

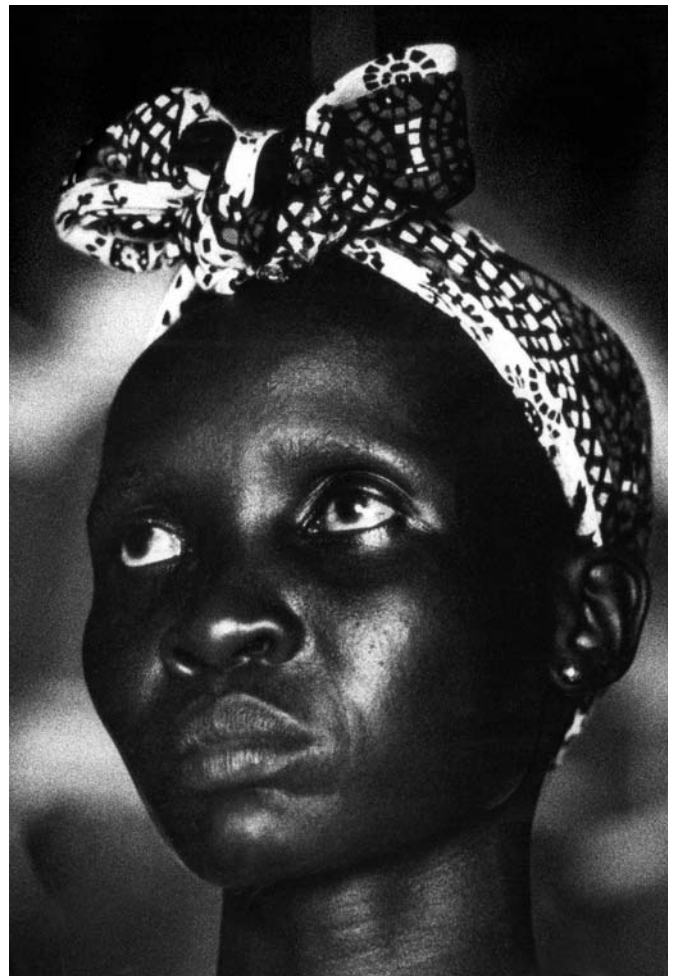
## Why a minority rights approach to conflict? The case of Southern Sudan

By Chris Chapman

This briefing is aimed at decision-makers working on conflict management, peace-building, development and human rights in countries affected by conflict – whether they be officials of the government in question, humanitarian actors working for donor governments, inter-governmental organizations, local NGOs or international NGOs (the imperfect shorthand of ‘humanitarian actors’ will be used to cover all of these categories). The aim is to illustrate how the minority rights approach can be useful to the work of humanitarian actors in any conflict situation – whether it be aid distribution in a refugee camp, a reformed police force, or a new national education curriculum. For this purpose, the briefing examines the specific case of Southern Sudan.

Conflict management requires a holistic approach that addresses all the causes of conflict, and the minority rights approach does not mean addressing only this aspect of conflict. However research carried out by Minority Rights Group International (MRG) has shown that governments and external actors often fail to understand the role that minority rights plays in both the origin and resolution of identity-based conflicts.<sup>1</sup> Minority rights provides a framework for humanitarian actors to analyze, understand and address many of the complex issues behind the conflict, and if utilized by the Government of South Sudan (GoSS), can help to build peace based on the accommodation of diversity, through providing all communities with a political voice and equal opportunities to access resources.

Southern Sudan provides a complex and demanding case study. During the two stages of the North/South war (1962–1972 and 1983–2002), many violations of minority rights and broader human rights – including war crimes – were committed, among them aerial bombings of civilian populations, abduction into slavery in the North, cultural assimilation, and economic and political marginalization. The overwhelming majority of victims were civilians in the South.<sup>2</sup> Its peoples have been victims, as have others in all parts of Sudan, of the country’s abusive political structures; the Khartoum government, drawn from the colonial army and civil service, and dominated by a small number of tribes originating from the shores of the Nile in the North, has kept a grip on power by fomenting hatreds and conflicts between ethnic groups.<sup>3</sup> As a Dinka interviewee



A woman attends a peace conference between the Nuer and Dinka tribes at a purpose built village in Southern Sudan. Tom Pilston/Panos Pictures

explained: ‘Our tribal differences are natural. What is odd about them is that they have always been magnified by the North. They have been used.’<sup>4</sup> The Khartoum government has maintained minority groups in a state of political marginalization and underdevelopment, while monopolizing resources.<sup>5</sup> However violations have also been committed against Southern civilian populations by various Southern armed groups, including the Sudan People’s Liberation Army (SPLA).<sup>6</sup>

Southern Sudan is at a critical stage. The Comprehensive Peace Agreement (CPA) has provided a framework for power- and wealth-sharing, and could offer a model for

resolution of conflicts in other parts of Sudan, as it recognizes marginalization as the cause of conflict and seeks to remedy this.<sup>7</sup> If the CPA collapses, the region – and the whole country – could be plunged back into conflict, and conflicts in other parts of Sudan could be aggravated. On the other hand, the CPA has itself aggravated divisions by allocating power and resources almost exclusively to the Sudan People's Liberation Movement (SPLM) and the National Congress Party (NCP).

This briefing will also consider issues in the three contested areas of Abyei, Blue Nile and the Nuba Mountains. They are included in the CPA, and many minority groups in those areas claim that they are part of the South and thus should also benefit from provisions such as a referendum on independence. For this reason, we will refer to Southern Sudan rather than South Sudan.

## Who are minorities?

There is broad agreement on the main parameters in the identification of minorities, even if it has not been possible to achieve complete consensus at the international level on a definition of the term. Applying these parameters is a matter of observation of objective criteria and common sense.<sup>8</sup> Some governments claim the right to determine who is and who is not a minority – a claim rejected by the United Nations Human Rights Committee, the body that monitors implementation of the International Convention on Civil and Political Rights (ICCPR).<sup>9</sup> A useful working definition has been offered:

'A minority is a population group with ethnic, religious and linguistic characteristics differing from the rest of the population, which is non-dominant, numerically smaller than the rest of the population and has the wish to hold on to its separate identity.'<sup>10</sup>

Many communities do not commonly use the term 'minority'; this is also the case in Sudan. It is important in this situation to identify which communities regard themselves as having a separate identity, and what their issues are. In Sudan, all communities are numerically minorities. The crucial issue is the element of dominance; for example the Dinka occupy most positions of political power in the South, but the Nuer occupy most of the oil-bearing land. In addition, a group may be powerful in one region but weak in another.<sup>11</sup>

In dealing with a community, humanitarian actors should use the term that clearly has the widest acceptance – if one exists. But this in no way undermines the usefulness of minority rights as a conceptual framework for understanding grievances, power relationships, and patterns of discrimination and exclusion, and designing interventions accordingly. Furthermore the minority and indigenous concepts are those that are used in international human rights law – although the minority rights framework does not demand that a person accept the label to enjoy the rights.

## Indigenous peoples

The African Commission on Human and Peoples' Rights (ACHPR) has produced the following list to help identify indigenous peoples:

- (a) Self-identification;
- (b) A special attachment to and use of their traditional land, whereby their ancestral land and territory have a fundamental importance for their collective physical and cultural survival as peoples;
- (c) A state of subjugation, marginalization, dispossession, exclusion or discrimination because these peoples have different cultures, ways of life or modes of production from the national hegemonic and dominant model.<sup>12</sup>

Missing from this list is the concept of 'first inhabitants', to be found, for example, in the widely cited working definition of indigenous peoples by UN Special Rapporteur Martínez Cobo as '... having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing in those territories, or parts of them.'<sup>13</sup>

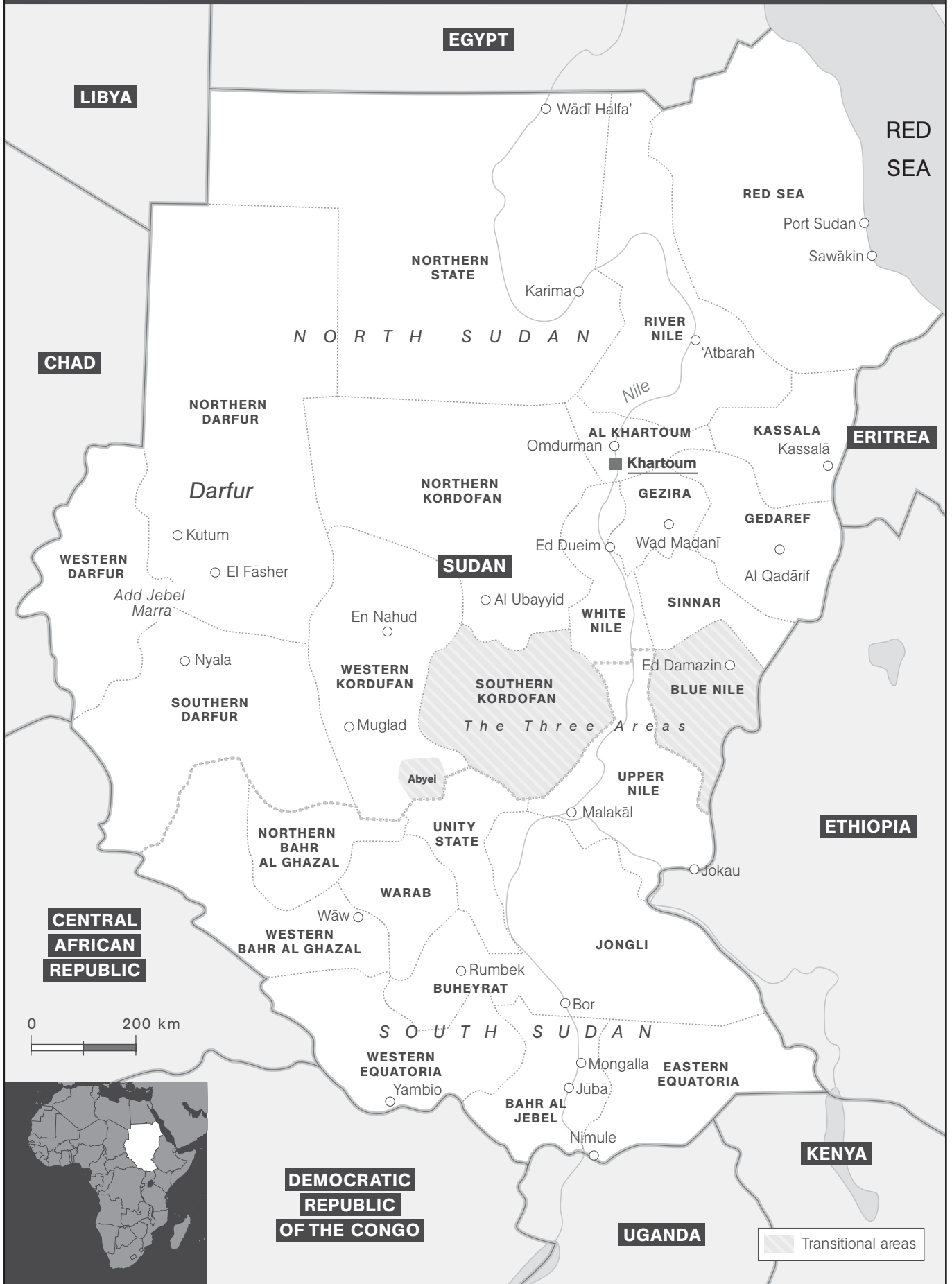
Indigenous peoples can also identify as minorities and indeed the UN Human Rights Committee has decided a number of cases involving indigenous peoples relating to ICCPR Article 27 on minority rights.

## The role of minority rights in conflict prevention and peace-building

Of all the categories of human rights, the history of minority rights is most closely linked to violent conflict. Before the Second World War, the League of Nations oversaw bilateral treaties which incorporated minority rights, to regulate conflicts between states involving kin minorities (one state's ethnic kin which is a minority in the other state).<sup>14</sup> In the early 1990s, a number of declarations and conventions on minority rights (see section below, 'What are minority rights?') were introduced in the hope of containing the burgeoning ethnic conflicts in the former Soviet Union and Yugoslavia. These were backed up by the introduction of monitoring and advisory bodies such as the High Commissioner on National Minorities (HCNM) of the Organization for Security and Co-operation in Europe (OSCE), and the UN Working Group on Minorities (WGM).

Conflicts involving minorities can take a number of forms. As has happened in Sudan, governments with weak internal support often provoke conflict with minorities to provide a distraction. In the worst cases this can lead to genocide. Alternatively, through greed or chauvinism, they may deny power, resources or recognition to minorities, which can provoke a rebellion. There are also situations in which a gradual escalation of provocations on both sides

# Sudan



makes it difficult to determine which side was the first to resort to violence. What links many of these conflicts is minority rights violations, which have been found to be a root cause in all of the headline ethnic or religious conflicts of the post-war period, including Rwanda, Kosovo, Northern Ireland, Guatemala, Palestine, China, Sri Lanka, Turkey – and South Sudan.

Certain human needs – including autonomy, identity, recognition and dignity – are non-negotiable and this explains the intractability of ethnic conflicts where minorities are denied these needs. This forms the basis of the human needs theory of conflict developed by John Burton – a pioneer of conflict-resolution thinking, who based his work on years of experience as a diplomat.<sup>15</sup> Sudan is an effective case in point. The usefulness of a minority rights approach is that it incorporates these needs into a legal framework that has been recognized by all UN member states.

An example of the minority rights approach to conflict is the work of the HCNM. This body has a specific conflict-prevention mandate, working through discreet diplomatic interventions in situations of minority tensions, meeting representatives of both sides and proposing solutions based on OSCE minority rights standards.<sup>16</sup> The HCNM is widely recognized as being one of the most successful inter-governmental conflict-prevention bodies.<sup>17</sup> The need to accommodate minority grievances has also been confirmed by the Carnegie Commission on the Prevention of Deadly Conflict, which found that ‘attempts at suppression [of ethnic, cultural or religious differences] have too often led to bloodshed, and in case after case the accommodation of diversity within appropriate constitutional forms has helped prevent bloodshed’.<sup>18</sup>

### The greed versus grievance debate

This debate, which often polarizes experts,<sup>19</sup> is about determining which of these two factors is most important in motivating combatants to take up arms. The relevance to the minority rights approach is that violations of the rights translate into grievances. In recent years, the debate has been resolving itself into a more nuanced understanding that recognizes the roles that both greed and grievance play in conflict.<sup>20</sup> One or the other may gain ascendancy depending on which phase the conflict is in: ‘Conflicts usually emerge as a result of concrete grievances, but individual economic interests (‘war economy’) gain influence during their course. These economic interests are usually major obstacles to making peace.’<sup>21</sup> The minority rights approach does not mean focusing on one at the expense of the other, but that an understanding of the grievances of minority groups must form part of the approach to conflict prevention and peace-building in situations of

ethnic/religious tensions. It also helps to counterbalance the focus on elites, for whom economic interests are likely to be a more powerful motivation and who benefit most from war economies, reminding us that while those economic interests may appear more prominent as the war progresses, the underlying grievances never go away for the communities themselves.

## What are minority rights?

The basic elements of minority rights are laid out in Article 27 of the ICCPR, and further developed in the Declaration on the Rights of National or Ethnic, Religious or Linguistic Minorities (UNDM), which was adopted unanimously by the UN General Assembly in 1992 (the text is reproduced on page 16).<sup>22</sup>

It is useful to present minority rights in the form of four pillars:

1. **The right to exist:** like everyone, minorities benefit from the right to life. However, states are also obliged to protect the existence of minority communities as a whole, which means the prohibition of assimilation – which would lead to the disappearance of a minority as a community with its own identity – and of genocide and ethnic cleansing.<sup>23</sup> It also means that the state must provide security to minority communities, to ensure they are not targeted by other actors, for example militias.
2. **The right to non-discrimination:** protecting minorities from direct or indirect discrimination on the basis of ethnic, religious, linguistic or cultural identity. The right to non-discrimination is contained in all the UN human rights treaties and is addressed under the African Charter on Human and Peoples’ Rights<sup>24</sup> and the International Convention on the Elimination of all Forms of Racial Discrimination (ICERD). The right to non-discrimination protects individuals against any distinction, exclusion, restriction or preference that may have the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise of their human rights and fundamental freedoms.  
ICERD allows for states parties to take temporary ‘special measures’ in the social, economic, cultural and other fields to help individuals overcome discrimination (Article 2.2). This is what is commonly called affirmative action. Such measures are not discriminatory in themselves and may indeed be the only way to overcome deeply ingrained patterns of discrimination. However they should be discontinued when the situation of discrimination has been successfully addressed.



3. **The right to protection of identity:** preserving the freedom of minorities to practise their culture, religion and language in the public and private spheres, and taking measures to enable minorities to develop their culture, religion or language. The UN Human Rights Committee recognizes that traditional livelihoods (such as livestock herding) form part of culture and must be protected under this right.<sup>25</sup>
4. **The right to participation in public affairs:** ensuring that minorities can participate in decision-making that affects them and can form their own associations freely. The right of citizens to participate in the conduct of public affairs, directly or through freely chosen representatives, is outlined in Article 25 of the ICCPR: 'Every citizen shall have the right and the opportunity [...] (a) To take part in the conduct of public affairs.' The UN Human Rights Committee interprets public affairs within the meaning of this article as 'a broad concept which relates to the exercise of political power, in particular the exercise of legislative, executive and administrative powers. It covers all aspects of public administration, and the formulation and implementation of policy at international, national, regional and local levels.'<sup>26</sup>

The UNDM elaborates on what the right to public participation and the right to form associations mean for minorities (Articles 2.3 and 2.4).

The African Charter on Human and Peoples' Rights provides ground-breaking protection for the rights of peoples in its Articles 19–24. These cover the rights of peoples to self-determination, existence, freedom from domination, to freely dispose of wealth and natural resources, cultural development, peace and security, and a satisfactory environment. The African Commission on Human and Peoples' Rights has not provided a general definition of the scope of the term 'peoples'; however, in a number of cases, it has interpreted these rights as applying to communities with ethnic, religious or linguistic characteristics.<sup>27</sup>

Often minority rights are understood as granting exclusive rights to certain ethnic groups. This is a misconception: in fact all groups have the same rights, but dominant or majority groups exercise some rights automatically or more easily through their position in society – for example, the right to identity, which covers provisions such as education in one's mother tongue, establishment of appropriate places of worship, promotion of one's culture through media, government bodies, etc. Minority rights, like women's rights, children's rights, refugee rights and the rights of the disabled are about ensuring that a vulnerable group does not suffer from unequal implementation of rights.

## Indigenous peoples' rights

Many communities in Southern Sudan identify as indigenous. Indigenous rights cover the same elements as minority rights, but emphasize the collective rather than individual nature of their rights, and a greater focus on self-determination tends to favour more separate political and economic structures. There is also express protection of land rights, including customary title. They are codified in the UN Declaration on the Rights of Indigenous Peoples and Convention No. 169 on Indigenous and Tribal Peoples' Rights of the International Labour Organization.<sup>28</sup>

### In which conflicts are minority rights relevant?

Minority rights are relevant in any conflict in which minorities are targeted because of their identity, by any of the parties to the conflict, or in which minority groups are fighting on the basis of grievances suffered. There will be other factors in the conflict, but they are likely to be intertwined with identity issues; for example, in Sudan, some observers argue that the war is not actually about identity, but about power and resources. Arguably these are prime motivators for the Khartoum government. However, the fact is that successive governments have fought the war along ethnic/religious fault-lines, and have voiced ideologies of racial superiority,<sup>29</sup> and once those grievances have been created, they become very real for the people concerned and are a central factor in conflict resolution and peace-building.

In some conflicts, minority rights issues appear to have little or no relevance as an original cause but may gain in significance; in Nepal, for example, a conflict which began primarily over political ideology and resources began to include specific targeting of ethnic groups; Dalits and indigenous peoples were seen as a natural constituency by the Maoists because of their economic marginalization, and hence as Maoist collaborators by government forces. Finally the long-standing grievances of the Madhesi concerning political and economic marginalization came to the fore. A good conflict analysis tool will help to identify these issues (see page 7).

### Why do humanitarian actors resist the minority rights approach?

In a number of interviews with humanitarian actors, MRG has identified several reasons given for a failure to understand how minority rights might be useful in their work.<sup>30</sup> These are usually based on a misunderstanding of what minority rights are about, or on obstacles that are real but can be overcome.

### **It means favouring one group over another**

This is the absolute opposite of what minority rights are about (see ‘What are minority rights?’ section). They are about ensuring that rights are enjoyed equally in situations where power dynamics make this difficult. Conflict, development and humanitarian professionals often claim that they have to be ‘colour-blind’ in their work, saying: ‘I have to focus on whoever needs support – regardless of what group they belong to.’ This is true – but they also need to be aware of the power dynamics, that might exclude women, HIV/AIDS sufferers, the aged – or minorities. Minority rights is a simple framework that can help humanitarian actors understand who the various communities are in their sphere of influence, and what the subtle patterns of discrimination and exclusion are, which might prevent the impact of their work reaching certain sectors of the population.

### **You exaggerate the differences between groups – we need to emphasize common values now**

Minority rights is about recognizing what we all have in common but not ignoring the diversity of identities. Identities have been seized upon and manipulated by governments in Sudan to create divisions<sup>31</sup> and some external actors extrapolate from that to argue that if they incorporate a minority rights perspective into their work they will be cooperating with and exacerbating exactly this phenomenon.

However, once ethnic/religious conflict has happened, there are very real grievances between groups, some groups come out winners and some losers, and patterns of discrimination set in, especially if one group or set of groups takes power. To ignore these dynamics once they are in place is no solution. The minority rights approach means recognizing the specific patterns of discrimination that affect communities and proposing ways of addressing them.

### **Rights are non-negotiable – in conflict resolution, we have to be flexible, in order to reach compromises**

It is true that minority rights are codified in international law, but in their implementation they not only allow for flexibility, they often require it; the enormous variety of minority situations demands equally varied solutions. The right to participate in political decisions that affect a minority, for example, might mean an autonomy arrangement, some seats in parliament, a consultative body or a veto on a set of pre-determined policy issues. These choices will depend on how numerous the community is, whether it is concentrated in one area, what its specific needs are, etc. What is not flexible is whether the right is respected or not. Of course the reality of work in conflict situations is that the messy business of negotiations will always involve compromise. But the minority rights approach can strengthen this work by helping us to identify

where rights are being ignored, which will most likely make peace unsustainable.

### **It is too simplistic – identities are more complex than just minority belonging**

It is absolutely true that identities are not limited to one’s ethnic/religious/linguistic group and the minority rights approach does not mean reducing identity down to this. One of the most important tenets is that one is free to determine how one sees one’s own identity – including not belonging to a minority group, having mixed ancestry, preferring to see oneself as Sudanese, South Sudanese, Christian, or African – not to mention a whole range of other coexisting identities based on gender, profession, politics, age group, etc. Humanitarian actors should recognize this variety and seek to incorporate the perspectives of different sectors within minority communities.

### **Women’s rights, children’s rights, HIV/AIDS sufferers’ rights – now minority rights! It’s too complicated, I need a simpler framework**

Minority rights is not about making humanitarian actors’ work more difficult, but rather more effective, increasing the sustainability and suitability of interventions. If peace-building work is not seen to address grievances of minority communities which are among the root causes of conflict, these communities will not buy into the process and tensions are likely to resurface at a later date.

Furthermore, minority rights are very easy to understand. The one-page UNDM provides a first, simple step to enhance knowledge and practice (see p. 16). It is hoped that the present document will provide useful further guidance on implementation, as does the UN Working Group on Minorities’ commentary on the UNDM.<sup>32</sup> The basic principle of non-discrimination is the same as is found in other aspects of human rights, for example women’s rights.

### **The public/government in the country where I work are too strongly opposed to dealing with minority issues**

It is often stated by external humanitarian actors that the government, with whom they have to agree their programme, rejects any measures that address minority issues. In such situations, efforts should be made to identify what the specific issues are behind the government’s position; it may be related to the perceived unpopularity of such measures, or fear that they will strengthen minority communities and encourage them to challenge the government’s power (in fact the claim of unpopularity may be a cover for the government’s own antipathy to the idea).

These issues are not intractable; a problem-solving approach can be taken to find ways of addressing them. External humanitarian actors can help by working with governments to explain how implementing minority rights

works to prevent future conflict and strengthen democracy, good governance and legitimacy. They can also help with finding ways to present measures to the public, explaining why such measures are needed (we discuss this issue further in the next section). What is important is that governments and external agencies are obliged to respect human rights, and that ignoring minority communities' legitimate grievances will only serve to entrench discrimination, as well as jeopardizing peace-building efforts. MRG's research shows that implementing minority rights, far from encouraging minorities to challenge the government, promotes conditions in which minorities can coexist harmoniously within the state framework.<sup>33</sup>

## What does the minority rights approach mean in practice?

As a broad framework, there are four basic principles that humanitarian actors can follow:

1. Analyse and understand who are the minority communities in the country, and what grievances they have, including human rights violations.
2. Involve minority communities in the design, implementation and evaluation of programmes that will affect them. Analyse the need for special programmes to address systematic discrimination.
3. Ensure that actions undertaken do not exacerbate discrimination, and, as far as possible, are beneficial to all communities equally, in accordance with 'Do No Harm' principles.
4. Evaluate the impact of interventions through a minority rights lens.

Ten specific steps needed in peace-building after an ethnic or religious conflict are outlined in MRG's report *Minority Rights: The Key to Conflict Prevention*.<sup>34</sup>

1. Stop violence against minorities, ensure a justice system that identifies and prosecutes perpetrators, especially the leaders. Ensure that all communities are free from attack, including minority women.
2. Ensure minorities do not leave against their will by providing security and financial assistance. Provide conditions for minorities who have recently left to return as quickly as possible. Set up systems for identifying owners of property and returning it to them.
3. Prohibit and prosecute hate speech, especially in the media and education.

4. Create a political system based on equality. Remove (and do not insert any new) references to a country being based on a particular people, religion or constituent peoples.
5. If power-sharing is considered the only option, have a clause providing for a review or termination after a fixed period. Do not have any system that forces persons into ethnic groups.
6. Create an effective legal system that uses all languages in the country and is open to all. Ensure that minorities have the financial means to use it.
7. Create a system to outlaw discrimination, and give effective (legal and other) remedies against it.
8. If quotas are deemed necessary, make them temporary and ensure the discrimination is addressed first.
9. Ensure that economic development does not marginalize communities, or destroy their identity. Ensure that those involved in development understand discrimination.
10. Create an education system that ensures that all children can learn their community's language, religion and culture, but also creates common experiences and understanding. Ensure a shared history curriculum.

In the following section, we will explore each of the four pillars of minority rights and apply them to the Southern Sudan context, identifying ways in which the minority rights approach will help humanitarian efforts. First, however, we will look at some structural issues.

## Who speaks for minorities?

When consulting minorities in an attempt to understand their grievances and involve them in programmes, it is necessary to understand that minorities are not homogeneous. Efforts need to be made to incorporate voices from the widest possible range of sectors within minority groups – particularly men and women and different age groups.

## Conflict analysis tools

Governments and external agencies use analytical tools to determine the key development and peace-building issues in a country and how they will be addressed.

Within the European Commission, the only tool for conflict analysis at present is the 'Check-list for root causes of conflict.'<sup>35</sup> It covers a broad range of possible minority grievances. However, it is not actively used in programme planning, including drawing up the Country Strategy Papers.<sup>36</sup>

The UK Department for International Development's (DFID) guidance notes for conflict assessment<sup>37</sup> also capture a number of minority grievances, without mentioning minority rights specifically. However they have not been applied to Sudan.

By incorporating minority rights provisions more explicitly, these tools would be better able to identify the full range of issues regarding ethnic/religious conflict in countries affected by conflict, and to ensure that development efforts contribute to a lasting peace.

A good overview of a number of available conflict analysis tools is contained in the *Resource Pack on Conflict-Sensitive Approaches*.<sup>38</sup>

## Training and staff structures

Human rights training for humanitarian actors who will intervene in conflicts which have an identity aspect, needs to include minority rights. They are often omitted, which is surprising, given that minority rights were developed as a response to such conflicts. The only inter-governmental agency MRG has been able to identify that includes minority rights in training for field staff, is the OSCE.<sup>39</sup> Certainly for staff of UN agencies, such training is essential, given that Article 9 of the UNDM obliges these agencies to contribute to its implementation.

While expertise on minority rights should be mainstreamed within agencies and governments working in areas affected by identity conflict, mainstreaming can be pushed forward more effectively if there is a focal point for such expertise. Where agencies have such a focal point, it is usually located within a department dealing with human rights, and there is no link with the agency's conflict-prevention or peace-building work. For example, the UN Office of the High Commissioner for Human Rights has an Indigenous and Minorities Unit with highly experienced staff, but this expertise is rarely made use of by UN staff working in conflict situations.<sup>40</sup> Most importantly, governments of conflict-affected countries and the in-country offices of external agencies in those countries should have such focal points.

Non-discrimination requires governments, and external agencies that employ local staff, to apply equal opportunities in their recruitment practices. This is particularly important in the case of front-line staff. This will send an important message of inclusiveness; furthermore, front-line staff often act as gatekeepers for the resources of governments and donors.

## The minority rights approach in Southern Sudan

The aim here is not to provide a detailed description of minority rights issues in Southern Sudan, but rather to take specific examples as an illustration of how humanitarian

## Affirmative action

Affirmative action is the only way to deal effectively with ingrained patterns of exclusion; such patterns will take generations to disappear using an approach of treating everyone the same. But in conflict-affected countries, sectors of the public may perceive affirmative action programmes to be unfair, even if the targeted communities suffer significant exclusion and inequality, and this may lead to tensions and violence. For this reason humanitarian actors must take specific care to raise the public's awareness of their programmes, draw attention to the specific situation of discrimination of certain communities, and explain why special measures are needed. Furthermore, the minority rights approach does not mean that government and external actors will only work on minority issues and will only talk about them in public statements. Minorities suffer from specific forms of inequality but the whole population has needs and programmes and policies will be developed to address them; this also needs to be demonstrated clearly to the public.

Affirmative action is often associated with quotas for minorities – such as for university places or in the civil service. These measures are almost cost free for the government, but may fail to address discrimination, as they do not tackle the underlying causes – for example, a minority may be poorly represented in universities because of poverty; children are taken out of school to be sent to work. Quotas are also more likely to cause tensions in conflict situations,<sup>41</sup> for example when a minority member beats a better-qualified majority candidate to a university place. More effective are capacity-building measures, such as additional resources to improve primary and secondary schools in minority areas, enabling minorities to compete more equally for university places.

actors can act to improve respect for minority rights and thus strengthen peace-building work.

## The right to exist

While physical attacks on minority groups are clearly a factor in conflict, tensions will also arise if minority groups perceive that they lack security. This can be a very powerful driver of conflict. The risks are particularly high in Southern Sudan given the existence of militias, regular forces and large quantities of small arms.<sup>42</sup> Important issues are disarmament, demobilization of militias, and divided loyalties between Khartoum and the South. In the Upper Nile, for example, central government has supported militias and Popular Defence Forces (PDF) from the Murle or Dinka, and had members of numerous tribes fighting on



its behalf, such as the Bari, Latuka, Mundari, Didinga and the Fertit.<sup>43</sup>

While the aim of GoSS disarmament programmes is clearly to decrease violence, there is evidence that a coercive approach to civilian disarmament has at times caused a rise in violence,<sup>44</sup> and has been perceived as unfairly targeting specific groups. This was the case between December 2005 and May 2006 in Jonglei State, where the SPLA attempted to disarm local pastoralists, primarily the Lou Nuer, ‘... many of whom perceived it as a political crackdown ... In the course of the disarmament programme more than 3,000 weapons were collected, and an estimated 1,600 White Army and SPLA soldiers were killed – approximately one death for every two weapons seized.’<sup>45</sup>

Another key issue which affects perceptions of security is that the SPLA is broadly seen to be a Dinka army.<sup>46</sup> It has made moves to bring in high-profile leaders from other ethnic groups such as the Nuer to make its appeal broader. But the issue still forms an obstacle to the SPLA’s effectiveness – until the SPLA is seen as inclusive and representative, other groups bearing arms may be unwilling to be disarmed. The SPLM strenuously denies that it is excluding non-Dinka. Gabriel Matru Malek, Chair of the Land, Natural Resources and Environment Specialist Committee in the GoSS, explains: ‘The SPLM did not fight for 20 years to oppress some small tribes. No! This idea is being planted in the minds of small tribes by the North.’<sup>47</sup>

The CPA also mandates the incorporation of all militias into either the SAF or the SPLA, and this is happening.<sup>48</sup> However, improving discipline and professionalism when incorporating high numbers of soldiers from these Other Armed Groups (OAGs) presents a challenge for the SPLA, as it makes the transition from a guerrilla army to a professional armed force.<sup>49</sup> In the meantime there are other issues competing for the attention of the top leadership, such as the tensions with the NCP over implementation of the Comprehensive Peace Agreement (CPA).

Ultimately, however, the main threat to the right to exist of minorities in the South may yet be a return to overt North/South hostilities. Khartoum is accused of mobilising Misseriya militias to attack SPLM units in Abyei, and there are fears that these attacks could destabilise the fragile peace in the South as a whole.<sup>50</sup>

### **What government and humanitarian actors can do**

The SPLM needs to work harder to reach out to all groups in Southern Sudan. Symbolic gestures such as appointing leaders of other tribes to key positions are important, but just as important is the overall make-up of security forces. Disarmament must be carried out with great care, avoiding coercion, and in consultation with communities. The GoSS should work to address the reasons why people feel they need to carry guns; options for providing a more positive, lasting presence in communities to improve security, for

example through community policing by representatives of the communities themselves, should be explored.

External agencies can provide advice and financial support to government in implementing measures such as those mentioned above, for example by sharing positive experiences from other countries. Communities throughout Sudan, including minorities, should be consulted on what they need in terms of security. The experiences of the Small Arms Survey in carrying out consultations on highly sensitive issues such as weapons ownership can be made use of.

Human rights, including minority rights, should be included in the training being provided by UN civilian police (Civpol) for the police force of South Sudan. Similar training should be provided to the SPLA, prioritizing the newly incorporated soldiers from OAGs. The SPLM must act decisively to discipline soldiers who engage in abuses.

Governments engaged with Sudan, including China, whose economic and political interests are not served by a resumption of war, should exert sustained diplomatic pressure on the NCP to implement the CPA in full, including the demobilisation of all militias.

### **The right to non-discrimination**

Equitable wealth-sharing is especially important in decentralized states. The competencies and powers of the decentralized units will mean nothing if the unit does not have the resources to implement them. In addition, in Southern Sudan many ethnic groups live in compact areas, so the equitable decentralization of resources to state level (and to smaller administrative units) is an important tool in ensuring that groups are treated fairly.

The CPA decrees that: ‘The wealth of Sudan shall be shared equitably so as to enable each level of government to discharge its legal and constitutional responsibilities and duties.’<sup>51</sup> This is an important principle, but there are a number of issues concerning how this will be put into practice. For example, under the CPA formula for sharing wealth from oil exploitation, the oil-producing region will receive 2 per cent of income generated (this is in addition to the usual central disbursements, and locally raised income from taxes, customs duties, etc.). This is intended to offset costs relating to oil production – in particular to cope with the environmental impact. The figure is low in comparison to, for example, Nigeria, where it is stipulated that the Niger Delta should receive a percentage varying over the years (since 1958) from 10 per cent to 50 per cent.<sup>52</sup>

But a more immediate issue is that – as is also the case in the Niger Delta – there are concerns over corruption and lack of transparency in central government regarding oil revenues.<sup>53</sup> The revenue Southern Sudan has received so far is less than expected; the original calculations expected oil revenue to come in at US \$1.2 billion for 2005. However, the finance minister of the Government of

National Unity (GoNU) corrected that figure to US \$400 million,<sup>54</sup> and transfers from January to August 2007 totalled US \$778 million.<sup>55</sup> On a positive note, the negotiations resulting in the SPLM returning to national government in December 2007 included an agreement to set up a 'full transparent system in the management of the oil sector'.<sup>56</sup>

Another issue is the CPA provision that communities will be consulted and compensated if they have to give up land to allow oil exploration. This task is assigned to the National Petroleum Commission.<sup>57</sup>

Equitable access to land is a significant problem in Southern Sudan. With employment opportunities so rare, especially outside the cities, for many communities land is the sole means of livelihood – whether it be through farming or pastoralism. There is a history of expropriation by central government and this has been an important source of conflict:

*'Legislation introduced in the 1970s and 1980s (particularly the Unregistered Land Act of 1970 and the Civil Transaction Act of 1984) further strengthened the privileges of the state and allowed elites close to government to acquire land at the expense of rural people. Expropriations were common particularly in Southern Kordofan (namely in the Nuba Mountains area), where illiterate farmers and pastoralists saw their land assimilated into mechanized farming schemes or simply registered in someone else's name. These land grabs led to massive displacement and was a main reason why, in the late 1980s, people in Southern Kordofan joined the Sudan People's Liberation Movement (SPLM) insurgency.'*<sup>58</sup>

There are a number of further issues; in Southern Kordofan, because Arab pastoralist communities sided with Khartoum during the war, Nuba are no longer willing to allow them access to their lands.<sup>59</sup> Returning IDPs (internally displaced people) and refugees may find their land occupied by others who are not willing to leave.<sup>60</sup>

There are also a number of structural issues: community ownership has not been documented, often leaving the traditional owners in a vulnerable position. About 90 per cent of land in Sudan is unregistered, which is problematic for returnees attempting to prove ownership.<sup>61</sup> In such situations, ownership will often be decided by force or the perception of force, rather than rights; smaller and weaker communities are most likely to lose out, as was the case with the pastoralists in South Kordofan in the example cited above.

Some customary land tenure practices have proven to discriminate against women – for example in relation to inheritance.<sup>62</sup> While indigenous peoples' rights protect customary land ownership, they also prohibit any customs which violate human rights such as women's right to equality.

Women from minority communities are likely to face discrimination on two levels. Minority women in prominent positions can contribute to raising awareness of these issues. Hon. Betty Ogwaro of the Southern Sudan Legislative Assembly, who represents an Acholi constituency in Magwi County, said that working for the rights of her constituents makes her feel as if 'we are the marginalized of the marginalized'.<sup>63</sup>

### **What government and humanitarian actors can do**

The GoNU should consider revising upwards the percentage of revenue from oil accruing to producing regions to compensate for environmental damage.

The GoNU should implement as speedily as possible, as promised in December, a fully transparent system for managing revenues from oil exports; this could be set up under the oversight of the National Petroleum Commission, and involve representatives of the oil-producing states/regions.

When losing land due to oil exploration or other development projects, communities should be compensated with land of equal size and value, which enables them to undertake their traditional livelihoods. The movement patterns of nomadic pastoralist communities will need to be taken into account when determining the location of land offered in compensation.

The National Assembly should establish a committee to draft a comprehensive anti-discrimination law, containing a comprehensive definition of discrimination and robust enforcement measures. If this cannot be achieved at the national level, the Southern Sudan Legislative Assembly should take up the task of drafting a law for the region. To get the process moving, civil society organizations may consider a broad-based campaign to raise awareness of the need, produce a proposal and present it for broad national consultation. Donor agencies can provide resources for this process, including allowing for input from experts from countries with similar experiences.

A number of community-to-community peace initiatives have been organized,<sup>64</sup> to deal with conflicts over land rights. A conference on conflicts between pastoralists and farming communities in the North/South border areas is to be convened under the patronage of the Sudanese Presidency.<sup>65</sup> These initiatives do not always produce immediate results but they constitute a first step. Donor agencies can provide financial support for such initiatives. In some cases conferences under the auspices of NGOs can provide an added degree of neutrality.

Development projects, particularly large-scale infrastructure projects, are likely to impact significantly on minority communities' land ownership – for example if the Jonglei Canal project is resumed. Affected communities should be fully consulted and their free, prior and informed consent obtained. If the project goes ahead they should be involved at all stages – design, implementation and evaluation.

A number of very good recommendations are made in the Overseas Development Institute report *The Land Question: Sudan's Peace Nemesis*.<sup>66</sup> These include freezing of long-term land lease allocation and concessions until there is greater clarity on land tenure rights and existing claims; streamlined and coordinated documentation of customary land tenure and analysis of how to integrate practical and workable customs into statutory law; establishment of the National Land Commission and the Southern Kordofan and Blue Nile land commissions; recognition of customary rights, including communal tenure for pastoralists; codification of compensation mechanisms and procedures; and elimination of laws that discriminate against women. The report also suggests that external donors provide sustained technical support and expertise for a long-term process of land tenure reform.<sup>67</sup>

The GoSS and donor agencies should work to improve access to justice without discrimination by providing more resources for courts at local level operating in vernacular languages, and interpreters for those who don't understand the language of proceedings, as required by the ICCPR.

During the peace-building process some minority communities will continue to suffer from wealth inequalities for reasons that include geographical isolation, displacement, and changing environmental conditions impacting on livelihoods. The GoSS and donor agencies should consider targeting these communities with affirmative action initiatives – for example micro-credit programmes – whilst bearing in mind the specific needs of women within these communities, and the need for awareness-raising around such programmes already mentioned. This may be considered as a long-term peace consolidation measure; however, there are likely to be urgent needs for some communities, such as pastoralists who have lost access to grazing lands, which will need to be dealt with urgently. Furthermore, groups that lose their livelihoods as a result of war and then see no peace dividend, may be mobilized by spoilers to the peace process.

## The right to protection of identity

Identities in Sudan are complex: two tribes might speak different languages yet share a religion, making them part of a different larger group. The same attributes that some people use to define commonality are used by others to define uniqueness: tribes which speak essentially the same language, such as the Atuot and the Nuer, who are often grouped together on a linguistic basis, take small linguistic differences as proof of distinctiveness. Groups considered by many outsiders as having a common identity, such as the Nuba, actually comprise 1.5 million people with many different languages, cultures and ethnicities.<sup>68</sup>

Humanitarian actors also need to recognize the internal diversity of communities, and consult and involve all sectors, not just leaders, however their position is

established (see 'Who speaks for minorities?' section on p. 7). In Southern Sudan, apart from age and gender, communities may include other differentiations, including returning IDPs and those who stayed, and those who joined different armies or militias.

Censuses that allow for the broadest possible range of identifications are particularly useful in identifying gross inequalities and communities most in need of support. However, the NCP has indicated that it may oppose the idea that religion or ethnicity be included at all.<sup>69</sup> Furthermore, respondents may not actually admit to belonging to a certain religion/ethnic identity if they fear this will be used against them at some point and the GoNU will have to provide very concrete reassurances that this will not happen.

The census is part of a sequence of steps – census, election, referendum – but arguably the first step should be for security measures to be put in place so that those displaced populations who desire it, can return to their region of origin. The census will also have a bearing on the status of the three contested areas. The NCP and the GoSS are keen to retain control over the process, and this is already leading to delays; there are disputes between the two parties over the questionnaire and delayed disbursement of required funds by the GoNU.<sup>70</sup>

The CPA protects the use of indigenous languages and allows states to adopt local languages as working languages.<sup>71</sup> The use of minority languages in education is an important tool for promoting identity, and the imposition of majority languages can trigger conflict.<sup>72</sup> Respondents to a survey in East Sudan cited the failure to teach in TuBedawye (the local language) in primary school as a reason for high drop-out rates.<sup>73</sup> On the other hand, the sole use of local languages in education can lead to exclusion from employment opportunities and participation in public life, where English and Arabic are the main vehicles. Adults following literacy classes in Upper Nile Province showed an overwhelming preference for English, followed by Arabic, as the medium of instruction.<sup>74</sup>

The CPA explicitly protects the right to identity. But, for a document based on the principle of decentralization, there is a failure to understand that in decentralized systems, legal protection is often enacted at the level of the decentralized unit – at the state level, in the case of Sudan. Therefore, minority identities at the state level need protection as much as those within the nation as a whole. The CPA fails to provide this protection, only allowing for the majority at the state level to take action to gain exception from national laws which are in conflict with their religion or customs.<sup>75</sup>

In Southern Sudan, each state will decide on the powers of its customary law courts and how to use customary law in conjunction with common law (in both the Interim National Constitution (INC) and the Interim Constitution of South Sudan (ICSS), customary law is used as a source

of law). The parallel system is intended to promote community traditions, while at the same time protecting individual rights.<sup>76</sup> One instance where customary law may come into conflict with individual rights is the case of personal law, which relates to personal and family matters including marriage, divorce, inheritance, succession and affiliation. According to the Machakos Protocol of the CPA, these aspects 'may be governed by the personal laws (including religious laws, customs, or traditions) of those concerned'. On the face of it this may appear to be a minority-friendly provision. However, it masks a deeper discrimination, as laws of this type invariably affect women differently from men. It must be remembered that minority communities are never homogeneous. Many aspects of personal laws affect women negatively, for example different treatment of men and women regarding inheritance upon the death of a spouse. Furthermore, the provision can discriminate against someone from a minority if a man and woman of different communities marry – which community's personal law will apply to issues of inheritance, succession and divorce? Given the domination of men in many communities, the man is likely to be able to impose either his own community's personal law, or that which is most favourable to him.

Customs such as female genital mutilation<sup>77</sup> and the use of women as transferable property, which violate women's rights, are practised in some communities in Southern Sudan.<sup>78</sup> Such practices are not specific to minorities and are expressly forbidden by the minority rights framework.

Land ownership is inextricably linked to identity in Southern Sudan as in many other contexts – the loss of land and hence the inability to exercise traditional livelihoods such as pastoralism or farming may be experienced as a partial amputation of identity. The issue has been discussed further in the section on discrimination (p. 9).

### **What government and humanitarian actors can do**

The GoNU should work to design a census that allows for the broadest possible range of identifications (and in addition, allow an 'other, please specify' category for self-identification) with categories for ethnic group, language spoken and religion. It should be clear that more than one category can be chosen. The census should be prepared in as wide a range of vernacular languages as possible. This will highlight what specific needs each community has, and allow appropriate measures to be taken to address them.

Security must be provided without discrimination to all communities in the run-up to and during the census and elections. The first step is for the GoSS and the United Nations Mission in the Sudan (UNMIS) to consult minority communities regarding their security needs. The GoNU should ensure that the census, and the process of identification of tribes, is as fair as possible. The identification of tribes is likely to affect who gains access to political positions and resources, and there are likely to be

tensions involved in the process. It should be made very clear that data will be recorded anonymously. The GoNU should identify an independent body that can arbitrate in disputes. If this cannot be achieved at national level, the GoSS should establish a process for the South. The principle of self-identification should be respected; that is, if a group claims to exist as a separate identity, that claim should be accepted unless there is significant evidence to the contrary. Donor agencies can work with GoNU, GoSS and UNMIS in developing plans to meet these needs, providing technical expertise and insisting on principles of non-discrimination, freedom of identification of identity, and security.

With regard to education, bilingual teaching is the ideal; this presents problems in Sudan, where marginalized, impoverished minority groups are lucky to have access to a teacher who can teach in one language, let alone two. But a status quo whereby monolingual options lead to exclusion, no matter which language is chosen, is not acceptable and it is essential that efforts be made to improve the situation progressively, with bilingual education for all communities that require it being seen as a long-term objective. Donor agencies should support bilingual programmes starting at the primary school level.

Each state in the South, when addressing the treatment of common and customary law in the courts, should provide strong protection of individual rights to freedom from discrimination and women's rights, in order to ensure that personal law is applied equitably, and to counter customary practices which discriminate against women and children. They should also provide for protection in law of the customs and religion of those who are minorities at the state level. These issues may also be addressed through the anti-discrimination law discussed earlier, or through a special law on the rights of minorities. Donor agencies can help by facilitating international expertise.

The GoSS should consider establishing an Ombudsperson on minority rights, or nominating a commissioner for this issue within the South Sudan Human Rights Commission.

### **The right to participation in public affairs**

The CPA sets out a framework for power- and wealth-sharing not only in South Sudan, but also in central government. As it was negotiated by the NCP and SPLM, who resisted opening up the talks to other actors – for example representatives of movements in East Sudan and Darfur<sup>79</sup> – it failed to respect the minority rights of those communities in all of Sudan who do not feel represented by the two parties, to participate in decision-making on issues affecting them. This exclusion eventually contributed to rebel groups in Darfur taking up arms against the government, and illustrates graphically how violating minority rights directly contributes to conflict.<sup>80</sup>



Furthermore, an absolute prerequisite for effective participation of minorities is an understanding of political processes, as embodied in the CPA and the ICSS; however, knowledge of these documents is very poor among the people of the South generally.<sup>81</sup>

The CPA cements roles into place for the SPLM and NCP at all levels of political life, at least in the interim period. Both parties are vulnerable to accusations of representing narrow ethnic interests. The charts below show the distribution of seats in the South and at the centre, at least until national elections are held.

At the state level – where much power is exercised in federal systems – executives of states in South Sudan will be made up in the interim period of 70 per cent SPLM members and 10 per cent NCP members, with those figures reversed in states in the North.

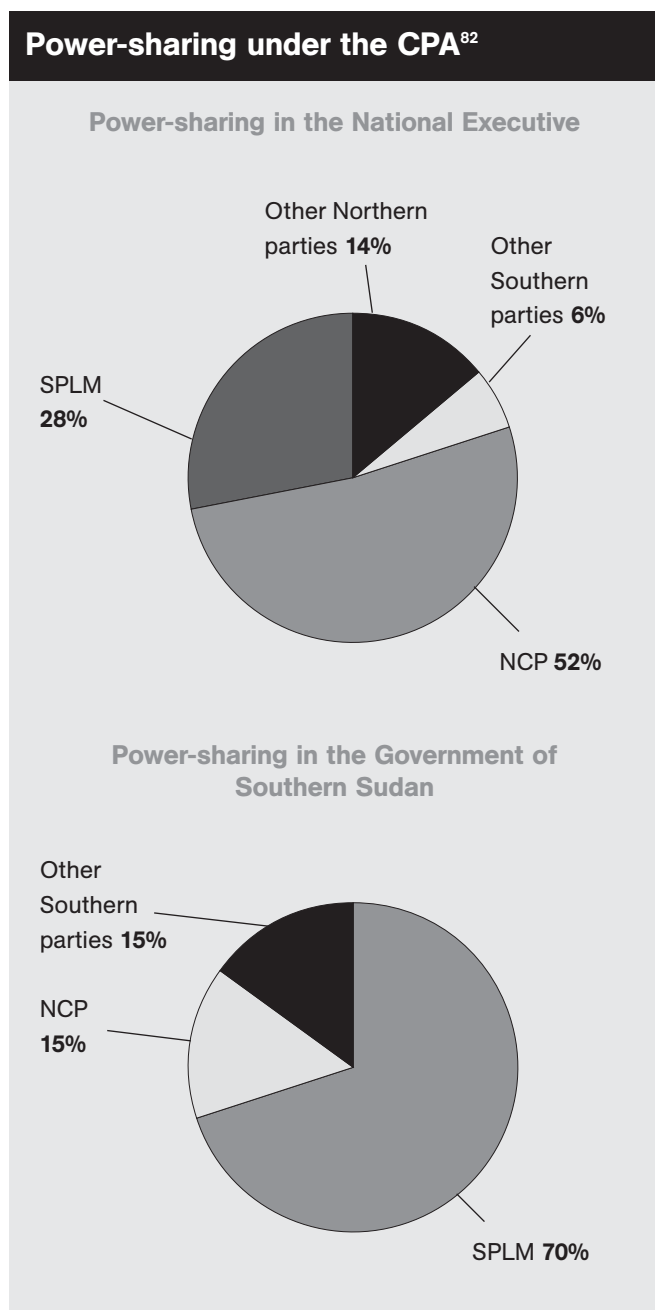
One issue with this is that, as has been seen in other situations ranging from Lebanon to Bosnia, once a power-sharing mechanism like this has been set in place it has long-lasting consequences; groups that have been handed power are reluctant to give it up, and are able to use state resources to fight to keep it. Although the CPA arrangements are expressly temporary, this initial position of power can be used to control processes at later stages of peace-building. Fragile states emerging from conflict, which have weak oversight and anti-corruption mechanisms, are especially vulnerable to this. And with the election timetable already slipping behind schedule,<sup>83</sup> the risk is that the interim period will be prolonged indefinitely.

Many provisions of the CPA call for specific bodies to be ‘representative’ of the population – the National Constitutional Review Commission, the Electoral Commission, the administration of Khartoum, to name but a few; however, these provisions can only be effectively implemented when there is some certainty about the respective populations of communities. In this regard, the census provided for in the CPA, and now scheduled for April 2008, will be of enormous significance for minority rights protection in the framework of the agreement.

Observers report that the SPLM is making genuine efforts to incorporate other voices into both political and military positions.<sup>84</sup> However, in view of wide-ranging criticisms of the SPLM for its failure to broaden its ethnic appeal,<sup>85</sup> there is a long way to go to achieve genuine inclusiveness.

Finally, the CPA allows for both the national and state governments to raise income taxes. However, experience from autonomous regions elsewhere has shown that this power can be meaningless if the level of poverty in such regions prohibits any meaningful revenue being raised from this source. This can lead to total dependence on transfers from central government; in Sudan’s case, transparency regarding transfers of oil revenue owing to the South has been questioned. As a result the autonomy may be gutted of any real meaning.<sup>86</sup>

An interesting proposal to establish a House of Nationalities (HoN) has been put forward by members of South Sudan civil society, and has reportedly met with some support from the SPLM.<sup>87</sup> Each ethnic group would be represented in the HoN with one member. It is suggested that the HoN would be a consultative body initially, to give input to government on issues affecting ethnic groups. One of the objectives is ‘to serve as a venue for the settlement of disputes. It will empower communities to solve conflicts themselves while protecting their cultural and ethnic diversity from political manipulation.’<sup>88</sup> There are now plans to carry forward this proposal by setting up tribal leaders’ forums in each state within the South.



### **What government and humanitarian actors can do**

The government and external agencies should implement programmes to raise awareness of the CPA and ICSS among minority communities, and explain how they can get involved and lobby for a voice for their communities.

The GoSS must continue to make efforts to reach out to and include minority members in political positions at all levels, and in the South Sudan Legislative Assembly (for example, in the seats allocated to the SPLM under the interim arrangements). Efforts also need to be made to recruit people from all communities into the civil service, whilst respecting the principle of competence.

The GoSS and donor agencies should implement training programmes in public administration for members of minorities, in coordination with Sudanese civil society. Training for youth leaders (women and men) should be considered.

### **Indigenous peoples' rights**

Recognition of collective land tenure is an important element of indigenous peoples' rights. A number of recommendations on this issue have been made in the section on discrimination.

For indigenous peoples the right to self-determination is a key issue. For the South, the process, on paper at least, is clear, leading up to a referendum in 2011. However the situation of Abyei, Blue Nile and Nuba Mountains is different. With regard to Abyei, an Abyei Boundaries Commission (ABC), mandated by the CPA, submitted its report on the boundaries of the contested area of Abyei; however, in violation of the CPA, the government refused to accept the findings of the commission. In Nuba Mountains and Blue Nile, the CPA is to be 'subjected to the will of the people of the two States', however this will not be done via a referendum, but 'through their respective democratically elected legislatures'.<sup>89</sup> The issue of whether the regions will be part of North or South Sudan – and hence participate in the independence referendum – is unaddressed, and even if the respective legislatures are unhappy with any aspects of the agreement, they will have to 'engage in negotiations with the National Government with the view of rectifying these shortcomings'.<sup>90</sup> This has caused considerable resentment within communities in these areas who suffered greatly during the war and supported the SPLM.<sup>91</sup>

### **What government and humanitarian actors can do**

The GoSS should work closely with communities in the three contested areas to improve relations and build confidence in the political process.

The GoNU should recognize the principle of self-determination and ensure that it is implemented for communities in these areas – this includes deciding whether to be part of the North or South. The SPLM and

international donors should engage closely with the NCP to insist that this principle be respected.

The NCP should accept the findings of the Abyei Boundaries Commission. By taking this step, to which it is bound under the CPA, it will increase its credibility as a partner for peace, and be in a better bargaining position with regard to other aspects of the CPA.

Security issues during the census and elections in the three contested areas will be crucial. GoNU and GoSS must work together closely to consult all communities on their security needs and ensure security to all communities without discrimination. Communities will have legitimate fears about the presence of either SAF or SPLA forces, based on loyalties and experiences during the war, and these must be taken into account in security arrangements.

### **Transitional justice and reconciliation**

The Comprehensive Peace Agreement makes no allowance for prosecution of crimes committed during the North/South war. A rather anodyne declaration is made in the preamble that the parties are 'Sensitive to historical injustices and inequalities in development between the different regions of the Sudan that need to be redressed'.<sup>92</sup> Rather, provision is made for a comprehensive reconciliation process, but even here the detail on implementation is rather sketchy.<sup>93</sup> It is understandable that after such a destructive war the need for peace has overridden justice concerns. However, complete impunity for war crimes can undermine peace in the long run, especially if combined with frustration over lack of implementation of other aspects of the peace agreement, such as elections and progress towards the referendum on independence.

The situation in Darfur is different – the International Criminal Court has issued indictments for Ali Kushayb (GoS Minister) and Ahmed Harun (Janjaweed leader), and a number of sealed indictments although this step was initiated by the UN Security Council, not the Sudanese government.

UN Security Council Resolution 1325 outlines the importance of women in peace-building processes. There have been a number of reports that women from minorities have played a positive role during the conflict by reaching across tribal divides; wives of tribal leaders have pushed their husbands to reconcile with their opponents, or maintained links with women from opposite groups even while the men of the communities were still fighting.<sup>94</sup>

### **What government and humanitarian actors can do**

The SPLM should work hard with Khartoum to make the CPA provisions on national reconciliation a reality. Justice for war crimes should be seen as the aim but, at the very minimum, a process whereby perpetrators recognize and apologize for their acts would strengthen the peace-building process. External agencies can provide both

political assistance, in pushing Khartoum and the SPLM to move forward on reconciliation, and provide resources for community-level reconciliation and confidence-building programmes, as some are indeed doing.<sup>95</sup>

The African Commission on Human and Peoples' Rights (ACHPR) can also play a role in providing redress for injustices. It has already carried out a mission to Sudan and has ruled on a minority rights case, deciding that Shari'a law should not be applied to non-Muslims in Sudan.<sup>96</sup> The GoNU should consider inviting the ACHPR to help with the process of establishing the truth and promoting a healing process. This could involve carrying out an investigation into specific cases, or a more general fact-finding mission to contribute to the truth and reconciliation process in the South.

At the local level, as mentioned earlier, a number of community-to-community peace initiatives have been developed. These should be supported by government – unless this might be seen as compromising the impartiality of the process – and by donor agencies. A recent report noted that: 'There is high commitment within parts of the SPLM/A leadership to support peacebuilding and reconciliation efforts within and between ethnic and tribal groups'<sup>97</sup> – this commitment should be built upon and implemented, including effective participation of women.

## Conclusion

Southern Sudan is in a period of uncertainty in so many ways – uncertainty about what its future will be after 2011, what its borders will be, when elections will happen, how the conflict in Darfur will impact on peace in the South, and how to find the resources to rebuild infrastructure and fund development. This makes it even more important for both national actors and donor agencies to work to accommodate diversity, implement human rights, improve rule of law, transparency and governance, and push forward

equitable development, so that people can see the peace dividend becoming reality. It is hoped that the recommendations offered here will provide some guidance. While many agencies are already implementing some of the specific actions we propose, minority rights provides a framework to enable this to be done in a more systematic way; if applied as part of an analytical framework, it will allow for all relevant communities and their needs to be identified.

While the CPA is an imperfect document, particularly regarding participation, it is the key to peace in the South. The GoSS must work with the NCP to keep implementation of the CPA on track, and engaged governments and agencies have an important role to play in keeping up political pressure on the parties. Donor agencies should work in partnership with the GoSS to help with specific practical issues regarding implementation of the CPA.

Above all, the SPLM, as the main holder of power in the South, must work now to rectify the exclusion that is enshrined in the CPA. This does not mean re-writing or violating it – that could be used by Khartoum to backtrack on key commitments, and ultimately cause peace to unravel. Rather, the SPLM must reach out to members of minorities and include them in political processes, and ensure they are fairly represented in the civil service, and the security forces.

As we know, the work of peace-building in conflict-affected countries is fraught with obstacles and difficult decisions. Solutions that keep all parties happy and respect everyone's human rights are rare; but the process is about the art of the possible, and the minority rights approach means practising the art of the possible in a dynamic, progressive way. It is about always questioning messy compromises, and demanding the best possible solution in terms of the basic human rights of all sectors of the population.

# International instruments

## International Covenant on Civil and Political Rights (16 December 1966)

### Article 27

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

## Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (18 December 1992)

### Article 1

1. States shall protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories and shall encourage conditions for the promotion of that identity.
2. States shall adopt appropriate legislative and other measures to achieve those ends.

### Article 2

1. Persons belonging to national or ethnic, religious and linguistic minorities (hereinafter referred to as persons belonging to minorities) have the right to enjoy their own culture, to profess and practise their own religion, and to use their own language, in private and in public, freely and without interference or any form of discrimination.
2. Persons belonging to minorities have the right to participate effectively in cultural, religious, social, economic and public life.
3. Persons belonging to minorities have the right to participate effectively in decisions on the national and, where appropriate, regional level concerning the minority to which they belong or the regions in which they live, in a manner not incompatible with national legislation.
4. Persons belonging to minorities have the right to establish and maintain their own associations.
5. Persons belonging to minorities have the right to establish and maintain, without any discrimination, free and peaceful contacts with other members of their group

and with persons belonging to other minorities, as well as contacts across frontiers with citizens of other States to whom they are related by national or ethnic, religious or linguistic ties.

### Article 3

1. Persons belonging to minorities may exercise their rights, including those set forth in the present Declaration, individually as well as in community with other members of their group, without any discrimination.
2. No disadvantage shall result for any person belonging to a minority as the consequence of the exercise or non-exercise of the rights set forth in the present Declaration.

### Article 4

1. States shall take measures where required to ensure that persons belonging to minorities may exercise fully and effectively all their human rights and fundamental freedoms without any discrimination and in full equality before the law.
2. States shall take measures to create favourable conditions to enable persons belonging to minorities to express their characteristics and to develop their culture, language, religion, traditions and customs, except where specific practices are in violation of national law and contrary to international standards.
3. States should take appropriate measures so that, wherever possible, persons belonging to minorities may have adequate opportunities to learn their mother tongue or to have instruction in their mother tongue.
4. States should, where appropriate, take measures in the field of education, in order to encourage knowledge of the history, traditions, language and culture of the minorities existing within their territory. Persons belonging to minorities should have adequate opportunities to gain knowledge of the society as a whole.
5. States should consider appropriate measures so that persons belonging to minorities may participate fully in the economic progress and development in their country.

### Article 5

1. National policies and programmes shall be planned and implemented with due regard for the legitimate interests of persons belonging to minorities.
2. Programmes of cooperation and assistance among States should be planned and implemented with due



regard for the legitimate interests of persons belonging to minorities.

#### **Article 6**

States should cooperate on questions relating to persons belonging to minorities, inter alia, exchanging information and experiences, in order to promote mutual understanding and confidence.

#### **Article 7**

States should cooperate in order to promote respect for the rights set forth in the present Declaration.

#### **Article 8**

1. Nothing in the present Declaration shall prevent the fulfilment of international obligations of States in relation to persons belonging to minorities. In particular, States shall fulfil in good faith the obligations and commitments they have assumed under international treaties and agreements to which they are parties.
2. The exercise of the rights set forth in the present Declaration shall not prejudice the enjoyment by all persons of universally recognized human rights and fundamental freedoms.
3. Measures taken by States to ensure the effective enjoyment of the rights set forth in the present Declaration shall not prima facie be considered contrary to the principle of equality contained in the Universal Declaration of Human Rights.
4. Nothing in the present Declaration may be construed as permitting any activity contrary to the purposes and principles of the United Nations, including sovereign equality, territorial integrity and political independence of States.

#### **Article 9**

The specialized agencies and other organizations of the United Nations system shall contribute to the full realization of the rights and principles set forth in the present Declaration, within their respective fields of competence.

### **United Nations Declaration on the Rights of Indigenous Peoples (7 September 2007)**

#### **Article 3**

Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

#### **Article 4**

Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.

#### **Article 10**

Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.

#### **Article 26**

1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.

## Notes

- 1 Baldwin, C., *Minority Rights in Kosovo under International Rule*, London, MRG, 2006, p. 14.
- 2 Verney, P. et al., *Sudan: Conflict and Minorities*, London, MRG, 1995; Ryle, J., Jok, J.M. et al., Sudan Abduction and Slavery Project, Rift Valley Institute Abductee Database, 2003 report, URL (consulted March 2008): <http://www.riftvalley.org/index.php?view=abductee>
- 3 Johnson, D., *The Root Causes of Sudan's Civil Wars*, International African Institute, African Issues series, Oxford, James Currey, 2003; Schomerus, M., 'Peace and minorities in Sudan', unpublished paper for MRG, 2007.
- 4 Schomerus, *op. cit.* – interview in Juba, November 2006.
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