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**HOLDING ARMED OPPOSITION GROUPS ACCOUNTABLE**

**THE CASE OF THE SUDAN PEOPLE'S LIBERATION MOVEMENT /  
SUDAN PEOPLE'S LIBERATION ARMY (SPLM/SPLA)**

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**INTRODUCTION**

1. Southern Sudan was underdeveloped in comparison to the northern part during the colonial period. The long political and armed confrontation that characterized their relationship since Independence has weakened the government institutions in southern Sudan all the more. The dilapidating state of such structures was a contributory factor to the neglect they were met with by the SPLA in its early years. The SPLA has been waging war, in southern Sudan, against the central government since 1983.
2. The SPLA, at any rate, was concerned with the preservation of the traditional social and political institutions in its controlled areas. SPLA politico-military High Command enacted laws supporting the application of the customary laws in the relevant localities of the various communities. Although the movement might have been acting on principle, some saw the tenacity with which the traditional values were held as a reaction to Khartoum's propaganda against non-Islamic values and its determination to impose Sharia laws across the land.
3. The practical relationship between the military and the traditional institutions went under considerable strain though, before the SPLA transformed its structures after the 1994 convention. The changes allowed the civil population to exercise a greater degree of organisation and gave the humanitarian assistance the chance to reach the needy populations with fewer interruptions. The United Nations-Operation Lifeline Sudan (OLS), delivering the assistance grew over the year as the war escalates and the misery increases. By 1998 the (OLS) has already become an umbrella operation of over forty international and local humanitarian organizations.
4. The interaction between the international organisations and local authorities has encouraged the appearance of a few local humanitarian organisations. But the level of local advocacy for human rights remains tensely affected by the war situation. The human rights awareness programme however, has been introduced by some agencies to increase the protection of civilian populations.

The material is presented in the context of local traditional values. The strategy of disseminating the Ground Rules with a high degree of local involvement guaranteed the success of the SPLM/OLS agreement to create a better environment for relief delivery. The dissemination in this manner is reassuring to all parties targeted by the programme. The example of such a close engagement provides a group like the SPLA with an opportunity of enlightenment bound to reduce the level of human rights abuses especially against the civilian populations.

## **BACKGROUND OF NORTH-SOUTH RELATIONS**

### **Ethnic and Cultural Dimensions**

5. The natural and cultural barriers had limited the interaction between the people of northern and southern Sudan before the subjection of their country to Turko-Egyptian domination in 1820. The kind of contact that followed after this major political development laid further strain on the people's relationship and diminished the opportunities for mutual understanding or cooperation. The Islamic composition of the northerners encouraged the new Muslim rulers to engage the former in extending their authority. The regime enjoyed unchallenged power, directed from Khartoum, before the Mahdist uprising against it started in 1881.
6. In the Turko-Egyptian period, Islam was used to segregate against the non-Muslim southern people and force many of them into slavery. The Turkish regime, as it was popularly known, was bent on draining the country of its human and natural resources. Northern and a few foreign traders were supported by the authorities in Khartoum to organise numerous 'Zeribas' across southern Sudan as market centres for slaves and other commercial goods extracted from the locality<sup>1</sup>. The exploitation of the south in this manner continued without respite until the Anglo-Egyptian regime seized power and ruled the country in the period between 1898 and 1956. This ruling power drew the borders of modern Sudan and maintained a semblance of unity between its people.
7. The stark racial and cultural dividing lines between the north and the south of the country impelled the imposition of the Closed Districts policy of the 1940s<sup>2</sup>. The need was felt to protect the more disadvantaged southern people from any further cultural and economic exploitation by their northern neighbours. The movement and activities of the northerners in the south were therefore restricted by law. Christian missionaries, instead, were encouraged to widen their activities among southern communities. The educational system used English as the medium of instruction and introduced the teaching of some vernacular languages. The numbers of southern Sudanese who joined the government during the years that preceded the country's independence were negligible in comparison to the northern Sudanese who continued to maintain the Islamic and Arabic cultural outlook and received more benefits from the government's developmental efforts.

### **The First Civil War**

8. The southern Sudanese demanded that special arrangements should be made in the system of rule to ensure a fair status for the south in the wake of Independence. But the lack of commitment by the colonial authorities and the indifference of northern politicians towards southern demands triggered the mutiny of southern troops in Torit garrison in 1955. The accumulation of the following events agitated public opinion in the south, causing the mutiny to develop into a full-blown civil war:

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<sup>1</sup> Schweinfurth, George (1873) "The Heart of Africa", Vol. II, London.

<sup>2</sup> Johnson, Douglas (1994) "Nuer Prophets", Clarendon Press, p. 29.

- The 1947 Conference in Juba was represented as having sanctioned the unity of the country, while southerners felt both ill-represented and misinformed.
  - The south felt cheated by the north at the Sudanization of the civil service after the departure of foreign officials.
  - Northern politicians reneged on their promise to give the demands of the southerners 'due consideration' if the latter supported the Independence's motion in parliament.
  - The national government revoked the amnesty order which was declared before some mutineers could surrender to its authorities.
  - The national government passed a law in 1962 banishing missionaries from the south; it also replaced the weekly Sunday holiday with Friday.
  - Growing apprehension about the government's attempts to 'Islamise' and 'Arabise' life in the south was exacerbated by the northern drive to pass an Islamic constitution for the Sudan.
9. Civil war had already raged on for 17 years at the time the Khartoum government and the South Sudan Liberation Movement (SSLM) reached a peaceful settlement in 1972. Church organizations had mediated the peace deal between the two parties. The agreement emphasised the distinct southern cultural and political identity and provided for its autonomous self-government within the united Sudan. The widespread optimism generated by the agreement ensured considerable support among the southern people. Internationally Sudan was assisted by foreign governments and organisations in rehabilitating the returning refugees and restructuring social and political institutions. A relative peace then reigned in the region until 1983.

### **Genesis of the Current War**

10. The implementation of the 1972 agreement had passed through a political period in which the country was still grappling with its national identity. After the 1972 Agreement, Sudan began to moderate the emphasis on pro-Arabic and Islamic political leanings. The peaceful settlement also improved the standing of Sudan among the other African nations. However, later shifts in the official political attitude dealt a blow to both the regional authority and the southern public opinion. The sum total of changes in policy bred the causes that led to the failure of the agreement and the outbreak of the present war. The main causes of the disturbances can be summed up in the following points:
11. The exploratory efforts of 1974, which resulted in the discovery of oil in the south in 1978, rekindled the historical suspicion that had marked the relationship between the two parts of the country. While southerners were becoming more vigilant, northern politicians were getting more wary about the impact of this new wealth on power relationship vis-à-vis the south.
12. When the government succeeded to strike a reconciliation pact with the leading northern opposition parties in 1977, the northern politicians resolved to undermine the 1972 agreement. The government was convinced that the regional autonomy was likely to facilitate the separatist tendencies in the south.
13. By 1980 the government had not only ignored the call for having some areas consider their

annexation to the south as the Agreement provided, but it also redrew the map of the southern provinces 'arbitrarily' incorporating the oil rich areas into the bordering northern provinces.

14. The Islamisation of the country's legal and political life was set apace such that by 1983 the Islamic laws were in force across the country.
15. The 'kasha' policy was effected to clear the capital from a certain type of population who allegedly put a strain on public services, perpetuated crime, and spoiled Sudan's image. Accordingly, southerners were randomly rounded up and transported southward when they failed to prove their identity to the police.
16. In addition to the purposeful failure of development projects in the south, the regional government and assembly were unnecessarily but systematically dissolved. This pattern culminated in the unconstitutional abrogation of the 1972 Agreement and the division of the south into three regions in 1983.

### **Insights into the National Crisis**

17. The Sudan People's Liberation Movement and Sudan People's Liberation Army (SPLM/SPLA), hereafter referred to as SPLA, has spearheaded the southern resistance against the government in Khartoum. The insurgency in the south was enough indication to the failure of autonomous arrangement with the north. The SPLA diagnosed the causes of internal civil wars in Sudan from a new perspective. The movement's political Manifesto of July 1983 identified the uneven development at the root of the country's crisis. The document expounded the solution in the restructuring of power in Khartoum on an equitable basis attainable through the consensus of national political forces and overseen by the people's government within a united, secular, and democratic Sudan.
18. The country's drift into a second civil war has also prompted leading southern Sudanese figures to contribute their analysis of the situation and their suggestions towards resolution. Bona Malwal wrote, "The Sudanese situation is characterized by racism and cultural and religious bigotry."<sup>3</sup> While Abel Alier takes note of Bona's contention, he sees the lack of comprehensive democratization of government institutions to be at the core of the political crisis. He asserts that "There are no chances of settlements surviving if they (a) do not provide for responsible pluralist democratic systems of government at all levels, and (b) are not backed by economic reforms, a restructuring of the economy and massive economic aid."<sup>4</sup>
19. Some analyses promote the role of oil as underlying the policies which provoked the current war. Dr Peter Nyot espoused the view that "The conflict itself is historically a conflict over the control, access to and the use of state power in the Sudan. But since oil, like all other strategic resources, is a source of power, it logically becomes an important element in the conflict."<sup>5</sup> He adds that the traditional political parties resented the southern regional self-government for fear of its implications. "...they felt that their position was challenged by the emergence of any other distinct political entity, especially in the south or in other regions of the Sudan."

### **Right of Self-determination as the Basis for Peace:**

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<sup>3</sup> Malwal, Bona (1992) "Prospects for Peace, Recovery and Development in the Horn of Africa", in *Beyond the Conflict in the Horn*, Doornbos, M., et al. (eds.), the Hague: The Institute of Social Studies, p.8.

<sup>4</sup> Alier, Abel., *ibid.*

<sup>5</sup> Not, Peter, *ibid.*

20. The trend of public opinion asking for the people to exercise their right of self-determination has grown steadily after 1991 in southern Sudan and the northern enclaves that have joined in the war against the central government. This and the thorny issue of the role of religion in politics have imposed the amendment of the SPLA's strategy in approaching the solution to the conflict. Following the series of dialogues with different national political forces, the SPLA has come up with a dual-approach proposal. It proclaims that the people of southern Sudan and the other areas that have joined them in the fighting are entitled to exercise their right of self-determination. The mechanisms, during the interim period, to guarantee the just exercise of this democratic principle entail the formation of two confederal states, i.e., the northern state on one hand and the southern state on the other including the 'fighting Sudan.'
21. The regional Inter-Governmental Authority on Development (IGAD), in its peace initiative for resolution of Sudanese conflict, has developed a declaration of principles (DOP) to guide the peace talks between the Government and the SPLA. In the declaration IGAD has acknowledged, among others, the right of the people of southern Sudan to exercise their right of self-determination. Unlike the SPLA, the government of Sudan rejected the principle of self-determination at the IGAD forum. But in a surprise gesture, the government signed an agreement with six southern splinter groups at Khartoum in April 1996. It endorsed the concept of self-determination for southern Sudan under the terms of the agreement with the six factions which initially split from the SPLA. However, the government's persistence in resisting the idea during the IGAD peace talks sessions with the SPLA remains unchanged.

#### **Conditions in SPLA Areas Before Humanitarian Intervention:**

22. Power struggle was a central issue at the inception of the movement. When the current direction of the movement predominated, the feeling to guard against any potential political highjackers or spoilers was already ingrained in many of the fighters. Some of the SPLA security units, with that thought at the back of their minds, went out of their way many a times. The human rights abuses became rampant. Their actions left the door wide open to abuse of authority at the expense of the movement's image.
23. Other factors which affected the behaviour of the human rights abusers in the ranks of the SPLA included:
  - Lack of adequate government or civil society institutions in southern Sudan before the war.
  - The legacy of the infamous National Security Unit of Nimeiri's regime influenced the behaviour of some individuals.
24. The field commanders were given a wide range of political, administrative and judicial powers under the Penal and Disciplinary Laws of (SPLM) 1984. For instance section 32(4) provides:
 

“No death sentence shall be carried out without the prior confirmation by the Chairman in writing.” But a clawback in section 32(5) reads: “Notwithstanding the provisions of the preceding paragraph (4) execution of a death may be confirmed by a Battalion commander if enemy action makes communication with the General Headquarters not possible or immediate and hasty withdrawal absolutely necessary.” This leaves field commanders with discretion powers virtually on all serious matters as they also form the courts and can by law interfere with judgement.
25. The dependence of SPLA troops on the civilian population for their provisions led to malpractices in collection procedures.

26. The excesses in glorifying the military for recruitment purposes undermined the value of civilian life in the eyes of the soldiers.
27. The movement seemed to have taken so long to muster the confidence needed to check the behaviour of some field commanders running rampage in their areas of command.
28. The 1983 political Manifesto and the 1984 Penal and Disciplinary Laws, which repealed the 1983 Punitive Provisions, were the only written documents to guide the conduct of the movement until 1994 when the SPLA held its first national Convention. The legal code, together with the variety of unwritten customary laws constituted the body of laws, in force in SPLA administered areas. The recognition of the customs of the local people was expressed by section (2) of the Penal Code, which reads 'The provisions of this law shall not prejudice the application of existing customary laws and practices in each operational area upon the local citizens.'<sup>6</sup>
29. The communities in southern Sudan still cherish and dearly value their traditional heritage. The relative ease with which SPLA has attracted local support is related to the SPLA aspects that can be locally identified with traditional norms. The identification of SPLA militarism with the aspirations of age-set or warrior social institutions made it acceptable to the youth in those communities. The political objectives of the war are the concern of a considerable number in SPLA, but to many others, it is a fulfilment of fighter and military ego.
30. Dinka and Nuer soldiers in SPLA are often guided in their personal behaviour by their community religion. Spirituality is entwined with the general culture and directs the members of the community in shaping their world outlook. Association with Divinity, i.e., Creator, is achieved through the variety of spirits that the clan or lineage members mould into their general thought. The conversion of those people into some world religions hardly severs their identification with the Divinity and spirits. The execution of war in the territory of traditional cultural environment has rejuvenated spiritual loyalties. It is characteristic of community religion to reinvigorate the spiritual fervour of the individual at times of acute hardship. The war and its consequences have created that pre-requisite. The writings of prominent anthropologists Sir Edward Evans-Pritchard and Godfrey Lienhard give insights into the spiritually guided behaviour of warriors in those two communities. The proximity of the SPLA soldier to this cultural environment affects his spiritual identity and hence the behaviour in war.
31. SPLA commanders utilise this cultural dimension, in addition to contemporary military instruction, to discipline their troops. Hence, it is usual to see units of SPLA being conducted through religious rituals by diviners before they are committed to military operation. Diviners in some instance have extended spiritual support by their physical presence among the SPLA troops in the heat of military action. Good commanders solicit reputable diviners to bless their soldiers even when immediate operations are envisaged.
32. Such rituals concentrate on explaining the code of conduct of a warrior in the society. The safety bestowed by the spirits on the soldier in combat is inextricably linked with his normal behaviour in the community, i.e., among civilian population. The instruction of the SPLA soldier to abide by a certain code of conduct in military campaigns is emphasized by invocations of local cultural values of general behaviour rather than referring to almost far-fetched obligations of Customary International Law.
33. The example of the Dinka and the Nuer is also discernible in the other communities of southern Sudan, Nuba Mountains, and the Ingessena. SPLA soldiers who are a mixture of all those people join

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<sup>6</sup> The penal and Disciplinary Laws of 1984, SPLM.

up in their traditional spiritual rituals with collective enthusiasm. Individual diviners have several times sprung up from amongst the troops themselves. Some have practically contributed to disciplining the troops and influenced military tactics regardless of their rank.

34. The tribes of eastern Equatoria, Latuka, Peri, etc. have military institutions as part of their local cultures. They also form a considerable size in the SPLA. Their 'mojomoji' institution comprises traditional warriors who effectively rule the society. The stability and prosperity of the community are dependent on the bravery and wisdom of the 'mojomoji.' The 'mojomoji' pride themselves on their maturity and responsibility. Many 'mojomoji' joined the SPLA for the power and military sophistication it represents rather than its political ideals. The SPLA, on the other hand, has used this cultural aspect with dexterity to transfer the 'mojomoji' into national fighters. SPLA members of this community are usually referred to by most of their SPLA comrades as 'mojomoji' in respect or as good gesture.
35. The attitude of the SPLA soldier towards the civilian population is shaped by his traditional values more than by teachings of the new organization. The SPLA sometimes used the local cultural base as a factor to deploy commanders or troops and in order to advance the movement's political objectives. SPLA leadership in this regard has made use of the experience of the first movement (SSLM) which fought its war on the basis of ethnic, autonomous military units. The structuring of the military in this order conformed to the acephalous political structure of the southern communities.

## **HUMANITARIAN ASSISTANCE IN SPLA ADMINISTERED AREAS**

### **Area and Population under SPLA administration**

36. At the beginning of the war the SPLA designated southern Sudan as its first operational zone. In due course, the movement was able to extend its activities to the Nuba Mountains and the Ingessena Hills and eastern Sudan. Those areas in SPLA parlance are part of its second operational zone, i.e., northern Sudan. The humanitarian assistance was facilitated into the first operational zone once the SPLA had started to control considerably populated territories facing humanitarian crisis. The government has not yet sanctioned the operations of humanitarian organizations in the second zone. Nevertheless, a number of human rights and humanitarian organizations have reported or actually delivered relief services in some of those war-affected northern areas.
37. In 1991, the SPLA spokesman reported SPLA's estimation of the population in its areas by announcing that : "The Sudan People's Liberation Movement and the Sudan People's Liberation Army are responsible for the welfare of approximately five million people in the areas under its administration."<sup>7</sup> The changing war conditions make the figures somehow elusive if not misleading. While alluding to the same subject a recently appointed SPLA head of the Judiciary expressed that '...SPLA fighters have been able to secure a territory as large as many independent African countries, with well-defended borders and a sizeable population in need of good governance.'<sup>8</sup>

### **Humanitarian Relief in SPLA Areas**

38. The movement established its humanitarian wing in 1985. The new wing, known as the Sudan Relief and Rehabilitation Association (SRRA), was charged to monitor the development of humanitarian need among the civilian population in SPLA areas. The SRRA was also obliged to alert the international community about any crisis and to coordinate the activities of the humanitarian

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<sup>7</sup> Luk, John, *ibid.*

<sup>8</sup> Riny, Ambrose (March 1999) Speech to The Conference on SPLA Judiciary.

organizations once they had intervened. The Norwegian People's Aid (NPA), the International Council of the Red Cross (ICRC) and the United Nations Children's Fund (UNICEF) were among the first international organisations to engage in humanitarian assistance in SPLA-held areas. The (SRRA) used its mandate for the first time to facilitate the intervention of (NPA) in eastern Equatoria province in southern Sudan in 1986. That experience influenced the following intervention of MSF-Holland, (ICRC) and (UNICEF) in 1988.

39. NGOs have started to trickle in between 1986 and 1988 as the world was gradually being enlightened on the plight of the civilian populations in southern Sudan. This awareness was given new dimension by the United Nations' Operation Lifeline Sudan (OLS) in 1989. The OLS operation was a result of a tripartite agreement involving UNICEF, the Sudanese Government, and the SPLA. The suffering of civilian populations, especially children in the famine-stricken Bahr El Ghazal, prompted this humanitarian intervention.

### **Humanitarian Assistance and War Politics**

40. The establishment of SRRA, with its liaison office in Kenya, was resisted by Khartoum government. Khartoum claimed that Kenya would be considered to have officially hosted the SPLA if the SRRA continued its operation in that country. This opposition affected the viability of the SRRA office before Kenya was absolutely convinced that SRRA was a purely humanitarian organization. The international NGOs already operating in government areas who wished to extend their operation to the civilian population in SPLA areas were denied the opportunity by the government. In response some NGOs changed their registered names in order to deliver their assistance in SPLA-held areas.
41. The presence of several NGOs in southern Sudan betrayed the limited experience of SRRA in the coordination of activities. The NGOs were fast to call for the restructuring of the SRRA on correct humanitarian basis. Certain incidents like the seven-day detention of the ICRC team in Yirol town in 1988 and the obstruction of the CNN crew to film the NGOs' activities in Kapoeta in the same year brought more pressure on the SRRA. SPLA commanders had perpetrated the two incidents, which called into question the independence of SRRA as a meaningful humanitarian wing of SPLA. The NGOs pressed the SRRA to raise its capacity and to justify its credibility to the humanitarian community. An expert report urged the SRRA to provide the basic criteria for humanitarian assistance to access SPLA areas in the 'possibility of travelling reasonably freely to, from, and within the area; possibility of delivering materials to and distributing materials within the area; possibility of forming local SRRA structures and recruiting SRRA staff within the area.'<sup>9</sup> The SRRA embarked on the implementation of these recommendations.
42. Appearance of the OLS framework in 1989 was welcomed by international NGOs. Under this new umbrella NGOs could find the opportunity to assist the civilian population in SPLA areas which Khartoum would have otherwise denied. The operation also committed the SPLA to respect the activities of individual NGOs. The number of humanitarian organizations in the SPLA areas continued to grow rapidly in proportion with the spread of war and its impact on the southern population. The intervention of the OLS provided the SRRA with the chance to establish better working relationships with a larger humanitarian community. The growth in activities necessitated its expansion in the field. SRRA also managed to acquire more autonomy from the local SPLA administrations. But the degree of independence appreciated by most NGOs was only achieved in the wake of the 1994 restructuring of the SPLA institutions.

### **The SRRA Field Staff:**

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<sup>9</sup> Ratter, Anthony (1989) "Report for the Sudan Relief and Rehabilitation Association", Nairobi.



43. The SRRA experienced some of the neglect that had befallen civil institutions in the early years of SPLA. The lack of SPLA alternatives to the civil structures of the previous government-held centres added to the further collapse of public service during the war period. Individuals were hardly supported through the sudden loss of their jobs. At times, the commanders frowned upon the group of former civil servants. The euphoria of support for the liberation process and the string of military successes over the forces of the government have left little attention to be paid by the movement to the new group. Instead, especially in the early years of the war, there was a mounting feeling that the war would only take a couple of years and other government institutions would be started anew. However, as the war dragged on, many experienced civil servants also vanished into oblivion though they had initially supported the movement. Early attempts by the SRRA to let Sudanese civilians hold paid jobs with NGOs were met with misapprehension. Pressure was even exerted on the SRRA to opt for material incentives for NGO local staff instead of well-negotiated terms of employment. Cash money was viewed as polluting to the non-salaried SPLA. But the views changed positively with time. The majority of SPLA began to perceive the vital role of the SRRA when the impact of the humanitarian relief on the life of civil population was seen over the period. The SRRA also persevered in trying to strike the right balance and ensure an appropriate environment for the NGOs' activities in the SPLA-controlled areas.

### **SPLA and OLS Dialogue:**

44. In 1992, a major incident happened which obliged the OLS to review the regulations of relief services in SPLA areas. Four relief workers were killed in an SPLA area that year. The SPLA associated the tragedy with the inter-factional fighting that hit the region. However, the OLS insisted on handling the incident in a different perspective. The OLS withheld its operation in the area for six months. An OLS-supported investigation was conducted, but the culprits could not be brought to justice. The OLS found it imperative to introduce its own security system for the continuation of the assistance. The Ground Rules of 1993 were drafted to fulfil that aim. The new regulations enabled OLS security officers to engage in dialogue with the SPLA commanders. The OLS head in southern Sudan asserted that this highly approved document facilitated the contacts and also allowed OLS 'to gain an in-depth understanding of the political and military situation...the ground rules were formally signed, and committed to, by the leaders of the Southern Movements, Dr Garang and Dr Machar, and by the OLS co-ordinator on behalf of the United Nations and the NGOs.'<sup>10</sup>
45. A few years later, a negotiated and more elaborate document was produced entitled, 'The 1995 SPLM/OLS Agreement on Ground Rules.' A similar document was made with two other factions. The introduction to the agreement emphasised that "This agreement is intended to lay out the basic principles upon which Operation Lifeline Sudan works and to lay out the rules and regulations resulting from such principles."<sup>11</sup> The purpose of the agreement was also identified as improving the delivery of humanitarian assistance and protection of civilians in need in southern Sudan. The two parties pledged their support for:

- Convention on the Rights of the Child 1989.
- Geneva Conventions of 1949 and the 1977 Protocols additional to the Geneva Conventions.

### **Protection of Civilian Population in SPLA-Administered Areas:**

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<sup>10</sup> Tinsman, Carl (Dec. 1997) "Operation Lifeline Sudan: United Nations Professionals protect humanitarian workers in a war zone", *DHN News*, p.44.

<sup>11</sup> SPLM/OLS Agreement on Ground Rules (1995).

46. The presence of the relief organizations contributes indirectly to the protection of civilian populations to some extent. Their association with the outside world enabled them to share information and expose the human rights violations they might witness. The SPLA field commanders are aware of that. In fact many of them listen regularly to the BBC African radio broadcast. The occasional human rights reports on the SPLA or the government's violations find their way to them and the soldiers through this radio broadcast. The SPLA has scanty means of disseminating information to the troops. The external connections of the NGOs and their exclusive devotion to needy civilians is seen by many SPLA soldiers to leave no chance of closer association of NGOs with the military.
47. Prior to the Ground Rules agreement, there was no definite reference to human rights or humanitarian law in SPLA documents. However, it was understandable that the concept was enshrined in the objectives of the struggle enumerated in the Manifesto and the preamble to the 1984 laws. The Ground Rules brought to the fore the obligations of SPLA under Customary International Law. These are the obligations of a belligerent group that has attained a specified threshold in its armed conflict with the central government. Common Article (3) of the 4 Geneva Conventions requires the combatants in non-International Conflict to observe certain fundamental principles. The requirements are relevant to the Sudanese conflict. The SPLA, in this regard, is as equally bound by this Article as the Sudan government which has ratified the Conventions.
48. In their Documents on the Laws of War, Adam Roberts and Richard Guelff have commented that "By referring expressly to 'parties to the conflict'; and not merely to states parties to the Convention, Common Article (3) attempts to ensure the insurgents engaged in armed conflict against a lawful government would be bound to observe the same provisions as those which would bound lawful government."<sup>12</sup>
49. The magnitude of the conflict between the SPLA and the government conforms to the paradigm specified in their explanation that "... Common Article (3) is only applicable in cases where there is a genuine 'armed conflict' as distinct from riots, isolated or sporadic acts of violence, or other acts of a similar nature."
50. The SPLA had detained and released prisoners of war, through the offices of ICRC, at the early stages of the war. The last group release was effected in 1998 when the ICRC flew the group of over forty prisoners from Loki-Kenya to Khartoum. As the capture of POWs was in practice well before the signing of the Ground Rules, the SPLA has not claimed that their combatants were strictly complying to the requirement of Common Article (3). The SPLA soldiers were not specifically instructed about the Geneva Conventions in their military training. Their action was following either the local traditional values of war or SPLA political objectives. These fundamental values were likely to be damaged by unnecessary excesses in combat. But in the general conduct of the war and the treatment of presumed political opponents, the movement had been liable to human rights violations though to lesser proportions in comparison to Khartoum government. The major human rights organizations have invariably investigated and published reports exposing the abuses of each party.
51. The SPLA structures and legal procedures needed to pursue justice against human rights abusers within its rank and file are still far from adequate. The absence of clear courts to handle the cases against the military, since the repeal of the 1984 laws in 1994, has affected the standards of judicial process required in this field. The new hierarchy of civilian courts set out by the 1994 laws was not matched with any martial courts complementary to the reforms.

#### **SPLA PROCESS OF REFORM**

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<sup>12</sup> Roberts, Adam and Guelff, Richard (1995) "Documents on the Laws of War", Oxford University Press, p.13.

## The Internal Debate

52. The SPLA was launched as a socialist-oriented organization. Consequently, it sought the backing of like-minded governments in the region and beyond. The collapse of the socialist bloc, which resulted in the loss or weakening of political allies, presented the movement with a host of political and military challenges. The enormity of such challenges drove some sections of the SPLA to take extreme measures. A number of senior commanders in the SPLA Politico-Military High Command tried to seize the leadership and change the movement's declared agenda by staging a coup. Their failed attempt ended in splitting up the movement into two factions. The political acrimony and violent confrontation became phenomenal in the SPLA and more factions cropped up. The SPLA members who staged the 1991 split decried the movement's human rights abuses, absence of democratic institutions, and the uncertainty of the movement's political objectives. Their front, which precipitated the division, was also faced with other political and military contradictions that continued to divide them into smaller groups. However, by 1996, SPLA emerged again as the sole organization fighting against Khartoum after the rest of the southern factions had signed a peace agreement with Khartoum.
53. The split phenomenon convinced the leadership of the SPLA of the need to expedite the process of restructuring the institutions in SPLA-controlled areas. By 1992, the movement had already released all its political prisoners. SPLA also seized upon the signing of the Ground Rules to increase the level of cooperation with humanitarian organizations and to ask for their assistance to build the civil institutions. It was realized that the NGOs and some representatives of donor communities were informally debating reforms with SPLA officers before and after the 1991 split.<sup>13</sup>The SPLA spent a great deal of effort to try to dispel its erstwhile image and seek new diplomatic accommodation.

## The 1994 SPLA National Convention

54. In 1993, the SPLA formed about 23 specialized committees to study various aspects of structures to be presented before the 1994 National Convention. The National Convention, which was held in April 1994, brought together over 500 delegates representing the military, chiefs, women, youth, and the general public in the SPLA areas. The Convention was empowered to elect the leader of the movement, identify the movement's governing institutions at all levels and lay the guide lines for the its general policy.
55. The deliberations of the Convention resulted in the dissolution of the previous political and military administrations of SPLA. The Convention also scrapped the Manifesto and replaced the 1984 Laws with new ones. The structuring of the movement's authority which preceded the convention was predicated, within own limitations, in the military and political legacy of the socialist revolutionary thought. Among other major resolutions passed by the Convention was the separation of the military and the civilian administrations. This resolution reflected the unpleasant experience of the civilian populations with the dominance of military authority since the movement began. It also showed the yearning of the population for the revival of the civil administration and the traditional chieftainship which had steadily declined in authority in the course of the war.
56. The 1994 Convention was a watershed in the political evolution of SPLA. The populations that have come under its administration over the years never had a more opportune chance to be so vociferous on the affairs which affect their life.

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<sup>13</sup> Johnson, Douglas H.(1998) "The Sudan People's liberation Army & The problem of Factionalism" in *African Guerrillas*, Christopher Clapman (ed.), James Curry- Oxford, p. 53.

- The Convention set out the governing organs of the New Sudan, SPLA name for its areas, as follows:
  - The National Convention (NC): It is the SPLA highest organ. It convenes every five years to review the activities of the executive and the legislating bodies.
  - The National Liberation Council (NLC): It consists of the representatives elected by the various constituencies in the national convention. It is the SPLA legislative body.
  - The National Executive Council (NEC): It exercises the executive duties, i.e., it is the SPLA cabinet.
  - The Judiciary: The Convention resolved that the SPLA should ensure the establishment of an independent Judiciary in its liberated areas.
57. NLC and NEC departments are replicated at the lower levels of the new administrative units of region, county, sub-county and village. Regional governors and county commissioners were appointed at the helm of the civilian administration. In addition, they were empowered to build the law enforcement agencies as the SPLA army was relieved of all duties but wage war against Khartoum government.
58. The separation between the military and the civilian administration was seen by the humanitarian community as a positive step towards the protection of the civilian populations. But in practice it was not easy for the civil authority to fully reclaim its jurisdiction from the military. Despite the fact that the structures of the civil authority did not take long after the Convention to take shape, the devolution of authority from the military commanders in various areas was an uphill task. There were many incidents where commissioners and commanders had quarrelled over the allocation of priorities and management of their areas' resources. However, the forces of change remain in favour of the creation a viable civil authority. The involvement of some organisations in training sections of the civil authority to impart the skill and capacity has raised the chances of continuity.

### **Humanitarian Organisations and SPLA Civil Authority:**

59. During interfactional fighting the parties were accused of having committed heinous crimes against the civilian populations. UNICEF/OLS conducted an investigation into those human rights violations in the areas of SPLA and SSIA ( South Sudan Independence Army) in 1995. The two factions were fighting against each other before the SSIA signed a peace agreement with Khartoum government along with other smaller factions in April 1996. Both SPLA and SSIA were signatories to the Ground Rules agreement. The findings of the investigations were discussed, as a matter of policy, with the commanders of the factions. The then head of the UNICEF/OLS humanitarian principles department stated in this regard that "OLS has followed a strict policy of not publicising reports of its investigations into Ground Rules violations, behind closed doors."<sup>14</sup>
60. The establishment of the SPLA civil authority has increased the official avenues in which the OLS can engage in the efforts to reduce the violations or enhance the maintenance of the rule of law among the civilian populations. The ground rules have recognized the relevance of the civil authority to resolving issues relating to violations and delivery of humanitarian assistance. The document

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<sup>14</sup> Levine, Iain (1997), "Promoting humanitarian principles: the southern Sudan experience", RRN Paper, ODI, London, p.22.

provides that for resolving such matters “The issue should then be discussed at local level with local Joint Relief and rehabilitation Committee”, i.e. JRRC. This body includes the representatives of NGOs, SRRA, beneficiaries and the civil authority in any administrative area where relief assistance is provided.

61. The mechanisms for resolving the violations also acknowledged the role of the commissioner in the sense that: “If the issue is not resolved . . . it should be discussed in meetings between the area secretary of SRRA, the local commissioner and the local head of the UN/NGO.” More serious issues are deliberated upon by OLS and SPLA senior leaders. The agreement guarantees that the discussions can go beyond the violations to exchanging views on how to improve the “delivery of humanitarian assistance to and protection of civilians in need in southern Sudan.”
62. The actions of the OLS have enabled international actors such as leaders of (IGAD) countries, the United Nations Envoy on Sudan for humanitarian affairs to influence the Sudanese government and to provide corridors of tranquillity to be used for the delivery of humanitarian assistance.

### **The State of Civil Society in SPLA Areas**

63. Beside the traditional social institutions at local community levels, the Church was the first body of civil society to organise in SPLA areas. The different local Christian denominations formed the New Sudan Council of Churches (NSCC) in 1990 after the SPLA seizure of some territories cut the link to their council, i.e. Sudan Council of Churches, in Khartoum. The Church was active in the field of humanitarian assistance since the NSCC was formed. But aside from that, the Church is engaged in discussing the state of the human rights violations with SPLA more than most other organizations. Their international standing, together with their local connections, gave them enough access to SPLA authorities. In 1997 the NSCC and SPLA held a joint conference in Yei town to deliberate on good governance.
64. It took quite a while before any other local NGOs appeared in SPLA areas. The example of the NSCC and OLS international organisations in assisting the suffering civilian populations was only locally emulated in 1993. The local NGOs which were formed in SPLA areas were all humanitarian in their focus and very dependent on the support of OLS for survival. There were no local human rights organisation per se in SPLA areas until now. The South Sudan Law Society (SSLS) which is purported to play that role has concentrated on legal research and advice more than on advocacy on human rights issues. Advocacy proves to intractable business without the backing of international organisations. The association of local NGOs with reputable human rights organisations is needed for both working experience and generating the confidence to operate in a war zone.
65. The support of the international humanitarian organisations for pioneering indigenous NGOs has motivated the social groups of women, youth and the disabled to form into local NGOs. In addition to relief programmes which preoccupy women organisations, some of them pay attention to the issues relating to women human rights. Workshops had been organised in several areas for enlightening women on relevant provisions of the 1981 UN Convention on the Elimination of All Forms of Discrimination Against Women. Those women organisations also co-ordinate some of their activities with the committee for women affairs in SPLA National Liberation Council (NLC) and the women secretariat of National Executive Council (NEC).
66. The local NGOs in SPLA areas organised a conference in partnership with the civil authority in 1996. The conference was concerned with ways to enhance the institutions of civil society and civil authority in SPLA areas. The Chairman of the SPLA and heads of the civil authority addressed the meeting. In his speech the SPLA leader outlined the movement’s policy by saying that: “the most

important task and challenge facing the Movement today is the establishment of an effective, democratic, participatory and accountable civil authority, the central purpose of which is the empowerment of the civil population to become productive and the driving force of our struggle.”<sup>15</sup> But it is evident from the conference’s analysis that the civil society in SPLA areas was weak for the reasons of “poverty, tribalism, lack of organisation, lack of resources, insecurity, dislocation of people, lack of viable civil authority and poor transport and communication network.”<sup>16</sup>

### **Human Rights and Humanitarian Law Educational Programme**

67. The ICRC programme in southern Sudan is largely geared towards emergency relief assistance. Contributing to the education of SPLA troops did not surface in their activities until 1995. In that year a number of SPLA officers were invited for an induction course on humanitarian law organised by the ICRC. The further sessions that were promised did not materialise as the organisation’s operations in southern Sudan were terminated by the SPLA later that year. The ICRC was only allowed back in 1998 where it became mainly preoccupied with famine relief for Bahr ElGhazal populations. It still has to show whether it will revive the 1995 educational programme. It is worth mentioning, however, that the programme was approved by the SPLA and some of the officers who attended the course appreciated it, as they also do to the similar programme introduced by OLS and SRRA.
68. The OLS and SRRA refer to humanitarian law in their field dissemination strictly in the context of protection for relief workers, property and the protection of civilian population, especially women and children in SPLA areas. The OLS and SRRA are conscious of the fact that any disruptions to relief activity are always likely to come from the side of the military. It was therefore understandable that ways should be explored to avoid such disruptions as much as possible.
69. The Ground Rules agreement, which contained references to human rights and humanitarian law, makes it the responsibility of UNICEF and SRRA to ensure “holding of workshops and meetings in all key locations in which the principles and rules of this agreement are explained...” It was also incumbent on SRRA to ensure compliance “by the local authorities and communities.”
70. The strategy followed by the joint dissemination team is to effect two main meetings in a locality. The first meeting includes NGOs workers, SRRA staff and representatives of civil administration. This meeting explains the duties of all actors in the process of delivering assistance. The second meeting is attended by the actors of the first meeting besides the leaders and the community of beneficiaries and the security units responsible for maintaining law and order in the given area. In this meeting the assembly discusses the traditional values observed by the community in traditional wars and point out the changes they have seen in the practice of the present war and try to find out the causes of the changes that are inconsistent with the traditional values. The dissemination team then introduces the relevant sections of the Convention on the Rights of the Child, Common Article (3) of the Geneva Conventions and the 1977 Second Protocol. It was observed that the local communities attribute most of the excess in the soldiers conduct, especially during interfactional fighting, to the decline in traditional authority, the distance of soldiers from their individual cultural base and the new gun culture brought by the widely spread number of firearms.
71. The UNICEF and SRRA have persistently carried out such workshops from 1995 up to the present. But in 1997 the programme was extended to the SPLA unit of moral orientation. Those are usually

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<sup>15</sup>, Conference on Civil Society and the organisation of Civil Authority (1996), *Report and Recommendations*, Nairobi, p.5.

<sup>16</sup> Ibid.

political officers drawn from various SPLA military units. After they have attended the UNICEF/SRRA workshops they go back to their bases in order to enlighten troops on the subject of the workshop besides their own political programmes.

## **NEUTRALITY OF HUMANITARIAN ACTION IN SPLA AREAS**

### **Reaction to SPLA/SRRA Ground Rules Violations**

72. The OLS/SPLA arrangements for delivering humanitarian assistance to the intended beneficiaries in southern Sudan were more successful after the conclusion of the Ground Rules agreement. The identification and location of rights and duties have enabled different actors to dispose of their responsibilities or practically engage in solving most issues which crop up in the field. The local civil authorities and relief workers find in the agreement the basis for their working relationship needed to enhance the humanitarian activities. The occasional instances of violations of the Ground Rules provisions have been tackled through specified mechanisms rather than being left to halt the delivery of services. A few examples may illustrate the validity of those mechanisms.
73. In 1997 some SPLA members were charged of having seized and diverted a significant amount of relief food consigned by Catholic Relief Services (CRS) to its centre in Yei County. The OLS, of which CRS is a member, demanded an explanation and action if necessary from SRRA. The latter launched an investigation in to the matter in collaboration with SPLA. According to the Ground Rules provision “diversion of aid from intended beneficiaries is regarded as a breach of humanitarian principles”. The result of the investigation process led to the accusation and arrest of a number of SPLA personnel including a commander. It was the first time that a commander, the highest SPLA military rank, was exposed to criminal charges relating to misappropriating relief food intended for civilian population.
74. Another commander was also arrested later in the same year in Bahr El Ghazal Region for disrupting children’s educational programmes. The local SPLA commander ordered the forceful recruitment into the military of some children from a local school run by the Catholic Church. When the priests and nuns protested against the action the commander put them under detention and ordered them to be flogged. The row the incident generated among the Church and NGO community pressed the SPLA leadership to ensure the speedy release of the detained Church members and the children. The arrest of the same commander was effected pending the completion of an investigation into the incident by a high committee.
75. There have also been some violations involving senior SRRA field staff. In early 1998 The SRRA Secretary for Tonj County, in Bahr El Ghazal Region, ordered the closing down of activities and expulsion of World Vision International (WVI) staff members from the county. The reaction of the SRRA headquarters was swift and firm. The county secretary who acted unilaterally had jeopardised the relief services in the area without justification and had therefore to be suspended from his duties and disciplinary proceedings. The reason for his order was immaterial as the decision to close down relief services and expel relief workers from the area of SPLA was beyond the remit of his office. Such a decision, in practice, lies with the SPLA political leadership.

### **Reaction to NGOs Violations of Ground Rules**

76. The SPLA considers all organisations operating in its areas as humanitarian and not human rights organisations. Though there is no clear policy to keep out human rights organisations none of them has actual presence in SPLA areas. A number of individuals representing various human rights organisations have been permitted, sometimes repeatedly, to SPLA areas for short visits. Generally, occasional NGOs' public reaction to human rights committed by government agents in their areas of operation are commended by the movement. But their going public about specific acts of SPLA members is likely to be misconstrued or even put the continuation of their humanitarian activities at risk. Most of the NGOs therefore ignore human rights violations which do not relate to the Ground Rules, discuss them privately at times, with appropriate authorities or leak them secretly to prominent human rights organisations.
77. In 1997 a French NGO by the name of Action Contre La Faim (ACF) was ordered by the SPLA to terminate its activities and leave the SPLA areas. As ACF was a member of OLS consortium, the latter demanded an explanation for the act through SRRA. It was clear at a later stage that the SPLA suspected ACF of complicity with the government agents. The SPLA seemed to have used the Ground Rules provision that reads: A NGOs and UN agencies must not act or divulge information in a manner that will jeopardise the security of the area. The OLS unconvinced by the reason for expelling ACF and unable to reverse the decision deliberately discouraged its members from replacing ACF in the areas it had evacuated.
78. Such extreme actions have not hindered OLS from co-operating with SPLA institutions to achieve the mission it has identified in southern Sudan. Sometimes, OLS has found different avenues for presenting its views on the condition that SPLA institutions respond to their duties. When the challenges faced all parties in southern Sudan during the 1998 famine in Bahr ElGhazal a joint Committee was formed to make recommendations on how best each party could rise to their responsibilities. The resulting SPLM/SRRA-OLS Joint Targeting and Vulnerabilities Task Force included in its subsequent recommendations point out to SPLA that:
79. The SPLM/A must increase the amount of attention and resources given to issues of law and order in areas where OLS and independent NGOs are operating.
80. SRRA must invest resources to build the capacity of their County secretaries Y<sup>17</sup> The recommendations also included measures to be observed by humanitarian organisations to fulfil their commitments under the Ground Rules agreement.

### Neutrality In Context

81. The Ground rules Agreement has laid down, beside other basic principles, the fact that: "The guiding principle of OLS and SRRA is that of humanitarian neutrality\_ an independent status for humanitarian work beyond political or military considerations." The agreement emphasised the need for SPLA to observe this vital aspect by undertaking that: "The SPLM/A recognises and respects the humanitarian and impartial nature of UN agencies and those NGOs which have signed a letter of understanding with UNICEF/OLS and SRRA." The assertion of the principle of neutrality has definitely served its purpose without restraining the parties to the agreement from co-operating in some programmes that benefit sections of civilian populations. In collaboration with OLS, for instance, the SPLA department of Education embarked on a programme which had the objective of "elimination of use of the child soldier and reintegration of unaccompanied minors with their families."<sup>18</sup> This programme was supported by Child organisations of Radda Barnen, SCF-UK, and

<sup>17</sup> SPLM/SRRA-OLS Joint Targeting and Vulnerabilities Task Force (27 August 1998) *Final Report*, p.4.

<sup>18</sup> See Samson L. Kwaje (26 Nov. 1997) "SPLA Secretary for Education, Youth, Women and Child Welfare", *Press*



UNICEF. These organisation tried in the same year to assist the SPLA and SSIA to prepare reports on the situation of children in areas under their control. This complemented Sudan's periodical report to the UN committee as required under the 1989 Convention on the Rights of the Child.

82. The OLS organisations supported various programmes focusing on issues of women in SPLA areas. Such support has enabled women to organise local NGOs and review some of their concerns with different SPLA authorities. In one of their main Conferences that reflected the growing local awareness women identified the objectives of their meeting as follows:

- To further encourage discourse on broad areas of national concern among Sudanese women.
- To produce a memorandum on "What Sudanese Women Demand", as nationals and human beings.
- To agree on methods of disseminating the information to key stakeholders in the Sudan's quest for an equal and just society for all.
- To put in place structures and lobbying mechanisms to ensure that the concerns of equity for all marginalized groups in Sudan are positively addressed in the constitutions (present and future)<sup>19</sup>

83. The New Sudan Council of Churches (NSCC), which had facilitated the engagement of leaders of southern military and political factions in reconciliation talks since the eruption of inter-faction fighting, has lately initiated an ambitious grassroots peacemaking process. The lull in violent clashes that has reigned for several few years has not ensured the resumption of traditional interaction between the neighbouring communities affected by those new political divisions. The local communities almost seem helpless before the political tension and claim their loyalty either to SPLA or to the groups that have allied themselves with Khartoum in this ensuing conflict. The Church persuaded the traditional chiefs of the two divides to come for meetings that would herald the beginning of grassroots reconciliation. The political leaders acquiesced at the first meeting, under the auspices of NSCC, that was held in the Kenyan border town of Lokichokio in June 1998. The chiefs who came for the meeting enthusiastically resolved that: "We have further agreed to hold a series of meetings throughout all communities in the East and West Banks of the Nile to pursue all possible means towards a just and lasting peace in the land of Nuer and Dinka."<sup>20</sup> The parties persistently pursued their goal. In spite of continued political rift between the factions which control their areas, the populations were invited to a conference in an SPLA area. This wide conference was attended by A Dinka and Nuer Chiefs, civil and community leaders, as well as women and youth . The meeting was held under the auspices of the New Sudan Council of Churches. The participants asserted that: "We initiated our conference with the sacrifice of the white Ox (Mabior Thon/Thabor) and have sealed the Covenant in Christian worship and traditional sacrifice."<sup>21</sup>

84. At the meeting it was determined , among other things, that:

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*Release, Nairobi.*

<sup>19</sup> "Sudanese Women's Social Contract And Negotiating Platform On the Status Of Women In Sudan (SWAN)", background paper, presented to Nairobi Conference of May 29-30, 1998.

<sup>20</sup> See Nuer-Dinka Loki Accord, signed by Chiefs and Church leaders in Loki, Kenya.

<sup>21</sup> See Wunlit Dinka- Nuer Covenant, Dinka-Nuer West Bank Peace and reconciliation Conference 27 February-7 March 1999, Wunlit, Bahr el Ghazal, Sudan.

- all hostile acts shall cease between Dinka and Nuer whether between their respective forces or armed civilians.
  - Amnesty is hereby declared for all offences against people and property committed prior to 1/1/99 involving Dinka and Nuer on the West Bank of the Nile river.
  - Freedom of movement is affirmed and inter-communal commerce, trade, development and services are encouraged.
  - It is hereby declared that border grazing lands and fishing grounds shall be available immediately as shared resources.
  - The spirit of peace and reconciliation this Covenant represents must be extended to all of southern Sudan.<sup>22</sup>
  - The parties expressly urged the political factions in their areas to support this initiative.
85. The political leadership later came out in support of this popular demand for restoration of relations among the local communities. It was later reported, in reference to this agreement, that Dr Riak Machar a leader of one of the factions that made an accord with the government “backed a local peace agreement initialled between Dinka and Nuer tribal Chiefs at the beginning of March in Warap province (north of Bahr el Ghazal), which had also been given the approval of SPLA.”<sup>23</sup>
86. Despite the government’s unease about this communal rapprochement, the (UDSF/SSDF) organisations of the factions which signed the peace agreement with it recently announced that they have agreed with SPLA to attend a similar community reconciliation meeting. The meeting, scheduled in August 1999, is meant to reconcile the local communities of the Murle, Dinka, Nuer and Anuak at the eastern bank of the Nile.<sup>24</sup>

### **SPLA Response to External Factors**

87. The SPLA has consistently been critical about the nature of OLS neutrality. OLS, as a UN led operation, abides by the right of Sudan’s Government to approve the entry of humanitarian assistance to its territory including areas held by SPLA. The latter aspires to recognition as sole power in areas that have fallen to its hands. It would also prefer NGOs that would operate in solidarity with itself rather than being exposed to manipulation by the government as has repeatedly happened to OLS. However, in spite of divergent views OLS has proved its utility to deliver humanitarian assistance to populations in SPLA areas. Most of the NGOs see it as a suitable protective arrangement for operating in areas controlled by liberation movements.
88. As the SPLA restructuring has somehow been influenced by its attempts to provide an appropriate environment for humanitarian organisations in its areas, much of the changes are happening due to interaction with traditional and other political forces. The SPLA strive to pause credibly among the rest of Sudanese national political forces began with its organisation of Koka Dam workshop, in Ethiopia, in 1986. Its declaration, at the time, of the need for a national consensus to get the country out of its political impasse, was heeded by some of the country’s major political parties.

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<sup>22</sup> Ibid.

<sup>23</sup> Vigilance Soudan, 1<sup>st</sup> Quarter 1999 (January - April 1999), p.3.

<sup>24</sup> *Al Hayat* (Arabic newspaper), Saturday, 7 August 1999, Issue No. 13300, p. 5.

89. The ascendancy of the current regime into authority in 1989 alienated the rest of the political forces. The SPLA sought an alliance with those parties which have been banned by the new regime. It later became a major player in the alliance of the political groupings named the National Democratic Alliance (NDA). This interaction with national political forces led to the movement having better access to dialogue with more regional and international political institutions interested in resolving Sudan's crisis. The movement in the process was getting more conscious of the need to be sensitive of its human rights record and organisation of civil administration in its areas. In a recently formulated programme the SPLA emphasised that: "The Movement stands in support and respect of international Conventions on human rights and similar international protocols on human rights."<sup>25</sup> In response to local complexion the SPLA has undertaken in the same programme to define its internal system by stating that: "SPLM shall conform to democratic principles and to the principle of national character in their organisations and practice."<sup>26</sup>
90. The growing concern about the social and political institutions have encouraged other southern parties that were involved in the country's plural democracy, before 1989 military coup, to co-operate with the SPLA which actually administers their popular bases. The close association of those political groupings reassures the civilian populations to insist on respect for local measures of social control. The SPLA response to the recent breakdown of law and order in the Chukudum area of Kapoeta county in eastern Equatoria exemplifies the need to keep abreast of the local feelings. Some of the swift measures undertaken by the movement have included:

The SPLM is restructuring the local SPLM civil administration, with the possibility of upgrading Didinga/Boya area to county level with the view of making the local administration efficient and nearer to the people. The SPLM is appealing to the Didinga in Kenya (particularly in Nairobi) and the Diaspora to help their county through material contributions to build a viable civil administration, and also to those who can return home, to Didinga land, to help in the process of national liberation.<sup>27</sup>

## CUSTOMARY LAWS AND TRADITIONAL PRACTICES DURING THE WAR

### Field Testimony

91. The communities in the southern Sudan cherish their customary laws and practices. The unsteady growth of the town centres and the compelling conditions of the civil war have not obliterated the entrenched traditional values and customs. Indeed, one of the factors that led to the civil war was the impending marginalisation of the role of the customary laws in the face of the systematic Islamization of the state institutions and laws by the central governments.
92. The SPLA, which wages the war against the central government, has enacted laws for the areas that are under its control. These laws recognize the crucial role of the traditional cultures and practices in the lives of the local populations.
93. Presiding and participating in several courts as a magistrate in southern Sudan, I started to settle cases in the SPLA Liberated areas in early 1985. I began by working in the Lakes Province which includes the Dinka populated districts (now Counties) of Rumbek, Yirol and Tonj. The conditions during that period, which stretched to 1989, could not enable our court to keep records of the cases settled. However, efforts were always made to serve each party to a case with a written note that indicated the particulars of the case and the court decision. For the purpose of this account, I shall

<sup>25</sup> "Vision, Programme and Constitution of the Sudan People's Liberation Movement (SPLM)", (March 1998), p.19.

<sup>26</sup> Ibid., p.12

<sup>27</sup> Samson L. Kwaje, SPLM Secretary for Information and Official Spokesman of the SPLM (25 June 1999) *Press Release*, Nairobi.

depend on memory to highlight some of the cases that may reflect the nature and the application of the customary laws in that period.

94. I also spent time working in the Azande area of Western Equatorial Province from 1990-1994. This period was marked by the establishment of the main seat of the court in Yambio town. I travelled in order to convene the court in the other districts in the province. This legal survey will also consider some of the legal and administrative aspects of Western Equatorial Province.
95. The members of the Dinka community that feature in the first period (1985-1989) are pastoralists and cattle is central to their litigation. On the other hand, the Azande community featured in the second period (1990-1994), are a farming population and money is the primary means for meeting liabilities. It is essential to consider that the areas of both communities have been devastated by the on-going civil war. The loss of lives and property, in addition to displacement and forced migration across the natural borders, have affected the lives of the people including the exercise of the customs.
96. The cases in this paper are intended to comparatively show how the Dinka and Azande communities, in struggling for survival, tried to cope with the new political and legal situation in relation to some of their social activities governed by the rules of customary laws. The coping mechanisms locally promoted by those peoples to preserve the social integrity may symbolise the responses of most, if not all, of the other southern Sudanese communities to current social strains.
97. This legal examination is also intended to set the social context in which the SPLA and International agencies are about to launch some ambitious rehabilitation and development programmes. A senior SRRA official recently revealed to me that a STAR programme which stands for Sudan Transitional Assistance for Rehabilitation has actually started. It is an American initiative to start with rehabilitation activities during war in southern Sudan. It is based on strong conviction to the need to rehabilitate now rather than waiting for the war to end. The programme is three dimensional. It proposes to include economic recovery, to train the political leaders of the opposition organisation (including SPLA) known as National Democratic Alliance, and raise the capacity of civil authorities. The economic component covers the economic activities initiated by various institutions of the civil society in 'relatively stable counties in Western Equatoria and Lakes Provinces' as put by the SRRA official.

### **Southern Courts Under the Civil War and Islamic Laws**

98. The few years that followed the start of the second Sudanese civil war in May 1983 witnessed rapid and dramatic changes in Southern public life. The judicial administration was not exempted from those changes. Southern Sudanese from various occupational backgrounds quit their positions and joined the newly formed Sudan People's Liberation Movement/Army (SPLM/SPLA) in large numbers. Insurrection in the army, police, prison and wildlife forces was reported in each of the Southern provinces. Armed men defected in various fashion and not all did so for purely political reasons.
99. Some of these defections were tainted by criminal acts. In one incident in Rumbek in 1984, a group of police officers attempted to assassinate Mr. Gabriel Mathiang Rok, the commissioner of Lakes Province, when he went to visit his family in the police residence. He narrowly escaped, but those police officers ended up gunning down two children. Two years later, the family sued the police officers before an SPLA court and succeeded in getting compensation for the murdered children. Later, in 1994, the same Commissioner became a member of the SPLM/A which the police officers had joined earlier.

100. Students, workers, government officials and men from rural areas also swelled the rank and file of the liberation fighters. The desire of South Sudan to assert and preserve a distinct character was apparently not protected by the 1972 Addis Ababa Peace Agreement between the Sudanese central government and the South Sudan Liberation Movement. Whatever shortcomings that agreement contained were ultimately exacerbated by ill-advised official policies that irritated the South thereafter putting it in the mood to revolt.
101. The growing war led to immense insecurity in the Lakes Province and undermined the effective operation of the courts. The rural population that formed the majority of the clients began to stop using the courts in town.
102. Gradually, the courts in the town were unable to execute their orders in the rural areas because of the interception of police or court retainers by the forces of the SPLA which were keen to assert their own authority. The sporadic infiltration into the town for military missions by SPLA units spread fear and uncertainty among the residents. Many of the residents chose to move to villages to avoid the cross fire or army reprisals, a situation reminiscent of the first civil war.
103. Meanwhile, judges were dissatisfied with the changes in the laws of the country. The replacement of the commonly named “1974 Laws” with the 1983 Islamic laws was a threat to non-Muslim judges. The former laws were the logical evolution of the legal tradition to which judges of different hues had contributed since the creation of modern Sudan. The province judge, a Southerner, once argued in private that he intended to enlighten public opinion on the impending danger of Islamic law despite the ethical issues involved, when he pronounced an Islamic punishment (hand amputation) on a Southern convict. The outcry generated by the decision subsided only when it was learnt that the sentence could not hold for legal reasons. Misappropriation of public property does not warrant an amputation according to the new laws.
104. The distinction in judicial powers on the basis of the judge's religion or faith rather than administrative grade was read into the ultimate objectives of the September 1983 Laws. Non-Muslim judges expected that Islamic laws would affect their status in the judiciary.
105. I may not be exact in describing the effects of the subsequent pursuance by the government of vigorous application of those laws on the judges' powers, as I dissociated myself from the Sudan judiciary over a decade ago. However, a recent testimony of a former judge and senior politician, Mr. Abel Alier, who played a major role in realizing the 1972 peace agreement and continued to witness Sudan's political history from his residence in Khartoum, emphasised that:
106. All Judges have either been retired from service or transferred to Northern Sudan. Judges work mainly as magistrates for traffic offences.<sup>28</sup>

### **The SPLA Administration of Justice**

107. The SPLA mobile units which penetrated Bahr ElGhazal region in 1984 had confined their activities of recruitment and limited military operations to those necessary for effective political mobilization. By the end of 1984, however, the SPLA deployed in Bahr ElGhazal a military battalion named Rhino manned by over a thousand soldiers to set a permanent presence of the movement in the area. The battalion had in its ranks a number of political officers and former public officials assigned to assist

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<sup>28</sup> Abel Alier (November 1996) “The Political Charter: Observation And A Commentary”, *Sudan Democratic Gazette*, No. 78, p.7.

the battalion commander in establishing military and civil administrations in order to enhance the prosecution of the war against the Khartoum regime(s).

108. In absence of any civil administration structures, save the chiefs, the battalion commander was authorised to organize the chiefs courts and appoint a judicial officer, not necessarily a lawyer, to undertake the responsibility for judicial administration in a given area. The battalion commander was also expected to ensure the security and maintenance of law and order in the areas under his control. The 1983 Political Manifesto of the movement stipulated the principles that would guide the battalion commander in the exercise of his duties. The organization of the civilian population in SPLA controlled areas was as important as the execution of the war. The movement was clear about the crucial role of the social base in the progress of the struggle. Therefore, a good number of commanders at the early stages of the war used to consider legal disputes when brought to them by the local citizens who would resort to the justice of any available high authority. In fact, the subsequent SPLA laws vested the battalion commander with administrative judicial powers, though not as a specific law court.
109. The start of the SPLA legal administration in the Lakes Province in 1985 was a prelude to the establishment of a wider system in most of the region of Bahr ElGhazal in the years that followed. In April 1985, Lt. Col. Martin Makur, commander of the Rhino battalion, appointed me to head a special court for the Lakes Province. This court was to consider appeals against the regional courts decisions, to try the tribal fights, and to examine other cases as a court of first instance. At the time, the gap between the withering governmental control and introduction of effective SPLA administration led to some inter-tribal fights erupting in several parts of the province. The special court was therefore commissioned to settle three fights in Tonj district and one in Rumbek district; we also got involved in settling additional tribal fights at a later date. The battalion commander, who appointed our special court was also the SPLA military commander for the whole Bahr ElGhazal region. He therefore crossed to Northern Bahr ElGhazal province and we started our duties in Tonj district.
110. The membership of the special court included Gabriel Anyar Maduat, a former local government administrator; Captain Aleu Ayeiny and First Lt. Enock Majok Macar, two prison officers; Chief Deng Ading of the Tonj town regional court, and SPLA Seargeant Macuie Thon who had a background in traditional administration before he joined the movement. It is worth mentioning that the court was to apply, like the rest of the local courts, the customary law which was in force before the establishment of SPLA authority. All state laws were irrelevant in SPLA areas except the customary laws. The largely codified customs of Bahr ElGhazal, before the commencement of the war, remained in force under the name 'The Re-Statement Of Bahr ElGhazal Region Customary Law (Amendment) Act 1984'. Despite the fact that SPLA had its own 1983 punitive laws, which largely related to the military, it was difficult to get a copy of them. The battalion commander was well aware of those laws, but did not draw our attention to them at all, and they were non-existent in practice in the region. Due to the absence of legally trained personnel in the battalion and the vastness of the administrative area, the battalion commander formed legal and administration committees in some areas to supervise and look into appeals from the chiefs courts. These committees, however, were to exercise their duties in collaboration with the special court which reviewed appeals against their decisions as well. As I remained to work in the special court in the Lakes province, the rest of the region spent 1985 without a judge. It was impossible for a single judge, whose services were acutely strained within one province to serve in the whole region.

#### **The Penal and Disciplinary Laws of SPLM 1984**

111. The customary laws continued to be the only laws in force in Bahr El Ghazal courts throughout

1985. The offences committed by military personnel and referred to the ordinary courts were adjudicated according to custom. The period was also marked by the absence of death sentences and terms of imprisonment, for the movement did not have prisons in the region at the time. The 1984 SPLM laws, which repealed the 1983 punitive laws, were a concise promulgation of disciplinary laws for the army, a code of procedures, and a penal code of general application. The 1983 punitive laws were not regularly enforced by the courts in Bahr Elgazal region due to poor circulation. These laws were in application in some SPLA controlled areas for a short time while the 1984 SPLM laws remained in force for eleven years. The 1984 laws were the only written laws of the movement until 1995.

112. At the same time, customary laws have always been in force in the liberated areas. Section (2) of The 1984 laws recognized the application of the local custom of each community within the SPLA liberated areas. The 1984 laws established three military courts, namely the summary court martial, the district court martial, and the general court martial as the final appeal court. The law set out the ordinary courts as the court of the judicial officer and the peoples' regional court. However, the general court martial which was also a court of first instance in some civil claims and capital offences, was the final appeal court for the ordinary courts simultaneously.

### **The Introduction of New SPLA Laws**

113. The shortage in the number of trained judges in the liberated areas influenced the degree of the application of the 1984 SPLA laws. The provision of those laws that the appeals against the decision of the court of a judicial officer should go to the general court martial, was largely impractical. The reason was that the judicial officers were trained judges, and it was inappropriate to let their decisions be reviewed by a panel with members having a lesser degree of, or no legal background. The general court martial therefore functioned as a court of first instance, with a judge's participation whenever possible, to consider offences that may entail the application of a life or death sentence. In practice, the decisions of the court of the judicial officer were final.

114. Section 35 of the 1984 laws established the chairman of the liberation movement as the confirming authority for the enforcement of the death sentence passed by the general court martial. The law provided for the submission of the case papers to the office of the confirming authority before he exercised his discretion to uphold or alter the decision.

115. Due to logistical communication difficulties, it was impossible to send the case papers, in the vast majority of instances, to the chairman of the movement. The courts were only able to send the summary of facts, evidence, and decision in each case to the chairman through the wireless. The adequacy of such summaries depended on the availability of a trained judicial officer in the general court martial that tried the case.

116. The absence of judges in some areas resulted in the decision of the chiefs courts falling to laymen that were appointed as judicial officers in such areas. The arrangement in most of the cases was viewed with scepticism by the litigants and the chiefs, as the latter seemed better prepared in running the courts and applying the customary laws. The limited scope of the defined offences and procedures in the 1984 code prompted the introduction of new laws in 1994 in the SPLA controlled areas.

117. The movement's national convention held at Chukudum town in Eastern Equatorial Province established the new laws in April 1994. Although the convention had passed a number of laws, only three of them were published and enforced in 1995. The three laws are:

- The Penal Code, 1994
- The Code of Criminal Procedure, 1994
- The Code of Civil Procedure, 1994.

118. The new laws repealed the 1984 penal and disciplinary laws and established a more elaborate form of court structure. The new court hierarchy in seniority order comprises:

- The Court of Appeal.
- The High Courts of Justice.
- The Country Courts.
- Payam Courts.
- Village Courts.

119. While the new hierarchy allows for considerable levels of appellate courts including the appeals against capital sentences from the High Court of Justice to the Court of Appeal, it remains to be observed in practice how the limited number of judges will affect the application. The new laws emphasise the role of customary laws in the local societies. As Section (3) of the 1994 Penal Code reads:

The provisions of this Law shall not prejudice the application of existing Customary Laws and practices prevailing in each area.

## **TRADITIONAL SOCIETIES AND LEADERS DURING THE WAR**

### **The Spiritual Leaders<sup>29</sup>**

120. Towards the end of 1984, the central government's grip in the country side dwindled dramatically. All the chiefs, therefore, chose to stay with their local populations in order to administer their areas under the emerging SPLA authority. When I left Rumbek on 28 January 1985, the chiefs had long ceased to communicate effectively with us in the town. One of the earliest impressions which struck me in the new environment was the remarkable level of understanding between Chief Malual Dhuor of Kuei regional court and the first SPLA unit that received us into the movement. The SPLA unit, which camped a few miles outside Rumbek town, was under instructions to ambush a government army convoy along Wau -Rumbek road in February 1985. The chief of the area and his people were virtually responsible for the welfare of the unit and all those who joined the movement at that station. In the evening prior to the day of the military operation, the chief, who was also a spiritual leader, arrived with five other elderly men to perform traditional prayers for the SPLA soldiers designated for the ambush. The solemn looking men were carrying several spears of varying length and colours. The chief led the prayers and then was followed, in order of spiritual seniority, by the five men who prayed well into the night over the sacrificial bull they had brought. The theme of the prayers was a

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<sup>29</sup> Makec, John (1988) "The Customary Law of the Dinka People of Sudan", AfroWorld Publishing Co., London, provides: "A Spiritual Leader . . . differs from a magician in that he does not believe in medicine, diagnosis of diseases or causes of illness, like the magician. He does not, in other words, use esoteric medicine. He derives his divine authority from God. He communicates through God's guidance. God rules the spiritual lives of the people through him. His divine authority is hereditary."



simple message, to be taken by the soul of the red bull to God on high, on behalf of the people. The first point the soul should stress to God, as emphasised, was that the bull was not killed in vain for no one is allowed to take the life of any animal or human being without a just cause. Cows were offered by God to save man from hunger, disease, natural affliction, or the war imposed upon them by the Arabs. The SPLA were justified in fighting because they were defending, from intruders, the land given to their people by God. God gave every people a piece of land at creation, nonetheless, the Arabs violated the will of God by their designs on other people's land.

121. When the bull was sacrificed at the end of the ceremonies, the morale of the soldiers was obviously boosted. The carcass was dragged to the edge of the forest where birds and dogs fed on it for several days. The spiritual, symbolic significance and role of the chief has been enhanced during the war period.
122. The greater majority of the SPLA soldiers regard the chief with special reverence for they are still largely rooted in their traditional backgrounds and cultures.
123. In regard to the Dinka community, although their spiritual leaders are usually men whose role is separate from that of the administrative chiefs, nonetheless, the two roles are often complementary and sometimes fall to one person. I once encountered a lady in the area of Chief Arol Kachuol in Cueibet area who was a spiritual leader. Such an occasion was rare, because spiritual leadership in Dinka tradition is almost completely male dominated. The lady, however, was a famous traditional leader from whom many SPLA fighting men solicited blessing. She often walked in the company of several male assistants to SPLA camps for religious ceremonies.
124. As for the courts in these areas, in exceptional cases, spiritual leaders are called upon for swearing-in rituals before the decisions are reached.

### **The Administrative Chiefs**

125. The ostensible collaboration of the chiefs and the movement did not prevent some conflicts between the traditional administration and individual SPLA officers. The chiefs are accustomed by practice as to where to draw the line between their jurisdiction and that of the central government or movement agents. They regard that boundary with great care. Equally, some chiefs have accounted for their wrong doings, whenever established, under the laws of the movement. The following cases illustrate some of the situations I had witnessed where conflict over jurisdiction between administrative chiefs and the SPLA arose.

### *In Pursuit of Justice*

#### Background

126. The attainment of justice, according to Dinka tradition, is a noble cause, and the individual should mobilize the available resources in pursuit of it. It is, therefore, possible to come across a case where a successful creditor who had raised a claim for one cow would ask the creditor for an additional two cows as suit costs. Winning a claim before the court of law, is more of an assertion of social prestige than mere material gain. Some individuals would resolutely pursue the court decision on a claim, but lose momentum when it came to the execution of a debt established in their favour. The chiefs also value people's conception of justice and expect public agents to abide by the same rules. In the case of a display of impunity or flagrant violation of norms by the public agent in a certain area, the chief

assumes, with total conviction, the duty to whatever necessary possible course in order to resolve the situation.

### The case

127. The facts of the case were that in mid-1985, Captain Thuc Majok was the commanding officer of the SPLA forces in Tonj district. He was under the overall command of Lt.-Col. Martin Makur Aleyu, then SPLA military commander of Bahr ElGhazal. During a tour in his district, Captain Thuc went to the area of Chief Gum Mading. Two years earlier, a civilian from Yirol district had migrated and sought residence for his family including his old father in that area. Captain Thuc ordered his arrest on a report by one of his soldiers that the civilian once spied for the government army in Tonj garrison. The captain was sitting under a tree with the chief and others, when the civilian was brought from his house under arrest.
128. The captain asked the chief about the charge and the latter said the civilian seemed to be a normal citizen, and that he was surprised to hear the charge against him. The captain then ordered a soldier to escort the civilian to a nearby hut where he should be kept in confinement awaiting further investigation. When the civilian was close to the hut, he decided to stray to its side, in order to urinate. The guard had already started to talk to other soldiers that were squatting against the hut when another soldier shouted, suddenly, that the civilian was running away. The civilian was opening his pants at the time, to start urinating. On hearing the shout and sighting the civilian in the stated position, Captain Thuc loudly uttered, in Arabic, the order 'Finish him ! Finish him!'. Consequently, the soldier shot the civilian dead on the spot.
129. Soon after, Captain Thuc led his soldiers out of the area.
130. The chief and the father of the deceased tirelessly pursued the prosecution of the captain who was also the military administrator of the district. After they had walked for many miles and waited for the ending of a lengthy military inquiry, Lt.-Col. Martin Makur relieved Captain Thuc from his duties and referred the case to the court for trial.
131. In September 1985, I presided over the special court that tried the Captain in Juu village. The Captain and the soldier that shot the deceased stood trial for abatement of murder and murder respectively. The only laws that were in force at that time, were the customary laws. The 1984 SPLA laws, which would have been applicable to the case, were introduced to Bahr ElGhazal with the coming of the new SPLA battalions in December 1985. The facts were determined by the court, as briefly mentioned, through the testimony of the witnesses and the examination of the accused captain and soldiers.
132. The court found that the deceased was a mere suspect who was executed before the normal proceedings were begun which may or may not have lead to trial. There was no proof that the deceased attempted to escape. The Captain had made an unlawful order and the soldier had executed that order. The court convicted the two accused of the charges of having caused the death of the deceased in an unlawful manner. The court sentenced the two convicts to share in equal halves the payment of thirty heads of cattle to the relatives of the deceased as required by section 71 of the Code of Dinka customary law (1983). Both convicted persons also had to pay fines to the SPLA authorities.

### Background

133. Initial contact between the SPLA officers representing the new public authority and the chiefs who had always worn the traditional mantle gave rise to some occasions of conflict. Most of these conflicts did not go further than simple suspicion or minor misunderstandings. They were dissipated in time by the increasing familiarity between personalities and understanding of responsibilities. The administrative skills in the movement are largely acquired through practical involvement of the officers in the field. Many of these officers were students prior to their membership in the SPLA, and many others belonged to occupations that did not carry descriptions of their new offices. It was therefore likely, that the process of interaction between the SPLA, the chiefs, and the local population would produce some unhappy, and at times tragic, incidents. It is characteristic in the movement that all newly deployed troops would experience, mostly at individual levels, incidents of crime in their new area.
134. The incidents would not subside until time had paved the bridge between the troops and the population, including the leaders, by acquaintance and the realisation of their need for one another.
135. However, some officers excessively abused their military advantage over the civilians and the semi-autonomous guerrilla administrative structures. The stage of development of the administration in practice makes it hard for any higher authority to intervene at the crucial moments, especially when the perpetrator is bent on a personal mischief as in the following case.

### The Case

136. The accused, First Lt. Wol Majak, was the SPLA officer in charge of a platoon army unit attached to the special court considering the inter-tribal fight between the sections of Atuot and Agar at Akot village in 1987. The accused was from the area of the deceased Chief Majok Derder, a long serving chief in Rumbek district. The station in which the offence was committed was within the jurisdiction of the Chiefs Appeal Court previously presided over by Chief Derder.
137. The chief, who used to convene his court at Akot between the sessions of the special court, once examined a claim against the accused's brother by the name of Maker Majak. The court passed a decision that Maker Majak should release a certain cow to his creditor. Maker reported the court decision to the accused. On the date of execution, Maker attended the court, but did not bring the cow as ordered earlier. The court that was presided by Chief Majok, then appointed a retainer to effect the execution.
138. At the end of the session, Maker went to the accused's office and informed him of the latest court order. The accused, accompanied by his brother, went to the court and started to challenge the chief publicly. The accused claimed that the cow belonged to him and the court ought not send for it. The chief told the officer that the court had clear procedures of determining the title to attached cows, and it would not be hard to find out the owner once that stage was reached before the court. When the officer persisted on disturbing the court, the chief asked the court members to disperse and he set off for home on his bicycle.
139. The accused was not satisfied with the encounter. He proceeded to his room and commandeered a bicycle when he emerged with an AK-47 rifle. The accused rode after the chief and shot him dead at about a three kilometre distance from the point of departure. From there, the accused continued to ride towards the town of Rumbek in an attempt to surrender to the central government army

garrison. The SPLA forces closer to town were alerted and managed to arrest him that same evening a few miles away from Rumbek.

140. The accused officer stood trial for murder before a general court martial. The court, of which I was a secretary, convicted the accused, on confession, of the murder of the deceased. The court sentenced the convict to suffer death by firing squad, under section 55 of the penal and disciplinary laws of SPLM 1984. On confirming the court sentence, the Chairman and Commander in Chief of SPLM/A ordered:

- The demotion of 1st. Lt. Wol Majak from his rank to private.
- The dismissal of private Wol Majak from SPLM/A
- Wol Majak should suffer death by firing squad.
- The death sentence was carried out as ordered at Akot village in September 1987.

#### *The case of Liet-Nhom Legal and Administration Committee*

141. The Liet-Nhom legal and administration committee was formed by Lt. Col. Martin Makur Aleyu in 1985 to consider appeals against the decisions of regional courts in Liet-Nhom area of Tonj district. The committee was also responsible for the supervision of the administration of the chiefs and their courts. The five committee members were civilians originating from the area and had been government officials before they joined the movement.

142. Although the formation of such a committee was necessitated by the lack of judges, the committee was directed to exercise its functions in collaboration with other special court that also reviewed the committee cases. The committee had barely existed for six months when some chiefs complained against it before the same commander that gave it authority. The chiefs charged that the committee had complicated their work as courts and administrators and that the members had no adequate backgrounds in settling law suits. It was added that the committee had misappropriated the funds of the regional courts.

143. The committee members were referred to the special court, over which I presided, for trial under the charge of criminal breach of public trust. The trial was convened in Ngab-agok village in December 1985. The witnesses included chiefs and individuals who traced cows, that were paid in fines, to the private cattle of the committee members. The committee's written records also indicated the incompatibility of the revenues collected and the remittance to the relevant authority. A number of cows and cash that accrued to the committee was inexplicably missing. The court found that there was sufficient evidence to convict the accused committee members of the charge. The court, therefore, ordered the confiscation of the attached cows and sentenced the convicted committee members to pay fines. The committee did not resume duties after the trial.

#### *The Case of a Sub-chief in Kongor Area*

144. One evening in April 1989, we arrived at the village of the sub-chief. The village was in the area of Kongor Chief Thehm Arop in Tonj district. I was in the company of two soldiers and two civilian men and a woman. The last three were on the way to their village in Yirol district. We entered the village while a group of men were still sitting, in what seemed to be a court session, in the shade of a

cattle byre. We did not turn to greet the group that was at a considerable distance of nearly one hundred yards. Our company walked straight to the house where we had spent the night when we passed through the village a few days earlier. We intended to sleep for the night and leave the village early next morning.

145. The woman in the house told us that her husband, whom we met in the first visit, had gone to the cattle camp. That evening the sub-chief did not come to our place and we had no reason to ask for him. At ten o'clock that evening, a lady came from a neighbouring house and asked us to go and help bury her dead child. The sick child died, according to her, two hours before she came to us. She said she had been to every other house in the village and was told the men had gone to the cattle camps. She was a widow, and if the burial was left until morning, then that would be a disrespect to the dead which might affect her other children. While I asked her to go back to her house, the two soldiers went to check for the sub-chief and men of the village. It was hard for us to believe that the group of men we saw earlier could go to the cattle camps, which were some miles away, at the same time.
146. However, the soldiers returned and said the women that responded to them behind closed doors asserted that there were no men around. They had gone to the sub-chief's byre and nobody answered their call. When I asked the two other men that came with us to join me and the soldiers in order to bury the child, they declined on the basis of a chest disease and previous arm dislocation. None of them looked disabled in any manner during the four day trip we covered together. I had to go with the two soldiers for the task.
147. We dug the grave and buried the dead child in the house compound, according to burial custom in Dinka communities. When we finished in the early hours of the morning, the soldiers slept briefly, then got up and went again to check if there were men in the village. At seven o'clock they returned with a group of men including the sub-chief. All of them spent the previous night in the village. When the widow, who had learnt that I was the judge in the district, saw the crowd, she came and asked for a case against the sub-chief. I accepted to hear her claim.
148. The widow said she had been treated like a foreigner. She said that when she went to the sub-chief's house, his wife not only denied the husband's presence, but also said that the widow should go to the people of the forest that came to the village early in the evening to bury the child at night and take away whatever misfortune involved therein. The local people refer to the SPLA or any guerrilla members, for that matter, as forest or wilderness people. She did not tell us earlier for fear that we might refuse to help her. The chief, who tried to be very apologetic, insisted on being asleep at the time of the widow's and soldiers' call. There was no reason to believe that the men could be asleep at each call while the women were not. It was the fear of getting involved in the burial at night and the myth attached to it, that kept them away. This fear also inhibited our two fellow travellers. However, I had to impose some fine on the sub-chief for failure to act when required in order to balance between the men's reservations and the fear of the widow for the rest of her children.

### *Spiritual Life and the Human Sacrifice*

149. The advent of the civil war had considerably affected some aspects of the public life in the war stricken areas. The degree of spiritual activity is one clear example of the impact the war had on the individual and the society. A great section of the civil population and the liberation fighters have turned to spiritualism as a supporting element in the face of the encroaching war conditions. The war is marked by the growth of witchcraft and other forms of religious fervour.

150. The pursuit of victory against the Khartoum forces, which is the ultimate goal of the SPLA, is rekindled in the hearts and minds of the soldiers through constant political agitation at the formal level. However, the influence of traditional spiritualism and its role in generating the morale of the majority of the fighting forces, is evident. It is reflected in the ever-increasing number of well-known sorcerers or spiritual traditionalists within the SPLA rank and file. The examples include an SPLA Sergeant who claimed that a divine spirit had fallen on him at Buma mountain, which was then under the command of A/cdr Anthony Bol Madut, in the Upper Nile region. I witnessed the due respect that soldier enjoyed among both his mates and superior ranks during the few weeks I spent there in 1989. Another example is in 1987 while I was still in Lakes Province when the SPLA Zalan battalion was deployed to the province under the command of A/cdr Andrew Anhiemdit. The Commander was the son of a notable spiritual leader in Yirol district, and a staunch believer in traditional spiritualism. He was very active in incorporating spiritual rituals in the administration to heighten the morale of his troops.
151. Andrew Anhiemdit is reported to have developed more spiritualism in his home area after his retirement from the army in 1990. Additionally, in 1992, a certain soldier named Bith commanded an overwhelming popularity among the SPLA commandos in Western Equatoria Province. His precise predictions of what they would encounter in battle inspired the SPLA units to score successive victories against the government army convoys at the provincial borders of Western Equatoria and Western Bahr ElGhazal.
152. The civilian population has also reacted in its own ways to the hardship the war has brought upon them. In the case of the Dinka community, where I served in the period between 1985 to 1989, the war has resulted in the voluntary enrolment of a great number of young men in the SPLA. The reported incidence of death, at the war front, of familiar young men has become frequent and wide spread. The societies have lost the traditional economic role of these enlisted youth. The war has put a constant material burden on each family through their contributions of livestock and agricultural produce for the maintenance of the liberation army. Such burdens, coupled with the loss of livestock through uncontrolled diseases, natural environmental disasters, flight of sections of society for reasons of war and famine, and the unpredictable end of the war have propelled many spiritual people to action. The Dinka in the Lake Province are in possession of a mythology which reminds them of incidents where human sacrifice has saved the people from great catastrophes. For example, before Sudan was colonised, a most beautiful young girl named Nyirol was ritually drowned in the lake which at present carries her name. The name Yirol itself is said to be another version of the same Atuot-Dinka girl. In the District of Rumbek, another girl called Akon Boui, was given by her people, as a wife, to the leader of the strangers that used to inhabit that land. Agar-Dinka, who saw such an exchange as extraordinary, gained their present land in return for this sacrifice.
153. It was against this background that one spiritual leader made a human sacrifice in Tonj district in 1989. MABIORDIT<sup>30</sup> which refers to a spirit, became the popular name of this man whom that spirit inhabited. He was a very influential spiritual leader in Luanyjang Dinka section of Chief Aguer Adel in Tonj district. Mabiordit was a young man in his mid-thirties when I saw him in the Mal in Bantiu district in 1987. He came to bless a reconciliation concluded between his people and the Nuer sections of that area. On that day, his Nuer counterpart, Gatluak Yee, came to Mal for the same purpose. In fact, each one of them had formerly led his people into a series of tribal fights that caused many deaths and loss of property on both sides. The court tried the case and embarked on the process of reconciliation which left them both unpunished lest it jeopardise the fragile peace.

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<sup>30</sup> 'Mabior' is a white bull, but is also used as a name of male human being and other objects including a spirit as in this case. "DIT" is a token of reverence usually affixed to the names of respected figures especially the elderly.

154. Mabiordit was utterly dedicated to the protection of his people, and he told them in a prophecy that all the sufferings of the war would vanish if he made a human sacrifice as Mabiordit, the spirit, had revealed to him. He suggested a young girl, of marriageable age and presumed to be a virgin, from among his relations to be the sacrifice. This girl, in her early 20s, objected to the proposal and Mabiordit had to change tactics.
155. News of these events reached our special court and the administration centres. The area of Mabiordit and his people did not have a SPLA administrative centre at the time and this news was taken to be incredible rumours. Shortly thereafter, Mabiordit sacrificed his son, who was about seven years old, in a public gathering of the community around him. The SPLA administrations were stunned by this extreme act.
156. The commander of the area A/cdr Bona Bang Dhol later effected the arrest of Mabiordit and kept him in his headquarters for a couple of months. Nobody came forward to lodge a complaint against Mabiordit nor was he referred to the court for trial. He was later freed and sent back to his area where he continued his spiritual activities. In 1992 Mabiordit was killed in the battle field by Nuer tribesmen who invaded the area of his people.

### **The Burden and the Sacrifice**

157. The war situation added extra moral obligations to the chief which, beside the traditional administration, he had to address. The local population focuses on the chief for inspiration or direction in dire circumstances. During these times of difficulty, the chief becomes closer to his people to ward off, if he can, the development of the conditions that might lead to their desertion in the form of internal displacement or migration to any of the neighbouring countries. The chief's responsibilities imply that he remains in the area with the section of his people that also stay to endure the risks of the situation.
158. Thus, the chief is no less exposed to war hazards than is the rest of the people. In 1987, Chief Madol Mathok of Amothnhom section, whose area surrounds Rumbek Town, was attacked by government troops from the town. Although he personally survived, his wife and children were among those killed in the cattle camp that came under attack. In the same year, Chief Kuac Manyeil Dut of Panyuon section was ambushed by troops from the same town which took advantage of the closeness of his area to it. The chief narrowly escaped capture and death, thanks to his youth. Some of the chiefs have even lost their lives for reasons of war. The deaths of Chiefs Deng Ading and Cinyuc Buongnyang of Tonj District in 1992, while defending public interest, illustrates the level of personal sacrifice the chiefs are prepared to face. The murder of Chief Makur Cep of Yirol District in 1992, and the earlier murder of Chief Majok Derder of Rumbek District are additional examples of the extreme nature of risk the chiefs face in the war zones.
159. The chiefs, like the rest of the people, continue to lose their relatives in the war. These shocks are usually borne with dignified sorrow which reassures their people of their worthiness to lead in a land of great sacrifice. That was the manner in which Chief Ngot Thiik explained, in April 1989, his loss of several sons who fought in SPLA ranks against the Khartoum forces. I was present to hear his reflections on the matter in the residence of Judge Paul Mayom Akec at Lietnhom village in Gogrial District of Northern Bahr el Gazal Province. Could it have been a misguided conviction of the obligation of leaders to show genuine leadership at times of crisis that drove Mabiordit to forsake his little son in a ritual murder?
160. I had noticed a similar fortitude of the concept of traditional leadership in Western Equatorial Province. The chiefs of the Zande people, normally from Avungara section, derive their model from

their ancestor King Gbudue, who died from the wounds sustained in 1905 in his battle against the British colonial troops. He was determined not to see his people subjugated by a foreign power.

161. The King's tomb in Yambio town is a focal point for SPLA nationalists and traditional adherents that seek inspiration from this heritage. The Zande insist, with few exceptions, on the descent of their chief from the Avungara section with attached hereditary norms.
162. On three occasions where I joined the civil administrators to organize the election of chiefs, Ngindo, James Diko, and Sakure, these traditions were closely observed. In Yambio town, one of the criteria for electing Angelo Francis Ngindo in 1991 as chief was his close blood relation with the late Chief Ismael whose death rendered the position vacant. It is acceptable practice for a reigning Zande chief to be represented in the official engagements by his son. In the assembly of the district chiefs at Yambio, in 1993, to elect their paramount chief, Chief Hassan Peni of Remenzi area was represented by his son who proceeded to cast his father's vote without any questioning. In the case of Chief James Diko, when the year of mourning of his death elapsed in 1992, we went to the village that carries his name to organize the election of a substitute. The committee was presented with an eleven year and a fifteen year old boy among whom the crowd would elect the new chief. The two brothers were the sons of the late Chief James. We had to drop the condition of maturity for candidacy and the crowd overwhelmingly selected the eleven year-old. Obviously, the young boy needed to be nursed into maturity by a chosen sub-chief. Though a minor, other characteristics determined by tradition overtook age as a criteria. For example, the reaction of the young chief, who was touched by the jubilant crowd was to let go his tears. Finally, in the case of Chief Sakina, a woman of the Ibba area was elected as one of the senior chiefs in the province. Despite tradition, the Zande observe the right of the woman to assume the authority of a chief. About three other women were elected in 1992 as local court members in Tambura District.
163. The chiefs in Western Equatorial play a major role in maintaining law and order, and in reassuring most of the citizens to withstand the government's attempts to disrupt the life in the province which it had lost to the SPLA in 1990. The chiefs in the liberated areas were among the leading social groups that offered to share their experiences at the 1994 SPLA national convention. They felt the need to articulate the reforms that would consolidate the popular role in the liberation struggle. I was privileged, as a delegate, to accompany the delegated chiefs of Western Equatorial Province, comprising the districts of Yambio, Tambura, Maridi, and Mundri. It was gratifying to meet, on the way to the site of the convention, some chiefs from the Lakes Province who had been my associates in the judicial administration during my service in that Province. The determination and sacrifice of the chiefs, in particular, were hailed by the Chairman of the movement in his speech to the Convention as follows:

. . . The road to this Convention has not been an easy one. The delegates from the Nuba Mountains, Missiriya, Bahr el Gazal, Ingessena, Upper Nile and Western Equatorial had to walk several months to come to this Convention. Every one of you had to face and overcome many obstacles and hardships on the way to this historical gathering. Several delegates have lost their personal belongings or were wounded in accidents or had to risk their lives in aerial and ground attacks of the enemy. We appreciate and admire wholeheartedly the sacrifices made and the determination shown by each and every one of you. I congratulate all of you for making this Convention a success.

Yet, with regret and great sorrow, we have to register for posterity and for the generations to come, that on the way to this Convention, we have not only endured hardships, but indeed our people had to shed blood. We have lost very dear of our distinguished sons and daughters of our land; twelve of our compatriots have fallen on the way, five of whom were delegates to this Convention. Among them are the



distinguished Chief and veteran freedom fighter Stephen Thionkol Anyijong of Yirol District, Chief Majak Adel of Luac, Tonj District and Chief Lavino Keri of Pageri, Nimule, Torit District . . .<sup>31</sup>

## CONCLUSION

164. The length of time, control of territory and responsibility for protecting a considerable section of the Sudanese population are some of the factors which impose certain standards of conduct on SPLA as the de facto public authority. The movement inherited weak public institutions in southern Sudan and operates in an environment where the rudimentary infrastructure has virtually collapsed. The early indifference to changing this situation by laying down correct basis for civil structures, had exposed the civil populations in many areas of SPLA to mal-administration. However, local pressure and the insistence of humanitarian organisations on regulated relationship and specified working environment prompted the SPLA to set the reform process apace. The occasional reporting on the human rights situation in SPLA areas has also contributed to speeding up the movement's efforts to check the conduct of its rank and file. Of course, more reforms await the SPLA.
165. The ambition of the SPLA to establish a credible alternative public authority in the New Sudan is discernible in the attempts to introduce some form of democracy to its structures and allow the civilian institutions to take over the ultimate political authority from the military. The SPLA reforms, though in context of a liberation movement, have been met with support by some agencies which are generally interested in issues of good governance and building the capacity of such institutions relating to the welfare of civil populations.

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<sup>31</sup> John Garang de Mabior (2 April 1994) "This Convention is Sovereign", Opening and Closing Speeches to the first SPLM/SPLA national Convention p.4.