Network, 2011; 'Jonglei's Tribal Conflicts: Countering Insecurity in South Sudan', International Crisis Group 2009, pp. 19–20; Interview with David Konyi, Murle elder, Bor, South Sudan, 14 August 2011.
- 209 Fick, M., 'S. Sudan Asks UN to Avoid Battle Areas', *Washington Post*, 11 March 2011, at <http://www.washingtonpost.com/wp-dyn/content/article/2011/03/11/AR2011031102920.html>.
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- 229 Interview with Martin Orem, Coalition of Pastoralist Civil Society Organizations – Uganda Land Alliance, Kampala, Uganda, 10 August 2011; Interview with Mary Nzioki and Hannah Chira, ACORD-Kenya, Nairobi, Kenya, 30 June 2011; Interview with Robert Ladu Luki, South Sudan Land Commission Chair, Nairobi, Kenya, 19 August 2011.
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- 233 'Objective 2 of the framework is based on the need to improve pastoral resource governance for efficient conflict prevention and secured pastoral resource property rights, both within and across borders, and, support pastoral, mobile livestock production, and the processing and marketing of livestock products.
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## Land, livelihoods and identities: Inter-community conflicts in East Africa

In resource-scarce East Africa, minority groups face major challenges over the control of and access to land and natural resources. Minorities find themselves competing with other communities, with the state, and with corporate interests for control of resources upon which they depend for their livelihood, culture and future development. This report describes the situation of selected minorities and their neighbouring groups in Kenya, Uganda and South Sudan's Jonglei State. As globalization, population explosion, and climate change converge to increase the demand for land and other resources, these communities face extreme livelihood challenges, vulnerability to conflict, and ongoing discrimination.

Despite progressive constitutional and national policy statements, it remains a huge challenge for minority groups to use these legal regimes to deal with conflict over land and natural resources. Instead, the formal law is often used against communities to dispossess them of their land. This report documents case studies from a diverse array of communities dealing with different multiple types of conflict, from mineral extraction to cattle rustling, to drought, to inter ethnic violence to the creation of national parks for tourism.

Minority women often bear the brunt of conflicts over natural resources. Security operations to quell violence or evict communities expose women to multiple violations of their rights. Moreover, violence between communities leads to attacks on women and children and directly impacts women's particular property rights within traditional community structures.

This report highlights that communities themselves are initiating the most effective strategies of dealing with inter-ethnic violence based on customary practices. But current conditions of land scarcity, state intervention and resource extraction are straining or obliterating customary management in many communities.

Among other key recommendations, this report urges governments in the regions discussed to: fully implement their national policy directives on land and natural resources, which are generally progressive with respect to minority rights; develop guidelines on what constitutes participatory and effective community consultation around land and natural resource extraction, based on free, prior and informed consent; and recognise the value of indigenous peoples' knowledge of resource management and of customary practise, especially related to women's rights to hold and use land.