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Traditional Mechanisms of Conflict Resolution in Southern Sudan

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Berghof Foundation for Peace Support

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1. Types and Causes of Conflict in Southern Sudan

The ethnic groups that are found in Southern Sudan consist of the Nilotics, Nilo-hamites, Bantu and Sudanese ethnic groups. Many tribes fall under these ethnic groups. Dinka, Nuer, Shilluk are the main tribes of the Nilotic ethnic group. The Murle, Toposa, Mundari and the Bari are part of Nilo-hamites ethnic group. Bantu and Sudanese ethnic groups consist of main tribal groups such as the Azande in Western Equatoria and the Fertit tribes in Western Bahr el Ghazal. In recent years, conflicts have happened within some of these groups and between them and other ethnic groups. New forms of conflict resulted from the overarching war in Sudan that is still responsible for tension in communities after the establishment of the Government of South Sudan (GOSS). Life is characterised in the post-CPA Southern Sudan by uneasy relationships between armed groups, IDPs, returnees and host communities. These conflicts have much to do with wartime prejudices of the various communities against one another, depletion of and competition over resources and the competition over the peace dividends.

1.1 Common Types of Disputes and Social Relationships

Many scholars and researchers, in their study of inter-communal conflict in Sudan, identify many traditional types and causes of conflict among the Nilotic tribes. Some of conflicts are specific to cattle owning communities while others crosscut the rest of Southern Sudanese communities.

Grazing of Livestock

The economic life of many communities in Southern Sudan rotates around cattle. The livelihood and prestige of people raising cattle (Dinka and the Nuer) depend on cattle. Cattle are cared for through seasonal movements in search for grazing land and water. Movements of cattle and their herders result in contact, especially in the dry season. This is the period when there is concentration of people in cattle camps in the lowland grazing grounds known as the *toich*. It is also a period when tension builds within and between herding communities. Concentration of cattle herders could also trigger cattle raids leading to inter-communal violence.

Water and Fishing

Water and its resources, mainly fish, have contributed to many intra- and inter-community conflicts among the different cattle owning ethnic groups in Southern Sudan. Conflicts are associated with watering of cattle, but also with fishing. Fishing is an important human activity of survival when cattle herders congregate in the lowland grazing areas along the banks of the Nile River and its tributaries. Tribes or segments of tribes own pools and ponds that contain fish. Trespassing these pools and ponds result in serious disputes that often lead to violence.

Blood Feuds

This is a crosscutting dispute in different ethnic groups in Southern Sudan. Blood feud is the relationship that emerges from homicide within or outside the community. It results in reactions that could grow beyond the immediate parties involved to attract

people with different interests in the murder that could call for vengeance. There are customary methods as well as judiciary approaches to the issue when it arises. Communities in Southern Sudan treat blood feuds differently. There is a marked difference between the ways Nilotics deal with the issue from many non-cattle communities.

Family Disputes

Family disputes arise frequently when partners in marriage divorce; when a girl is eloped as a process of marriage; and when there is an incident of adultery. It implies that bride wealth has to be returned to family of the bridegroom and payment of compensation. This situation is again more complex in communities that pay bride wealth in the form of cattle, especially the calculation of the number of offspring of the cattle paid as bride wealth. Cases of this nature take longer time to settle. Sometimes frustrated complainants take law into their own hands by seizing cattle they believe belong to them. An action of this nature could trigger more violence resulting in further blood feud.

1.2 Post-Conflict Types of Disputes

The protracted civil war has altered the nature of traditional conflicts in Southern Sudan. It caused forced migration of people inside the Sudan as IDPs, across the borders into neighbouring countries and in the Diaspora as refugees. The prolonged separation of people for the period of more than two decades has imposed sets of conflict-prone relationships. Conflicts have become more complex in the aftermath of the Comprehensive Peace Agreement (CPA). Further, new conflicts have emerged that have the bearing on returnees being they IDPs or refugees. Our focus is on the types of conflicts below.

Land Ownership and Land Use

Conflicts associated with land tend to be very diverse in the post-CPA period. Land-related conflicts manifest themselves in the form of inter-personal, intra-communal and inter-communal conflicts. In the first place, communities are bent to claim their ancestral lands from wartime IDPs. The war made some communities to seek safe haven in territories of other communities. This was the case of the Dinka communities of Jonglei and of Bahr el Ghazal who sought safety in the three states of Equatoria. The host communities expected IDPs communities to return immediately to their ancestral lands after the signature of the CPA.

Further, conflict over land translates itself into occupational conflict between farmers and pastoralists. Livestock owning communities and settled agricultural communities coexisted in strained relationships during the civil war. The latter always claimed that their crop fields were being constantly trespassed by cattle belonging to IDPs. Consequently, violent conflicts took place in parts of Western Equatoria and Eastern Equatoria States.

Finally, there are other land-related conflicts that are building around ownership of family plots of land, especially in the urban and semi-urban areas. The war displaced many people from their homes in towns. It should be noted that the urban population was more devastated by the war. Many towns in Southern Sudan changed hands

between the Government and the SPLA. It was a normal practice of both parties to establish civilian shields around the areas they controlled. Thus, newcomers were encouraged to settle on lands of the IDPs and refugees. The post-CPA reverse migration is resulting in claims and counter-claims of land for settlement in many parts of Southern Sudan.

Traditional Authority

Traditional authority is vested in native administration consisting of diverse hierarchies of tribal chiefs and their assistants, elders and opinion leaders in communities. They exercise influence on local communities and act as intermediaries between communities and local governments. The war fragmented communities; some became IDPs and others were refugees. In their areas of displacement, these communities established traditional systems of governance. There were chiefs and their assistants in IDP camps inside the Sudan and refugee camps in exile. These chiefs represented local administration in the areas of flight.

The return process is generating competition between community leaders over local traditional authority. IDP and refugee chiefs were more exposed to new values such as the claim of rights from office bearers. They claim that strict observance of traditional authority is incompatible with the social rights, especially rights of women enshrined in the CPA and the interim constitutions of the Government of National Unity (GoNU), Government of South Sudan (GOSS) and the state governments. The contradictions between the different sources of traditional authority constitute the basis of post-conflict situation that leads to conflict and disruption of social order at the community level. They have been responsible in many states for community-based conflicts after the signing of the CPA.

Family Separation and Reunion

Issues arising from war-related family separation are becoming frequent during the return process of IDPs, refugees and other groups of people separated over two decades of war. Lives of certain categories of people were threatened by the war. The people affected by war returned to find their partners married to other women and men. Others had made children in their remarriages. Customs recognize that the first marriage is the legitimate one. However, situations dictate that the first marriages are no longer regarded as legitimate. The settlements of such disputes vary from one ethnic group to another. This situation has resulted in social conflict and sometimes in crimes that ignite vengeance. Conflicts of this nature often degenerate into communal violence, especially in the Nilotic communities.

1.3 Major Causes of Conflict

The nature of conflicts in Southern Sudan mainly interplays between diverse identities, ownership and the use of natural resources. However, conflicts over natural resources do not occur solely at the material level. They inevitably have symbolic elements as well; understanding relationship between identity and geography is crucial for tracing the ways for conflict resolution. The roots of the conflicts in most parts of Southern Sudan lay in the increasing scarcity of resources, as a result of drought and security uncertainties.

Many conflicts arise from what parties think may happen, from their anxiety, prejudice, fear, and uncertainties, rather than from any phenomenon that is actually threatening. On the surface, many conflicts do seem to revolve around ethnic, cultural, or linguistic divisions. However, the origin of such conflicts can be found in the structural arrangements of roles, which often entail expectations of prestige, livelihoods and survival. Such conflicts may reflect latent or manifest interest orientations.

Yet to gain a better understanding of the nature of these conflicts, we need to look beyond customs and traditions to detect the underlying stress factors that help cause the dispute. The position of prestige and means of survival can be related to both legal and traditional authority, but in the context of social and ethnic type, traditional authority is the more prevailing one. It can be stated that a conflict about legitimisation of traditional authority, which rests on the traditional cultural values, is a conflict between ethnic aggregates in the post-conflict Southern Sudan.

Disputes are often sharpened or even triggered by glaring social, political and economic inequalities, explosive conditions that are exacerbated by social conflict, resource depletion, and environmental degradation. This may be accompanied by weak, non-representative governance at the local level that is increasingly seen as illegitimate and incapable of attending to people's needs. As people turn to ethnic, and other groups-based organizations for assistance and protection, relations with other groups often deteriorate. Another important element that contributes to the intensity of ethnic conflict is external influences such as the past war time alliances.

Depletion of and inequitable access to natural resources can be seen as a main cause contributing to conflicts in Southern Sudan, in particular, those between pastoralists and settled agriculturalists. Given the history of migration-induced conflict and disputes over resources between communities, and the involvement of environmental degradation in the mass movement of people, it is not surprising that many hold contradicting perceptions of land use.

Conflicts and their causes vary according to culture, security or season. The causes of conflict among communities are diverse, reflecting the geographical, socio-economic and political differences of the regions. However, for most traditional rural communities in Southern Sudan, competition over natural resources appear to be the main cause of conflicts and other disputes between groups or within them. Natural resources include land for settlement, grazing lands, arable land for crop cultivation and water sources upon which the livelihood of communities depends.

Disputes over natural resources include ownership and use of arable land, trespassing of animals into agricultural land and use of water sources, and occupying plots of the people forced out by the civil war. The Sudanese civil war was an important factor in the perpetuation of conflict within the entire social structure in Southern Sudan. Other sets of interconnected factors such as trans-boundary cattle rustling should also be taken into consideration when trying to identify types and causes of conflicts in Southern Sudan.

2. Traditional Mechanisms of Conflict Resolution

The process of conflict management and resolution is subject to cultural diversity in Southern Sudan. Each of the major ethnic groups mentioned earlier has rules and procedures of conflict resolution. In some cases, issues that result in conflict may be similar. The procedures and rules to settle the disputes may, nevertheless, differ according to culture and customs. Further, actors in conflict resolution in Southern Sudan play different roles in similar cases. An outline of conflict resolution mechanisms in two tribal groups could shed light on the diversity of actors in conflict resolution.

We have chosen the Dinka and Nuer communities on the one side and the Luo on the other side, because they represent key features of conflict resolution within the Nilotic group in Southern Sudan, and because of the availability of respective research and studies. Also, we have treated the Azande, the non-Nilotic group, to complete the study with respect to the main ethnic groups mentioned earlier in our introductory paragraph. It needs to be outlined, however, that the physical feature of much of the Nilotic land determines the pattern of human movements and interethnic and intertribal conflicts in Southern Sudan. Surrounding higher grounds provide for settlements during the rainy season while populations migrate during the dry season towards lowlands and the *toich* along the Nile, Bahr el Ghazal, Sobat, Pibor, Bahr el Zeraf Rivers and Machar swamps on the Sudan-Ethiopian borders.

2.1 The Dinka and the Nuer

The Dinka and Nuer people had the traditional system of authority to enforce decisions. The main actors in conflict resolution among the Dinka are the *Bany Bith* in the Dinka community and the *Kuar Kwac* in the Nuer community. Their offices are spiritual and the symbols of their offices are the “spear” and the “leopard skin” respectively. These offices are hereditary, which are held by special priestly clans. These leaders had no political or executive authority to compel parties in a conflict to abide by the decision to pay compensation. However, the Dinka and the Nuer respected this person who alone had a moral force to make the parties to a conflict to comply. They perform sacrifices, oaths and mediate in all types of conflict. Their residences are sacred. Any offender who seeks refuge in the residences of the *Bany Bith* or the *Kuar Kwac* is spared by the offended.

The other important actor in conflict resolution is the *Bany Alath* who the government appoints as chief. The *Bany Alath* is a member of the customary court, which made its first appearance by the virtue of the local courts legislation in 1931. This individual decides cases in the customary law courts. The *Bany Alath* interacts with the *Bany Bith*. The introduction of customary courts into the Dinka and Nuer societies did not contradict the role of the two actors. Cases that require taking oath are referred to the *Bany Bith* or the *Kuar Kwac* before the *Bany Alath* makes the ruling.

The most familiar mechanisms of conflict resolution consist of customary mediation, compensation and restitution. In the context of the Dinka and Nuer, mediation by elders requires the consent of parties to a conflict to settle the dispute. Religious persons such as the *Bany Bith* and the *Kuar Kwac* are the ideal mediators. Nevertheless, any other respectable elder qualifies to settle disputes. Another

mechanism of conflict resolution is compensation. It applies to both criminal and civil wrongs against an individual. The compensation for adultery is known as *akor*, which is paid to the husband of the woman involved in adultery. An individual who elopes or commits illicit sexual offence with an unmarried girl pays *aruok* to the father of the girl. Finally, an accidental death or physical injuries calls for the payment of *rol* to the parents of the victim.

2.2 Other Nilotics: The Luo

The Luo people are a sub-division of the Nilotic group in Southern Sudan. They are scattered widely among the Dinka and Nuer and the Bantu/Sudanic in Greater Upper Nile, Greater Bahr el Ghazal and in Greater Equatoria. The main Luo tribes are the Shilluk, Jur Chol, the Anyuak, the Päre (or Lokoro) and the Acholi of Southern Sudan. Many of them adopt traditional practices of conflict resolution of their immediate neighbours. This paper treats the Päre of Eastern Equatoria because their practice of conflict resolution is similar that of the Latuho and the Lopit neighbours.

The traditional institution of conflict resolution in the Päre society is the kingdom. All other institutions such as chieftaincy came into existence through the evolution of the society and its contacts with the outside world. Ukal Kawang Julu, a Päre researcher, demonstrated that their society is composed of six villages. Each village has its own king known as *rwäth*. The Päre traditional justice and conflict resolution centres on a court known as *Jo Likweeri*. The king of Wiatuo (one of the six villages) who is entrusted with the rain administration is the most important king among equals.

Nevertheless, the kings of Kor and of Wiatuo are responsible for administering justice in the whole Päre society. There are many types of disputes that are handled by the kings. Murder is the extreme case that starts a cycle of vengeance and violence between clans, which are parties to the conflict. There are traditions for managing murder cases. The normal practice is that the offender has to escape revenge by seeking protection of the king of Kor or of Wiatuo. The king has to perform rites such as the slaughter of a goat to purify the compound from the evils brought about by the murderer. The king selects a panel of judges who will always escort the murderer wherever he or she goes, especially in the first week of the incident.

The king and the judges decide the day of the court hearing. Then the parents of murderer and of the deceased are summoned. The clansmen of the two parties accompany the parents to the court. Interested elders participate in the hearing. They participate also in making their opinions on the kind of judgement that could be passed. It is the usual practice that hanging is prohibited in murder cases. The verdict centres on compensation of the victim known as *kwoor*. Compensation is paid in the form of a girl or heads of cattle. In case the parents of the deceased go for a girl as the compensation, the responsibility falls squarely on the parents. This practice is declining. Successive governments have prohibited the practice and the Catholic Church, which is predominant in the area, condemns the practice and equates it with neo-slavery. Otherwise if parents of the deceased choose heads of cattle as the form of compensation, the responsibility falls on the whole members of the clan of the murderer. Besides cattle, the clansmen of the murderer must provide a number of goats to the court. One of the goats has to be slaughtered for the performance of rites, while the rest will be divided among the panel of judges and the king.

2.3 Non-Nilotics: The Azande

The Azande are the single largest group in the non-Nilotic groups. They inhabit Western Equatoria State in Southern Sudan. The causes of conflict and the process of conflict resolution are complex compared to the other groups we have examined so far. Causes of conflict are both imaginary and real. Imaginary causes of conflict consist of all misfortunes attributed to magic and sorcery called *ngua and mangu*. Bad health, physical injuries, death and failure of crop, among others, are believed to be caused by mystic powers of evil people. Besides actual conflicts caused by recognised incidents, relationships deteriorate in the society and tension builds due to imaginary causes of conflict associated with magic and sorcery.

Addressing these types of conflict involves the chief (*gbia*), the courtiers (*agbiangbanga*) and other community leaders such as the headmen (*abairagene*) and influential elders called the *abakumba*. All these actors interact in the court that is locally known as the *ngbanga*. The court has hierarchies. There are courts at the level of the chief, sub-chief and the headman. All other forums of conflict resolution at the level of the elders and nowadays the Church are also referred to as courts, though they may be informal. Cases start from the lowest level of courts and progress towards the chiefs' court through appeals called *kango*. If a case involves magic and sorcery, there is the process of consulting oracles, especially the poison oracle called *benge*. The culprit has the chance to appeal to the chief to reconsider the verdict passed by an oracle. This type of appeal is called *ngbuu*. This practice is found in rural areas, but is on the sharp decline because of the lack of recognition in formal courts and because of the spread of Christianity, which condemns the practice as unethical.

The traditional mechanisms of conflict resolution are mediation; compensation: *motumä* and *yongo* in the case of adultery; restitution in the case of property wrongly acquired; and mediation in the case of magic and sorcery. Compensation and restitution are the popular mechanisms of conflict resolution. However, mediation applies mainly to cases of magic and sorcery where moral pressure is used by mediators to ensure that the magician or sorcerer to accept the responsibility for the misfortune. A similar pressure is also put on the victim and relatives to forgive after the sorcerer has performed prescribed rites recognised in the tradition and thus social relationships are normalised thereafter.

2.4 Relevance of Traditional Mechanisms of Conflict Resolution

The issue to consider here is that traditional institutions and social behaviour have undergone radical change as the result of the prolonged civil war. The mechanisms of conflict resolution outlined above were damaged by the war. Chiefs and other traditional leaders lost influence over their subjects. Parallel leadership established itself with the support of parties to the wider war. An example is the emergence of the armed groups, such as the *Jeish Mabor* (White Army), whose commanders substituted the traditional leaders, especially in the Upper Nile region of Southern Sudan. Other traditional chiefs were compelled to undergo military training to ensure the execution of orders from the side of the war they belonged to. The key result was militarisation of the society, which resulted in the use of force to settle disputes and the breakdown of law and order at the grassroots level of the society in Southern Sudan.

People who were forced to flee their villages and ancestral lands reorganized in exile and in other locations, which were not theirs. They acquired new governance and social values that are not compatible with the strict traditional system of governance. The return of IDPs and returnees will definitely undermine traditional systems of governance. This situation contributes to the weakening the traditional mechanisms of conflict resolution. However, traditional institutions and mechanisms for managing the society will persist, but will not go back to the kind of influences they had in the past. There are other competitors in the field of conflict resolution. These competitors are the local government, NGOs and civil society organisations (CBOs). For example, faith organisations such as the New Sudan Council of Churches (NSCC) had combined both traditional and modern values of conflict resolution to build peace in Dinka and Nuer communities of Upper Nile and in Bahr el Ghazal during the period of active warfare (e.g., the Wunlit people-to-people peace process). This trend continues in the post-conflict period.

2.5 Problems and Limits of Traditional Mechanisms of Conflict Resolution

Traditional mechanisms of conflict resolution are similar in Southern Sudan in that they rotate around the concepts of mediation, compensation and restitution. It is the application of these principles that differ from one ethnic group to another. The application of the principles in the communities mentioned above creates more problems than solving them. For instance, the seizure of cattle (e.g., in Dinka and Nuer communities) as ransom or the basis for settling disputes over restitution rekindles more violence in cattle owning communities. Taking a girl for compensation is an inhuman act, which reduces a human being to the status of property. The issue of passing judgement on a person based on immaterial evidence such as magic or sorcery is a form of psychological torture. They can all be summed up as flagrant violations of human rights. The practices of conservative traditional authorities overlook, in many instances, the rights enshrined in the CPA, Interim National Constitution and international instruments of human rights. Hence, traditional conflict resolution is constrained by many factors:

Firstly, the most important factor is the absence of codification. Each ethnic group applies traditional justice in the way it finds appropriate. Also, the process of social emancipation generated by displacement of important sections of the populations of Southern Sudan is likely to undermine fundamental values of traditional legal system once repatriation takes place. Increased movement of people, especially IDPs and refugees, from their wartime safe havens to different states in the post-CPA is expected to be a major challenge for the local governance system. This situation of population mobility would carry along with it problems such as the resurgence of new forms of rural and urban conflicts related to contradictions between emancipation and the traditional system of behaviour.

Secondly, competition over traditional authority is likely to lead to and aggravate communal conflicts in many parts of post conflict South Sudan. There are many sources of authority that are imposed by the war. There are the chiefs and other traditional leaders recognized by tradition. The government and other authorities in the situation of displacement and refuge appoint others. Institutional and structural rivalries between authorities that were previously created during the war could lead to paralysis of conflict resolution in a post-conflict period.

Thirdly, claim of rights is expected to be on the increase. The current war has made plenty of widows, orphans and other disadvantaged groups. Traditional leaders and local authorities infringe on the rights not only of women, but of other vulnerable groups such children and the youth. Further, exclusion and marginalization of institutions and groups of people based on the wartime grudges could lead to emergence of new forms of conflict.

Fourthly, there are limits in the implementation conflict resolution using traditional mechanisms of conflict resolution in Southern Sudan. One of the difficulties is the status of the rule of law. There is the grain of lawlessness in the post-CPA period of governance. Inter-community armed clashes are frequent in Southern Sudan after the signature of the CPA. Examples can be traced in inter-communal relationships in Western Equatoria, Lakes, Warrab, and Eastern Equatoria among others. In addition, mutual suspicion between IDPs, returnees and host community makes traditional institutions and mechanisms vulnerable to the changing nature of conflict.

3. Synthesis and Recommendations for Good Practices in Conflict Resolution

Traditional conflict resolution is still very relevant in Southern Sudan because there is a vacuum in the system of justice and the rule of law, especially in the rural areas. It is logical to maintain an existing system that has survived for centuries while building alternatives such as functional judiciary that would gradually address weaknesses in the traditional system. There is the need to establish, in the circumstances of institutional collapse of community-based conflict resolution during the war, a transitional criminal justice system with capacities to address post-conflict incompatibilities at all levels of the society in Southern Sudan. Conditions for the improvement of the traditional system of conflict resolution would depend on key factors:

Codification of customary law

Traditional conflict resolution mechanisms need to be re-examined and harmonized to conform to modern constitutional and administrative legal systems that recognize the rights enshrined in constitution of Southern Sudan and that of the 10 states. Post-conflict approaches to conflict resolution transcend the traditional approaches that disregarded key human rights in ethnic communities.

Linking traditional systems with “modern” system of local governance

This situation invites further dialogue with established local authorities and redefining the roles of civil society, community-based organisations (CBOs), traditional leaders and their institutions, but most importantly the establishment of confidence between the partners, institutions and stakeholders in conflict resolution.

Locations of conflict resolution activities are in towns, rural areas and in hinterlands where community conflicts are rampant; and in transitional areas where conflicts acquire inter-state or inter-county character. Conflict resolution initiatives should

involve a set of actions to re-establish social harmony and to promote peaceful co-existence such as:

- Organized kinship integration system to accommodate and reintegrate IDPs and returnees into host communities. This means the local government administration together with traditional leaders should mobilise local communities to set up mechanisms to receive, resettle and assist their kin to integrate into host communities within their territories.
- Increased access to resources of livelihood and regulated sharing mechanisms of such resources without gender segregation.
- Promote dialogue between IDPs, refugees and host communities on issues of resource sharing and participation of all communities in decisions about their livelihoods.
- Capacity building of extension workers, animal health workers and community leaders in methodologies and skills of conflict resolution and application to cattle owning communities.
- Consolidation of production capacities of host and returnee communities through quick impact micro-projects that would promote interactions and transactions between the returnees and host communities.
- Promotion of the rights-based approaches to rehabilitation, development and service delivery where tradition discriminates against sectors of the population.
- Promotion of sustained dialogue between local governance institutions and local community leaders, including traditional leaders and CBOs, to provide an opportunity for the elimination of some inefficient structures of the past and to adopt "modern" institutions and mechanisms of conflict resolution.