The Other Side of Oil Wealth: The Case for Compensation of Displaced Women

Draft

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The opinion, analysis and policy recommendations of this Report reflects the views of the author and do not necessarily reflects the views of IDRC or the Gender Unit
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ABSTRACT

International literature on both war and development in conflict zones has kept pace, first, with the growing ramifications of armed conflicts as they affect women and, second, with the serious human rights implications of displacement caused by development. Due to the magnitude of the problem of internally displaced people ("IDPs") worldwide, there is, however, still an ongoing need, at both national and international levels, for policies to deal with the impact of displacement and to fill the gaps in existing protection and resettlement regimes.

As a contribution to the international literature, this report documents the underexplored case for compensating internally displaced women ("displaced women"), using the example of southern Sudanese women from oil-producing areas as an empirical study. The report aims to prioritize the interests and compensation for displaced women who are single-headed households. The claim of compensation for displaced women coincides with the politically momentous signing of the Machakos Peace Protocol, on 20 July 2002, between the Government of Sudan ("GoS") and the Sudanese Peoples Liberation Army/Movement ("SPLA/SPLM"), to put an end to the 20-year civil war in Sudan. The parties have undertaken to facilitate the immediate return of IDPs, including those who were originally from oil-producing areas; however, the negotiations of the formula to share oil revenues did not consider the role that oil development played in the plight of these people, nor the role that oil development will play in rehabilitating their homeland. This report responds to this shortcoming and urges the GoS to compensate displaced women, who are the most disadvantaged group because of their limited access to resources, so that they can achieve better livelihoods upon their return.

This case for compensation is based on the analysis of a process resulting from conscious political choices, a process that marginalizes displaced women with respect to their treatment by government institutions and laws of protection. Notably, national oil policies and legislation, customary laws, and the social relations of gender and ethnicity are all factors compounded to constrain displaced women's access to resources. This report uses gender equity as a lens through which to explore and understand the different problems that displaced women and men face, and the different opportunities available to help them adjust to non-traditional gender roles and responsibilities imposed by war and displacement. Compensating displaced women upon their return is a legitimate and viable option. Compensation will enable them to participate or at least survive the new forces of the monetarized oil economy after war and displacement have shattered their families and tribal communities, the traditional sources of their security.

For the progress of oil development in post-conflict southern Sudan, GoS and SPLM must formulate gender-equity-based policies. These are fundamental for productivity in a monetarized oil economy. Adopting a gender-sensitive process is essential for ensuring the just and fair compensation of displaced women, who have no means to meet their basic needs upon their return.
PART I: BACKGROUND OF OIL DEVELOPMENT AND DISPLACEMENT IN SUDAN

The Government’s Attitude Toward Oil Development in Southern Sudan

- Hegemonic politics of oil development
- Forcible oil-development displacement
- Compensation plan ineffectual for displaced women

Oil development in southern Sudan originally began in 1974 by Chevron, the American-based oil company. The company discovered massive oil deposits in the Western Upper Nile and Sobat valley regions. At that time, Numeri’s government (1969–1985) was in power, with southern Sudan having self-government. The “southerners concern over discovery of oil in the region became rife ever since Chevron entered into a production sharing agreement with Khartoum.”\(^1\) Numeri created El-Wihda State out of the oil-rich district of Bentiu.\(^2\) Southerners believed that this was mainly to remove control of the district from the regional government.\(^3\) Chevron supported “the government security calculations in moving oil away from the volatile southern region.”\(^4\) When Chevron joined its Sudanese partner, the White Nile Petroleum Company, in building the pipeline connection to the Red Sea in eastern Sudan to export the oil, this project added to “the fermentation of grievance and political unrest in the region and ultimately fuelled the mobilization of support” for the Sudanese Peoples Liberation Army (“SPLA”\(^5\)). By supporting the pipeline, “Chevron put itself in direct confrontation with the southerners who were opposed to the project.”\(^6\)

Oil activities were disrupted by the outbreak of civil war in 1983, the main causes of which were the ending of self-government of southern Sudan, uneven regional development, and the imposition of Sharia (Islamic Law) as the dominant law of the country. Because oil activities had been suspended, displacement caused by oil development was not obvious, although there was evidence that in the 1980s the Nuer and Dinka, who inhabited oil areas surrounding El-Wihda and Heglig oilfields, were permanently displaced.\(^7\)

Oil development in southern Sudan is not a major cause of the civil war. It is, however, a major factor in the intensification of fighting between the Government of Sudan

\(^1\) Abdelgalil El-Mekki, “The United States, the Chevron Connection, and the Civil War in Sudan” draft with author of this Report at page 10.
\(^2\) Also called “Unity” State as El-Wihda is roughly translated unity.
\(^3\) “Discussion and Views” Sudan Now Magazine (Feb. 7, 1978) at 35.
\(^4\) El-Mekki, supra note 1, at 11.
\(^5\) Ibid.
\(^6\) Ibid.
\(^7\) Mary Anne Fitzgerald, Throwing the Stick Forward (New York: UNIFEM & UNICEF, 2002) at 1, 9.
The people of southern Sudan continue to suffer the effects of the civil war.

### War-Related IDPs, 1983–2002

<table>
<thead>
<tr>
<th>Area</th>
<th>IDPs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Khartoum state</td>
<td>1.8 million</td>
</tr>
<tr>
<td>SPLA/M controlled territories</td>
<td>1.4 million</td>
</tr>
<tr>
<td>Southern areas under GoS control</td>
<td>300,000</td>
</tr>
<tr>
<td>Transitional zone and eastern Sudan</td>
<td>500,000</td>
</tr>
</tbody>
</table>


In 1993, the GoS decided to resume oil development in southern Sudan. It desperately needed foreign revenue, which was running low due to United Nations ("UN") sanctions imposed because of Sudan's poor human rights record. It gave concessions to some multinational oil companies to operate oil activities through a consortium called the Greater Nile Operating Company ("GNOPC"). The Sudanese oil enterprise Sudapet holds 5 percent of the shares; the Malaysian oil company Petronas, 30 percent; China Petroleum Inc., 40 percent; and the Canadian Talisman Energy Inc. had 25 percent (now owned by India's ONGC Vindesh Ltd).

Control of the oilfields is strategic for both warring parties. Oil operations are carried out regardless of the danger of the fierce fighting to both local communities and oil company installations.

Successive governments have all treated the south as a source of wealth rather than being genuinely concerned with its regional development. The current regime continues this historical attitude.

Simultaneous development and fighting in war-torn oil areas has displaced thousands of civilians. International figures confirm that displaced women and children represent the majority of displaced people worldwide. For example, displaced women represent 51.8 percent of those 354,000 IDPs of concern to United Nations High Commissioner for Refugees ("UNHCR") in Sudan.

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9. Interview with Dr. Gelil Elmekki, Senior Program Officer IDRC, (IDRC, Ottawa, January 10, 2003).
10. According to UNHCR, of 19.8 million persons of concern to UNHCR majority of them are IDPs. 9.5 million (48.1 percent) are female. An estimate of 1.9 million are children under age 5 (11.6 percent); 55 million children of school-going age (32.9) half to the population 48.7 percent is aged between 18-59; whereas 1.1 million persons (6.9) are 60 and over. UNHCR, "Refugees, Asylum-seekers and Other Persons of Concern: Trends in Displacement, Protection and Solutions" (Oct. 2002) Statistical Yearbook of 2001, at 34.
11. Ibid.
IDPs Resulting from War and Oil Exploitation, 1999–2002

<table>
<thead>
<tr>
<th>Area</th>
<th>Date</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bentiu, Rubkona, Pariang, Mayom, Kummagon</td>
<td>Nov. 2002</td>
<td>100,053</td>
</tr>
<tr>
<td>Entered Mayom from Upper Nile</td>
<td>Sept. 2002</td>
<td>24,000</td>
</tr>
<tr>
<td>Fled Rubkona Province control</td>
<td>May 2002</td>
<td>75,000</td>
</tr>
<tr>
<td>Attacks for cattle displaced in Mayom</td>
<td>Nov. 2002</td>
<td>34,000</td>
</tr>
<tr>
<td>Seeking refuge in Rubkona/Bentiu</td>
<td>During 2000</td>
<td>60,000</td>
</tr>
<tr>
<td>Adar oil fields</td>
<td>During 2000</td>
<td>55,000</td>
</tr>
<tr>
<td>Koch</td>
<td>Dec. 2002</td>
<td>60,000</td>
</tr>
<tr>
<td>Five camps in Mlakal</td>
<td>Nov. 2002</td>
<td>13,000</td>
</tr>
<tr>
<td>Upper Nile</td>
<td>Jan.–April 2002</td>
<td>150,000–300,000</td>
</tr>
</tbody>
</table>


GNOPC came under strong pressure to introduce corporate social responsibility programs. According to a reliable source, Talisman's pressures prompted the GoS to open the compensation file of IDPs from oil-producing areas, and the company did provide technical and financial resources to support compensation plans.12

In 1999, the GoS established the Land Acquisition and Compensation Committee (“LACC”) to design and implement compensation plans for civilians relocated because of oil development.13 The GoS and GNOPC provide funds for compensation.14 As detailed in Part V, the GoS retains the absolute right to acquire any land for public purpose; but it recognizes tribal use of land and the traditional system to regulate such use. The traditional system entitles only male heads of households to own property. The GoS deals with tribal chiefs and male heads of households as official representatives of their communities and families respectively. Therefore, negotiation of relocation and payment of compensation involve only the male members of the tribe. Government policy and customary practices thus both discriminate against displaced women.

The Machakos Protocol, signed 20 July 2002, commits the GoS and SPLA to facilitate the immediate voluntary return of IDPs to southern Sudan, including those from oil-producing areas. But the GoS's and SPLA's current IDP resettlement plans do not directly meet the particular needs of displaced women. This report urges the GoS to compensate returning displaced women from oil-producing areas to enable them to maintain their livelihoods and to participate in or at least survive the new forces of the monetarized oil economy in post-conflict southern Sudan.

Part II explains the methodology of the fieldwork research used to analyse the problems of displaced women and to assess their compensation. Part III discusses a framework

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13 The terms “relocation” and “relocated” in this report refer to government-planned relocation of people due to oil development. 
for a national definition of IDPs that will encompass people who were forcibly displaced; the framework will determine eligibility criteria for protecting IDPs. That part also examines the shortcomings of existing national IDP policies. Part IV discusses displaced women’s access to resources in the context of the traditional administrative structure, legislation, and oil policies. Part IV also explains the extent to which violence, at both household and official levels, and violations of human rights are stumbling blocks for displaced women to realize better living conditions. Part V details, substantively and procedurally, the case for compensation of displaced women and why compensation upon their return is crucial for their livelihoods. Part VI concludes with recommendations for policy reforms.
PART II: RESEARCH METHODOLOGY

The Research Process

In examining the case for compensating displaced women within the contemporary configuration of national oil development in Sudan, it was important to make the experiences of displaced women central to the analysis. This required reviewing oil development and relocation from a gender perspective to understand the particular needs of displaced women and to generate new ideas on the interface between economic policies and social relations. The testimonies of displaced people and the interviews with officials provided a rich medium for investigating the complexity of the situation of displaced women, their ability to reshape the conditions around them, and the extent to which broader political, economic, legal, and social processes construct the status of these women.

The research process was important for understanding relationships at different levels: relationships between the GoS and displaced women, on the one hand, and displaced women and their communities, on the other. Cross-analysing these relationships produced evidence supporting the justification for compensating the returning displaced women. It is hoped that this report will be useful in encouraging the process of policy change.

In order to make transparent the manner in which the data were obtained, the next paragraphs detail the objectives and strategies of the fieldwork research.

Fieldwork Research

The fieldwork took place in Sudan over a six-week period, from 7 February to 12 March, 2003. It was generally a success. The main objectives were to identify displaced women’s coping strategies and to assess the extent to which national policies and legislation influence their position and claim to compensation. Different qualitative and quantitative methods were used to track policy discourse and to understand local communities’ perceptions, including those of displaced women, of oil development.

Reconnaissance Survey

The first step upon arriving in Sudan was to plan for the reconnaissance survey. The survey was divided into three phases. Phase 1 focused on the selection of locations of displaced women who belong to the Dinka and Nuer tribes and who are originally from oil-producing areas. Phase 2 was to select from among these tribes mixed groups (that is, comprising men and women) that were subjected to relocation and compensation plans. The outcome of these phases was valuable in selecting one site, Kummagon, in southern Sudan to assess the experience of these tribal members who did not manage to get to Khartoum. The last phase was to visit official IDP camps to assess the quality of services that displaced women receive from the GoS and humanitarian agencies and to work closely with GoS’s institutions dealing with oil development and relocation.

Two research assistants facilitated the survey and fieldwork process. One speaks the Dinka dialect. Due to the difficulty of women obtaining security authorization to enter the oil-concession areas (the author of this report being a woman), the male research assistant went to southern Sudan to fill in the questionnaires, assess the conditions of villagers who were subjected to relocation and compensation plans, and learn about the
villagers’ relationship with local administrative authorities. Being barred from oil-concession areas is a major obstacle to fieldwork research and one of the difficulties in doing research into oil policy in Sudan.

Research Sites

1. Al-kalakla Al-lafa
Al-kalakla Al-lafa is located 75 km south of the centre of the capital city, Khartoum. This location can be considered a makeshift, or squatter, camp. The research work at this site was worthwhile. The testimonies provide a myriad scenarios of the difficult coping strategies of displaced women. The majority of residents of this site are from Nuer and Dinka tribes from southern oil-producing areas, originally displaced by war\textsuperscript{15} or relocated by oil development and then moved to Al-kalakla Al-lafa for security and economic reasons. Interestingly, most residents of this site are new arrivals in the Khartoum area.

It is worth noting that 75 percent of displaced women at this site are single heads of their households (they are abandoned wives or widows, or have husbands still in southern Sudan). Women made the joint decision with their husbands that they (the women) would come to Khartoum with their children while their husbands stayed in southern Sudan to care for their huts and remaining cows. The women’s situation in the camp will continue until security and living conditions improve in southern Sudan. These women generate income from domestic and market work. They are unable to cope with the urban demands of schools and hospital fees. More seriously, they cannot obtain other government services because they have no identity card. Some of the men at this site have received compensation, some of them were denied compensation, and the rest are aware of the compensation issue but have not applied for it because they fled before the start of the compensation process.

An important reason for selecting Al-kalakla Al-lafa is that this site is a main location for Mahkamat Alashara Wiliat ["ten customary courts"], headed by tribal chiefs. These courts were established by the GoS in 1999 with cooperation from southern states’ offices in Khartoum—interestingly, not by a decree from the Chief Justice, who determines the competence and jurisdiction of all courts in Sudan. These offices coordinate the delivery of services to southerners living in Khartoum. Each of these ten courts examines intertribal disputes. Many IDPs go to live in Al-kalakla Al-lafa to be close to the city and to these courts, which they turn to as an official resort for their legal grievances.

2. Jebel Awlia
Jebel Awlia is located 150 km south of Khartoum and hosts one of the official IDP camps. The majority of residents in this camp are war-affected IDPs. They receive services from Popular Committees, which deliver services on behalf of the GoS and aid agencies. However, IDPs generate income from working in the informal sector. Men are involved in petty trading, construction of private property, factory work, labouring, and selling water from donkey carts. The women sell alcohol and food, and engage in prostitution and domestic work. Both men and women IDPs come into contact with government authorities when they apply for identity cards, licences for their small businesses, and health certificates for selling food. However, even with these official documents, they are raided by police because they sell alcohol—a criminal offence for which a fine and three- to six-month sentence is imposed. Young children accompany

\textsuperscript{15} The terms “displacement” and “displaced” in this report usually refer to displacement due to war and oil development.
mothers serving the sentence. The tension between the GoS and international agencies has negatively affected the services delivered to IDPs. Compared to international NGOs, national NGOs receive better facilities from the GoS, and focus on aid distribution. However, they lack the financial and technical capabilities of their international counterparts. Church organizations focus on vocational skills, education, and health care. The abrupt transformation from a traditional tribal subsistence lifestyle to one requiring monetary activities has increased the pressure on displaced women and affected all aspects of their lives. After police raids, domestic violence and alcoholism are the major problems they experience in their daily lives.\(^\text{16}\)

3. Kummagon

Kummagon is a garrison town located southeast of Heglig, a major oilfield in southern Sudan. The inhabitants of this town are mainly Dinka. The significance of this site is that it comprises a whole community who were relocated from Al Toor East, which is located further southeast of the Heglig oilfield. Some people were “compensated,” when oil development started in their homeland. Before they were relocated, the inhabitants of Kummagon were directly exposed to GoS/SPLA fighting, as well as to tribal militia raids. In one incident, 942 people were displaced and forced to live in IDP camps in relatively peaceful towns. When oil was discovered in the area, they were relocated to Kummagon. Acute malnutrition has resulted from their being denied access to humanitarian relief. The number of beneficiaries of compensation is difficult to determine due to their high mobility.

Selection of Groups of Displaced Women

The purpose of selecting women IDP groups is to gather information on their livelihoods and their expectations upon returning to their homelands. This information-gathering is an important step in terms of learning about group dynamics, problems, and traditional subsistence activities in relation to the displaced women’s current coping strategies, their collective perception of oil development, and the role they expect such development to play role in improving their living conditions in post-conflict southern Sudan.

Under customary norms, the life of a female is divided into four main social stages: childhood (called “Meeth” in the Dinka dialect); girlhood (“Bieem”), womanhood (“Diaar”), and old age (“Diaaardit”).\(^\text{17}\) These social stages are very important because they determine a female’s responsibilities or function at that particular stage. In each stage, females enjoy a unique social status that differs from that in another stage. A woman is expected to carry out the responsibilities and social activities attached to the stage in which she currently belongs. According to custom, a female in a younger stage must respect and be ready to serve one in an older or a senior stage; this is not considered exploitation of a junior by a senior.\(^\text{18}\) More important, among displaced women, the most vulnerable are those from a household headed by a woman. After war and displacement have shattered their lives, they then suffer harsh economic conditions with no experience or skills and must bear the responsibility of sustaining their children and other family members (especially elders).

\(^\text{16}\) See also Jeremy Loveless, Report on Displaced Populations in Khartoum: a Study of Social and Economic Conditions (Danmark: Save the Children) at 19.


\(^\text{18}\) Ibid., at 7-8.
Interviews with Individuals

The purpose of interviewing individuals was to assess what oil development and the compensation process mean for individuals in different circumstances—displaced women as well as for policy makers, judges, and peace negotiators. This information-gathering included selecting individual participants, surveying, collecting data, asking open-ended questions, and conducting semi-structured interviews.

After the research objectives were explained, and consent obtained from the research subjects, they were asked general questions about marital status, number of children and family members, and the type of income-generating work they performed. This information was later useful for categorizing individual participants.

The interviews with individual participants comprised open-ended questions and focused on how they came to Khartoum (in the case of the first two research sites selected), who helped them to do so, whether they received assistance from the GoS and humanitarian agencies, what they thought about oil development in their homeland, and whether they received compensation before coming to Khartoum. The interviewees appeared to be determined to return to their habitual residences in southern Sudan. They are struggling with economic hardship in Khartoum and shared the view that the GoS is arbitrary in dealing with them. The authorities do not allow them to conduct petty trading or build houses in the suburbs of Khartoum because they deem their activities and residence illegal.

Personal and group interviews were held with 100 displaced women. Within the four mixed focus groups of men and women, each group comprised 25 women. The people in these groups speak Nileotic dialects and broken Arabic.

Age
- 25–35 years, representing approximately 58 percent of studied groups
- 36–45 years, representing approximately 21 percent of studied groups
- 46–75 years, representing approximately 21 percent of studied groups

Marital Status
- 86 percent of interviewed women were single-headed households (widowed, abandoned, or with husbands remaining in the south to protect their huts and cows).
- 10 percent married and living with their husbands in the same household
- 3 percent unmarried
- 1 percent divorced

Displaced women who are single-headed households bore the brunt of war and displacement. This fact is of particular importance to this report, which aims to prioritize the interests and compensation of this category of displaced women. It is also worth noting that the percentage of divorced women is low because under customary and religious (Christian) law, divorce either is not permitted or is restricted.
Illiteracy

Of 78 percent of interviewed displaced women who are illiterate, only 15 percent attend adult education classes offered by churches and missionary schools in Khartoum. This low percentage reflects the fact that either displaced women work all day and thus have no time to attend classes or they do not have the means to pay for transportation and the minimal fee to attend adult classes. Illiteracy is the primary reason preventing displaced women from finding skilled work.

Compensation Issues

Most of the women interviewed in groups (85 percent) are aware of oil development and compensation, but regard them as men’s issues. All the men interviewed were fully aware of these issues. They all agreed that compensation was paid to very few people and that the amount paid was very little compared to the value of their lost land; they also agreed that the amount was insufficient for the beneficiaries to maintain their predisplacement living conditions. Three percent of the displaced women said their husbands received money from the GoS and used some of it to send them to Khartoum. Seventy-nine percent believed that the payment of compensation to men made no difference in their lives because they had no control or influence over their husband’s actions especially over the distribution of resources at the household level. Ninety-two percent thought that the men spent their money on remarrying and alcohol.

Focus Group Discussions

Since this report seeks to probe the qualitative processes of displacement and survival strategies, a convenient non-random sample was taken comprising 40 respondents (men, women, and girls) selected from the three sites. Key knowledgeable people were involved, including chiefs and community leaders, custodians of customary law, and people from community-based organizations and women’s groups.

Men and chiefs were interviewed to better understand the different perspectives of IDPs’ problems and constructs of social relations. Having a research sample of 20 men was a conscious choice based on the reasoning that such representation better reflected the objectives of the research, which focused on displaced women, the most marginalized and vulnerable group of the IDP population. Displaced men are higher up than displaced women in the hierarchy of power and employment and therefore are not exposed to the same level of violence and daily harassment as women.

The focus group discussions provided valuable information for the research strategy. When the chiefs were being interviewed, a number of people who were not selected for an interview gathered and became strongly engaged in the discussion. Their input was useful in clarifying some issues from other interviews and in assessing the degree of agreement on issues concerning the quality of GoS services, oil development, and compensation.

Interviews with Officials and NGO Activists

To track policy discourses, 10 in-depth, semi-structured, and open-ended interviews were conducted with policy makers, researchers, traditional authorities, judges, peace negotiators, and NGO activists involved in displacement policy.

The purpose of interviewing officials was to determine their views on oil policies, displacement, and the problems of displaced women in order to clearly understand the
position of officials on gender and compensation issues. Understanding their attitudes would be useful to gaining a more subtle appreciation of the rationales used to justify the GoS's practices.

**Documentation and Secondary Sources**

The literature and international reports on displacement, oil development, human security, citizenship, and gender justice were reviewed, as were local studies on IDPs and national laws and policies governing compensation for IDPs. The data were gathered from the Humanitarian Aid Commission, Ministry of Interior, Ministry of Justice, Ministry of Energy and Mining, and Centre for Gender Research and Training, among others. Information was also obtained from “The National Workshop on the Sudanese Women and Public Life.”

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PART III: FORCIBLE DEVELOPMENT DISPLACEMENT—TOWARD A NATIONAL DEFINITION AND PROTECTION OF IDPS IN SUDAN

Forcible Development Displacement and United Nations Guiding Principles on Internal Displacement

- Complexity of forcible development displacement—that is, displacement as a result of investment in conflict zones
- Inadequate international definition of IDPs
- Explicit recognition of forcible development displacement as a category of displacement
- The vague language of Principle 6.2(c) of the UN Guiding Principles on Internal Displacement
- Suggested modification of Principle 6.2(c)

The causes of displacement are divided into root causes and proximate causes. Armed conflict, drought, and ethnic strife are considered root causes, and development-induced displacement is considered a proximate cause. Development-induced displacement is responsible for the plight of millions of civilians around the world—for example, 10 million people displaced by dam construction, mining, deforestation, and other development projects in India; and 7 million in China. But when displacement is caused in a conflict zone by systematic coercion and intimidation to drive civilians out of their homeland, it becomes forcible development displacement ("FDD"), and its compounded damage toll is worse than other forms of displacement. FDD also involves other traditional types of displacement, yet it has its own complex characteristics and thus deserves better international treatment.

Until fairly recently, forcible displacement in general had not triggered international concern in a coherent manner, and the response of international human rights organizations to this type of displacement was slow. The reason for this lack of concern is that displacement was not, for the most part, considered a violation of international human rights norms. Indeed, it was not construed consistently as a human rights violation. Although violations of human rights lie at the heart of the cycle of displacement, neither population displacement nor armed conflict was a central focus in the development of human rights law. Horrendous forms of forcible displacement were considered violations of both international customary law and international "common morality." As a result, violations associated with displacement needed no specific articulation in the human rights framework. Some also believed that there existed no human rights framework dealing with displacement that would solve more problems than it would create. Finally, the root and proximate causes of forcible displacement are so diverse, and sometimes overlapping, that even defining an internally displaced person was a difficult task.

22 Ibid., at 42.
Different forms of international protection regimes, based on either customary international law or humanitarian law, also “converge” in the protection of forcibly displaced people. So the forcible displacement problem is dealt with by different protection regimes, some not offering any protection at all. As a result, the solution to the problem of displacement is left largely to national states with IDPs. These states thus deal with displacement as a sovereign internal matter, thereby limiting intervention by international humanitarian agencies and, most of the time, contributing to the rapidly escalating problems of the IDPs.

The need for an urgent international response to the IDPs problem led to the adoption of the UN Guiding Principles on Internal Displacement in 2001 [“Guiding Principles”]. These Guiding Principles lend necessary input to any viable national policy on IDPs. They provide a broad definition of IDP and urge national states to identify alternative solutions to the problem of displacement; formulate objectives for their displacement policy; organize a decentralized structure to spread out services for IDPs; cooperate with international agencies; design roles and responsibilities for the protection and relief of IDPs and for sustainable solutions; and coordinate external relations and mass information to increase public awareness. Like any other international instrument, these Guiding Principles are “soft”—that is, their implementation depends on the will of the national government concerned. Most of the time, this complicates the problems of IDPs since local institutions are unprepared to respond to their problems.

The Guiding Principles define IDPs as “persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border.”

This definition overarches all types of displacement. Yet it makes no reference to development-induced displacement in any of its categories. The justification for this omission is that development-induced displacement that is arbitrarily created can be treated as a “human-made” disaster.

There are a number of reasons for FDD to be considered a major cause of displacement. FDD goes beyond the legitimate objectives of development-induced displacement. It is a human-made disaster accompanied by continuing violence and violations of human rights. In the case of development-induced displacement, local communities are at least aware of the development plans to be carried out in their homeland and sometimes have the chance to “negotiate” relocation plans with the government. FDD victims, on the other hand, are unaware of development plans, forced out of their homeland, and exposed to a chain-reaction of violence. Abel Alair, a key person in current peace negotiations believes that “displacement of people from oil areas in southern Sudan is a military strategy to secure the areas surrounding oil-fields. And civilians are displaced because they are suspected of supporting opposition troops.” This means that forcible displacement results from several causes, complicating the conditions of displaced people. Moreover, in the case of FDD, the economic interests and security of the state are pervasive factors cutting IDPs off from their roots and exposing them to immense

23 Fitzpatrick, supra note 21 at 42.
25 Pettersson, supra note 20 at 17.
26 Research Assistant Interview with Abel Alair, (Khartoum, May 23, 2003).
human rights violations. This situation casts doubt on the level of national protection that victims of FDD will receive.

In addition, FDD shares the characteristics of displacement by armed conflict: military action with a clear intent to displace civilians is the norm; civilians are directly exposed to the military activities of various armed factions; control of territory is the main reason for the fighting. However, in the case of FDD, the dominant cause of violent military acts is to extract resources from civilians. Unfortunately, because of the nature of the movement of victims of FDD, they do not fall into the category of refugees and therefore do not receive similar protection.

FDD shares some characteristics with “international migration” that results from the failing economies of migration-generating states. Similarly, FDD results from the same governance pattern characterized by mismanagement of executive power and the state's lack, in some cases, of institutional checks and balances. Compared to migrants, however, victims of FDD have neither time to prepare nor choice or control over their movement.

Moreover, FDD is associated with the causes of internal displacement listed in the 2001 UN Report on IDPs—namely, internal strife, forced relocation, communal violence, and systematic violations of human rights. Particular complications affect the case of FDD, unlike other causes of internal displacement, which can give rise to claims against the agents of displacement. First, it is difficult to determine who has direct liability for causing the damage when, for example, acquisition of the oil-rich homeland takes place simultaneously with armed conflict and ethnic strife. Second, defining persecution in the context of armed conflict is central to the existing doctrinal basis of accountability and protection of war-displaced people. But defining persecution becomes exceptionally difficult in the case of FDD because it is not easy to distinguish root causes and proximate causes. Even where the distinction is relatively easy to make, the context of the relationship between proximate causes and other background factors complicates the search for the displacement-causing agents.

Another controversial issue is that Principle 6.2(c) of the Guiding Principles is vague when it comes to addressing development-induced policies. The principle provides, at 6.2, “The prohibition of arbitrary displacement includes displacement: (c) In cases of large-scale development projects which are not justified by compelling and overriding public interests [emphasis added].” The justification of Walter Klain, one of the drafters of the Guiding Principles, is that “development-related displacement is permissible only when compelling and overriding public interests justify this measure, that is, when the requirements of necessity and proportionality are met.”

If we assume that this principle assigns the determination of these compelling interests to national states and the only measure to distinguish development-induced displacement from human-made disaster is subjective, it is possible that the national state will use the “compelling and overriding public interests” in Principle 6.2 (c) to justify arbitrary development-induced displacement. If, however, we assume that the principle reserves the right of international authorities to evaluate the adequacy of the

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29 Pettersson, supra note 20 at 17.
necessity and proportionality test, its language does not support a normative ground for these authorities to intervene.

So recognition of FDD as a category of displacement would not only provide protection for displaced people but would set a standard for determining whether such development-induced displacement is legitimate.

Finally, recognition of FDD as a category of displacement would facilitate the budgeting of the resettlement process. Unlike IDPs from areas that do not have economic potential, IDPs from endowed areas can benefit from revenues generated by projects on their land. A proportionate share of revenues could be divided among resettlement areas and IDPs as compensation, whether pecuniary or non-pecuniary, to help displaced people get rehabilitated.

To authorize international and national actors to evaluate whether the proportionality test is met, Principle 6.2 (c) could be modified by adding the term “internationally” before “compelling” and “nationally” before “overriding public interest”—thus, displacement would be prohibited in cases of large-scale development projects that are not justified by internationally compelling and nationally overriding public interests. The explicit term “internationally” would provide the Office of the UN Representative of IDPs with normative grounds to assess whether the test of necessity and proportionality is met and to identify forcibly displaced people from development areas so that their particular protection needs can be met.

In assessing the standards of voluntary and involuntary resettlement associated with development projects, the World Bank’s Operational Directives on Involuntary Resettlement and the Organisation for Economic Co-operation and Development’s (“OECD”) Guidelines for Aid Agencies on Involuntary Displacement and Resettlement in Development Projects are excellent guides to governments, aid and donor agencies, and international financial institutions. The presence of international scrutiny would serve two ends: it would urge national states to embrace better standards of resettlement when planning development projects; and it would enable international donor agencies to establish whether these standards are socially sensitive and thus decide whether to commit financial support to such projects.

The addition of “nationally” to “overriding public interests” would enable private national actors (such as local communities, advocacy groups, experts, and concerned organizations), in contrast to the government, to be involved in assessing livelihood measures and overriding public interests.

**Problematic IDP Policy Framework in Sudan**

- GoS’s changing definition of IDPs and suggested improved national definition
- Absence of an effective data-management system
- Lack of a cohesive and overall national IDP policy
- Ad hoc and short-sighted policies and poor implementation of solutions
- Lack of programs for displaced women
- Underfunding of SPLA/SPLM’s Humanitarian Relief and Rehabilitation Association
• Inadequate representation of southern Sudanese women in the decision-making process
• Lack of focus on gender issues in the current GoS and SPLM policies on IDPs

The internal movement of groups and individuals, as a result of certain push-pull factors, from one place to another in Sudan can be divided into two types of movement. One, several tribal groups migrated in search of temporary or permanent livelihood opportunities from the outskirts to central parts of the country that are endowed with natural resources and offer more opportunities for development. Two, other tribal groups were forced to move to urban centres or other areas in eastern and southern Sudan, mainly as a result of ethnic strife, armed conflict, drought, famine, and oil development.30

To grapple with the IDP problem, the current GoS passed Decree 941 in 1990, which adopted the El-Sadiq El-Mahdi government’s (1986–1989) legal distinction between “squatters” and “displaced” persons. “Squatters” were defined as those persons who had arrived in the city before 1984, and who in theory were given the right to settle in Khartoum. In contrast, the “displaced” were defined as those persons who arrived after 1984. They were given no right of residence in Khartoum, no right to own land, and no right to construct permanent shelters.31

However, the GoS then redefined “displaced” as those persons who had arrived in Khartoum after 1990.32 The rationale of the definition was to classify IDPs according to the cause of their displacement, designate suitable areas for their settlement, remove squatters, and urge displaced people to move to settlement areas. The implementation of GoS policy that was derived from this definition involved demolishing informal settlements and relocating IDPs to temporary camps on the outskirts of Khartoum.33

It was reported in 1998 that approximately three-quarters of a million people were forcibly removed from Khartoum in 1992.34 The relocation of IDPs took place without warning, accompanied by violence and destruction of property.35 New locations were not prepared and lacked water supply, sanitation, and housing. IDPs were isolated from areas of employment, and therefore the opportunity to generate income was limited. The rationale for the relocation, however, does not account for the physical separation of war-displaced people, nor does it account for legislation that distinguishes their legal and political rights from those of economic and drought migrants, and from the rights of the general population of Khartoum.36 Accordingly IDPs experienced further displacement and insecurity. These practices are contrary to the rationales of the IDP definition, which serve mainly to identify displaced groups and the causes of displacement in order to plan protection programs.

For an effective approach to the IDP problem, we need a new national definition of IDP based on the causes of displacement and the factors required for IDP protection. The

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32 Ibid.
33 Ibid.
34 Ibid.
35 Ibid.
36 Ibid.
definition of a refugee could be used as a model, even though IDPs do not cross international borders. The Geneva Convention of 1951 defines a refugee as “A person who is outside his/her country of nationality or habitual residence; has a well-founded fear of persecution because of his/her race, religion, nationality, membership in a particular social group or political opinion; and is unable or unwilling to avail himself/herself of the protection of that country, or to return there, for fear of persecution.” According to this definition a refugee is entitled to protection because of a well-founded fear of persecution for the stated reasons. By the same token, the war-affected IDPs and victims of FDD cannot return to the southern areas of Sudan because of a well-founded fear of harm to their lives by armed conflict, tribal militias, famine, precarious health conditions, and other factors that render their human security at stake. Therefore, the emphasis, in the definition, on the harm that IDPs would face if they were to return is important in respecting the right of displaced people to dignified treatment and protection. Recognition of the serious threat of harm is crucial since, like refugees, displaced people are forced to escape. They do not have the means to readjust and are more exposed to external shocks.37

The national definition could, therefore, read: “IDPs are people who are forced to leave their habitual residences because of armed conflict, ethnic strife, natural or human-made disasters, or arbitrary development schemes; have a well-founded fear of violence and fear of want; and cannot return to their habitual residences because of these pervasive threats.”

Another problem to be dealt with is the absence of a gender-disaggregated data system. The demographic profile of IDPs currently available for Sudan shows that IDPs number almost 4.5 million.38 This figure is an estimate because the data-management system has no technical capability to break down the total number of IDPs into women, men, boys, and girls. The establishment of a disaggregated data-management system is crucial in order for international and national agencies to plan suitable policies that would meet the needs of both displaced men and displaced women. An appropriate data-management system must take into consideration data-collection problems relating to the high mobility of IDPs and the reliability of the number as provided by IDPs themselves (persons per family).

Moreover, the GoS has no overall national IDP policy. This is because policies have been changed several times with new institutions being established and existing ones restructured or replaced. Ad hoc and short-sighted policies, the multilayered and complex institutional framework, and the lack of effective monitoring mechanisms have resulted in the escalation of displacement problems. For example, in 1990, the GoS convened the National Displaced and Peace Issues Conference (“NDPIC”). The conference participants were selected from politicians, representatives of several government agencies and regional governments, tribal chiefs, local NGOs, and scholars.39 The conference agenda listed vital issues that had not been raised before.

In the realm of rights, NDPIC recommended that IDPs receive the same welfare care from government and society at large as other citizens. Like other citizens, they should be equally entitled to move freely within the country and to have access to employment opportunities. Moreover, IDPs should be entitled to personal security, whatever the causes of their displacement; thus, they should be entitled to food, shelter, personal

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37 Osman & Sahl, supra note 30 at 20.
38 Humanitarian Aid Commission. (Khartoum, February 16, 2003).
safety, education, and a healthy living environment. In addition, IDPs should be empowered to manage their own affairs and not be exploited because of their religion or political views. Finally, they should be entitled to voluntary resettlement and be encouraged to participate in efforts dedicated to their rehabilitation.

In the realm of social and economic entitlements, the NDPIC focused on ways of stabilizing the political environment in which these entitlements could be realized. The methods included the formulation of solutions and alternatives in both migration and production areas; restructuring of existing institutions; unification of local public opinion on problems created by displacement; consolidation of national feeling with emphasis on the unity of the Sudan under the umbrella of peace, settlement, and development; stimulation of international public opinion on humanitarian intervention; and recognition of the proposed relocation and development programs.40

The authority to implement these recommendations was dispersed among a complex web of institutions and local organizations. As a result, each institution hesitated to take the lead, fearing the overlapping of decisions. The persistence of fighting in southern Sudan and the GoS/SPLA war propaganda also worked against implementing these recommendations. But what is more significant, the policies generated from NDPIC recommendations disregarded displaced women.

The GoS's short-term policies are based on improving the relationship between tribal groups to ensure peaceful coexistence. The drafters of these policies were oblivious to the fact that mending tribal conflicts is a long-term process that requires more than peace talks or the tribal chiefs' personal diplomacy.41 Making peace primarily requires a painstaking process of awareness to forge mutual understanding and respect for each tribe's customs.42

The policies have ignored southern Sudanese women who traditionally play a primary role in promoting peace during these conflicts. Women have been described as “non-partisan medics on the battlefield and mediators behind the line.”43 Although the war allows them no voice in fighting matters, they are still key players because of their genuine interest in ending the violence. They bear the brunt of war. They are killed, raped, looted, abandoned, and displaced; and in many ways, war exacts a higher toll from women than from men. They are valuable mediators in disputes between different lineages because of their dual affiliation through marriage.44 Even in patrilineal societies, matrilineal links to other clans are important instruments for conflict mediation.45 The dual role imposed on them by war and displacement as income generators and caregivers for their families actually endangers their physical security. They are exposed to gender-based violence by tribal militias and cannot even walk to fetch water and firewood without the fear of treading on a landmine.46 Putting an end to intertribal conflict holds a different promise for women than it might for men, whose wartime obligation is fulfilled at the frontline.47

With respect to the level of involvement of southern Sudanese women in ending the armed conflict, unofficially they are engaged in the peace process by launching their

40 Hamid, supra note 39 at 137.
41 Ibid., at 140.
42 Ibid.
43 Fitzgerald, supra note 7 at 119.
44 Ibid.
45 Ibid., at 121.
46 Ibid.
47 Ibid.
own peace initiatives. Only the GoS and SPLA are involved in the peace negotiations shepherded by the Intergovernmental Authority on Development ("IGAD"), consisting of horn of Africa states. The attempts of women’s groups to have a seat at the negotiation table have failed, but they are continuing with their efforts to influence parties to conclude a peace agreement. Recognizing that women are an untapped resource for peace, the UN Security Council Resolution 1325 is seminal to women’s struggle for legitimacy in formal peacemaking processes and in securing a seat at negotiating tables. After all, it is women who have firsthand experience of the brutal consequences of conflict; they who “witness vivid links between violence, poverty and inequality in their daily lives.” Thus, the role of southern Sudanese women in an effective peace-building program that would end ethnic strife and armed conflict should not be underestimated.

Another popular GoS short-term policy is to absorb IDPs in reception centres to limit migration to already swamped urban cities in northern Sudan. Voluminous reports reveal the precarious living conditions at these centres and point out their remoteness from local employment markets. The testimonies of displaced women interviewed in Al-kalakla Al-lafa, who are originally from Bentiu, revealed the main reasons that they left relief centres and came to Khartoum: the frequent bombing and attacks by GoS and SPLA troops made them feel unsafe; the growing number of people coming to relief centres increased daily fights over water and food, an issue supported by other reports that refer to social rifts at reception centres; displaced women’s living conditions are harsher than those for men in these relief centres; and women’s physical security is at risk and their children’s well-being jeopardized by the lack of social amenities.

Sound settlement policies must plan for the physical security and availability of social services before IDPs are brought into reception centres. Training of displaced men and women is also important to enable them to engage in income-generating activities rather than depend on relief.

The GoS’s medium-term policies offer no better treatment for IDP women. These policies focus on the rehabilitation of IDPs through the creation of employment opportunities and resettlement in “development schemes” and/or in “secure homelands.” Although employment creation, development of traditional handicrafts and industries, and support of women’s productive work are commendable and urgently needed measures, in the context of existing political and economic realities in southern Sudan, resettlement is a highly problematic matter. The absence of a land-title system for development schemes to vest IDPs’ tenancy rights has made them low-wage labourers, and poorer. In interviews, IDPs originally from Mayom mentioned that “the scarcity of land and competition over employment opportunities in agricultural projects make resettlement in development schemes unrealistic in solving their problems.” They complained that employers pay them very little for their heavy workloads, and they have no option but to accept this work. This situation is typical when resettlement in agricultural projects in southern and northern Sudan takes place without careful examination of all the conditions of employment in these projects.

For the IDPs, agricultural activities before the war were limited to subsistence farming. Both women and men participated in growing sorghum and cassava; men tilled the soil, while women weeded and harvested. Men fished and raised cattle, and the women

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48 Fitzgerald, supra note 7 at 126.
49 Ibid., at 129.
50 For example see IDPs Global Project Report, supra note 31 at 77 and 119.
51 Fitzgerald, supra note 7 at 59.
52 Hamid, supra note 39 at 142-144.
collected water and firewood. The labour-intensive and time-consuming tasks of collecting water and grinding grain left women with little energy or time to engage in more productive pursuits that would improve their lives.53 The war and displacement disrupted traditional subsistence activities. Anti-personnel mines were planted in cultivated plots in southern Sudan and other places where women were likely to go in their business of feeding their families.54 Thus women made up the majority of landmine victims.55

Resettlement in “secure homelands” was difficult to achieve within existing security conditions in designated territories. Settlements were continuously targeted by the SPLA.56 Furthermore, policy makers attempted to combine relief and rural integration in this resettlement program. This was mainly to create “paired villages” of IDPs next to existing villages. This strategy was meant to create more peaceful villages.57 The idea of the “peace village” was based on promotion of “peace within,” from the comprehensive national strategy aimed at achieving self-sufficiency in food production.58 However, such relocation to the periphery of a town was problematic because, first, it compromised the security zone around peace villages; second, relief was replaced by food products sold at subsidized prices. This led to a high rate of malnutrition because IDPs lost their relief and had no employment opportunities to generate income to pay for food.59

The SPLA’s policy on IDPs in areas under its control is challenged by the shortage of resources for its humanitarian relief agency, the Sudan Relief and Rehabilitation Association [“SRRRA”]. The protection terms in SPLA’s policy for IDPs are inadequate and only 27 judges are responsible for the whole SPLA-controlled area. In addition, tension remains with NGOs over immediate access to humanitarian relief.60

The existing decision-making structures in SPLA-controlled areas comprise two divisions: a political division run by SPLM (the political arm of SPLA) and the Sudanese People Democratic Front (“SPDF”), and an economic division run by associations, women groups, and traditional networks involving clans and extended family members. The SPLM administers areas under its control through a nascent bureaucracy.61 State secretariats head the different departments of the administration. Governors head the regions, which are subdivided into counties headed by commissioners. Associations and women’s groups are formed at the grassroots level in SPLM-controlled areas. Women’s groups operate within the SPLM structure and have a relationship with the Secretariat for Women, Gender and Child Welfare, whose mandate is yet to be sufficiently well defined,62 The political and economic structures are often symbiotic, although this is not always the case.63 The traditional dominant customary structure within controlled areas is also the least open to encouraging women to become decision makers.64

53 Fitzgerald, supra note 7 at 33.
54 Ibid.
55 Ibid.
56 Hamid. supra note 39 at 141.
57 Global IDP Project Report on Sudan, supra note 31 at 199.
58 Ibid., at 200.
59 Hamid. supra note 39 at 143.
60 Paragraphs between footnotes 54-64 are based on Fitzgerald, supra note 7 at 74-84.
61 Fitzgerald. supra note 7 at 75.
62 Ibid. 77.
63 Ibid. at 74.
64 Ibid. at 74.
SPLM is currently working with associations and a civilian administration on issues concerning taxation, representation, and provision of services. But women's involvement with SPLM is still limited because of lack of contact with regional authorities. Women’s associations work only with the county commissioner, who has no power to initiate activities and no mandate to promote women's issues. A more credible option would be to establish direct lines of communication with the regional administration.65 There is need for women representatives from rural areas to express the concerns of returning displaced women.

The type of issues to be discussed between SPLM and women's groups are also of concern. Issues such as education, access to clean water, and recruitment of child soldiers are better received than other issues perceived as threatening to men. 66 It is reported that only one woman is represented in SRRA.67 Family affairs coordinators are women, but they are not invited to SRRA meetings or training workshops, and their role within SRRA is not clear.68 The number of women represented in counties and councils is far from equitable.

A handful of Sudanese women's NGOs, such as the Sudan Women's Voice for Peace and the New Sudan Women's Federation, actively promote women's inclusion in mainstream policy formulation. Their objectives go beyond humanitarian assistance and focus on capacity building. They have important input in current peace efforts. For the first time, they are demanding representation by women in peace negotiations as well as an equitable share of oil revenues. Women say that economic associations pose many challenges.69 Those who are members of agricultural cooperatives report that they are invariably excluded from the decision-making process by their male colleagues.70 Women's groups that are formed to pursue income-generation and credit schemes appear to be the answer to male competition, but these groups too have yet to fully appreciate the advantages of organizing along democratic lines.71

Women with a good education tend to keep their positions in councils for a long time because illiteracy prevents women from rural areas competing.72 Displaced women receive training in vocational skills from women's groups. However, the income-generating activities that depend on NGO support are not always sustainable when the NGOs leave the area.73

In contrast to the progress made in the formal civil administration, traditional structures exclude women from participating in decision making and remain a barrier to equality. However, many chiefs continue to bar women from participating in decisions that fundamentally affect their lives in the belief that decision making is strictly a male domain.

After the Machakos Peace Protocol was signed, the GoS and SPLM each convened workshops to remedy the shortcomings of their IDP policies and to plan for the immediate return of IDPs.

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65 Ibid. at 75.
66 Ibid. at 77.
67 Ibid. at 78.
68 Ibid.
69 Ibid.
70 Ibid.
71 Ibid.
72 Ibid. at 79.
73 Ibid.
The GoS convened a workshop in September 2002 to plan for an overall national IDP policy. The objectives of this workshop were to review existing policy; to encourage cooperation with the international community; to examine the causes and socio-economic consequences of displacement; to establish appropriate monitoring measures; to explore future objectives concerning return to areas of origin, resettlement in “reasonable” areas, and local integration; to examine the possibility of establishing an IDP Support Fund; and to upgrade the Humanitarian Aid Commission (“HAC”) to a full-fledged federal ministry responsible for supervision and coordination of IDP programs.

The objectives of SPLM’s 2002 Rumbiek Workshop were to adopt the UN Guiding Principles on Internal Displacement; to develop strategies for return, resettlement, and reintegration of IDPs; to reinforce local capacity; to establish a data-management system; and to establish partnerships with international organizations.

Significantly, the IDP policies of both the GoS and SPLA/M do not include a single paragraph on the basic needs and protection of human rights of returning displaced women.

The Global IDP Project’s 2003 report, Profile of Internal Displacement: Sudan, emphasizes the need for the immediate return of IDPs to southern Sudan once a peace agreement is signed. The remaining challenges are stability and sustainability. And to attain these conditions, several issues must be seriously considered. They include human security, the coordination of national and international agencies for effective delivery of services, capacity building, and property rights. To this end, the Global Project report promotes the return of skilled IDPs and a reintegration package for IDPs from rural areas.74

The majority of groups interviewed for this report are willing to return to their homeland. Their expectations upon return include secure areas, food, housing, financial support, access to health clinics and schools for their children, clean water, and transportation home.

**Recommendations**

- Adoption of a national definition of IDP, based on eligibility for protection criteria.
- Engagement of southern Sudanese women in peace negotiations and decision-making processes.
- Adequate protection of IDPs throughout the cycle of displacement and upon their return.
- Establishment of a gender-disaggregated data system.
- Full-fledged coordination of resettlement plans, with participation by international agencies and tribal chiefs.
- Rehabilitation of resettlement areas or preparation of suitable areas connected to rudimentary services such as access to roads and drinking water.

• Facilitation of awareness, education, and vocational training programs for returning IDPs, including women.
PART IV: RETURNING DISPLACED WOMEN AND THE QUEST FOR GENDER JUSTICE

Background

- Oppressive conditions of displaced women
- Understanding gender inequity and inequality

The GoS is planning to return displaced women as soon as a peace agreement, which will preempt the Machakos Protocol, is signed. Almost 91 percent of interviewed displaced women in Al-kalakia Al-lafa and Jebel Awlia are interested in going back to their “homeland.” These are some of their comments:

Although we have stayed for a long time in Khartoum, we do not feel that this is our home. Life is very difficult.

We used to live happily with our families and neighbours.\(^7\)

The particularity of the case of to compensate displaced women lies in the fact that their homeland is oil wealthy but their economic and social conditions are precarious. This is because they have limited access to productive resources and opportunities. The reasons for this limitation are multidimensional and complicated by the geo-political environment in which several players and factors downplay gender justice. The players are the GoS, opposition troops, tribal militias, and male members of the household. The main legal, social, and economic factors responsible for the women’s deleterious conditions are discriminatory customary norms; gender-based violence at official, communal, and household levels; and violations of their human rights.

The quest for gender justice for displaced women stems from the greater need for an objective policy to be premised on the equitable distribution of resources and opportunities, so that upon their return, these women can assume a positive role in society and the development process. The quest entails a reconceptualization of the relationship between the GoS and displaced women, and reforms of legislation and institutions to promote and implement a gender-responsive oil policy. Reviewing the process that supports the gender hierarchy and marginalizes women is thus central to the quest for gender justice.

The GoS must perceive gender equity as the process of being fair to women and men in terms of access to resources and opportunities. To ensure fairness, measures must be introduced to compensate for the social disadvantages that prevent women and men from operating on a level playing field. Equity leads to equality.\(^6\) Gender equality requires equal enjoyment by men and women of socially valued goods, opportunities, resources, and rewards. Gender equality does not mean that men and women become the same, but rather that the opportunities available to them are equal. The emphasis on gender equality and the empowerment of displaced women presumes that men and

\(^7\) Interviews with Al-kalakia Al-lafa women, (Khartoum Feb. 18, 2003).

women have equal opportunities to make choices; but because of the current disparities, equal treatment of men and women is insufficient as a strategy for gender equality. Equal treatment in the context of inequalities perpetuates disparities. Achieving gender equality requires changes in the institutional practices and social relations through which disparities are sustained.\textsuperscript{77}

The Struggle Behind the Door of Traditional Society: The Customary System

- Gender disparity in social relations
- Gender inequity in division of labour
- Abandonment of subsistence activities and displaced women's poverty
- Marital status as the determining factor in enjoying land rights

Customary norms shape the tribal governance structure as well as the role of southern Sudanese women from oil-producing areas. The norms divide the tasks of both men and women and their relationship to society. The norms also determine men's and women's access to resources and labour markets. For a long time, the GoS regarded the division of roles as set in stone, even though the roles changed over time; however, they have not necessarily changed in the best interests of women.

The traditional structure of governance, officially known as the "native administrative system" is based on a patriarchal system, in which the influence of lineage and kinship is very strong in both the relationships among people and the administration of tribal affairs. The family is a micro unit of society. As the family steadily multiplies, the large group of families becomes a clan. When different groups of clans live in same territory they make up a tribe. Like statutory law, customary law aims to regulate the behaviour of individuals and protect their rights in order to ensure communal stability.

In principle, customary law does not preclude women from engaging in negotiations involving tribal affairs. It is traditionally recognized that women have influence over their husbands in regard to household decisions and that they influence them indirectly in regard to tribal relations. According to the Hon. Judge Woul, "under customary law, women enjoy several rights such as separate accommodation, maintenance, rights of care, right of physical and social protection, but they do not have the right to own property."\textsuperscript{78} The chiefs believe that "family land is small compared to communal land. So if it is fragmented into pieces and every member of the family owns [a] separate one, this will disrupt the production of food and the family will not have enough to sustain up to the next harvest season."\textsuperscript{79}

Under the customary system, gender inequity is manifested in division of roles, rights, and labour. A woman's role is designated at two levels: at the household level, she is the "producer" of children; and at the societal level, she is the "preserver" of tribal values. Women do not participate in the tribal administrative authority. Men dominate the

\textsuperscript{77} Gender -Based Analysis. supra note 76.

\textsuperscript{78} Interview with Hon. Judge Woul. [Supreme Court, Khartoum, Feb. 26, 2003].

affairs of the tribes as religious leaders, chiefs and subchiefs, clan or gol leaders, cattle camp chiefs, and police chiefs. Before colonization religious leaders had absolute spiritual and political powers. With the introduction of the modern system of government, their spiritual authority was limited both by the influence of the church and by the introduction of public security by government. The present role of religious leaders is limited to maintaining peace among fighting tribal groups. Chiefs and subchiefs occupy the second level in the hierarchy, after the religious leaders, and they hold both administrative and judicial powers.

A female is considered a valuable source of wealth, not only for the family but for the whole clan. She remains a member of her father's lineage but she and her property are controlled by her husband, and on his death, by her husband’s family. The “linchpin of this economic and social dynamic is bridewealth.” The marriage of a daughter is seen not as her personal commitment to her future husband but as a transaction that enriches the girl's family with additional resources—primarily, but not exclusively, cattle. These resources, in turn, strengthen bonds inside and outside the family. The advantage of the extended family is that its resources are shared among all its members. This unit has an obligation to protect its members in time of adversity and to share resources. Marriage also creates an alliance between unrelated families that is “sealed with the payment of bridewealth by the groom's family to the bride’s family.”

To ensure that this alliance remains firm, the payments are staggered over many years. Men reinforce their position of power by creating many alliances through marriage. Thus women are subjugated within power structures that are underpinned by material assets. A wife cannot easily leave her husband because this would signify the “breaking of a carefully crafted network of assistance and obligation, within and outside the extended family, that is deemed crucial to a family’s survival.” As a result, divorce is very rare; serious social and economic consequences would follow.

Failure to observe their social role has serious consequences for women. A chief in the customary court at Al-kalakla Al-lafta explained that most of the disputes coming to his court relate to women’s refusal to perform, or negligence of, their household duties. Their husbands beat them or stop giving them a household allowance so that they obey.

The right of ownership, except of personal property, is subject to family and communal ownership. The male is the head of the household and the custodian and co-owner of the family property. Customary law presumes that he has no exclusive rights over such property, although there are certain instances in which he may make an independent decision for the disposal of family property. If he has more than one wife, he divides the family property among the wives, and each of them becomes the head of a subunit of the family, and together with her children, is entitled to use her husband’s property; however, the husband owns the property of all wives until the children of each wife become fully grown-up or reach the age of maturity.

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80 Some parts on traditional system are extracted from Makec. supra note 17.
81 Ibid. at 33.
82 Fitzgerald, supra note 7 at 15.
83 Ibid.
84 Ibid., at 16.
85 Ibid.
86 Ibid.
When a man dies the property remains with the family. If the widow marries another man she ceases to be entitled to benefit from the deceased husband’s inheritance. If, however, the widow marries a paternal relative of her deceased husband, this does not constitute a new marriage. She remains the wife of the deceased and therefore her relationship with his relatives does not change. And so she is entitled to the inheritance together with the other family members of the deceased.\textsuperscript{89} The traditional polygamous practices further entrench gender inequity. Wives who are less favoured by the husband can be penalized in the allocation of resources. A wife’s possessions, even if she has worked to acquire them, can be shared among the other wives at the husband’s discretion.\textsuperscript{90} (The property rights of southern Sudanese women will be dealt with in more detail in Part V, since its discussion is, for practical purposes, interconnected with compensation.)

The marriage is thus a social terrain where the material struggle between men and women depends on access to resources that are central to sustaining livelihoods.\textsuperscript{91} The struggle continues in the fulfilment of gender roles and responsibilities in everyday life.\textsuperscript{92} Men occupy a more powerful position, and women undertake their responsibilities within inequitable power relationships. Men invoke the norms relating to women’s social roles and resort to violence to maintain “order.”\textsuperscript{93} Emotional intimidation is used as a strategy to maintain patriarchal dominance at the household level and to control women. Withholding of the household allowance is a strong economic pressure used to subordinate women. Within this limited access to family resources, women are burdened with carrying out household duties.

Customary norms influence the type of economic activities women undertake. The dominant subsistence activities in oil areas are mainly pastoral and horticultural. Men’s and women’s responsibilities are divided throughout the wet and dry seasons. Women cut grass for thatch, cultivate, care for the children, clean the house and cattle pens, fetch firewood and water, weed, harvest, and grind grain. The men hew wood for building huts, smear mud on hut walls, chase away wild animals, build and fence granaries, fish, hunt, herd the cattle, and fight in wars.\textsuperscript{94} The main crops cultivated are sorghum and cassava for which the men till the soil while the women weed and harvest.

Gender disparity is obvious in the division of labour and reward. Women are associated with food crops for family subsistence, and men with cash crops for sale. In practice, however, women contribute a large portion of the labour to produce food—for sale as well as for household consumption. Men sell not only their food production but also the surplus food produced by women’s labour. Since social norms bar women from dealing with intermediaries in the local markets, men merchandise the food production and

\textsuperscript{89}Makec, supra note 17 at 83.
\textsuperscript{90}Fitzgerald, supra note 7 at 15.
\textsuperscript{91}Ritu Verma, Gender, Land, and Livelihoods in East Africa (Ottawa: IDRC, 2001) at 126-133.
\textsuperscript{92}Gender roles are the assigned activities and relative position in society and men and women. The roles help to determine access to opportunities and resources based on local cultural perceptions of masculinity and femininity. When gender roles impose expectations and certain limitations on both women and men, they often perpetuate women’s subordination. Gender roles are frequently mirror images, leading some people to suggest that the division of male and female gender roles is inherent and unchanging. Yet while one’s sex does not change, gender roles are learned and change over time. These roles are constructed through forces such as culture, tradition, politics, and need, varying from culture to culture, and often from one social group to another within the same culture. Ethnicity, race, age, caste, and marital status. Education, technology, economics, and sudden crises like war and famine can cause changes in gender roles. \url{http://www.swc-cfc.gc.ca/pubs/gbaguide/gbaguide_e.html} (visited 17, July 2003).
\textsuperscript{93}Verma, supra note 91 at 129.
\textsuperscript{94}Fitzgerald, supra note 7 at 30.
receive the profits from the women's work, for which women are unpaid. Out of respect for these customary norms, state marketing boards and agricultural cooperatives deal only with men when buying, distributing supplies, and granting credit. Women have no control over family resources, but constitute an unpaid labour force. They are the source of wealth without access to such wealth, a clear manifestation of the social and economic vulnerability of women under the customary system.

Gender inequity has indirect costs for productivity, efficiency, and economic growth. Output is reduced as a result of inefficiencies in the allocation of productive resources between men and women within households. Customary norms prevent the efficient reallocation, between the men and women in the household, of the profits and resources from sales of their food production. And the gender-based division of labour and unequal resources available to men and women affect their ability to participate equally in the economy and society, impeding both economic growth and the reduction of poverty. All these factors, together with labour laws designed to protect women from harmful forms of work, result in rigidities in the allocation of labour that create inefficiencies and lower output. The implication of all this is that a less segregated labour force would improve total output.

Economic liberalization policies have led to the abandonment of traditional agricultural activities upon which 75 percent of Sudan's population once depended. The GoS's ad hoc macroeconomics policy has not set out adequate measures to integrate the traditional subsistence economy (and/or mode of production) into the market economy. The GoS reduced the subsidy for fertilizers and seeds, making it difficult for poor farmers to purchase these necessary inputs. As a result, the subsistence sector lost its advantage and competence; the returns for their production did not match people's labour exertions. Engulfing poverty has resulted. The mass exodus from underdeveloped rural areas, which are rich in raw materials, to urban cities with more employment opportunities has led to social disequilibrium and increased pressure on the limited employment opportunities in development schemes in northern Sudan. The poverty level has increased among women who lack the necessary skills to engage in urban activities. They have been deprived of their basic minimum needs and the resources necessary to meet these needs.

Gender inequity has also had a negative impact on women's status. The gender imbalance in resources and power has consequences for the relative autonomy of women, for their influence in household decision making, and for their potential ability to participate in the development process. Labour division and restricted access to resources also impose obstacles on women's ability to earn a living. Poverty relegates

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95 Naiia Kaboc, Gender Mainstreaming in Poverty Eradicatidn and the Millennium Development Goals (IDRC & Commonwealth Secretariat, 2003) at 121-123.
98 Asghik Grigoryan, “Gender, Citizenship and Women’s Relationship to the State and Labour Markets” World Bank 5th Annual Gender and Law Conference (Washington, DC, March 18-19) at 83.
100 Ibid. & Sahil, supra note 30 at 15.
101 Ibid.
102 Ibid.
103 Ibid.
women to a lower social and economic status, and their despair is an indication of the absence of alternative opportunities or a suitable economic and social environment in which they could be empowered or autonomous. And because a woman’s status affects the cognitive development and schooling of her children, it also influences the country’s long-term prospects for economic growth.\textsuperscript{104}

Studies have estimated the effect of gender discrimination in the labour market on the economy and have indicated that gender inequity is strongly linked to women’s poverty and lack of economic growth.\textsuperscript{105} Positive results have been reported from countries in which women have gained access to financial markets through specially designed services that meet women’s specific needs within local contexts.\textsuperscript{106} Feasible access to markets would allow returning displaced women to obtain the same employment benefits as men. This would enable these women to avoid the negative impact—for example, loss of income or constraints upon mobility—of exclusionary policies upon them and their families.

The foregoing paragraphs abound in examples of the limited rights and access to economic power that result from less than full citizenship rights and rights to productive resources in the public domain. A direct correlation exists between lack of secure land rights and poverty. Marital status under customary law is an important determinant of land rights because women enjoy the benefit of the property as long as the marriage lasts. Women who are divorced or widowed lose such benefits and access to productive assets. The limited access to land also means restricted access to credit markets, because land is a critical source of collateral to secure loans. Women’s minimal participation in formal labour markets is an additional obstacle to benefiting from and dealing with financial institutions, and therefore obtaining productive resources.

The problems inherent in discriminatory customary practices trickle down from the highest level of government, where policies, laws, and judicial decisions recognize and legitimize these practices, thus serving to hinder equality claims rather than advance them. Given the prevalence of customary law over national law in regulating tribal affairs and personal matters such as marriage, it is not unusual for women to find themselves in doubly penalized, losing both in customary law and in national law.\textsuperscript{107}

The protection of women’s rights from discriminatory customary practices must not be considered a threat to these customs but rather as an avenue to improve women’s legal and socio-economic conditions so that they can become social agents contributing to the development process.

**Forcible Development Displacement and Gender-Based Violence**

- Human insecurity and violence
- The effect of violence on displaced women’s health and productivity
- Violence and impoverishment of displaced women

\textsuperscript{104} World Bank, supra note 97 at 83.
\textsuperscript{105} Ibid., at 86.
\textsuperscript{106} Malik, supra note 99 at 6.
\textsuperscript{107} Samardari, supra note 96 at 8.
• Understanding poverty
• Limited access to employment and resources
• Ethnic conflict

Forcible development displacement (FDD), resulting from investment in conflict zones, exposes women to severe gender-based violence that cuts into the vital core of their basic needs, physical security, and productivity.

Violence is a multifaceted problem with no single solution; it is recognized as a major constraint of sustainable development. The 1993 UN Declaration on the Elimination of Violence Against Women defines violence against women as "any act of gender-based violence that results in, or is likely to result in, physical, sexual or mental harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life."\(^\text{108}\) This definition encompasses, *inter alia*, physical and psychological violence taking place in the family and in the general community, and perpetrated or condoned by both state and non-state actors.

Human rights advocates stress that unless women are free from the threat of violence, they are unable to exercise other rights and thus unable to participate in the process and benefits of development. The landmark UNDP's 1994 *Human Development Report* determines human security by the way in which people live in a society, how freely they exercise their choices, how much access they have to market and social opportunities, and whether they live in conflict or in peace.\(^\text{109}\) According to this report, any sudden and hurtful disruptions in the patterns of daily life represent a critical threat, like that imposed by FDD on women. More worrying is that violence carries the risk of continuing as long as its root causes exist.\(^\text{110}\)

In Sudan, displaced women are caught in a tug-of-war between GoS forces, SPLA troops, and tribal militias—all in one way or another exerting control over women's bodies and actions, marauding their assets, and limiting their mobility and access to necessary resources to meet their basic needs. Organized and systematic violence is born out of tense ethnic and power relations, and exacerbated by competition over national resources.\(^\text{111}\) Violence erodes the security of these women—their survival, their livelihoods, and their human dignity.

War and the atrocities of tribal conflicts subject southern Sudanese women to various forms of gender-based violence. Displacement and sexual violence are used strategically as weapons of war and instruments of terror.\(^\text{112}\) Rape becomes an indirect factor in the

\(^{108}\) UN General Assembly Resolution 48/104, 20 December 1993.


\(^{111}\) Gender relations seek to shift attention away from looking at women and men as isolated categories to looking at the social relationship through which they are mutually constituted as unequal social categories. Gender is constructed through a society's assignment of some activities to women and others to men. Gender relations are constructed out of the activities of actors and institutions and as such they are subject to change. In other words, gender relations vary from one social environment to another. Cited at :<http://www.swc-cfc.gc.ca/pubs/gbguide/gbguide_e.html> (visited July 17, 2003).

intensification of fighting. Perpetrators strip women of their most valuable assets: their virtue and their reputation. Under customary norms, the husband, chief, or tribe members are obligated to protect the moral integrity of their wives and girls. So the rape of a woman is regarded by the men of the tribe as a stain on the tribe's honour. And since this illicit act constitutes an affront to her husband and the clan, it justifies retaliation and further sexual violence against women belonging to the aggressor tribe. In this vicious circle of violence, women are exploited as military targets and are demoralized.

However, sexually exploited women are not protected by the tribe. Their communities reject them and consider them a failure, shamed, and too morally bankrupt to bring up children. This paternalist approach indicates that men presume they know the interests of women better than the women themselves, thereby subjecting women to social pressures.

Women are traumatized by the negative consequences of sexual violence, and they are emotionally distressed because "they fear rape," as the women of Kummagon admitted. These women cook fewer meals for their children because they fear being raped while out collecting firewood. Violence thus contributes to malnutrition and inflicts widespread health problems among these women. Gender-based violence is linked to some of the most intractable reproductive health issues, teenage pregnancy, sexually transmitted diseases, and mental health disturbances that affect women's ability to carry out their normal daily activities.

In interviews, displaced women involved in soap making said that they experienced sexual harassment. They said that they could not complain because that would eventually create more problems for them—with their husbands and in society generally; furthermore, if they refused sexual favours, they would lose their employment. Harassment interfered with their work performance and created an offensive work environment. More seriously, these women have no recourse for this problem.

Some of the women interviewed in Al-kalakla Al-lafa and Jebel Awlia want to maintain their subsistence activities rather than attend adult education classes or vocational training because they think their husbands will not allow them to do so. Men perceive the growing empowerment of their wives as a threat to their social status in the male-dominated tribal culture. However, some of these displaced women are allowed to work but are exposed to different pressures: their husbands use force to take their daily earnings. In Jebel Awlia, displaced women who are from time to time exposed to physical violence experience spells of unemployment and suffer health problems that affect their job performance. This indicates the connection between violence, low income, and the poor living conditions of displaced women. To avoid physical abuse, many of these women censor their behaviour to suit what they think will be acceptable to their partners, in effect making women their own "jailers."

The following comment was made during an interview with a women's group in Al-kalakla Al-lafa, near Khartoum:

114 Woul. supra note 17 at 83.
115 Meintjes. supra note 113 at 12.
Our husbands send us to Khartoum. They stay back to take care of our huts and cows. When it is safe we will return home. We [have] become like men. We fight with men from other tribes when they steal our food and clothing or attack us. When the police come, they beat us because they say we are troublemakers.\textsuperscript{117}

This is a clear indication that the violence that displaced women suffer does not arise solely out of the conditions of war; it exists in their lives even when they settle in a relatively safe area.\textsuperscript{118} Women experience violence “because they are women, and often because they do not have the same rights, autonomy or social privileges that men do.”\textsuperscript{119}

Violence tends to continue into the post-conflict period, where chaos adds to the many frustrations that are not solved. Sending displaced women back without establishing suitable living conditions will devastate them more than ever before. They have no resources, nor do they even have the opportunity of continuing to perform the type of work they were doing before returning to their original habitual residence. Returning displaced women need peace, and physical and economic security.

The GoS must consider violence a major hindrance to empowerment of returning displaced women because violence, or the threat of violence, prevents them from realizing their full potential as citizens, and from participating in and benefiting from economic development. Every step toward preventing violence is a step toward reducing poverty among displaced women. In the same vein, the World Bank 2001 Report on Poverty raises the three pillars of poverty reduction: empowerment, enhancement of security, and promotion of opportunities.\textsuperscript{120} It is essential that the GoS resolve these poverty and conflict issues when planning the return of displaced women. These issue include assessment of economic and political risks and vulnerabilities such as violence and health threats; risk-management strategies involving promotion of social programs to mitigate conflicts; and formulation of objective policies to meet individual needs at both the household and societal levels.\textsuperscript{121}

UNDP’s 1990 Human Development Report noted that the increasing number of female-headed households has led to a “feminisation of poverty.”\textsuperscript{122} It also pointed out that women “are typically less qualified than men and tend to get into lower paying jobs, having fewer opportunities to be upwardly mobile, leaving them less able than men to provide a decent living [for] their families.”\textsuperscript{123} The 1995 Human Development Report, on the other hand, focused on gender inequality and said that the purpose of development was “to enlarge all human choices, not just income.” It suggested that removing gender inequality had very little to do with the level of national income, and stated that “poverty has a woman's face ... of 1.3 billion people in poverty, 70 per cent are women.”\textsuperscript{124}

\textsuperscript{117} Interviews with Al-kalakla Al-haia women. (Khartoum, Feb. 18, 2003).
\textsuperscript{118} Elisabeth Rehn & Ellen Sirle Report to UNIFEM. Women, War and Peace (New York: UNIFEM, 2002) at 13.
\textsuperscript{119} Ibid.
\textsuperscript{120} World Bank Report on Poverty 2000/1, see also Alkire, supra note 110 at 17.
\textsuperscript{121} Synthesized by Alkire. supra note 110 at 18.
\textsuperscript{122} Kabeer, supra note 96 at 15.
\textsuperscript{123} Kabeer analysis of UNDP’s 1990 Human Development Report at 15.
\textsuperscript{124} Ibid.
Then the UNDP's 1998 *Human Development Report* explained that "human development is a process of enlarging people's choices. Enlarging people's choices is achieved by expanding human capabilities and functioning."128 The 2003 *Human Development Report* indicated that eradication of poverty should refer to human poverty rather than income poverty. The causes of poverty of displaced women are typical and result from "tragic consequences of women's unequal access to economic opportunities."126

It is also well reported that the lack of social services impedes women's role as social agents.127 Gender equality in education would help women secure employment outside the home and acquire political and economic power, contributing to their influence in the public sphere.128 The educational disadvantages faced by women also slow the social and economic development of the state. Economic returns on investment in women's education are found to exceed those of men. One reason for this is that women who use their skills to increase their income invest more in children's health and education.129

The failure to provide for these displaced women in Sudan results from the absence of legislation that guarantees citizens the right to basic human needs. The GoS says it has a duty to provide any individual with sufficient basic human needs. These include food, drink, clothing, housing, education, health services, and care for the aged. The source of the GoS's finance for its anti-poverty scheme is the Zakat Ulm. As it does with tax deductions, the GoS garnishes corporate profits and GoS employees' wages to finance the Zakat fund; but because of technical difficulties and the high spending, 33 percent, of its resources on administration, it is unable to provide steady social assistance to displaced people and other impoverished segments of society.130

Moreover, the spending on war is greater than the investment in social security programs. War also destabilizes development activities. With limited opportunities, men have a better chance than women. Men can join the front line and move between villages or cities for work. Women simply cannot do that for two main reasons: they must care for their families, and their physical security is at high risk if they move between villages. Thus, the only option is to flee to the cities.

In the Jebel Awlia camp, displaced women use risky survival strategies. These strategies are strongly influenced by the NGOs' intervention, which focus mainly on the provision of health services and relief items. According to a report of the Accord Khartoum Office, most of the coping mechanisms used by displaced women are aimed at maximizing the benefits provided by the NGOs.131 First, most of the NGOs, whether national or international, are very concerned about improving the health and nutritional status of children, pregnant women, and lactating mothers.132 One direct consequence of the NGO intervention is that some displaced women get pregnant so that they can benefit from NGO intervention. Pregnant or lactating displaced women sometimes sell the food rations they get from an NGO to obtain other family needs or to offset their husband's

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129 Ibid., at 15.
128 Ibid.
132 Osman & Sahil, *supra* note 30 at 17.
133 Ibid.
134 Ibid., at 18.
heavy demands on their little daily income. Prices of rations are relatively low but are in great demand, especially by those who cannot afford to buy them from the market.

Moreover, displaced women move from one camp to another to receive the assistance of the different NGOs. What makes this possible is the easy entrance into and exit out of the camp, and it is not difficult to build a house in the camp using local materials. Some families may also spread family members among the different camps so that they can benefit from a wide range of facilities. Ethnic belonging is a crucial factor in networking among IDPs in the different camps.133

Finally, an increasing number of displaced women and girls become prostitutes to cope with unemployment and decreasing household incomes. According to a UNIFEM Report on women, war and peace, “Women are physically and economically forced or left with little choice but to become sex workers or to exchange sex for food, shelter, safe passage or other needs; their bodies become part of a barter system, a form of exchange that buys the necessities of life.”134 Prostitution is a major cause of their ill-health and a serious public health concern both as a social threat and a source of sexually transmitted diseases, which place an undue burden on the health system.135 The linkage between the social disadvantages of women (including poor access to health care) and the stagnant economic situation on the national level has been well documented.136 The costs of inadequate health care include women’s lost financial contributions to the family, which endangers the family’s survival, and the serious health problems that deplete the workforce and burden the health system.

Violence has a serious economic effect on displaced women. They become mired in poverty and are more susceptible to violence and exploitation both at the household level and in the workplace. Aggressors rob them of their food, clothing, money, and household furnishings. An increasing number of households are headed by single women or widows, and their plight is exacerbated by lack of financial resources, more people to feed, and external pervasive threats to their physical security. They become trapped in struggles over large and small assets. They are treated unequally in labour markets, holding low-paid jobs; and they are disproportionately represented in the informal sector, where they receive irregular pay. Eighty-eight percent of women interviewed in Al-kalakia Al-lafa perform domestic work, for which they receive an average of the equivalent of $1.00 a day. If they are fortunate, they can secure two or three days’ work a week.

Displaced women who resort to displaced camps in relatively peaceful areas in southern Sudan become dependent on relief aid and vulnerable to famine when warring parties deny humanitarian aid to their camps.137 They are seriously affected by the collapse of social services, by malnutrition, and by serious life-threatening diseases such as malaria. Those fortunate enough to make it to the northern cities found that their traditional dependent role shifted to the dual role of income-generation and caregiving to their families. They receive little, if any, humanitarian assistance. With their limited labour skills, they face the hardships of scarce employment opportunities and pressing new social realities. They have little time to change any of this, even if they could,

133 Osman & Sahil., supra note 30 at 42.
134 UNIFEM, supra note 118 at 13.
135 Ibid., at 51.
137 Fitzgerald, supra note 7 at 55.
because they are routinely looking for work or work up to 17 hours a day, besides looking after their families. The GoS restricts their free movement; police raid their houses, which are considered illegal settlements; ethnic strife threatens their physical and material security; and the meagre income they generate is insufficient to meet their daily basic needs.

The turmoil of civil war and ethnic differences has encouraged southerners to think only about the narrow interests of their own ethnic group. With oil discovery, ethnicity became deeply rooted in the way southerners became interested in acquiring regional political power and the economic resources that go with it. The battle intensified as the state was increasingly identified as the purveyor of social amenities. And the political process has become the playing field for ethnic groups bent on securing greater benefits for themselves. Given the scarce resources of warfare conditions, the state’s policies have provoked intergroup competition and have frustrated southerners, who feel that within the diverse ethnic structure of Sudan, they are the most marginalized.

The focus groups interviewed “believe that it is unfair that the federal government leaves their region undeveloped and uses revenues from oil extracted from their land for the rapid development of other parts of the country.” Protests expressing this type of view developed into continuous armed confrontation with the GoS and are perceived by the latter as a threat to national unity and economic interest, thus justifying the use of force. The federal mapping of states established under Article 108 of the 1998 Constitution is based on ethno-regionalization, thus giving the federal system no incentive to enhance common socio-economic interests. The redivision of the underdeveloped southern states coincide with ethnic boundaries and create an ideal environment for the proliferation of ethnic conflict over scarce resources.

The GoS must adopt preventive measures to protect women from the destructive impact of violence.

Violations of Displaced Women’s Rights

- Lack of recognition of FDD as a cause of displacement

Few southern Sudanese women are formally educated and active in wage-earning occupations, and their role or representation in the oil sector is rare. According to Harker’s Report, “The employment of southerners in oil concessions is very low.” As mentioned earlier, women from oil-producing areas were more active in subsistence labour. Throughout the oil-development process, they were excluded from all decision making, as were other members of their communities; nevertheless, women suffer much greater economic and social consequences of such exclusion.

The policy of GoS toward Displaced is premised on the country’s Constitution and its cultural heritage. The Constitution provides that all Sudanese citizens are completely free to move within the borders of the country (and beyond, if they wish). The national authorities appreciate the compelling reasons that have driven whole communities away from their habitual places of residence and to become Displaced. The GoS’s responsibilities include the protection of Displaced as citizens who happen to have been forced to flee their habitual residence areas by catastrophic

\(^{138}\) Fitzgerald, supra note 7 at 1.

\(^{139}\) Harker Report, supra note 8 at 78.
events such as war and natural disasters. Existing legislation is fairly adequate and need not be amended in any way [emphasis added].

The above official statement does not recognize FDD in southern Sudan as a major cause of displacement that is responsible for the worsening living conditions of displaced women, and encroaching on constitutionally recognized human rights—the right to life, to health, to food and shelter, to security, and to free movement, among others. It is essential that to plan suitable programs, the GoS identify FDD as the main cause of problems experienced by displaced women.

**Discriminatory National Laws**

- The Constitution and its lack of protection for women
- Squatters Act, 1992
- Civil Registry Act, 2002
- New Sudan Penal Code, 1994
- Petroleum Legislation Act, 1998

Different legal sources regulate oil operations and protect human and community rights—for example, the Constitution of 1998, the Petroleum Legislation Act of 1998, legislation governing services rendered to displaced women, and the judiciary. Existing legislation is problematic and insensitive to gender equity and equality. The Constitution and legislation provide for equal treatment of citizens, but the institutionalized citizenship process is highly discriminatory to women. Both the national and the traditional systems are patriarchal; they support a gendered hierarchy and facilitate the institutionalization of gender inequity in state projects.

The Constitution entrenches the affirmative duty of the state to protect its citizens' human rights, to respect the sanctity of customs, and to fairly compensate affected individuals/communities. The way in which the GoS exercises its constitutional sovereign rights reinforces hegemony over both national resources and the affairs of IDPs. Because of the absence of parallel programs to remedy the social costs of oil development, the problems of IDPs from oil-producing areas have reached unacceptable levels. The GoS considers such problems an internal matter and to some extent restricts intervention by international humanitarian agencies; without such restrictions, the problems of IDPs would have been contained at an earlier stage.

The Constitution does not provide for direct protection of women's rights. It is silent on the relationship between international law and national law. This void blocks the adoption of international treaties or conventions, such as the Convention on the Elimination of All Forms of Discrimination Against Women, 1979 ("CEDAW"). CEDAW is the international bill of rights for women and the foundation of equal rights. It prohibits any discrimination, exclusions, or restrictions on the basis of gender that impairs or nullifies women's human rights and fundamental freedoms. It places women's rights on a par with those of men, including the right to education, health, work, credit facilities, and political participation. CEDAW condemns violence against

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women and prohibits national states from invoking any practices that encroach on the security of women.

The absence of direct protection of women's rights furthers inequity and inequality in benefiting from national resources and opportunities. It is also the primary reason that gender disparity in laws and policies prevails. Displaced women bear the burden of this disparity in the form of limited access to productive resources. There is a growing consensus that the policy approach of ignoring the question of equality in the distribution of resources while crafting development policies is myopic and has disadvantages for development. Gender disparity embodied in practices in households, the community, and institutions weakens the capabilities of displaced women, thus impeding their human development, and thereby hindering their ability to improve their living conditions and participate in the development process. Gender disparity harms people's well-being and a country's prospects for development.

Equal treatment of citizens entails a legal status—that is, the belonging of an individual to a political unit, usually the state, that awards him or her a particular status and a series of rights and duties in civil, political, and social spheres. The laws and policies of Sudan deal with women within the family. The GoS political scheme deals with the family as a basic unit of society, while mobilizing society and traditions to justify male privileges. The impact of patriarchy in a complex social and ethnic structure like that in Sudan has been profound because kinship permeates the private, public, state, and societal spheres. The result is unequal citizenship rights for women and barriers to participate in decision making. Some women have penetrated the public domain; however, few economically disadvantaged displaced women participate in the decision-making process.

Under, the Squatters Act of 1992, GoS has the right to remove squatters. The Act countermands constitutional protection of the right to free movement and the right to shelter. Interviewed women complained about the persistent harassment by law-enforcement authorities and the destruction of their homes. One woman said, “The police came to my house, used physical force to evict me, my children and my elderly aunt and burned down the shack.” She was forced to leave her children with neighbours, while she stayed overnight with a relative who guards and lives in an elementary school. Police and law-enforcement authorities take advantage of displaced women’s powerlessness.

The Civil Registry Act of 2002 denies non-holders of identity cards the right to receive government services. The Act stipulates that in addition to the payment of fees, women must obtain a family identity card, secure two guarantors, and present proof of place of their birth in Sudan. These requirements are difficult for displaced women to meet. Although the Act permits fees to be waived in some cases, the other requirements are challenging for displaced women, who usually have no legal documentation when they flee and have difficulty finding a guarantor because they are always treated as strangers. The rational of requirement of residence in Khartoum necessarily presumes applicants from other states should apply for identity cards in their respective states. The idea of family cards is further evidence of a gendered citizenship process and reflects the way in which the GoS perceives the citizenship of Sudanese women and the conditions under which they enjoy their citizenship. A woman’s identity is subsumed under the family unit, which is dominated by a male head of household. Therefore, displaced women’s experience of citizenship is refracted through the lens of various


\[143\] Malik, supra note 99 at 11.

\[144\] Interview with Mary (Al-kalakla Al-lafa, Khartoum, February 13, 2003).
subservient positions—that is, as wives, daughters, and sisters. It is therefore important that the GoS not just provide a certain number of rights, but that the rights be grounded on redefined citizenship rights that are restructured to give women legal autonomy within fluid patriarchal relationships between state, society, and family.

In an attempt to supersede customary laws that uphold inequality, the SPLM/SPLA introduced the New Sudan Penal Code in 1994, applicable in SPLA-controlled areas. An objective of this Code is to redress women’s peripheral role in society by promulgating laws that protect some of their rights. The Code, however, focuses only on criminal matters rather than personal matters, which are still governed by customary law. The Code governs sexual violence against women, which is a step forward since there exists no national legislation on gender-based violence. The New Sudan Women’s Federation advocates women rights and launches legal-awareness communal campaigns focusing on social and economic rights such as the right to work and to education. But the federation’s shortage of human and financial resources limits the expansion of its activities in linking access to resources (such as land and property) to legal education for displaced women from oil-producing areas.

The Petroleum Act of 1998 regulates oil operations. The first part of the Act covers the petroleum profits from which the government is entitled to royalties. The second part governs executive powers over petroleum operations. These powers, which are separated into regulatory and operative, are to be carried out by the Council of Petroleum Affairs, Sudapet, and the Ministry of Energy and Mining. The council comprises the President of the Republic, the Minister of Energy and Mining (MEM), the Minister of National Economy and Finance, the Minister of Foreign Cooperation and Investment, the Minister of Justice, and six other competent members selected and appointed by the President. The council deals with all aspects of the management of petroleum operations such as final approval of petroleum agreements and determination of corporate duties and the GoS’s royalties. The MEM is responsible for appointing the general manager of Sudapet and negotiating petroleum agreements with multinational companies. Sudapet is responsible, together with other oil companies, for carrying out the upstream and downstream activities. The third part of the Act provides for liabilities and remedies under section 34, which empowers Sudapet to sue any operating company whose conduct is considered threatening to people or their property rights.

The Petroleum Act does not cover issues relating to relocation plans and compensation of communities affected by such plans. The protection of a person’s right to private action is marred by the controversial threefold role assigned to Sudapet: as a regulator, as one of the major players in oil operations, and as claimant against oil companies whose operations inflict harm or damage to communities. The monitoring of oil operations would be better off in the hands of an independent body. People should be entitled to directly bring a lawsuit if oil operations inflict physical or material harm on them. Permitting a direct action by the people harmed would avoid tension between oil operators and/or avoid compromising legal proceedings over harmful activities—if, for

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145 Fitzgerald, supra note 7 at 24.
146 Ibid., at 25.
147 Section 18 of the Petroleum Act
148 Section 34 of the Petroleum Act specifically reads as roughly translated from Arabic: "if Sudapet perceives any action in relation to oil operations as endangering the national oil wealth or threatening the well-being of individuals or their properties, Sudapet would, within a period of time it deems reasonable, notify those who are in charge of their operations to maintain and redress any harm resulting from such operations. If the operators do not respond, Sudapet has the right to take all the necessary legal proceedings before competent courts."
example, Sudapet refuses to allow an action suing its partners so that it can avoid a conflict that would disrupt oil operations. Furthermore, if Sudapet is responsible for suing a company on behalf of the people who suffer injuries or property damage, it is unrealistic for Sudapet, as tortfeasor, to charge itself large sums to redress these harms. It is also difficult for an oil operator to fairly represent any other than oil interests. The idea here is not to attack Sudapet without evidence that it has actually disregarded its duty to monitor other oil companies. However, the Act must be amended to avoid conflict of interest.

The Justice System

- Unequal rights and access to justice for women
- Difficulty of obtaining a fair trial
- Recommendations

The justice produced is not only to serve individuals but also to those who face the mighty forces of the state. In that capacity, "it is the last hope of the common man"... that is, when the legislature and the executive fail to redress justice, it becomes the only hope for the hopeless, and the only help of the helpless, the only strength for the powerless.¹⁴⁰ [Hon. Justice O. Chukwudifu]

The right to receive justice is a constitutionally recognized human right in Sudan. Displaced women face several difficulties in accessing justice. First, customary norms shame women seeking justice in courts. In addition, in the southern areas, war inhibits their ability to seek justice. War has had a serious impact on the operation of judicial institutions in southern Sudan. At present in SPLA-controlled areas, there are 17 judges to examine a wide range of lawsuits.¹⁵⁰

Legal illiteracy coupled with customary barriers, the inordinate fees of legal proceedings, and the limited scope of existing legal aid services are obstacles for displaced women to seek justice in national courts. The Legal Aid office has only a few branches in Khartoum and some other states; but no legal aid services are yet available in southern states. The Ministry of Justice is planning to provide such legal services there. The Legal Aid office has only 84 lawyers to handle a wide range of civil, administrative, and criminal cases in both the capital and the states. Because of this limited number of lawyers, the most recent statistics revealed that Legal Aid provided services in only 275 criminal cases, 23 civil suits, 7 matrimonial cases, 1 case involving judicial review of an administrative decision, and not a single case regarding constitutional protection of human rights.¹⁵¹

Customary Courts

The adjudication of disputes involving customary practices among IDPs in Khartoum are handled by non-Muslim national courts and ten customary courts called Mahkamat Alashara Wiliat, which the GoS established in 1999.

¹⁵⁰ Global IDP Project in Sudan, supra note 31 at 149.
An observation of the proceedings of Mahkamat Alashara Wiliat showed that the court's fees are affordable to claimants, the procedures are speedy, and the claimants are familiarized with customary laws and the process of the customary courts. The competence of these courts is based on the ethnic backgrounds of the claimants—that is, each court is headed by the chief of a certain tribe who decides cases involving tribal members and arbitrates intertribal conflicts.

Nevertheless, a number of problems challenge a claimant's right to obtain a fair trial in these courts. And problems also face these courts in delivering justice. The Hon. Judge Attilio Takku, the head of Court of Non-Muslim Personal Matters, explained: "The police raided and confiscated the stamps of these courts, because these courts literally are illegal and arbitrarily exercise their powers. They were not established by warrant of the Chief Justice, which typically determines the jurisdiction and competence of courts; rather, they were established by executive decision. Thus, these courts are not under the scrutiny of the judiciary, and the chiefs exceed their discretionary powers. Furthermore, the chiefs receive no wages or remuneration from GoS. They rely on their court fees and legally ordered fines as their source of income; a serious consequence is that the chiefs impose exorbitant fines on claimants. Finally, these courts have no enforcement power, and claimants resort to courts for non-Muslims for enforcement of the chiefs' orders. Since official courts do not recognize these orders, the claimants have to start a fresh lawsuit."

Two other serious issues were revealed in interviews with the chiefs: first, they recognize a husband's right to beat his wife if she does not carry out the household duties; second, they rely on alkogour, or "palm readers," to compel an unwilling defendant to confess. They believe an alkogour has the power to identify whether or not the defendant has committed the crime. "This only by looking at the eyes of the defendant," as one chief explained. Understandably, these are customary notions and every person involved in this process is aware of the consequences of his or her deeds. However, the emotional intimidation of the defendant make him or her confess. This, of course, can lead to the conviction of an innocent individual.

A scheme of restructuring and reformulation of customary courts should take place and must involve educating the chiefs on gender issues; providing paralegal training for tribe members, including women; assigning the Chief Justice the power to warrant the jurisdiction and competence of customary courts and to remunerate the chiefs.

**National Courts for Non-Muslims**

The national courts for non-Muslims, on the other hand, are the official judicial organs having jurisdiction and competence to examine lawsuits involving customary law. The problems facing litigants seeking justice in these courts are inordinate fees and lengthy proceedings. For the judges, the absence of customary codes delays prompt and expedient judgments. They have to call chiefs as expert witnesses to resolve issues before their courts. According to Judge Takku, this can take months since the court must make sure that the expert witness is credible. They do not have fixed rules to determine pecuniary redress. They use the value of cattle to determine the value of an order. The determination is based on figures provided by the offices in charge of southern states in Khartoum, not the market value, which is often lower but can sometimes even be much higher.

So while legislation continues to deny equal rights to women, the courts' ability to change the law is limited; statutes do not suspend the implementation of discriminatory

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152 Interview with Judge Attilio Takku (The Court of Non Muslim, Khartoum, February 27, 2003).
153 Ibid.
customary laws. Post-independence governments inherited the British colonial rule of allowing the traditional system to prevail in regulating and settling tribal disputes. No efforts have been made to improve the conditions of southern Sudanese women under the traditional system.

The judiciary has been reactive, not proactive, partly because of its own incapacities and lack of attention to the administration of justice and access-to-justice concerns. Judicial institutions, which include prosecutors, police, and legal experts as well as the courts, need to play not only a reactive role in ensuring that laws are enforced but also a proactive role in promoting gender equity — a role that has always been in the hands of the legislature and executive authorities. For the judiciary to play a proactive role, for example, it should be assigned powers to monitor the extent to which institutions are responsive to gender issues. A proactive role would involve facilitating a judicial–social dialogue. 154

Ensuring gender justice requires new laws or proper application and enforcement of current gender-sensitive laws. Law enforcement requires access to justice strategies for each component of the justice system—police, litigants, counsel, and judges. To become gender responsive, judicial institutions need to adopt a holistic approach that encompasses both internal and external factors, recognizing that these factors are interlinked. Internal factors refer to the promotion of women in judicial institutions by involving women in legal services markets and increasing the number of women judges, especially since the number of judges in southern Sudan is very low. For example, according to the schedule annexed to the Judiciary Act of 1995, Sudan has 70 Supreme Court judges, 130 Appeal Court judges, and 200 Provincial Court judges. 155 In view of the size of the country and the number of legal disputes, the number of judges is inadequate to ensure expeditious proceedings. External factors include legislative reforms and constitutional amendments to ensure that men and women are treated equally.

In terms of criminal law, the GoS needs to introduce national legislation to deal with gender-based violence such as domestic violence and sexual harassment.

Discriminatory customary norms must be replaced, given the greater need for property rights for the large number of single women heading households who will be returning to southern Sudan.

Establishing Legal Aid offices in southern Sudan is also important so that vulnerable returning displaced women can gain access to justice.

A reliable justice system means protection of property rights and transactions, which is a fundamental aspect of investing in the environment. 156 Empowerment of women is promoted through the UN Millennium Development’s goals, under which gender justice is considered to be advantageous for economic and development policy, and gender equity and equality to be fundamental for economic growth. 157 Given that, the GoS should introduce reforms to national legislation, the Constitution, and the judiciary, which all play central roles in promoting equal rights for men and women.

154 Malik, supra note 99 at 11.
Exclusionary Official Policies

- Marginalization of communities as a result of oil policies
- Exclusion of women as a result of the federal system

National oil policies also discriminate against displaced women from oil-producing areas. There are several indications that oil policies are state-centred rather than development-centred.

According to the data gathered at Al-kalakla Al-lafla and Kummagon, 85 percent of local tribal chiefs and men who were interviewed perceive oil development as a government project, and are skeptical that they will gain any benefit from it. The young men believe oil development is a source of employment but are not sure that they will have the opportunity to work in oil projects because of favouritism in the hiring process.

Notably, women were not interested in participating in the discussion. They preferred to leave the discussion to the men, saying that the men are better at talking to the government. It was not clear whether they resisted because they believe that oil development is a male domain or because they are unaware of development as such. When were pressed to answer the question of how much they knew about development in their land, one responded, “We had to leave because the government needed our tukuls [huts] to dig oil wells.” However, when Mona Yassin, head of the Legal Department of the Ministry of Energy and Mining, was asked her view of the entitlement of these communities, she said, “Oil development is taking place in deserted areas and only a handful ... of people were affected by oil development.” It is worth noting that these communities move back and forth at the start of each wet and dry season to carry out their subsistence activities. So their movement does not mean they have abandoned their land.

It can be inferred from personal testimonies and the ministry official that marginalization and gender discrimination are at the heart of the oil-development policy.

It is essential to study the customary law of traditional societies whenever any big development scheme is contemplated. The reason for this is that the “social consciousness of traditional society expressed in customary law is so deeply ingrained that any development scheme which disregards it cannot find its way into the hearts of the people and might result in the use of coercion for its implementation.” Professor Kadouf explained: “Before any development project is attempted, traditional problems should be considered carefully and quick measures of reconciliation provided. That is, sources of people's discontent in the area should be discussed faithfully, and people's traditional ways of life, actively portrayed in their customary rules that adjust and mark their patterns of behaviour, should be known.” The engagement of local communities is important for productivity and economic growth. According to a 2001 World Bank report: “By hindering the accumulation of human capital in the home and the labour market, and by systematically excluding women or men from access to resources,

public services, or productive activities, gender discrimination diminishes an economy’s capacity to grow and to raise living standards.\textsuperscript{161}

The Constitution vests the federal government with absolute control over the national natural resources.\textsuperscript{162} Article 9 provides: “Natural resources under or on the surface of the earth and in the territorial waters are public property regulated by law; and the State shall provide plans and appropriate conditions for the development of the financial and human resources for utilizing such wealth.”\textsuperscript{163} The policy consequences of this constitutional provision are that regional governments have no authority or right to participate in decisions concerning the development of mineral wealth found in their territories.\textsuperscript{164} Given the predicament of Sudan’s enormously underdeveloped southern states and their heavy financial dependence on the federal government, conflict over financial resources continues. Such dependence and conflict definitely work against the ideals of the federal system, one of which is to facilitate cooperation and coordination. The multilayered administrative channels for distributing revenues to the southern states lead to delays that affect resources for social services. Not allowing southern states to team up with federal organs indicates the malfunctioning of Sudan’s federal system. The shortage of funding for social services in southern states has a negative effect on the basic needs, health, and education of southern Sudanese women.

The federal system in Sudan reinforces existing inequalities and widens the gap of existing gender disparity at the local level in three ways. First, gender relations at the local customary level are unequal, and customary practices with regard to women’s property rights are less supportive than at the national level, where statutory laws support women’s property rights.\textsuperscript{165} Decentralized decision making and resource allocation put women in a more vulnerable position rather than facilitating their empowerment.\textsuperscript{166} Women are excluded from decision making and face obstacles because they are divided and stratified in numerous ways within their tribes and clans.

Second, at the official level, displaced women face obstacles in using financial markets. Although a large percentage of displaced women are engaged in petty trading, the commercial banks in Sudan have a negative attitude toward the informal sector and are reluctant to finance small-scale enterprises. This is because of the high transaction costs of small loans, risk of lending, relatively low mark-up, and unpredictability of the success of such projects. Moreover, banks’ perception of IDPs as a whole is also a problem. They view IDPs as relief recipients and not creditworthy citizens.\textsuperscript{167} This further creates a vicious circle of unemployment.

\begin{footnotesize}
\begin{enumerate}
\item The World Bank Report, supra note 97 at 10-11.
\item Articles 2, 9, 110 (m), 113, and 115 of the 1998 Constitution. Art. 2 of the Constitution states: “The Sudan is a federal republic. The supreme authority thereof is based on the federal system, drawn by the Constitution, as a national centre and States, and administered at the base by local governments in accordance with the law, to ensure popular participation, consultation and mobilization, and to provide justice in the distribution of power and wealth.” Constitution of the Republic of Sudan, 1998, Republic of the Sudan Gazette. Special Supplement No. 1, Khartoum, Sudan.
\item Moreover, arts. 110 (m), 113 and 115 of the 1998 Constitution vest the federal organs with absolute responsibility to enact law and polices, to execute decisions relating to control of federal lands, natural resources, and mineral and subterranean wealth, and to control the channelling of financial resources.
\item Article 114 of the Sudan’s Constitution.
\item Melissa Macklin “Developing a Research Agenda on the Gender Dimensions of Decentralization” Background Paper for the IDRC 2003 at 14.
\item Ibid.
\item Osman & Sahil. supra note 30 at 28.
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Finally, displaced women are excluded from negotiations regarding oil-development relocation plans. Government authorities negotiate relocation plans with male tribal chiefs. Under the traditional customary system, as discussed earlier, the male head of the household is officially considered the family or clan representative.

Thus the GoS needs to adopt a new attitude to establish an equitable revenue-sharing formula to divide revenues among the central government, states, provinces, and local authorities. The federal system should be restructured to offer more opportunities for women from oil-producing areas to benefit from local resources. The GoS must redefine its citizenship process and practices. It should also introduce measures to address gender issues in the labour market, social services, and representation of women in local institutions. Ultimately, it must balance its right to intervene for public good with its inherent citizenship commitment to provide for and protect individuals.108

The securing of suitable conditions for returning displaced women should involve an evaluation of the whole process of laws and policies, rather than dealing with each problem separately. Piecemeal plans will do nothing to address all the causes of the persistence of gender injustice among displaced women.

The GoS must review policies resulting in gender discrimination. Its review should include an assessment of women’s basic needs and important opportunities to empower them to participate in decision making at different levels—household, local, regional, and national.

**Toward a Socially and Gender Sensitive Policy**

- Challenges for the resettlement of returning displaced women
- The human development approach
- Protection of human rights

According to Nobel laureate Amartya Sen, “Happiness and desire-fulfilment are serious enough candidates for capturing the idea of personal well-being.”109 Sen’s statement implies that well-being is multidimensional, encompassing many facets of people’s lives, and is highly subjective.

Returning displaced women need security, protection of their human rights, and equitable access to productive resources and social services. Human security plays a vital role in their human development. The concept of human development refers to the process involved in expanding people’s choices or capabilities, not only in terms of income but also in areas such as health, education, and employment. The conventional approach of economic policies is based on growth maximization. Due to its high social costs, this approach has been contested, since aggregate growth could be realized alongside less desirable conditions such as political oppression and wrenching

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108 The concept of citizenship entails the direct legal relationship between the individuals and the state, a relationship that carries with it obligation and enforceable rights as defined by juridical processes. State legislation delineates and regulates the rights and responsibilities of citizens and rules by which one becomes a citizens. Suad Joseph. “Gender and Citizenship in the Arab Region” (Ottawa: IDRC, 2002) at 2.

deprivation among the poor.\textsuperscript{170} The human development approach grows out of the basic needs approach that endeavours to provide a minimally decent life for the poor. Human development clearly holds that socio-economic policies should focus on people and their well-being as the final objective, rather than on economic growth or any other state of affairs as ends in themselves.

The change from development aimed at relieving material poverty and providing for basic needs to development aimed at giving people choices also came about in response to the impetus to highlight the importance of dignity and other non-material aspects of life. The human development agenda and the human security agenda share salient features: they are both concerned with people as ends and not means, concerned with the bottom-up human agency that is absent in the dominant development paradigm; and both agendas address chronic poverty. When human development is applied to impoverished persons who already live with chronic insecurity of food, livelihood, or health, it overlaps with human security. The human security paradigm undertakes to address threats such as violence or economic downturn directly. It recognizes that wars are a real threat to people and investment, and it establishes measures to resolve conflict and prevent its potentially destructive consequences.

With respect to human rights, the quantifiable measures of well-being remain in the protection of these rights. Violations of these rights are actually a denial of basic needs such as security, food, shelter, health, education. Both human rights and human security recognize freedom from fear and freedom from want as central facets of human lives. The problem for women is complicated by increasing levels of violence and the absence of direct protection of their rights. Sen, for example, introduced the idea of "entitlement failure" in his work on famine. He defined entitlements as

the totality of things he can have by virtue of his rights. What bundle of goods he ends up with will, of course, depend on how he exercises his rights, and so the entitlements are best viewed as a set of bundles, any one of which he can have by using his rights.\textsuperscript{171}

These rights include rights to inherited and acquired assets, including health, strength, skills, and property; rights to use these "endowments" to produce for one's own consumption or for sale; and rights to goods, services, and financial transfers from the state. Sen's concept includes both production and distribution; it also includes legally sanctioned claims upon fellow citizens through both market transactions and the state.\textsuperscript{172} Sen argued that many deaths in famines occurred not because of an overall insufficiency of food in the country as a whole, but because some people were excluded from obtaining food because they could not produce it themselves, could not pay for it in the marketplace, and had no institutionalized claim on the state to provide food for them. They died because of entitlement failure. More generally, this idea of entitlement failure can be extended to cover all situations that occur when the resources that a person can obtain through his or her existing entitlement relations are insufficient to enable that person to live a well-functioning human life—a life in which the person is able to be well nourished, healthy, and literate; able to participate in the life of the community; able to define and pursue his or her own goals in life; and able to enjoy human rights.\textsuperscript{173}

\textsuperscript{170} Alkire, supra note 110 at 32.
\textsuperscript{171} Sen, supra note 169 at 32.
\textsuperscript{172} Elson, supra note 136 at 11.
\textsuperscript{173} Ibid.
Sudan needs a sound oil-development approach that entrenches gender justice, which will yield desirable results, rather than a state-centred approach to development that benefits only a segment of society and devastates the rest. The latter approach will create problems that will eventually exhaust revenues from such development projects. A sound approach implies equitable distribution of revenues and services, and the enabling of displaced women to get access to productive resources such as land. Legal reforms introduced in the context of a conventional economic approach (pro-growth) are encouraged to facilitate efficient transactions and generate stability and predictability for investors. Nevertheless, a socially conscious approach to oil policy can balance the trade-off between equity and efficiency, and offer an alternative approach in the promotion of social and economic rights of citizens. Such an approach does not necessarily contest the development agenda but harnesses the distribution dimension of development that has so far been neglected.

An alternative approach to considering social policies as an afterthought to economic policies would start with the examination of the intrinsic social content of macroeconomic policies. There are aggregate real resource constraints on the achievement of ultimate social objectives. These real constraints are not directly the object of macroeconomic policies, which are mainly concerned with financial constraints. And financial constraints depend on the pattern of ownership and control of financial resources.\textsuperscript{174} The destruction of real resources that occurs when human capacities are destroyed may even have benefits for capital accumulation if it is part of a process that lowers the unit costs of hiring labour.\textsuperscript{175} The current realization is that optimal policies have hidden costs for economic growth, costs that will become undue burdens on national returns. Poverty and unemployment will indirectly affect demands and weaken the capacity of the state to tax.

Synthesizing social policy and macroeconomic policy requires designing policies that, at a minimum, do not have social biases such as unemployment built into them.\textsuperscript{176} But as well as promoting an examination of the social content of economic policies, a new synthesis of social and economic policy requires different criteria against which to judge the success of policy and a different understanding of the way to organize policy outcomes. Socially unbiased policy refers to policy that will focus directly on distribution. The language of rights is useful because it articulates the grounds on which individuals can enjoy entitlements offered by their citizenship. The equitable resource-sharing approach is thus logical in redefining political membership. Moreover, it would secure resources for returning displaced women, enabling them to maintain their livelihoods.

Law and institutional reforms should be part and parcel of a more comprehensive effort to articulate governance that embodies a reconceptualization of the role of the state in the market\textsuperscript{177}—that is, the state has the resources and power to play an enabling role in market transactions. Under the current theme of development, such a role should not only focus on the conventional macroeconomic concerns but should pay greater attention to structural, social, and human dimensions of development.

The introduction of the rule of law and human rights would give the reformed development agenda a newfound legitimacy;\textsuperscript{178} such a rights-based approach to development would also provide an alternative means by which to evaluate the social

\textsuperscript{174} Elson, supra note 136 at 8.
\textsuperscript{175} Ibid.
\textsuperscript{176} Ibid.
\textsuperscript{177} Rittich, supra note 142 at 14.
\textsuperscript{178} Ibid., at 15.
sensitivity of development programs. Specific laws should also provide both the material incentives and the normative structure in which different actors, public and private, are expected to perform, and in which the interests of stakeholders, such as individuals and the community, are protected.

Recommendations

- The GoS must provide direct protection of women's rights.
- It must pass national legislation to criminalize gender-based violence.
- It must ensure the security of returning displaced women by preparing safe and suitable areas, and providing police services and support for tribal mediation programs to ensure peaceful coexistence.
- Training programs must be coordinated with NGOs in order to train returning displaced women to participate in the native and local administrative structure.
- The GoS must ensure the security of returning displaced women by preparing safe and suitable areas, and providing police services and support for tribal mediation programs to ensure peaceful coexistence.
- Training programs must be coordinated with NGOs in order to train returning displaced women to participate in the native and local administrative structure.
- The GoS must increase spending on social services, such education and health programs.
- Radical reform of laws must be undertaken to promote equality and ensure that returning displaced women have access to productive resources, such as markets and credit systems, so that their subsistence activities can be transformed to income-generating activities.
- Judicial reforms must be undertaken in southern Sudan, including increasing the number of courts and judicial staff, creating mobile courts for remote areas, training judges and lawyers in gender issues, and establishing a civil code to replace discriminatory customary norms.
- The chiefs' courts should be integrated into the hierarchy of judiciary courts. The non-Muslim courts should have appellate jurisdiction and final decision over chiefs' orders.
PART V: LAND-TENURE SYSTEM AND COMPENSATION OF DISPLACED WOMEN

Landownership and Land Use: Legal Sources

- Laws relating to landownership and land use
- Priority of statutory law over customary law to secure GoS interest but not to grant women adequate property rights


Under the Land Acquisition Act, the GoS has exclusive ownership over any unregistered land, such as tribal lands. However, the GoS permits village or tribal rights of watering, grazing, cultivating, and wood cutting on unregistered land, and retains the right to acquire it for public purposes. In the latter case, the Act establishes the right of affected persons to compensation. The Unregistered Land Act of 1970 provides that all waste, forest, occupied, unoccupied, and unregistered land is deemed to be GoS property and is deemed to be registered under the Land Settlement and Registration Act of 1925. Tribes have occupancy rights over forests, river, and plains.

Within the framework of the GoS’s ownership, customary norms regulate land usage among the tribes, such as the Dinka and Nuer inhabitants of oil-producing lands. Fertile grazing land is important for the cattle of these tribes as well as for tribal subsistence activities. The social, economic, and political aspects of tribal life are so interwoven with cattle that it is almost impossible to separate discussions of land and cattle ownership. Cattle is the predominant form of property for the Nuer and Dinka. Consequently, the branches of law related to transactions involving the use of cattle are more developed. The precedence given to cattle gives the impression that land is of less importance; however, that is an inaccurate assumption since land is the primary source of tribal survival and has significant communal and ritual values.

Four sets of issues are linked to land and gender justice in southern Sudan: landholding, subsistence land use, oil development, and property rights of returning displaced women. These are interwoven issues with further socio-economic and legal ramifications for gender equity in obtaining land and equal property rights.

Statutory law prevails to protect the GoS’s multiple interests over tribal land—for example, control of forests and wildlife and development projects; however, such protection does not extend to women’s property rights under customary law. The economic liberalization policy that promotes the transfer from communal ownership to individual ownership does not remedy women’s limited access to land or the gender disparity in labour relations under customary law. The normative and policy framework of the national compensation system is gender-insensitive, given that compensation is a

179 Section 3 of Land Acquisition Act, Sudan Gazette, Ministry of Justice, Sudan.
180 Kadouf, supra note 160 at 26.
viable option for returning displaced women to maintain their livelihoods in post-conflict southern Sudan. In this context, the overarching issue is how to structure national economic policies and gender justice in the sphere of land, which is regulated by the existing plural legal system. Discussion of this issue requires a clear understanding of the relationship between women and traditional society, on the one hand, and the relationship between statutory law and tribal women’s rights property rights to land under customary law, on the other (statutory law recognizes customary norms discriminating against these women’s rights).

Customary Law and Gender Issues Relating to Land and Property

- Superiority of male ownership and possessory rights to land over women’s usufruct rights and control over their own cattle
- Shortage of land as a source of tribal conflict and further source of women’s insecurity
- Suggested land-tenure reforms

Customary law regulates all tribal societal relations to ensure communal stability. Statutory law emphasizes the prevalence of customary norms and operates to give a natural and immutable appearance to the dominant articulation of custom. Therefore, custom can be invoked to legitimize statutory law. Through statutory exemption provisions, the state in fact facilitates the establishment and preservation of asymmetrical social arrangements that deny some citizens (women) a voice in shaping social norms.182 Calling for the repeal of customary practice without putting in place statutory laws to remedy injustice embedded in customary law will only create a legal vacuum, and women will lose the little customary protection of their rights that they do enjoy. In dealing with gender inequality in order to give women opportunities to participate in the development process, customary and statutory law must be read together to identify where customary law ends and statutory law begins so that it will be feasible to reinforce the property rights of women and to treat women as autonomous legal agents.

Customary norms favour communal ownership as well as private individual rights. As a result, economic transactions involving the disposal or transfer of land are almost nil. Modern transactions of mortgage sales, purchase of land, leases or tenancy, and so forth, are unknown in customary practices.183 The main reasons for the stagnancy of land law relate to colonial and post-independence Sudanese government policies, which permitted traditional customary norms to regulate land use to the extent that such norms do not run counter to the interests of the state in tribal land. Moreover, the predominant system of communal ownership of land has minimized the level of individual disputes over land, whereas extensive litigation helps to rapidly develop land law.184

Under customary law, land use is divided into two: low-land use and high-land use. The legal implication of this division is that low land is vital to tribal subsistence and therefore subject to communal ownership. Low land is characterized by plains with rich

184 Ibid.
pastures, water throughout the year, and areas for fishing and hunting.\textsuperscript{185} High land, except for its forests, is suitable for building permanent settlements (huts). High-land forests have several benefits for the community—for example, they provide fruit and firewood, as well as a place for the whole community to settle during rainy seasons. Although private rights are overshadowed by communal rights, the tribe does not tamper with the rights of an individual to have a residence and agricultural land around his homestead.\textsuperscript{186}

The private rights to arable and residential land are subject to communal permission,\textsuperscript{187} since the land is owned by the community. The most widely recognized private rights on this land are the right of inheritance and the right to shrine land (it is believed that the spirits of ancestors remain on family or clan land, so no aliens should occupy it).\textsuperscript{188} The problem of determining individual rights to arable or residential land relates to the type of private interests on the land\textsuperscript{189}—that is, whether the individual has “possessory” or “ownership” rights. The individual is deemed to have a possessory right if he or she has corpus (thing under his or her control) and animus possidendi (intention to hold). Animus possidendi equates a possessor of land with an owner.\textsuperscript{190} However, to base the judgment on the “intention” of the occupant of the land is a subjective test. The objective test is generally what the community recognizes as a possessory right.\textsuperscript{191} The prevailing and traditional justification is that since the ownership of the whole land is vested in the tribe, it is impossible for a private person to automatically acquire private ownership until the tribe has relinquished its right of ownership. Accordingly, the right a person enjoys over the land under his physical control is deemed a possessory right.

Moreover, the community does not allow an individual to acquire the right of ownership over abandoned land while its members are searching for fertile lands. If such ownership were allowed, an individual would acquire a substantial part of the tribe’s land, thereby leading to a shortage of land and to serious conflict over scarce land. Because of these concerns, an individual enjoys only possessory rights, which he loses as soon as he abandons the residence. But the community’s conception of the nature of private interest in residential and arable land does not seem to totally conform to the concept of possession, since the type of rights an individual enjoys over arable land are “usufruct rights.”\textsuperscript{192} The community provides the individual with usufruct rights, such as the right to cultivate, for a period, after which the land is to be restored to the tribe in the condition in which it was given except for ordinary wear and tear.

Customary principles entitle women to have usufruct rights. In practice, however, the right of the male household head is superordinate, and the rights of the women in the household—as wives, sisters, daughters, or mothers—are secondary or “inferior” to that of the male head of the household.\textsuperscript{193} This characterization is particularly relevant in reference to wives. Women do not inherit land but are usually allocated the usufruct of the land as wives in their husband’s clan.\textsuperscript{194} Thus a woman has no exclusive usufruct

\textsuperscript{185} See discussion of types of subsistence activities and land use by Kadouf. \textit{supra} note 160 at 111-163.

\textsuperscript{186} The Customary Law of the Dinka. \textit{supra} note 88 at 135.

\textsuperscript{187} Ibid., at 157.

\textsuperscript{188} Ibid., at 139.

\textsuperscript{189} Ibid.

\textsuperscript{190} Ibid.

\textsuperscript{191} Ibid.

\textsuperscript{192} (which mean that rights of using and taking the fruits of something belonging to another) Ibid., at 141.


\textsuperscript{194} Ibid.
right since the exercise of that right is derived from the right of her husband to arable land. So if the community dismantles the husband's rights, his wife will automatically lose hers. And since in customary law the official registration prioritizes the rights of her husband as the principal landholder, a woman's enjoyment of her usufruct rights remains limited; moreover, since customary law provides multiple rights over the same land, these are distributed hierarchically with the male having higher substantive rights over the woman's "derivative interests."

The struggle over land is experienced differently by women and men, and depends on complex interactions of gender, marital status, and stage of life. The coexistence of customary and statutory land laws provides an overlapping set of legal institutions, each characterized by its own set of rules and procedures. This plurality of legal structures results in gender bias—maintaining men's control over land and women's inequitable position within the local power structure.

Polygamous practice and division of land and labour among wives (as detailed in Part IV) are also problems for women. Since the man's plot is not that large in the first place, the family may be better off if the plot remains undivided. Yet within complex polygamous practices, women contribute a significant share of the production, especially of the household's food, without being rewarded. Therefore, recognition of women's labour would go a long way toward promoting the right of women to enjoy the entitlements associated with the use of land. Such recognition would also obligate men to respect their wives' enterprises. The organization of labour and production are to be seen as an integral part of the wider structure and process of production, an important aspect of regional and national economic growth.

Moreover, under customary law women are entitled to own cattle, which are the primary source of wealth for the whole tribe. Cattle are used to pay the bridial dowry and are distributed in inheritances to maintain the lineage and kinship. Cattle collected by the bride's family are shared with all relatives, thereby establishing stronger social bonds between the husband and wife, on the one hand, and the couple and their respective clans, on the other. The clan does not approve of divorce because it would mean repaying the cattle to the husband's family. As for the husband, he must be careful not to mistreat his wife, on whose account he paid so many head of cattle and which might be difficult to get back. Dinka and Nuer honour this network of human ties very highly, and cattle symbolize the value of these ties.

Cattle are the media of exchange for labour and for trade purposes. They are the tool used to maintain social equilibrium; to compensate for injury, wrong, and damage; and to control political relations between tribes, especially when they turn out to be the major cause in the occasional outbreaks of intertribal conflict. For the Nuer and Dinka, to own cattle ensures that one is remembered by one's descendants. One of the chiefs explained, "The more cattle you have, the more the whole community remembers your prosperity and great influence in the tribe you belong to." The tribal social structure has brought about the dependence of each individual upon his or her kin. This reciprocity, which finds its expression in the transference of cattle from one member to another, endows cattle with phenomenal influence at all social levels—household, clan, and tribe. In the course of a woman's life in the family, she continues to receive milking cows from her husband when the occasion arises, and when her daughter or stepdaughter marries. She prevents other members of the family

195 Ibid.
196 Kadouf, supra note 160 at 33.
197 Ibid., at 38.
198 Interview with Chief Gordon Bushok Tour (Al-kalakla Al-lafa, Khartoum, Feb 20, 2003).
from meddling with her cows and using them in matters that will not perhaps further her interests or those of her children. However, she cannot dispose of her own cattle without her husband's consent. Cattle transactions are male dominated. The husband is looked upon as a trustee of the family cattle and his disposition of cattle is restricted and checked by social demands rather than by any legal rights of the family members.  

The economic liberalization policies that were introduced over the last two decades emphasize individual ownership rights and place a premium on well-defined and secured property rights. But they do not address the absence of women's rights under customary law, including the fact that women are not rewarded for their labour. These policies are implemented within the existing structure, which perpetuates gender discrimination. The Constitution extends social immunity to customary law. Personal and matrimonial matters (for example, inheritance, marriage, divorce), which are governed by customary law, are exempt from statutory intervention. Thus constitutional and statutory laws must also be investigated, otherwise the transformation of traditional possessory rights into individual ownership rights without reforming women's property rights will allow gender disparity to persist.

At the heart of property relations is the issue of security of tenure. Land is a critical factor underlying relations between people who work together to produce food. Women, as well as men, participate in food production and thus have a vital interest in the use of land. Therefore it is important to look at women's struggle over land rights in the broader context of the economic and social threats to women's rights and interests in land use. For example, land is a material resource and critical to sustaining livelihood, but women are denied the right to own land and are treated inequitably compared to men under both the family and the tribal power structure. Women are the major players in communal labour-intensive enterprises but they lack access to the profits of such enterprises. They enjoy usufruct rights, but these rights can be contested or denied at any time. Socially constructed threats occur when the second wife has more influence and control than the first wife; or when the brothers and sons of a woman's deceased husband acquire the property and the privileges that go with it, thus leaving the widow in a more vulnerable situation; or when the marriage of the daughter brings to the family more male members who will be competing over shares in her deceased father's property. In all these cases, women's rights to land become increasingly insecure. Therefore, land-tenure reforms must be informed by an understanding of these social relations and must focus on recognizing the participation of women in sustaining the material and labour resources of production.

Another important issue is that in addition to the customary law exclusion of women's property rights, statutory law excludes these rights. Women are acknowledged only in their dependent position as wives of the landholders in idealized "households." The Boserupian thesis, which gained currency over the 1990s in debates over land-tenure reform in Africa, explains how the shift from "traditional" systems of landholding toward "modern individualized" systems began spontaneously under conditions of increasing scarcity of land. Such scarcity is associated with "increases in population density, advances in farming technology, and the emergence of agricultural markets."  

As land acquires new economic value, women have a greater need for landholding rights in order to survive external shocks.

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199 Macck., supra note 17 at 85.

Landownership raises different issues for the community's political, economic, social, and legal well-being. It is worth noting that customary norms are not intended to marginalize women or relegate them to a lower social status. Rather, these norms were designed to ensure the survival and protection of the tribe within a complex ethnic structure that is helpless against government control and market forces. The logic behind these norms, which is that they protect land from invasion by outsiders or from women disposing of their land to outsiders under conjugal contracts, is fully justified by statutory laws and legal institutions. It is imperative that the move toward a land-registration policy be grounded in ensuring the well-being of the whole community through land tenure. Therefore, when a registration scheme is adopted, women's rights can be accommodated in a more economically secure and politically stable tribal environment.

An assessment of conditions in Kummagon indicated that shortage of land is a serious problem, even though there is water. The villagers who were relocated in Kummagon confirmed these facts. They complained that the new areas are isolated and lack suitable conditions for carrying out their subsistence activities; as a result often they conflict with other ethnic groups. In the event of a sudden mass return, intercommunity conflicts can be expected to take place. Land should be demarcated and areas rehabilitated before IDPs return.

For returning displaced women, relying on the traditional system to guarantee them access to land in rural areas is problematic. Women heads of households are not treated as a distinct category under customary law. As a result, they will not fare well under registration programs, assuming that the man is the principal landholder. The rapid commodification of land will only intensify the insecurities of returning displaced women. In the context of greater market integration, these women will have no voice in influencing the productive use of land. Moreover, the exclusion of both women's property rights and women's effective participation in economic development defeats the economic goals of the country.

The GoS must resolve the tension between gender equality and statutory/customary practices. Customary laws that are based on a gender hierarchy must be reformulated to create room for women's voices and inclusiveness in the shaping and articulation of community norms. Since women's access to economic resources depend heavily on their relationships to their father and husband, the customs relating to the key events of marriage, divorce, and death require redefining and reconstituting in terms of women's property rights. The absence of direct constitutional protection of women's rights has far-reaching consequences in a social context that accommodates gender hierarchy and marginalizes women. Customary norms should be harmonized with constitutional articles relating to equal treatment in order to reform women's property rights. Moreover, the symbiotic relationship between customary law and formal institutions and processes should be reviewed in view of the fact that the relationship is a source that weakens women's property rights.

An objective solution would seek greater inclusiveness in the registration of title; it would also require official disclosure that the title holder is a trustee for other socially recognized, but unregistered, property interests. Otherwise registration could turn out not to be the ideal sole solution to gender disparity in access to land. Studies confirm that men register the land in their own names so registration will not change women's status. Men can freely dispose of family land without any tribal obligation to inform

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201 Global IDP Project, supra note 31 at 151.
family members. In a more gender-sensitive environment, joint registration in the name of both spouses would be a durable solution by directly granting women property rights and giving them the right to negotiate any decisions concerning the use of family land. Registration initiatives should ensure that the disposal of land by the trustee is valid only with the consent of all holders of interests on the land concerned. Incorporating social controls into institutional procedures would strengthen the protection of women's hitherto unregistered interests.

Article 14 (g) of CEDAW (Convention on the Elimination of All Forms of Discrimination Against Women, 1979) calls upon governments to guarantee rural women equal access to agricultural credit and equal treatment in land and agrarian reform in land resettlement schemes. The male bias in land registration will cause difficulties for returning displaced women. First, women are often denied a share of the marital property after divorce or their husband's death. Any claim they establish over land, if it is not acquired by the GoS for oil development, does not have any legal grounds, since title to this land is held in their husband's name. Second, the bias in land registration impedes returning displaced women from obtaining independent credit. Without evidence of landownership, women cannot offer adequate collateral to secure land. Land is still the economic base in rural areas and defines a network of kin relationships in which women are involved. An assessment of property relations and gender is, therefore, a key component in establishing equitable access to land and the legal autonomy of returning displaced women.

In the light of the foregoing discussion, the GoS must introduce the following central tenets of land tenure in southern Sudan. It should entrench the land system in the Constitution to give it legitimacy and protection from political and administrative excesses. In addition, it must have the land-tenure system administered jointly by the National Land Registration and Settlement Office and local land registration offices of regional southern states. Under this system, the policies of these offices should conform to constitutional articles and equitable terms of land distribution among oil concessions, tribes, and individuals. The regional office should, in coordination with the national office, allocate land for oil projects. And the regional office should be responsible for the registration of tribal land. The standards of registration should require mandatory inclusion of the spouse's name on the certificate of title to communal land. The spouse's consent to dispose of land by another family member is imperative, otherwise the transaction to sell the land should be considered null and void. Upon the death of the title holder, the division of shares among other family members should be registered. A woman who is a single head of household should be equally entitled to purchase or be allocated land. Her disposition of land should be conditional upon the chief's consent: first, to avoid the transfer of land to an outsider, which could be a potential problem for ethnic conflict and could threaten societal stability; and second, to protect the rights of her children.

205 Tsikata. supra note 203 at 160.
206 Ibid., at 171.
Compensation for Returning Displaced Women

Why Compensation

- Need for cash
- Problematic official approach to compensation
- Unbalanced bargaining powers of communities versus GNOPC
- No definition of compensation in Land Acquisition Act
- Rigidities in determining who is entitled to compensation
- Basic cost-benefit analysis
- Inadequate compensation
- Discrepancies between the Act and compensation process
- Gender-insensitive compensation process

The lifestyle of returning displaced women has been transformed. Their tribal bonds have been dissolved by war and displacement. They return as single-headed households and need to generate income to support their families. They have been engaged in informal income-generating activities and have become more dependent on cash to sustain their lives. Economic conditions in southern Sudan threaten traditional agricultural activities, and the planting of landmines has reduced the area of safe land for such activities. Subsistence activities that once sustained these women are just one set of several livelihood strategies for earning cash. Some of the displaced women interviewed in Al-kalakla Al-lafa and Jebel Awlia would like to return to southern Sudan and to have land on which to carry on their traditional activities. They said that they were able to secure food for their families from these activities, and they would like to sell the surplus food to obtain cash for their children’s schooling and for their health expenses. Some of them would like to own land and build a house but continue with petty trading because they do not have enough money to prepare the land for agricultural activities. One interviewee said, “All the people are becoming poor. Who is going to buy farm products from me?” and “Transportation to go to big markets everyday to sell food products is difficult.” In both cases, land is considered a source of sustenance and security.

Women use different coping strategies to meet the urgent income needs of their families, effectively taking on roles as providers in an environment where they have no option but to use their labour on large commercial estate farms.\(^{207}\) The drive to a cash-based economy and changes in gender roles and responsibilities will be exacerbated by oil-development projects. Without equitable access to GoS and development resources, displaced women will not be autonomous.

Compensation is the only way in which returning displaced women from oil-producing areas can obtain start-up capital or cash to resume living in southern Sudan. And, as previous parts of this report have illustrated, there is a serious need for these women to have cash to restart their lives and maintain their well-being. This report has also demonstrated the necessity of entitling these women to property rights. In the light of

\(^{207}\) Verma, supra note 91 at 177.
these reasons, compensation in terms of cash and suitable land must be made to these women.

The groups interviewed generally feel positive toward oil development on their land. They agreed that it is “good for all of us”; and “good for development in our area.” A youth from Dinka Panru said, “Oil will be good if we are participating in its development; employment is an issue for us.” Chief Sultan Deng de Kur said, “It is good for Sudan in general and my community in particular.” One 40-year-old woman, who has six children, said, “I have no idea, but I think it may be good.” A skeptical young man said “People say it is good, so I think it may be good.”

In 1999 the GoS established the Land Acquisition and Compensation Committee (“LACC”) to design and implement the compensation process, which is funded jointly by the GNOPC (Greater Nile Operating Company) and the GoS. LACC, which was established by presidential decree, was granted its powers under the Land Acquisition Act of 1930 and other national legislation governing land survey and land registration. According to Mona Yassin (head of the Legal Department of the Ministry of Energy and Mining), “Due to the technical nature of LACC, the Minister of Energy and Mining retains the right to determine its formation and jurisdiction. LACC derives its power from the Land Acquisition Act but exercises wider discretionary powers in the formation and implementation of compensation plans.” LACC comprises representatives from the National Survey Office, judiciary, Ministry of Justice, Ministry of Agriculture and Forestry, Ministry of Housing and local assemblies of regions in which oil development is taking place.

The GoS does not have an explicit national policy on resettlement and rehabilitation. Resettlement is left in the hands of the authorities of the oil projects. GNOPC has implemented the compensation plans, at the request of the LACC, but problems remain, as discussed below. GNOPC designed the Land Reconnaissance Assessment form (“LRA”) to use in a base-line study to serve several purposes: (1) to identify persons entitled to compensation and to assess their current living conditions and their needs upon relocation; (2) to explain types of subsistence activities, such as farming, grazing, and herding in proposed concessions areas and to examine the potential impact on these activities by oil operations; (3) to explore the suitability of proposed project areas for certain types of oil operations (such as seismic work, drilling leases, or routes for new access roads); (4) to assess the suitability of the proposed areas for habitability and subsistence land use, and to determine whether relocated communities will have access to water resources in new areas; and (5) to negotiate relocation with tribal chiefs, taking into consideration the number of individuals, families, their ethnic origin, length of time they lived in oil concession areas, nature of their residence (whether transitory or permanent), how they generate income, and whether they have moved from any other locations.

Once the base-line study is completed, the project team is to identify the principal measures to be taken to eliminate, or minimize the degree of, the negative impact of oil operations on the affected populations; the team is then to work on reaching an agreement on the compensation amount, which is to be evaluated according to the key needs of relocated communities and individuals.

208 Interviews conducted between (Kumnagon Feb. 27-March 10, 2003).
LRA does not specify compensation amounts. Appropriate compensation is determined on a case-by-case basis. The Land Acquisition Act provides for two modes of compensation payment, cash and kind (the latter is an alternative option). In addition to these modes, LRA provides for compensation payment through provision of social services (medical, educational, and veterinary services); a physical asset (for example, building fence); physical infrastructure (roads and water systems); and temporary assistance (assistance in moving and harvesting). Under the Act, the Executive Council of the province where the oil development is being carried out is supposed to decide when compensation is to be made in kind, and to demarcate the areas in which the person will be relocated. However, the LACC has given these tasks to GNOPC staff, which now considers whether to give compensation in kind or provide social services, or whether to relocate people to areas close to social services and water. Allowing GNOPC to make these decisions is one of the shortcomings of the compensation process. Local councils are better situated than GNOPC to determine suitable new areas for relocation. They are acquainted with customary practices and tribal seasonal movements. They deal regularly with tribal chiefs and are familiar with the customs, problems, social context, and living condition of the tribes.

The assessment of eligibility to receive compensation is undertaken in three primary situations: (1) personal compensation when a single or small number of households must be physically relocated to a new area for safety, access to services, or other reasons that GNOPC staff deem compelling; (2) personal compensation when a single or small number of households lose their traditional resources, such as water, firewood, and agricultural land, or have their access to such resources impeded; (3) community compensation when entire communities will be affected by the oil project (that entire community must be physically relocated because their access to water resources will be impeded by oil operations). Community compensation is also provided for communities living within the vicinity of oil development areas and have immediate socio-economic needs that GNOPC can effectively meet as part of the development project (such as digging wells and building health clinics and schools).

LRA sets out five steps for the compensation process. First, GNOPC staff personally visit the affected parties to identify the key needs, such as health services, water resources, schools, sanitation, housing, livestock care, agricultural seeds, fuel, sanitation, electricity, lighting, roads, and transportation; they also decide whether to compensate in cash or in the form of food or marketable goods. In general, capital-intensive compensation, such as a water well, will be provided to a community, whereas compensation in cash and seeds will be provided to individuals and households. The second step is to find solutions for identified needs—for example, whether to provide a mobile or a permanent medical clinic. The third step is to discuss with the affected parties the potential roles each party will play to ensure that responsibility is shared (so that ownership and future maintenance of the program resides with the individual/family). For example, GNOPC might provide facilities, tools, and instructors to facilitate a cash crop agricultural development program, and the affected party might agree to attend training sessions and complete the program to harvest. GNOPC staff will investigate the costs, risks (social, environmental, economic, and security), timing, and appropriateness (taking advice from relevant humanitarian and other NGOs in the area or implementing similar projects) of each possible solution, and prioritize them using an appropriate grading scale. The staff will then select the best solutions after consulting with the affected parties. Fourth, the staff completes a feasibility study within a negotiated period of review to confirm the potential to successfully complete the compensation project. They will communicate with the GoS and relevant humanitarian

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211 Section 22 of the Land Acquisition Act.
agencies and NGOs to confirm an appropriate level of acceptance of the program. The fifth step is for the staff to distribute the agreed-upon compensation.

GNOPC is to source all required material and/or “immaterial” inputs to fulfil the requirements of the compensation agreement. Using the inputs gathered, GNOPC and all affected individuals and families will perform the necessary tasks required to complete the compensation project (for example, acquire and distribute livestock, complete the training program). The recipients of compensation sign the compensation information document before a competent official (such as a government minister or a judge) and, where possible, a third party witness (such as an NGO or IGO representative). When this is not possible “evidence” of compensation, such as a thumbprint, photograph, or signature of community head will be collected and recorded.

Assigning the compensation process to GNOPC has created a conflict of interest. To maximize the profitability of the project, the authorities tend to consider the least costly externalities of the project. That essentially distorts the displaced community’s chance of obtaining better compensation terms. For example, the relocated tribes are nomadic and have no perception of the monetary value of their assets. Compared to GNOPC, their bargaining power is weak. The absence of neutral legal officers to represent the real interests of local communities jeopardizes their chances of obtaining a better resettlement package. In fact, the Land Acquisition Act provides for expropriation officers with legal expertise to implement the compensation payment process, but LACC dispensed with this legislative requirement and authorized GNOPC to carry out the process. The Act refers to the legal expropriation officer to fulfill two objectives: (1) to negotiate the compensation amount; and (2) to head the arbitration board if no agreement is reached. The formation of an arbitration board is important. Its function is to give relocated people the chance to express their grievances. And it also has the legal power to settle claims in the best interests of the disputing parties. Interviewees who, before oil activities began had inhabited Aloi and Alhong, close to Al Toor, one of the major oilfields, and were relocated to Kummagon and Nyok-Rial in Al Toor west, said, “We had no option but to leave ... the negotiations with authorities from GoS and oil companies were not real, in the sense of exchange of views. Instead, they were carried out in a hasty and authoritative manner or by way of ‘order.’”212 The interviewees also confirmed that they had no chance to refuse either the relocation or the compensation offered. They were only advised to leave. Compensation was based on a formal process that did not take into consideration their tribal interests, such as grazing and herding, which are crucial to their livelihoods. Moreover, some of these groups were approached by GNOPC when it was constructing the road crossing their land. A 50-year-old interviewee said, “They [referring to authorities] told us that they needed to remove our huts and so they did.” An interviewee from the youth group said that the GoS’s representative stated they had removed the huts, “but at that time we did not know the reason because we were not involved or notified of their intention.”

An entirely different approach should be taken, with independent legal staff presenting the genuine demands of the communities and negotiating on their behalf with project authorities. In this new approach, the GoS and project authorities must make a commitment not to implement a project unless mutually agreeable resettlement plans can be devised on the basis of collective bargaining between representatives of displaced communities and project authorities.213 Representatives of communities are in a better

212 Interviews with communities in Kummagon (Kummagon March 9, 2003).
position to identify and mediate internal conflicts among displaced communities, a matter that was totally ignored by authorities when assessing compensation.

The Land Acquisition Act does not define compensation other than providing for the two options: compensation in cash or in kind. The definition is important to identify the types of loss and damages, so that displaced communities can be accurately compensated before and upon relocation. Legally, compensation is the payment of money in recognition of a wrong done and to make good the losses suffered. Distinctions can be made between nominal damages (a small amount of money symbolizing the vindication of rights), pecuniary damages (relating to non-physical harm such as psychological suffering because of dislocation), and punitive damages (to deter rather than to make up for the loss suffered). On the basis of these salient features of legal compensation, the GoS must adopt a definition of compensation. Doing so is important for determining the type of damages, budgeting for resettlement plans, and protecting displaced communities' constitutional and legislative rights to fair and just compensation.

Furthermore, the Land Acquisition Act adopts a narrow approach to compensation. As to who is entitled to compensation and who is not, the Act considers only the one in whose name the land is registered and who must represent himself during the proceedings as eligible. LRA goes further and treats individuals, families, and communities as eligible for compensation. However, the breadth of LRA is only theoretical. According to testimonies, the reconnaissance team examined only the cases of individuals who have legal proof of landholding. This is surprising because it is statutorily and officially recognized that tribes are not bound to register their customary rights to land and they rarely do so. The rationale of this asymmetry of treatment of those with less well-defined tenure and resource rights is often “conveniently justified by the absence of legal registration documents, but has more to do with ‘minimizing’ the monetary, rather than the human and social costs of resettlement.” The World Bank Operational Directives emphasizes the importance of treating people with customary property rights in the same way as people with full legal rights, as far as is feasible. The reasons for treating them the same are, first, to ensure their aggregate well-being. Gains and losses in well-being are no different if customary rights are involved than if full rights are involved. Second, if full recognition is conferred on holders of customary rights, the resettlement project is likely to lead to better protection of the land and natural resources.

The GoS methodology employed to justify projects is based on basic standards of cost-benefit analysis (CBA) that do not moderate the consequences for displaced people at both the individual and the communal levels. The GoS is reluctant to admit the magnitude of the problem of IDPs from oil-producing areas. The only available compensation records are Talisman’s Corporate Social Responsibility Reports, 2000 and 2001. The 2000 report shows that LACC opened 10 cases in November 2000. These included six individuals who came to Pariang during 2000 from surrounding villages to

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215 Section 3 of Land Acquisition Act.
218 Pearce. supra note 216 at 57.
escape famine, disease, and conflict.\textsuperscript{219} The 2001 report indicates another 400 cases to be settled; 300 cases were established but the claimants had to be tracked down.\textsuperscript{220} Compared with the IDP global project statistics, the number of these compensated cases represents less than one-third of the total number of IDPs from oil-producing areas.\textsuperscript{221} The repeated statements of officials that oil concessions are located in deserted areas and that very few people inhabit these areas indicate that the GoS would like to maximize returns from oil projects by reducing external costs for relocation plans. This attitude is one of the most profound roots of the failure of resettlement plans.\textsuperscript{222} If indeed the core risks are decapitalization and pushing communities out of their prior economically productive positions, then to be adequate, the response strategy should take into account the number of IDPs in order to provide accurate data. Such data would be helpful in designing development investments tailored to the requirements of relocated individuals and communities—investments that would be based on growth-oriented economic analysis and financial provisioning.\textsuperscript{223}

CBA justifies the oil projects economically when the sum of a project's benefits outweighs the sum of the project's costs. But CBA overlooks distribution patterns—distribution of both costs and benefits. It does not ask who is paying the costs, who is benefiting, and who is losing.\textsuperscript{224} It assesses only the total effect of the project to determine how it stacks up relative to other investment alternatives.\textsuperscript{225} But harm caused to individuals and communities cannot be outweighed or explained away by benefits to other families or by the aggregate of the project's benefits independent of their allocation. CBA does not address the risks borne by various individuals. The risks of impoverishment are distributed differently from the project's benefits.\textsuperscript{226} Aggregate benefits may be real, but they do not automatically offset each individual's costs.

Social costs are often misunderstood as referring only to non-measurable costs. In fact, these costs comprise the project's costs that are borne by the society outside the project, as opposed to the project's direct internal costs (labour, equipment, and so forth). Social costs are fully project costs in that they would not accrue without the project.\textsuperscript{227} Many of them are measurable. These external or societal costs include all that is lost by the displaced communities—land, houses, trees, crops, jobs, productive time, cultural assets, common property goods, shrines, and access to social services. Incorporating these external costs into the project's overall costs should take the form of (1) compensation to be paid to the displaced communities, plus (2) investments for facilitating recovery and accelerating readjustment for those uprooted.\textsuperscript{228} Sacrifices are made by displaced people, whom the project transforms into net losers and who have to bear many of the hidden social costs of projects.

\textsuperscript{219} GNPOC funded LACC $2,761,952 was paid for eligible compensation cases. Talisman Report, supra note 14 at 28.

\textsuperscript{220} Talisman Report 2001, supra note 12 at 19.

\textsuperscript{221} See page 3 of this Report.

\textsuperscript{222} See discussion by Patel, supra note 217 at 69.


\textsuperscript{224} Ibid.

\textsuperscript{225} Ibid.

\textsuperscript{226} Ibid.

\textsuperscript{227} Singh, supra note 213 at 5.

\textsuperscript{228} Cernea, supra note 223 at 20.
It is true that some costs are not easy to quantify, but invoking intangibles is often an excuse for avoiding any valuation. Unmeasurable should not become "forgettable." Ignoring social costs, intentionally or not, minimizes the financial costs of a project, but does not reduce the real costs. The CBA is influenced by excluding costs caused by the project, by the way in which costs and benefits are valued when direct market prices cannot be determined or are not conclusive, or by using a discount rate to estimate the present value of a condemned asset. Thus without "distortions, the standard CBA is incapable of answering the economic and ethical questions involved in forcible displacement." Relying on CBA is questionable not only from a social perspective but also from a market perspective. Market valuation is based on the voluntary exchange between a willing seller and a willing buyer. Relocation is involuntary: it imposes surrendering of assets. And resettlement is not a marginal market valuation decision for those affected; on the contrary, it imposes a total life change. To meet the necessary and overriding purposes of the project, the resettlement valuation should include a special economic and financial analysis for the allocation of new lands to those relocated as well as the socio-economic reestablishment component, an analysis distinct from the routine CBA. The CBA of the project must be calculated separately for each vulnerable group not simply across the whole community. The principle of recognizing different impacts is, in fact, the reason for adopting safeguarding policies such as a resettlement policy.

Moreover, CBA directly influences the amount of compensation. The Land Acquisition Act provides, upon failure of the expropriation officer to make an agreement with the displaced community, for a Board of Arbitrators headed by an expropriation officer to assess the amount of compensation, using the following criteria: (1) market value of land at the time of awarding compensation—that is, the amount that could be expected if the land were sold in the open market by a willing seller; (2) any damage sustained by an interested person, at time of awarding compensation, by reason of the acquisition injuriously affecting his other property whether movable or immovable, in any manner, or his earnings; (3) reasonable expenses, if any, incidental to compelling the interested person to change his residence; (4) where the land has no market value, compensation will be assessed according to the interested person's derivable profits from the uses or land. However, the Board shall not take into consideration (a) the degree of urgency that led to the acquisition; (b) any disinclination of the interested party to part with land; (c) any increase in the value of the land that has accrued from the temporary occupation of land by GoS; (d) any increase in the value of land that has accrued from the anticipation of the GoS's intention to acquire it; and (e) any outlay or improvements on the land made with the intention of enhancing the compensation to be awarded. These limitations are typical CBA calculations and will only devalue the land concerned and leave room for a large degree of imprecision and arbitrariness in compensation. As a result, underfinancing of resettlement packages will directly deprive displaced people of the material means needed for post-displacement recovery.

Another problem of underfinancing of resettlement plans is that it affects the amount that potential compensation recipients will get. During an interview in Kummagon,

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229 Cernea, supra note 223 at 21.
230 Ibid.
231 Ibid.
232 Ibid.
233 Ibid.
234 Ibid.
235 Ibid.
236 Sections 14 and 16 of the Land Acquisition Act.
Sultan Deng de Kur assured the interviewer that because of war and the high mobility of people, "not the whole community received compensation." When compensation started being paid, most of the community members were not in Al Toor East. Some of those who received compensation believed that it was not sufficient, whereas others believed the compensation amount was reasonable. One woman said, "Yes our husbands received money, but it was not enough." A 50-year-old man said, "I have received an amount that is worth [the cost of] building a hut and buying a cow." When the interviewees were asked why they considered the compensation inadequate, they said that the compensation money did not help them survive the difficult living conditions in the new areas. The man explained, "We faced many problems in settling down in the new area, such as lack of farmland for cultivation." Some mentioned the difficulty of moving their cattle the way they used to because of oilfields in the area, and the new areas were located faraway from water resources. When asked whether they had approached the government about increasing their compensation amount and providing social services in the new areas, the majority answered no. One youth explained, "Our chiefs do not allow us to do so." But in reference to approaching the GoS, the chief said, "Yes we did, and so far there has been no response." When asked whether they were better off in the new areas, they unanimously agreed that their living standards had dramatically deteriorated.\textsuperscript{237}

The primary reason that displaced communities received only small amounts of compensation is that in assessing compensation, GNOPC staff compared incomes and assets before and after the project and used that to decide whether displaced people were better or worse off. This method is inadequate for two reasons. First, we need to know how much better off the displaced community would have been had the development not taken place. An estimate of their income in the absence of a project can at best be only a minimum estimate. The second reason is that the methods for valuing assets and income do not allow for the displaced people's own valuation of their assets.\textsuperscript{238} The World Bank policy requires that those relocated at the very least not become any worse off, a policy that receives support in literature on sustainable development.\textsuperscript{239} The rationale for this is that the least advantaged in society should be given special attention, and their assets should not decline because of development. This policy will directly influence the well-being of the poor and of future generations. The basic notion maintained by the literature on sustainable development is that one of the conditions for intergenerational equity is that stocks of capital assets be no less in the future than they are now, where asset stocks include the typical concept of capital (such as land), human-made capital (such as roads), the stock of skills and knowledge (such as human capital), and the stock of environmental assets (such as trees). By extension, then, the intergenerational requirement has as its condition that the asset base of the poor should not decline as a result of development. The basic logic of the constant and increasing capital base arguments is that capital provides the capability to develop.\textsuperscript{240} Thus a sound policy would be to restore the economic base of the displaced community, a policy that is consistent with the idea of ensuring that the same, or expanded, capital base is conferred on the disadvantaged.\textsuperscript{241}

\textsuperscript{237} Interviews with communities (Kumanamong, March 5, 2003).
\textsuperscript{238} Pearson. \textit{supra} note 216 at 58.
\textsuperscript{239} Ibid.
\textsuperscript{240} Ibid., at 58
\textsuperscript{241} Ibid.
To consider issues relating to the restoration of a community's capital base upon relocation, we must examine the risks from both an economic and a socio-cultural perspective. GNOPC staff should assess how risks occur and counter them simply by using standards of income reconstruction. Michael Cernea established a model of eight interlinked potential risks for development projects, risks that are intrinsic to displacement. When not counteracted, these fundamental risks converge and combine to cause economic and social impoverishment. His model captures the loss to displaced people of all types of capital—natural, manufactured, human and social—as well as loss of opportunities and entitlements held at the prior location.

According to the conditions of the relocation, several risks are to be taken into consideration, each of them with a varying intensity and a different context. Specifically, there is the risk of landlessness, since expropriation of land removes the main foundation upon which the tribe's productive system, subsistence activities, and livelihoods are constructed. This is the principal form of decapitalization and pauperization for most rural IDPs, who lose natural and manufactured capital. The other risk is joblessness, which affects rural people and deprives landless labourers of sources of income that used to be generated from their subsistence labour. Unemployment tends to linger long after physical relocation. Homelessness or loss of housing affects displaced people but threatens to become chronic for the most vulnerable. Considered in a broader cultural sense, homelessness is also placelessness, loss of a group's culture space and identity. Marginalization occurs when tribes, clans, or families lose economic power and spiral downward; it sets in long before physical displacement, when new investment in the condemned areas is prohibited. Middle-income land and cattle holders become small holders of grazing land and, in the case of Kummagon residents, their subsistence activities were downsized, causing them to slip below poverty thresholds.

Economic marginalization is also accompanied by social and psychological marginalization, expressed in injustice and increased vulnerability. This is obvious in case of displaced women who are originally disadvantaged by customary practices and further marginalized by displacement and lack of social security. Forced displacement increases the risk of chronic food insecurity because of the sharp drops in food crop availability and income. Loss of access to commonly owned assets (forests, water sources, grazing lands) is typically overlooked and such loss becomes a major cause of deterioration of their living conditions. Loss of family and clan support, although harder to quantify, impoverishes and disempowers displaced women in lasting ways, not recognized by project-level economic or compensation analysis.

Lack of statutory protection for displaced women's rights complicates their compensation. Simply said, statutory law legitimizes customary discriminatory norms and approves the customary exclusion of their rights. As mentioned earlier in this report, negotiations dealing with relocation and payment of compensation are conducted with chiefs and male members of households. One chief's reaction to the question whether women can negotiate or complain to him about compensation matters was "According to our tradition, women are not involved in issues such as these." The other obstacle is that the Land Acquisition Act provides that "in case any person who has interest in land but the land is registered in another person's name, the expropriation officer shall direct the person to institute a suit for the rectification of the

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242 Cernea, supra note 223 at 17.
243 Ibid.
245 Interviews with communities (Kummagon. March 5, 2003).
registration or list of holders of other rights to land, or if the expropriation officer has
the necessary proof he may sit as a court to hear and determine such suit.246 This will
represent a problem for returning displaced women who used to have unregistered
usufruct rights on acquired land. In addition, these women are illiterate and have do
not have the legal know-how to pursue land lawsuits or follow complex administrative
procedures such as the rectification of land registry; moreover, they do not even hold
rights per se to claim rectification. This type of requirement is excessive and particularly
burdens women whose property rights are already severely undermined by customary
law.

The return of displaced women should be an opportunity for a review of the
constitutionality of their rights as citizens in the domain of oil policy making. Equitable
access to compensation is not only about giving cash or land to relocated and returning
displaced women. It is also about empowering these women to attain the basic quality
of life, to be able to participate productively in society, and to have better opportunities
to improve their lives. Therefore, gender-sensitive compensation policies and processes
are urgently needed, and they must be based on the understanding that returning
displaced men and women are social agents who are constrained in different—and
unequal—ways. And compensation is vital for them to maintain their lives within new
socio-economic realities, particularly for women who return as heads of households.

The right to compensation is systematically associated with access to social services.
Gender equality in compensation is one step toward single women’s access to other
social services, as part of the resettlement project. The rights to property and
compensation must be entrenched in both the legal framework and the economic
institutions of the country since they jointly influence the resources to which women
and men have access, the activities they can undertake, and the ways in which they
can participate in the economy. Legal and policy frameworks pertain to markets and
hierarchies that have sets of rules governing transactions and influencing decision
making about work and investment. They reflect prevailing social norms and customs,
including the gender structures that discriminate against women. For example, the
local land market and customary laws governing property rights of returning displaced
women determine who can have resources and possess land and who cannot.

Recommendations

- Compensation should be defined in the Land Acquisition Act, which should
set out the criteria for the type of losses and damages to be redressed.
- The Land Acquisition Act should be modified to better reflect fair
compensation assessment.
- The Land Acquisition Act and policy process should be made consistent to
avoid discrepancies and overlapping that will result in the devaluation of the
assets of relocated individuals and communities.
- An independent judicial body must work closely with the GoS and GNOPC
on the compensation process.
- Better terms of compensation should be negotiated with communities and
individuals.

246 Section 3 of Land Acquisition Act.
• Customary rights should be treated equally with legal rights when community compensation is in question in order to more accurately value the community's assets and interests that are associated with land use.

• A gender-sensitive compensation process, based on the recognition of women's right to compensation, should be introduced.
PART VI: RECOMMENDATIONS FOR GENDER JUSTICE AND COMPENSATION FOR DISPLACED WOMEN

- Adoption of a national definition of IDP, based on eligibility for protection criteria.
- Adequate protection of displaced women throughout the cycle of displacement and upon their return.
- Fair and just compensation to be paid to returning displaced women. This can take the form of restoration of employment and allocation of suitable new areas.
- Returning women to receive money from the GoS to make good their losses. The amount paid should be determined according to
  - nominal damages (a small amount of money symbolizing the vindication of their usufruct rights)
  - pecuniary damages (to represent the closest possible financial equivalent of the loss or harm suffered because of displacement)
  - moral damages (relating to the non-material harm they suffered—for example, fear, humiliation, and mental distress because of displacement) and
  - punitive damages (to enable them to avoid the miseries of poverty and homelessness)
- Security of returning displaced women to safe and suitable areas, with police services and support for tribal mediation programs to ensure peaceful coexistence.
- Rehabilitation programs for returning women to restore their physical and psychological health. This involves immediate provision of medical and psychological care, and legal and social services.
- Facilitation of awareness, education, and vocational training programs for returning displaced women.
- Returning displaced women to be encouraged to trade. The GoS can do this by facilitating their entry to markets—for example, by providing start-up capital, trading licences, and health certificates for selling food. Women must, by law, be remunerated for their labour in agricultural activities and be allowed access to credit and cooperatives to merchandise the food they produce.
- Training programs coordinated with NGOs in order to train returning displaced women to participate in the native and local administrative structure.
- Returning women to be represented in the tribal administrative structure and local councils.
- Entitlement of returning women to property rights to land and removal of gender discriminatory customary norms.
- Returning displaced women to have access to productive resources, such as markets and credit systems, so that their subsistence activities can be transformed into income-generating activities.
• Increased spending on social services and women to have access to these services, notably education and health programs.

• Radical reform of laws and institutions to create an environment in which values of gender equality can be promoted.

• Direct protection of women's rights by the GoS.

• More than token representation of women in matters where policy and law are being created or discussed.

• Modification of existing labour standards in the informal sector to ensure that women are rewarded for their traditional work in producing food.

• Action in a number of areas to deal more effectively with violence:
  
  o Commitment to eradicating violence against women by passing national legislation to criminalize gender-based violence.

  o Introduction of legal reforms and programs to assist victims.

  o National plans of action to prevent violence from recurring and in particular, adoption of preventive measures to protect women from the destructive impact of violence. Such preventive measures include educating law enforcement authorities about gender issues and establishing partnerships between the civil society, government, and NGOs to collaborate in capacity-building programs.

  o Raising awareness among tribes and women to ensure peaceful coexistence.

• Judiciary to be assigned powers to monitor the extent to which institutions are responsive to gender issues.

• Establishment of a gender-disaggregated data system.
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