

# REPORT ON FIELD ASSESSMENT OF LAND TENURE IN IMATONG WATERSHED, EASTERN EQUATORIA STATE, SOUTH SUDAN

## List of Abbreviations

AWF	Africa Wildlife Foundation
CPA	Comprehensive Peace Agreement, 2005
CES	Central Equatoria State
DLP	Draft Land Policy 2014
EES	Eastern Equatoria State
GoSS	(National) Government of South Sudan
LA	Land Act, 2009
LGA	Local Government Act 2009
SS	South Sudan
SSLC	South Sudan Land Commission
UKW	Upper Kinyeti Watershed

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## **PART I INTRODUCTION**

### **A BACKGROUND & METHODOLOGY**

This report follows from a visit to South Sudan (SS) from 12<sup>th</sup> January to 19<sup>th</sup> January 2015. Three nights were spent in Juba and five in Torit where the AWF programme is based, and one in Katari at the foot of the Imatong Mountains. While in Juba, time was spent in interviewing senior ministers and secretaries in various government offices, lawyers in differing environments and expatriates involved in SS development. In Torit, several ministers and secretaries were visited at the state government level, and also senior administrators at the county level, both in Torit, and in Ikotos. This is the administrative capital of Ikotos county, in which lies most of the upper catchment area of the Kinyeti River.

Some of the background to the legal system, and details of current legislation have been taken from the author's previous report, with the intention that this present report should be easily read without reference to the earlier one. In addition the author was supplied with a copy of the 2014 Draft Land Policy, the salient points of which are included in this report and were not in the earlier one. He was also supplied with two separately prepared lists of Forest Reserves, although these are at variance with one another. Further internet research also provided more information, especially regarding forestry legislation.

Otherwise, the contents of this paper derive mostly from interviews and as such, must be treated with a degree of circumspection. Sometimes interviewees appeared to declare what they wished to be the case in particular circumstances rather than what actually was happening on the ground. Or officers from two different levels of government would actually state the current position, as they perceived it to be at their level of government, but which would be at variance with the position at a different level. Every ministry or government organisation, at whatever level, is hopelessly under-financed and under equipped, and this clearly affects the reality of any given situation on the ground.

The list of principal interviewees and their positions/ organisation is set out in the Schedule. Much other general information was obtained from under-the-tree discussions with teachers, elders and other community members.

### **B ADMINISTRATIVE HISTORY**

A grasp of how the administration of what is now the Republic of South Sudan evolved into its present-day format is essential in trying to understand the different layers of which that administration is currently comprised, and the ensuing complexities these create.

On 1st January 1956 Sudan became an independent sovereign state, with the majority of its administrative powers emanating out of Khartoum. The country then comprised a total of nine *mudiriyat* or provinces. While some powers were vested in the provincial administrations, this delegation fell far short of constituting a true federal system (which was to be a continuing source of frustration for southern residents).

In 1973 various new provinces were created as were others in 1976, bringing the total to 18. In 1991 there was a further reorganisation back down into nine states, which basically corresponded to the nine former provinces. However, this was not the end of it and in February 1994, these nine were “refracted” into a total of 26 states.

After two civil wars, (1955-1972 and 1983-2005) and a lot of other less formalised conflict, a Comprehensive Peace Agreement (CPA) was finally signed in 2005. This provided for a subsequent referendum, eventually held in 2011, and in which nearly 99% of voters supported full independence for the ten most southerly of the 26 states. These ten once comprised the provinces of Upper Nile, Bahr el Ghazal and Equatoria. What was once the province of Equatoria now comprises the three states of Western, Central (CES) and Eastern Equatoria (EES). The states are further divided into counties, of which there are eight in EES. Each county is subdivided into payams, and each payam into bomas - the lowest administrative unit in the government structure.

The system is far from being a fully federated one, (as a lot of the states would wish) and today most state government revenue consists of national government (GoSS) grants. These derive almost exclusively from oil sales and overseas aid. With the oil price having dropped so dramatically, and the ongoing civil strife absorbing much of the national income, the states are all the more aware of the need to raise their own funds. However, they have very limited powers to do so. They are able to charge a wide range of licence fees, vehicle owners pay car registration fees, and there is a tax on properties in urban areas. Other attempts, for example, to impose state import duties, have been disallowed. Any development projects unlucky enough to fall between the two funding sources of national and state governments are likely to stall indefinitely.



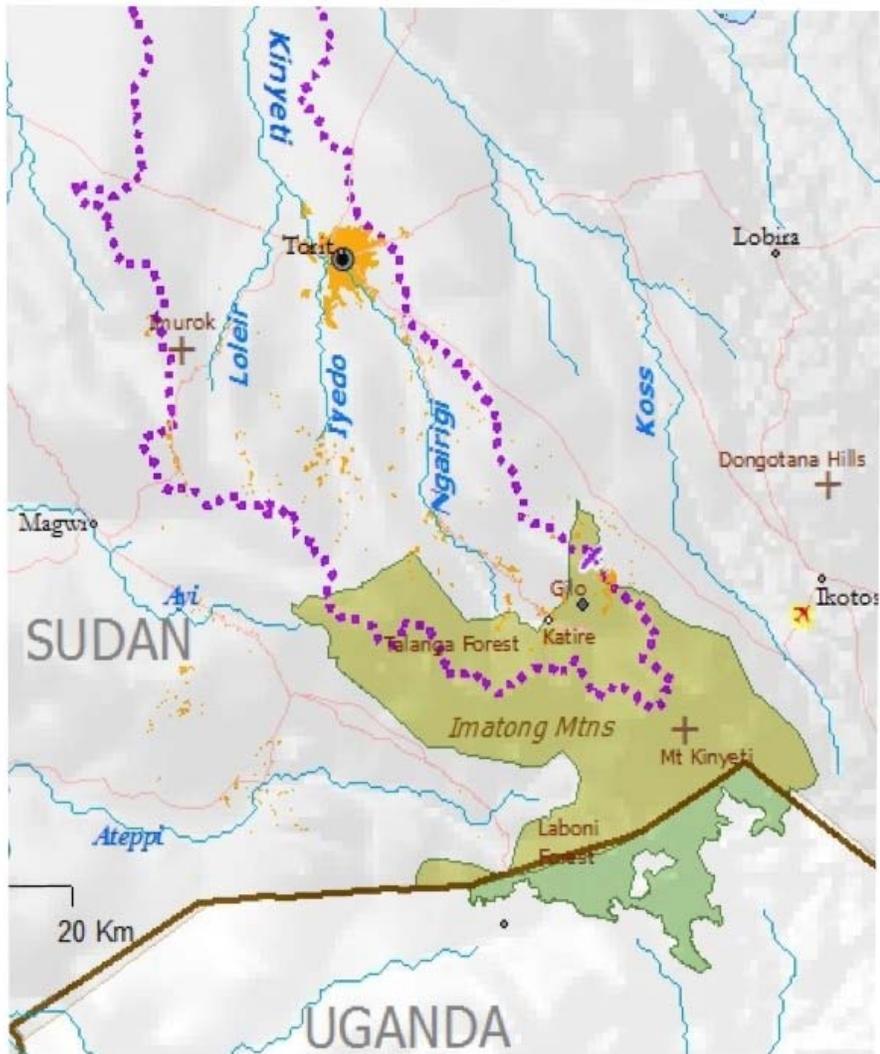
Figure 1 - The ten states of South Sudan

## C DEFINING THE PROJECT AREA

The African Wildlife Foundation (AWF) has identified the transboundary Imatong-Kidepo landscape as one of 30 priority landscapes in Africa, critical for conservation. It has a multi-year project in Kidepo Valley National Park in Uganda, just south of the Sudan-Uganda border, and the planned intervention in the Imatong Mountains will further its vision of a cross-border landscape.

To this end AWF is initiating a five-year programme in EES entitled *Improving the Integrated Watershed Management of the Imatong Mountains*. Through this programme, AWF aims to ensure that the water tower of the Imatong Mountains, and particularly the catchment area of the upper Kinyeti River, are protected and sustainably managed, to ensure long-term water access to communities and ecosystems lower down the river. Clearly the programme has the added value of protecting the flora and fauna within this upper catchment area.

While the Kinyeti river catchment area extends far down to the Mongalla Game Reserve and its surrounding swamplands, the focus of the programme is in the higher reaches of the Kinyeti river and its upper catchment area. To quote from the draft Project Report of October 2014, "This work however, focuses on the Upper Kinyeti Watershed (UKW) which is defined for the purposes of this project as *the portion of the Kinyeti watershed which falls just upstream of a point below the bridge joining Torit to Juba. The watershed includes all of the areas of the Imatong Mountains which drain into the Kinyeti River*". This therefore is the area with which this report is concerned and is referred to hereafter as "the Project Area". On the attached plan (fig 2) this includes the urban surrounds of Torit and the rest of the land within the purple-dotted line south of Torit.



*Figure 2. The Project Area includes all that area within the purple dots south of a line drawn just north of Torit*

It should be apparent that, notwithstanding the limitations of the Project Area, its effective management will produce benefits which are felt way beyond its borders. The river catchment extends far north to the Mongalla Game Reserve and the surrounding swamplands, which are totally dependent on a continued flow of water from upstream. Furthermore, effective management of the UKW within the Imatong Mountains cannot but benefit other river systems beginning in the rest of the Imatong massif. So too will better management of the Forest Reserves within the Project Area benefit other forested areas around the mountains.

## D DEFINING THE FOREST RESERVES

As will be noted from the plan, while the majority of the Project Area consists of community land (grey on the plan) the upper reaches of the Kinyeti River drainage comprise of green, forested areas. Much of this land is undoubtedly official Forest Reserves, but there remains considerable confusion as to the precise legal extent of such Reserves.

Pre-Independence, Sudanese forests were either Central, and controlled from Khartoum, or Provincial, in that they were managed by the provincial administrations. So far as what is now South Sudan is concerned, this would have meant management by the relevant one of the then three provinces of Upper Nile, Bahr el Ghazal and Equatoria. Clearly, on Independence the responsibility for managing Central forests situated in South Sudan moved down to Juba. However, very few records moved with this responsibility. Efforts are underway to archive some of the earlier pre-independence ministerial records, and there are bundles of maps presently on top of a cupboard in the Director General of Forestry's Juba office. Otherwise, tracking down reliable details of Forest Reserve history, from Gazettement to Independence, is very difficult.

To add one more layer to this administrative confusion, in the early days of the nine provinces, the Equatoria provincial forestry headquarters was in Juba. When Equatoria split into three states in 1994, Juba assumed the role of capital of CES, but records for the other two states (Western Equatoria and EES) also remained there, in what are today the offices of the forestry authorities of CES.

There appear to be three forests, all formally designated as Central Forest Reserves, comprising the forested area on the Sudan side of the Imatong Massif. The details below are extracted from a letter dated 29th April 2008 from the EES Director of Forestry to the EES Minister for Agriculture, Forestry & Rural Development (1 feddan = 1.038 acres or 0.42 hectare).

<u>Forest</u>	<u>Dated gazetted</u>	<u>Area</u>
KATIRE	15 <sup>th</sup> August 1951	31 feddan
IMMILA	18 <sup>th</sup> August 1951	3,150 „
IMATONG / GILO	15 <sup>TH</sup> March 1952	282,270 „

Katire and Immila are lower-lying forests, containing almost exclusively planted teak. There are some pine and eucalyptus plantations at higher altitudes in Imatong / Gilo, but given its extensive area, this reserve must principally include all of the massif's natural high-ground indigenous forest and wild area.

The same letter indicates that in April 2008, there were a total of 14 Forest Reserves in EES, all gazetted between 1948 and 1956. The 11 Central Forests covered a total area of 290,249 feddan, and the three Provincial Forests, 727 feddan. While most of the forests, including the three Imatong ones, are designated Central Forest Reserves, the effective management today, such as it is, is actually undertaken at the state level.



*Figure 3. Looking down from the Imatong foothills*

## **PART II THE LAW**

### **A THE EVOLUTION OF THE LEGAL SYSTEM**

Historically, customary law governed land use in SS, ethnic groups each applying their own rules and regulations relating to the use and ownership of the land they occupied. As colonial influence was extended, English law-based statutes were introduced, beginning with the 1906 Land Ordinance, which, at least in law, brought all land in Sudan under government control. In practice however, the difficulty of enforcing it meant that most southern land remained subject to a diversity of customary laws, depending on the particular ethnic group that occupied such land. The 1925 Land Settlement and Registration Ordinance allowed for title registration and private ownership but again, the land in the south generally remained untitled and so unregistered.

Some years after after Sudan's 1956 independence, the Unregistered Land Act of 1970 was passed, providing that any land not so registered for title under the 1925 Ordinance belonged to the Government. This meant virtually all land, in practice, and while the act was bitterly opposed by rural communities it proved a convenient legal tool with which the Government of Sudan could facilitate the start of certain development projects, particularly the construction of the Jonglei Canal and the drilling for, and extraction of oil. This law was, legally at least, repealed by the Civil Transactions Act of 1984, but in practice the latter act incorporated all the provisions of the repealed act as well as adding more of its own.

Despite the sweeping powers of the 1984 act, customary land law continued to prevail in the south, and far outweighed any possible bias towards the notion of private ownership. Thus, one of the essential tenets of the CPA, and the 2011 Transitional Constitution, became that the “Land belongs to the people”, and this remains a key feature of all post-independence land legislation and policy.

## B THE PREVAILING LAW

### 1 The Transitional Constitution

This came into force on Independence Day, 9th July 2011, replacing, and superseding the 2005 Interim Constitution.

- S 169 deals with land ownership, borrowing the three categories of *public, community and private land* from the 2009 Land Act, and defining community land as “all lands traditionally and historically held or used by local communities or their members.” It further provides that such lands shall be defined, held, managed and protected by law, and that “customary seasonal access rights to land shall be respected ... communities and persons enjoying rights in land shall be consulted in decisions that may affect their rights in lands and resources.”
- S 170 ensures that those enjoying rights in land are consulted in any decisions that may affect those rights
- S 171 provides for the creation of a Southern Sudan Land Commission (“SSLC”). This echoes provisions in both the CPA and earlier Interim Constitution, the Commission having already been formally established by Presidential Decree 52 of 2006.

### 2 The Land Act of 2009 (“LA”)

On independence, SS inherited the laws then prevailing in Sudan as a whole. In the many areas where change was needed, fresh legislation had to be enacted. The 101-section LA is the pre-eminent SS law relating to land.

#### General provisions

- All land in SS is owned by the people and its usage shall be regulated by the Government (S 7)
- Land is acquired, held and transacted through the following tenure systems, *customary, freehold and leasehold* (S 7). So far, there is no freehold land tenure anywhere.
- Land is either “*public, community or private land*” (S 9)
- Land can be alienated and registered in private ownership (S 12)
- Foreigners may not acquire freehold land (S 14) and no lease may exceed 99 years (S 19)
- In keeping with the emphasis on community enjoyment of land, there are numerous provisions for *use*, as opposed to *ownership* of land (leases, usufructs or easements)

### Community land

In the absence of alienation of communal land into private ownership, or by Government agencies for public purposes, land is community land, and some of the appropriate provisions affecting this include:-

- All lands traditionally and historically held or used by local communities or their members shall be defined, held, managed and protected by law in Southern Sudan (S 6)
- Customary seasonal access rights to land shall be respected (S 6)
- Any person or group of persons holding customary land rights before the commencement of the act shall continue to hold the same (S 8)
- Community land shall be held by communities identified on the basis of ethnicity, residence or interest, and may be specifically registered as such in the name of the community or its representatives; otherwise it can be informally held, managed or used by specific communities as community forests, cultivation, grazing areas, shrines, and any other purposes recognized by law (S 11)
- Every person shall have access to land for housing, cultivation, pasture, grazing, or fishing as shared resources as shall be regulated by the Act, rules and regulations (S 13)
- The Traditional Authority (traditional body with administrative jurisdiction within which customary powers are exercised by traditional leaders on behalf of the community) may allocate customary rights for residential, agricultural, forestry or grazing purposes and may also cancel same (Ss 15 & 16) and in each case must inform county or payam authorities

### Land Management at the local level

The devolution of land management is further emphasised in the Land Act, in which the State *assigns the responsibilities of land management to the relevant ministry at the state level, then the County Land Authority and Payam Land Council* (S 41 LA)

- The state government manages the survey office and the delimitation of boundaries between community land (S 43)
- A County Land Authority is appointed by the state governor and e g facilitates registration and transfer of interest in land and assists Traditional Authorities and liaises between them and any relevant state ministry, advises local communities, liaises with the SSLC (S 46)
- The Payam Land Council is responsible for the management and administration of land in the different bomas within the payam (S 48) with functions that include supporting registration and transfer of interests, protecting customary land rights of communities and protecting communal grazing land, forest, wetlands and water resources (S 49)

### Pastoral lands

These are defined as “land used by livestock for grazing, pasture and watering, including routes provided for their mobility and space ancillary to the activities” and are to be delineated and protected by the appropriate level of land

administration and management based on a comprehensive land use planning system (S 66)

#### Registration of land rights

A system of registration of land rights is a fundamental necessity where the land laws contemplate any form of tenure other than communal ownership. Registration is usually confined to titles to private or public land, but under the LA community rights are eligible for registration as well.

- Collectively or individually owned land shall be registered and given a title (S 53)
- All land not registered before the act came into effect is to be registered in accordance with its provisions (S 53)
- A centralised land registry is to be established within the Ministry of Housing, Physical Planning and Environment at national government level, and other registries at state level, and at “each level of land administration” (S 54).
- Community Land can be registered in the name of the community, or community association or of a traditional leader who holds in trust with consent of community, and inquiries can be held to ensure community agreement to any such arrangements (Ss 58 & 59)

#### Dispute resolution

The importance given to customary law throughout the Land Act is particularly apparent in the emphasis placed on means of alternative dispute resolution.

- These means include “processes and mechanisms that fall outside the government judicial process, to traditional dispute resolution mechanisms and specifically to mediation or arbitration” (Ss 91-95)
- Several sections of LGA (Ss 93-106) are concerned with the establishment of Customary Law Courts and a Customary Law Council, the B court or Regional Court being mandated to hear customary land disputes

### **3 The Local Government Act of 2009 (“LGA”)**

The LGA also impacts on the administration and management of land, although trying to mesh its provisions with those of the LA is not easy. “Decentralisation” is, not surprisingly, one of the central pillars of the LGA, much of which is concerned with the establishment of a large number of Local Government Councils, either Rural, Urban or Industrial. Rural Councils are to be set up in a “rural settlement or area whose economy is predominantly agricultural, pastoral or mixed, with a strong base of traditional administration and cultural practices”.

- Within each Local Government Council is a Legislative Authority or Council (S 25) authorised to make bye-laws within its jurisdiction (S 37), for instance regulating seasonal access rights to land and to protect agricultural land (S 90)
- Every Local Government Council is mandated to establish a Land Committee or authority to “ease the process of land management and administration”; this is given wide ranging functions such as “the preparation of policy guidelines for land use rights” and the

establishment of sub-committees to perform the same functions at payam and boma level (S 91)

- The Local Government Councils are also enabled to enact bye-laws to regulate land management on land use control, land acquisition, land lease and land rights transfer systems (S 92)
- The LGA also makes certain provisions for “the development of land registration, distribution and allocations schemes and schedules for Council land management” by Local Government Councils (S 91)

#### **4 The Draft Land Policy**

In February 2011, the SSLC received the DLP prepared with USAID help. This was approved by the Cabinet in February 2013 and, after further amendment, referred by the Minister of Lands, Housing and Physical Planning to the National Legislative Assembly in 2014 for final approval. This has yet to be granted.

The policy summarises not only the problems facing SS which impact on land administration, but also what may be needed to surmount them. It adds an indication of the direction of land policy and legislation in the event the DLP is formally adopted, and eventually begins to be implemented.

In its own words, the DLP is ...

“a reflection of the needs, problems and circumstances of South Sudan as it emerges from a long period of conflict, civil war and social, economic and political disorder. Paramount among these needs is the creation of institutions that enable citizens of South Sudan to rebuild their lives and their livelihoods in peace and security. Secure property rights are essential to the country’s economic reconstruction and political and social development”.

Amongst its guiding policy principles, two could be singled out as of overarching significance.

##### **1 The importance of tenure security**

The DLP identifies “tenure insecurity” as one of the principal problems in SS, and declares its principal aim to be to “strengthen land tenure security for all citizens ... who hold land or wish to hold land”. Tenure security is essential for ...

1. Building peace and enhancing civil security
2. Economic development and investment
3. Unifying the nation

##### **2 Subsidiarity**

The DLP is perfectly open in admitting the shortcomings of the current system of land administration and management, and that “there is a continuing lack of clarity regarding the authority, roles, policies and procedures at various levels of government and traditional authorities”. It then goes on to formalise the principle of subsidiarity. This goes some way towards clarifying the envisioned workings of the country’s administrative pyramid, which is currently causing so

much confusion. That said, the policy has yet to gain approval of the Legislative Assembly and whether all legislators share this vision remains to be seen.

“The evolving decentralized system of governance in SS is based on the premise that the national authority should manage only those functions necessary for cohesion of the [Nation] or which cannot be fairly and effectively managed by state-level, local or customary authorities. State and local governments and traditional authorities will be primarily responsible for land administration and adjudication. However, the National Government is responsible for providing policy guidance, standards and oversight for efficient land administration and management in SS. The Judiciary will also have an important role to play as a final arbiter and guarantors of constitutionally and legally-defined rights.”

The chapters on implementing the DLP, show what the drafters envisage will be needed to bring SS’s land management and administration into the 21st century. Existing laws (LA and LGA) need amending, and some of the new legislation required include ...

- Regulations to help implement LA
- Land Registration Act
- Community / Customary Land Act
- Law to guarantee rights for women and children, particularly on inheritance
- Laws to set standards for and to implement, land survey, valuation & registration

With the DLP still a draft, and many gaps and contradictions bedeviling the existing laws, perhaps ironically, there is more certainty down at the community level, where traditional law and practice is long-established.

## **5 Forestry Legislation**

Essentially, the higher up the UKW, the more important is the conservation of the water and the surrounding land. All the headwaters emanate from land designated as Central Forest Reserve, and the law governing the management and conservation of such Reserves is totally distinct from either the customary law prevailing in the communities, or the statutory land law. While the LA and LGA both recognise the existence and importance of customary law and also provide the legislation generally applicable in urban areas, the totality of SS land legislation lacks any degree of clarity or certainty, and is clouded with varying interpretations as to which laws are still applicable and which are not.

As mentioned, the LA and the Transitional Constitution provide for three systems of land tenure - community, public and private. Public land includes “all forest and wildlife areas which are formally gazetted as national reserves”. This would therefore bring Forest Reserves into the category of Public Land - one of the few certainties in the law pertaining to forests. Below are the salient statutory or quasi-statutory attempts at forestry management:-

- In 1989 Sudan enacted the Forests Act, which effectively consolidated half a century of colonial legislation. In the same year, the Forests National Corporation Act established the parastatal FNC, which has, in any event, never been particularly active in what is now SS.
- Both these acts were then repealed and their provisions merged into the Forests & Renewable Natural Resources Act of 2002, which also expanded its remit to cover non-forest land management. This act was passed by the Sudan government before the CPA. There is no unanimous answer to the question as to whether it still applies in SS? Some legal practitioners argue that all Sudan's non-Sheria acts apply in SS unless specifically repealed or in contradiction with SS legislation. Others take the contrary view.
- There is no doubt that the Timber Utilization & Management Act 2003 and the Forestry Commission Act 2004 are still applicable, having been signed by the SPLM chairman and came into force before the CPA. However, both acts seem to be generally ignored, and the Forestry Commission has yet to be established.
- A 2006 Ministerial Decree banned illegal logging and was intended to give GoSS time to regularise the procedure of tender awards, which it has singularly failed to do.
- In 2007 a National Forestry Framework Policy was prepared by the Ministry of Forestry and Agriculture, approved by the National Legislative Assembly in 2009 and upgraded in 2013. Like the DLP which was to follow, it comprised of policy statements - 25 of them - which, inter alia, categorised forests into National Forest Reserves to be managed at GoSS level and State Forests to be managed by the relevant state, emphasising the importance of collaboration between all levels of government.
- The Framework Policy recognises the need for an updated law, as well as for the establishment of a Forestry Commission. While only a policy document, and in desperate need of enabling legislation, it probably has near-statutory authority in the absence of any other reasonably comprehensive and clearly applicable law. In this state of legislative confusion, it is perhaps no surprise that the 1989 Forests Act is also still referred to in some offices as the most reliable statutory authority.

Trying to get a timber extraction licence – who gives them out?

Nothing better illustrates the confusion between the roles and responsibilities of the different layers of SS government than the awards of timber extraction concessions. Ask anyone at the national forestry level in Juba whether they expect to be involved in the award of timber extraction licences anywhere in the country, and the answer will be “yes”. After all, Imatong / Gilo is, in name at least, a Central Forest Reserve, which means it was originally meant to be managed by the central government. The prime motivation for wishing to be involved is of course the opportunity to raise revenue at the national level. Indeed it was remarked at this national level that many of the taxes imposed by state governments were acting as a disincentive to some would-be investors, who had been attempting to by-pass the national authorities.

Down at the state level, the story is one of frustration with the national government. EES began by submitting prospective licence awards and related legal contracts to the national ministry for approval, but, whether deliberately or through lack of communication facilities or through pressure of overwork, got no response or feedback from either the national forestry authorities or the legal affairs department. Eventually the EES ministry decided to take matters into its own hands and began awarding licences direct to prospective extractors without any reference to the national level. This had the added advantage of providing much needed revenue at the state level, in times when the national government grants to each state were in decline.

However, the story does not end here. Given the opportunity, the national government is never going to allow itself to be bypassed in the extraction of such a potentially lucrative resource. It was no surprise to hear the Imatong Katire community related how on one of the last occasions when extraction licences were awarded by the state without reference to the national government, once the latter found out, it ordered the licensee's equipment seized and personnel imprisoned.

## **6 Wildlife legislation**

The first act signed into law by the late Dr John Garang was the Wildlife Conservation and National Parks Act of 2003, which contains the relevant legislation relating to wildlife and conservation. The process for establishing a new National Park was outlined by the Director General of Wildlife Services as follows:-

- 1 Demarcate the area in conjunction with the local communities (and of course the forestry authorities, with most of any proposed National Park in the Imatong massif being currently National Forest Reserve).
- 2 Discuss the proposal with the communities.
- 3 Ascertain so far as possible, the flora and fauna of significance, which would particularly benefit from the creation of National Park.
- 4 Prepare a detailed proposal and submit this to the Council of Ministers through the responsible Minister, currently that of Wildlife Conservation and Tourism.
- 5 If approved, formalise the proposal in Act of Parliament form and submit to Legislative Assembly for open discussion.
- 6 Gazette the Act
- 7 Finally submit the Act to President for him to sign and bring into law.

## **PART III DOWN ON THE GROUND**

### **A LAND TENURE IN THE PROJECT AREA**

There are three separate land tenure regimes within the Project Area, and a distinct legal system governing each.

The Central Forest Reserves in the Imatong massif are governed by such legislation as is applicable to forests. This is *public land* within the provisions of S9 LA. Should some or all of the Forest Reserves get “promoted” to National Park Status, the park would be declared as such under the Wildlife Conservation and National Parks Act of 2003.

The land in the town of Torit is municipal land and largely subject to private ownership, through leases from the municipality. This is *private land* within S9 of the LA, which also contains the basic provisions enabling this system to operate. Privately leased land can be sold without need for any consent, unless the new owner is contemplating changing the established use of the land in which case consent is required from the Directorate of Survey, Lands & Town Planning, Ministry of Physical Infrastructure EES.

Almost all the rest of the land within the Project Area is *community land*, within S9. Some leases of land within community land have been granted to individuals or investors, particularly of irrigable areas alongside the riverbanks. Community rights are eligible for registration under LA but none have been so registered in Torit, which in any event does not have a functioning land registry. The EES government also obtains leases of community land for use as e.g. payam headquarters or schools. However, community consultation and consent is essential before any grant of a lease of what was community land.

Up in Katire, a lease of community land has been granted to Chinese developers, Sino-Hydro, for a hydro-electric plant which is due to start in 2015. Another Chinese company was keen to start a scheme to gravity-feed piped water from Katire down to Torit, which presently relies on bowsers, but this has not yet got off the ground. If peace returns to SS and investors see opportunities, particularly agricultural, it seems likely there will be an increase in applications for grants of leases of community land.



*Figure 4. The Kinyeti River falls at Katire would most likely be the site of any hydro-electric scheme*

#### Municipal land – AWF’s Torit lease

The owner of the land leased by AWF from Catholic Relief Services is the Catholic Diocese of Torit, which is aware of AWF’s sub-tenancy. Nevertheless, CRS is not currently very active and should it cease activities and the plot reverts to the diocese, AWF will need to ensure that it remains part of the package to be taken over by any new tenant. Alternatively, if it was offered, and could afford to lease the whole plot, it could then find its own subtenants, as available space dictates.

#### AWF’s demonstration plot at Imilai

AWF is hoping to negotiate user rights with the local community to its demonstration plot at Imilai in Katire payam. It would like these rights for as long as the project lasts, then the land can revert back to the community. The plot activities will be run in conjunction with the adjacent school. One of the intrinsic elements of community land is that it is the rights of user rather than ownership that matter most. People move on and off patches of land, often just cultivating it, rather than living there. Often this involves a slash and burn progression, which is environmentally destructive but falls within the accepted way of doing things in the communities.

## B LAND ADMINISTRATION AND GOVERNANCE

### Title registration

There is no County Land Authority in Torit or Ikotos yet, nor any land registry in Torit - which is both county and state capital. When one is finally established, it is most likely to be housed in the Judiciary, where all documents would be checked before registration. This removes at least one of the steps in final registration away from the Ministry of Physical Infrastructure, which currently approves the application for a lease, does the survey and files away the records.

Presently, transfers of leases basically involve negotiating a private contract, then trying to verify the title in the Directorate office, before finalising the transfer documents. The lease is then taken to the municipality offices to confirm all taxes on the land have been paid before paying a final fee to change the name of the registered owner. Such records as there are of any lease or transfer thereof, are all in the Directorate of Survey, Lands & Town Planning.

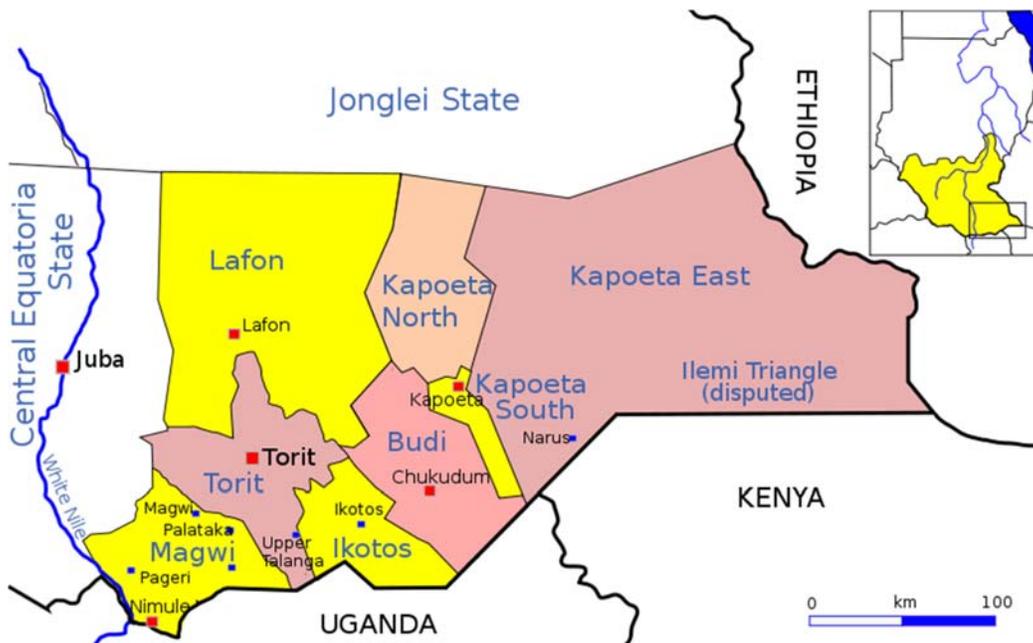


Figure 5. The counties of Eastern Equatoria

### County Organisation

The Project Area is all within the two counties of Torit and Ikotos, with most of the UKW in the Imatong and Katire payams of Ikotos county. Katire is the end of the motorable road up the Kinyeti valley from Torit, and the stepping off point for the Imatong Mountains and the track up to Gilo. Somewhat perversely, it is currently about 2-5 hours from Katire to Torit and almost 6 hours to Ikotos, this latter journey necessitating driving from Katire almost to Torit before turning back along the flank of the massif to Ikotos.

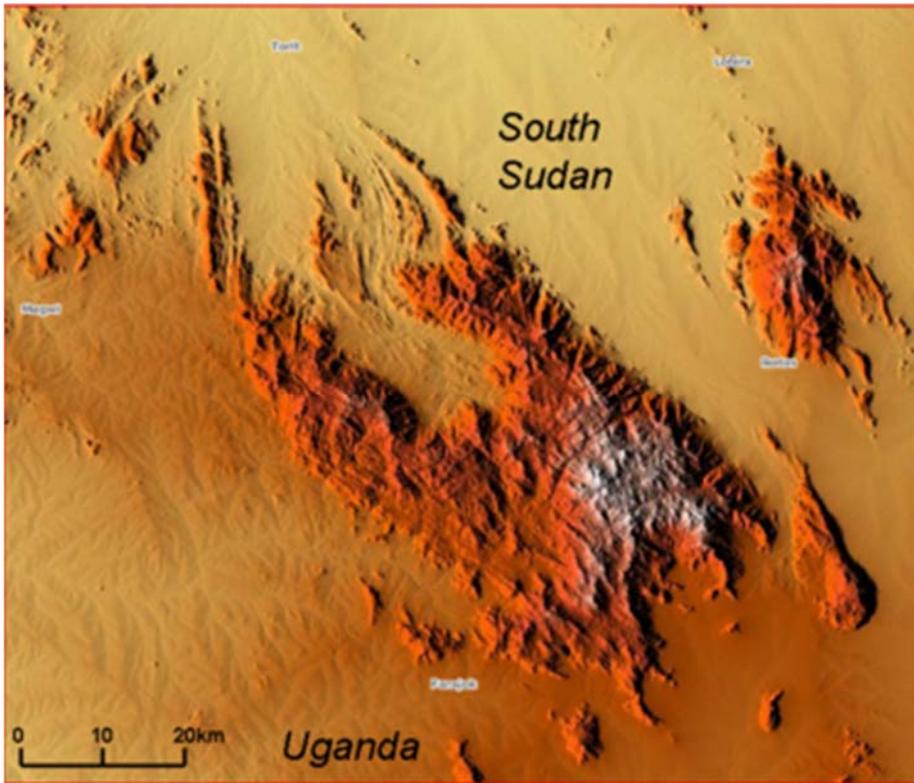


Figure 6. Katire is at the bottom of the U between the two arms of the massif

The Imatong payam is comprised of six bomas, Himodongi, Hiniso, Geria, Ifose, Ingoi and Lomoleny. In the Katire payam are five bomas, Imilai, Katire, Gilo, Isore and Isuk. Each payam has a chief and each boma a sub-chief. Both are elected, although the state government endorses the election, through the County Commissioner and the local office of the Ministry of Local Government, Law Enforcement & Wildlife Conservation. The chiefs are effectively the links between government and the communities. Below the bomas are villages, which are informal administrative units and usually elect a headman.

Within the Imatong tribe are several clans or traditional groups, whose members may or may not comprise all the residents of specific bomas or payams.

The stewards, trustees or even perhaps spiritual guardians of community land are loosely termed “traditional landlords”. They are always members of a particular clan, just as a single Maasai clan often provide the *laibons* for a much wider area than it occupies. If one of these traditional landlords dies, the clan appoints his successor. The role is as much spiritual as practical or physical. For instance, if a displaced resident wishes to return to the area of his upbringing, he would first approach the County Commissioner with a request to be allotted some land. The commissioner would then summon a payam chief, and arrange an allocation of a specific piece of land, and when this was finally agreed, the land would be blessed by the traditional landlord.

“The rain can come from the forest”

Peter Lokeng is the County Commissioner for Ikotos County. In his offices he looks up at the hills beyond Ikotos town and remembers how they were once fully forested. Now they are barely covered in scrub, with the once fast-flowing streams reduced to trickles. He is now only too aware of the need to preserve the Imatong forests, the water supply to Ikotos now having to be piped many kilometres down from the Imatongs to Ikotos.

(C) PERENNIAL PROBLEMS

There are at least some laws in place to guide the people of SS in land matters, and some established practices in the way they are implemented. However, ultimately, these laws are only as good as their administration and enforcement, and with this there are deep-rooted problems.

The DLP is quite frank in its criticisms of the present practices, and the drastic need for improvement. These excerpts from it pinpoint two of the principal hurdles, which need to be overcome before any system of efficient land administration begins to operate - the lack of clarity of the different roles of different agencies at different government levels, and corruption.

“There is a continuing lack of clarity regarding the authority, roles, policies and procedures at various levels of government and between government and traditional authorities for land administration. Land agencies are hampered by a shortage of funds, inadequate material resources and insufficiently trained staff. Stakeholders have complained that limited capacity and poor management by land administration officials has led to confusion over land ownership, due for instance to the issuance of duplicate titles or lost records.”

“There are widespread concerns about corruption, favouritism and capricious actions by some government officials and traditional leaders in the administration and allocation of land. Those without power political access and money fear they will be at disadvantage when seeking to acquire land or defend their land rights. There is widespread concern that some government departments will abuse their authority to acquire and dispense land, without proper consultation with affected individuals and communities.”

“In many parts of the region, land holdings, large and small, urban and rural are being allocated or illegally occupied without taking account of the rights of the current land holders. These practices reflect a disregard and in some cases confusion over the proper land administrative authorities to engage when applying for land. Some government officials have taken land allocation decisions without consulting communities and individuals who have ownership of use rights to the land in question.”

Who grants leases? The Nation or the State?

To show how confusing it is for investors or those trying to ascertain who is really responsible for natural resources, a lawyer related the background to an on-going case in the CES courts. Investors had liaised with the ministry at the national level to obtain a lease of land for an agricultural project. At the same time, other investors had approached the relevant ministry at the state level, which had granted them a lease of the same piece of land. The matter was now in court.

Land grabbing

This is as prevalent in South Sudan as anywhere else in Africa. It was related how one community was about to be visited by the United Nations de-mining teams. "Don't come" the people pleaded, "we know where our mines are and can farm around them. As soon as they are removed, someone will then feel safe to come and grab our land." Whatever the law may be, power often prevails.

(D) CONFLICTS

General

The UKW is principally an agricultural area, with no obvious population pressures, and generally settled residents. Some of them have small numbers of livestock, but their owners remain sedentary. The upper valley is very fertile, with much seemingly unoccupied land. The existing residents are always cultivating new plots, and returning IDPs seem easily absorbed into this mosaic. Outwardly at least, an air of contentment seems to prevail in the Project Area, and while there obviously are firearms in the area, on a journey from Torit to Katire and back, no-one was seen carrying one, and just one boy with a catapult.

Most of the population within the Project Area are from a single tribe, the Imatong, which is a further factor reducing the likelihood of strife over the medium to longer term. Within the tribe as a whole, there is a well-established system of land dispute resolution by chiefs and tribal elders.

However, a few comments and caveats should be added:-

- 1 Lower down the Kinyeti River the Latuko people prevail. They are more pastoral and in dry times, their migrations may bring them into conflict with sedentary agriculturalists.
- 2 In the lowlands south of Ikotos, down towards the Uganda border at Kidepo, cross-border cattle is prevalent.
- 3 The on-going conflict between the government of president, Salva Kiir, and the supporters of Dr Riek Machar does not seem to reverberate down in the Project Area, at all, other than that individuals have their own views on the rights and wrongs thereof. Most residents are desperate for the conflict to end.

- 4 There is a perception amongst the communities at the upper end of the UKW that the forest is theirs to use as they wish. Such rules as may once have existed for the sustainable exploitation of Forest Reserves have long been forgotten, with the exception perhaps of a ban on felling trees for timber extraction. If new rules and regulations are to be introduced, which seem to limit what once seemed normal behaviour, this step should be preceded with careful sensitisation and education programmes.
- 5 The possible change in status of much of the Imatong/Gilo forest from Central Forest Reserve to National Park will inevitably reduce the usage of the upland forest for any benefit to the community, even to the extent of having to relocate people out of what will be the National Park. This may cause resentment.
- 6 One of the inevitable, and necessary impacts of AWF's programme will be an increased presence of forest and wildlife guards. To some extent this may provide local employment, yet their presence may act as a continual reminder to the local population that there are now restrictions on their own activities.
- 7 Even in rural areas, far from any urban centres, there is now a heightened awareness of the value of land. Boundaries now become of greater importance than before, and the mantra that "land belongs to the people" has heightened local communities' awareness of their rights - rights that they had previously taken for granted but which are now enshrined in law, and so perhaps perceived to be correspondingly more valuable.
- 8 One of the principal advantages to accrue from the protection of the UKW will be the continued healthy flow of water. This is likely to become ever more important. Already, leases of what was once community land have been granted to riverside farmers and extraction for irrigation is likely to increase dramatically. Furthermore, if the project to pipe water to Torit ever takes off, this could also increase the total urban usage, even though of course the bowser extraction should then decrease.

### The Courts

Within the country, there is the usual pyramid of Supreme Court, Court of Appeal, and High Court, of which there is one in each of the ten states. As the state capital, Torit is home to that of EES.

- In Torit, most of the cases are criminal, the majority involving murders. These may arise out of tribal conflicts and cattle rustling. Minor crime would still be dealt with by the boma or payam courts.
- The EES government may get involved in civil cases, but only if these involve the government.
- An accused can opt to speak in English, Arabic or his local vernacular language and interpreters will be provided. The Torit courts are simple officers with the judge sitting behind a desk, the accused in front, and police prosecutor or witnesses to the side.

- One of the many ways to manipulate the conduct of land cases is to use the criminal laws of trespass to resolve a civil dispute. This can mean the same case being tried twice, each time in different courts.
- EES Wildlife services are not currently prosecuting offenders, probably through lack of facilities for doing so.
- Many, many other transgressions at all levels go unprosecuted for lack of the wherewithal to conduct the necessary court cases.

#### No Courts - No Justice

On one occasion the Ikotos forestry authorities arrested some illegal timber extractors and tried to prosecute them in Ikotos. However, the lack of any functioning court there meant that the case had to be transferred to the state capital of Torit. There, state courts are active and a compromise settlement was reached in which the loggers apologised for their wrongdoing and forfeited all their equipment.

Down below the statutory courts, at the community levels, traditional boma and payam courts deliver justice through the chiefs and elders. Disputes over land allotments would first be referred to the boma court and only if the matter was too complex, or involved communities rather than individuals, would it become a matter for the payam court. Supervising the administration of traditional justice are the county authorities.

The traditional systems focus more restorative justice than on the fines and custodial sentences of the statutory system. The processes and procedures of traditional justice are also known and respected throughout the rural areas and at least for civil matters, infinitely preferred by most community members.

#### (E) PARTNERS

Partnering gives any organisation the possibility of a broader base to its activities, as well as opportunities to take advantage of economies of scale. Potential partners for AWF in the UKW programme are likely to fall into one of two categories. They will either be other NGOs, donors or research organisations, whose activities complement those of AWF; or they will be national or state (more often) government institutions or departments whose remits and responsibilities cover one or more of the proposed activities envisaged by AWF in the course of its programme. Inevitably, particularly given the lack of available finance and other resources in all government departments at all levels, AWF's work will be seen as helping these government agencies fulfil their responsibilities.

#### NGOs and Donors

University of Chicago / Field Museum

This has submitted a proposal to the Ministry of Wildlife Conservation & Tourism at the national level to undertake bird and small mammal research. The letter of request was on the desk of the under-secretary in the Ministry and the proposal appeared to be receiving favourable consideration. Approval of the project has the opportunity to create an excellent partnership, with considerable mutual benefit. AWF could give the university much on-the-ground assistance, not least in helping ease the request for permission through the various Juba offices. In its turn, the University will ultimately be able to provide updated information on the status of birds and animals, which will be a *sine qua non* if much of the forested areas are to be upgraded to National Park. Several senior officers stated that it was national government policy to create more National Parks but that the authorities would of course need to be aware of the full range of faunal and floral attractions before this could happen.

#### Netherlands government agencies

One or more of these is involved in an integrated water resource management programme in EES. AWF already has a close working relationship with it, not least because both share the same donor. The two share details of their work, anxious to ensure that no resources are wasted on duplication.

#### Catholic Relief Services (CRS)

This is AWF's landlord, which itself rents the whole plot from the Catholic Diocese of Torit. In sharing the compound, AWF presently shares guards on the gate, and also the benefits of CRS's solar panels. As the project moves into its implementation phase, the relationship may change.

#### Agricultural partners

The South Sudan Programme of Norwegian People's Aid undertakes agricultural work and AWF may partner with it in the development and utilisation of its demonstration plot at Imilai. Farm Africa did a study at one stage for AWF and in the absence of involvement by any organisation with which AWF has already worked, it may advertise afresh for agricultural expertise.

#### Government institutions

##### Forestry authorities

In the course of its work in the Project Area, AWF's activities will inevitably fall under the remits of state ministries, particularly the Ministry of Agriculture, Forestry, Tourism, Animal Resources, Fisheries & Co-operatives and Rural Development. The area of National Forest Reserve in the Project Area is substantial and as such, is in law at least, under the protection of the state forestry authorities, acting on behalf the national ones.

AWF envisages ranger training, but will need to establish the relevant rules and regulations that any rangers are to enforce, and in exactly what areas they are to enforce them. Generally, it will need to partner with all levels of forestry authority. While the EES government is effectively responsible for most of the work on the ground of the Project Area, any changes in the areas of the reserves, or attempts to re-survey boundaries, will need involvement at the national level,

as of course will any proposal to convert much of the Imatong massif into a National Park.

#### Ministry of Wildlife Conservation and Tourism

At the state level, the ministry's presence is low key, to say the least. However, AWF proposes to train its guards. This will relieve the ministry of its own responsibility in this respect, but it is likely to be a long time before the ministry's funding situation shows any major improvement. Its expectations therefore need to be realistically managed from the outset, with the understanding that help in kind or cash from AWF is unlikely to last beyond the duration of the programme.

#### Ministry of Education, Science & Technology

One of the overarching aspects of the Project is education, sensitisation and the creation of awareness relating to forest conservation and good farming practices. This will no doubt entail using existing school buildings, perhaps teacher services, and, at least at Imilai where the demonstration plot is, perhaps creating an even closer relationship with the school next door.

#### Ministerial confusion - Where to put Wildlife?

Governments all over the world are faced with the problem of deciding which ministry should house the Wildlife docket? SS is no exception. At the signing of the CPA there was a National Ministry of Wildlife, Environment & Tourism. Environment was then removed leaving the Ministry of Wildlife & Tourism. Wildlife then moved to the Ministry of Interior & Wildlife Conservation, and Tourism was housed in the Ministry of Agriculture, Forestry, Co-operative & Rural Development & Tourism. Tourism and Wildlife then split off from their respective lodgings and merged again as a new Ministry of Tourism & Wildlife Conservation. However, at least by early 2015 the Ministry lacked a minister.

## **CONCLUSIONS**

South Sudan is currently so impoverished that however good its legislation may be, or however well intentioned its administrators, lack of resources makes the gap between the law and the practice almost unbridgeable. Furthermore, the confusion between the rights and responsibilities of the different layers of authority - national, state and county - are such that, without further clarification, it is questionable as to how effective government is going to be, even with increased resources. Perversely, there is presently more certainty in customary than in statutory law, and more reliability in traditional, local administration than in anything delivered by higher levels of authority.

Every aspect of government will begin to function better as the supply of resources improves. This should begin to make life easier for the citizens of SS and for those wishing to do business or otherwise operate within the country. However there is always a risk that more resources will enable the establishment of the bewildering array of committees recommended by LGA in

the execution of its central thesis of decentralisation, and in practice, this may hinder, rather than help, development.

The GoSS needs to pay serious attention to the passing of new legislation. If the DLP is ever approved a whole range of new laws and regulations will be needed to make it effective. In addition the statute book is particularly lacking in a wide range of laws to help protect and manage the environment and the country's natural resources. Nor is it clear exactly which laws passed prior to independence, do or do not apply to SS.

Finally, below are some miscellaneous comments on and suggestions for the implementation of AWF's programme. Some of these refer to matters already touched upon in this report, while others derive from field observations.

- 1 AWF should give all possible help to the University of Chicago to enable it to start its programme in the Imatong mountains entitled "Survey of Small Mammals and Birds. Such help could be at national government level and in the filed with initial on-the-ground logistical support.
- 2 The Katire community, at least, is getting tired of being consulted by investors or developers and then not seeing anything more happen. A certain distrust of the intentions of outsiders may be starting to creep in.
- 3 There is a very good camp-site above Katire, with a large veranda under which tents could be pitched, and an assortment of other well-built facilities. However, it is currently not easy to access by vehicle, and the local community has no idea how to manage it or how to charge for it, or ultimately whose responsibility it is to maintain it. AWF could give considerable help here.
- 4 Katire is the stepping-off point for almost all journeys up the Imatong Mountains. However, the local community leaders have no idea how, or whether, to charge for access into the Mountains or for the services of guides and porters. In the expectation that throughout the duration of AWF's programme, and hopefully thereafter, visitor numbers will increase this should be regularised and written down.
- 5 The perception that the forests belong to the communities and are theirs to do as they will with, is deeply ingrained, and education and sensitisation programmes may at first be greeted with scepticism. Communities will need to feel that the introduction of certain rules and behaviour changes are benefits not losses.
- 6 For many reasons, establishing the existing boundaries of the three Central Forest Reserves, particularly Imatong / Gilo is going to be vitally important. The paper chase should probably start in Juba.

List of principal interviewees (J=Juba, T=Torit)

*Acere*, Charles - Under-Secretary, Ministry of Wildlife Conservation & Tourism, J  
*Adija*, Hon Deng Acuil - Attorney General & Head of Legal Administration, EES, T  
*Ansari*, Aimee - Country Director, Care International, J  
*Duku*, Christo - Ministry of Agriculture, Forestry, Co-operatives & Rural Development, T  
*Gadi*, Pamela - Vice-chairperson Imatong Community Committee, J  
*Guido*, John Stephen - Inspector of Forestry, Ikotos County  
*Jubara*, Gideon - Director-general of Forestry for Central Equatoria, J  
*Laku*, Charles - AWF  
*Lokeng*, Peter - County Commissioner Ikotos County  
*Lomiyani*, Ardeo - Chief Katire Central boma  
*Lomude*, Edward L - Director of Ministry of Agriculture, Forestry, Co-operative & Rural Development, J  
*Joseph*, Dr Jamus - Norwegian People's Aid, T  
*Majak*, Maj-Gen Philip C - Director-general Wildlife service, Ministry of Wildlife Conservation & Tourism, J  
*Marzatico*, Francesca - Senior Land Governance Adviser, European Union / Ministry of Lands, Housing and Physical Planning, J  
*Olla*, Colonel Dusman Acellam - Director of Wildlife, EES, Ministry of Local Government, Law Enforcement & Wildlife Conservation, EES, T  
*Onak*, Timothy Thwol - Director General of Forestry, T  
*Oneke*, Brigadier (retd.) Tartisio - Adviser to Wildlife service, Ministry of Local Government, Law Enforcement & Wildlife Conservation, EES, T  
*Orasiyo*, Luka - Director of Lands, Directorate of Survey, Lands & Town Planning, Ministry of Physical Infrastructure, EES, T  
*Oromo*, Hon Tobiola Alberio - MP Katire, Speaker of EES Legislative Assembly, T  
*Otto*, Kenneth - Director of Forestry, Ministry of Agriculture, Forestry, Co-operatives & Rural Development, T  
*Piyanile*, Samuel L - Attorney, J  
*Romano*, Taban - Senior Attorney, South Sudan Law Society, J  
*Taeuber*, Wendy - Country Director, International Rescue Committee, J  
*Tartisio*, David Oromo - Acting Director Wildlife Management, Ministry of Local Government, Law Enforcement & Wildlife Conservation, EES, T  
*Winter*, Philip - Long-term Sudan expatriate, J