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**ADMINISTRATION OF JUSTICE IN THE (SPLA/M) LIBERATED AREAS:
COURT CASES IN WAR-TORN SOUTHERN SUDAN**

BY

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To the Memory of

Nyanbol and Achai-thiei
(my mother and my sister.)

RSP DOCUMENTATION
CENTRE

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INTRODUCTION:

This account is an exposition of the state of customary laws in the Dinka and Azande communities of southern Sudan. The case studies are set in the period of the civil war that broke out in 1983, and include cases of the SPLA (Sudan People's Liberation Movement) soldiers interacting with the local populations.

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 marginalization of the role of the customary laws in the face of the systematic Islamization of the state institutions and laws by the central governments.

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. Section (3) of the 1994 SPLA Penal Code provides that:

The provision of this law shall apply to all Sudanese and to any person or persons within the SPLM/SPLA controlled areas.

The provisions of this law Shall not prejudice the application of the existing customary laws and practices prevailing in each area.

Presiding as a judge 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 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 depend on memory to highlight some of the cases that may reflect the nature and the application of the

customary laws in that period.

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 study will also consider some of the cases settled in Western Equatorial Province as a comparative sample of the type of the case material that came before the court at that time.

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. 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 marriages and other social activities governed by the rules of customary laws.

CHAPTER ONE
THE JUDICIAL ADMINISTRATION

1.1. COURTS AND JUDGES IN SOUTH SUDAN BEFORE 1983 CIVIL WAR:

My career in law began in September 1982 when I was appointed as a judicial assistant to a Magistrate in the Judiciary of Sudan based in the capital city of Khartoum. Having undergone a six-month training period in Omdurman Courts, I was transferred to southern Sudan along with several other southern magistrates including Mr. Michael Manyon Anyang, Mr. Deng Arob Kuol, Mr. Paul Mayom Akec, and Mr. Jeremiah Swaka Moses.¹ We arrived in Juba in March 1983. As new magistrates, we were interviewed by Justice Wilson Aryamba, the most senior southern Judge. He was a member of the Supreme Court and head of the judicial administration in the South. Subsequent internal transfers took me to Wau, the provincial capital of Bahr Elghazal, and later to Rumbek in the Lakes Province which I reached in August 1983.

The judicial powers conferred on me while in Rumbek were of as a second class Magistrate and these were enough for me to run the District Court for a couple of months before Judge Aleu Akechak, the Resident Magistrate, and Judge Ayak Awan, the Province Judge, were stationed in Rumbek.

When Sharia (Islamic) Laws of 1983 -popularly known as September Laws-came into force in 1984 my judicial status required me to be the President of a bench of magistrates. The other two members of the bench, namely Mr. Abarhok Domkoc and Mr. Philip Pith Mongu,

¹All of us, except Mr. Moses, ended up joining the Sudan Peoples Liberation Movement (SPLM) from different places and under different circumstances.

were notable laymen from the same district with considerable experience in the local courts. According to the new laws, Judge Aleu became the District Judge for Rumbek and Judge Ayak continued to be the Province Judge of Lakes Province which includes the three districts of Yirol, Rumbek and Tonj. When I assumed judicial duties under the SPLA movement in 1985, I became the sole judge until late 1989 in the Lakes Province with its three vastly Dinka-populated districts.

The Dinka people, who largely adhere to traditional life with cattle as the mainstay of their economy, stand high among the litigious communities in Sudan. However, their court culture does not deal primarily with criminal suits and most of the case load is based on civil claims or torts rather than criminal actions. Court sessions are used for sharpening debate and advocacy skills on traditional issues. Courts in this case are platforms where experience and wisdom are exchanged between society members. Hence, everyone within the audience may contribute an opinion during hearings.

In the district of Rumbek, three judges were assisted by a Court of a Special Magistrate run by a retired senior police officer empowered to deal with criminal cases. The local courts, presided over by chiefs, were responsible for administering customary law and could impose fines and/or prison sentences to a certain degree. The categories of those Chiefs Courts included Regional Courts of senior chiefs and Branch Courts of lower ranking members. The establishment of a local court was based on population and land distance as determined by the judiciary in collaboration with local government authorities. The Province Judge had authority to recommend formation of special Chief Courts on an *ad hoc* basis to consider tribal disputes if necessary.

The districts of Tonj and Yirol were not as well-supplied as Rumbek in the level of judicial services. Despite the formation of a good number of Regional and Branch Courts in

the two districts, there was no single Judge in Yirol to supervise the administration and handle appeals against decisions of the local courts. My colleague Paul Mayom was the only judge in Tonj. The overall court structure of the Lakes Province was representative of the courts system in the rest of the southern provinces, with a fluctuation in the availability of trained judges. At the time, there were three Appeal Court Circuits for the Southern Region based in the towns of Juba, Malakal and Wau.

1.2. SOUTHERN COURTS UNDER THE CIVIL WAR AND ISLAMIC LAWS:

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. 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.

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.

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. 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.

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. 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.

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:

.. All Judges, ... have either been retired from service or transferred to Northern Sudan. Judges work mainly as magistrates for traffic offenses. ²

1.3. THE SPLA ADMINISTRATION OF JUSTICE:

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

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

²Sudan Democratic Gazette No. 78 November 1996 p.7; The Political Charter: Observation And A Commentary. By: Abel Alier.

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.

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.

The membership of the special court included Gabriel Anyar Maduat, a former local government administrator; Captain Aleu Ayeiny and First Lt. Enoch 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.

1.4. THE PENAL AND DISCIPLINARY LAWS OF SPLM 1984:

The customary laws continued to be the only laws in force in Bahr El Ghazal courts throughout 1985. The offenses 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. 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 offenses, was the final appeal court for the ordinary courts simultaneously.

1.5. THE INTRODUCTION OF NEW SPLA LAWS:

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.

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. 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.

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 offenses and procedures in the 1984 code prompted the introduction of new laws in 1994 in the SPLA controlled areas.

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:

- a. The Penal Code, 1994
- b. The Code of Criminal Procedure, 1994
- c. The Code of Civil Procedure, 1994.

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:

- a. The Court of Appeal.
- b. The High Courts of Justice.
- c. The Country Courts.
- d. Payam Courts.
- c. Village Courts.

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."

CHAPTER TWO

TRADITIONAL LEADERS AND THE WAR

2.1. THE SPIRITUAL LEADERS³:

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

³ Makec, John 'The Customary Law of the Dinka People of Sudan' AfroWorld Publishing Co. (London), 1988 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.

who prayed well into the night over the sacrificial bull they had brought. The theme of the prayers was a 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.

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. 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.

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.

As for the courts in these areas, in exceptional cases, spiritual leaders are called upon for swearing-in rituals before the decisions are reached.

2.2. THE ADMINISTRATIVE CHIEFS:

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.

A. IN PURSUIT OF JUSTICE

BACKGROUND:

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:

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. 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.

Soon after, Captain Thuc led his soldiers out of the area.

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.

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 abetment 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.

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.

B. THE MURDER OF A CHIEF ON DUTY

BACKGROUND:

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. 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.

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:

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.

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.

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.

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.

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:

1. The demotion of 1st. Lt. Wol Majak from his rank to private.
2. The dismissal of private Wol Majak from SPLM/A.
3. Wol Majak should suffer death by firing squad.

The death sentence was carried out as ordered at Akot village in September 1987.

C. THE CASE OF LIET-NHOM LEGAL AND ADMINISTRATION COMMITTEE

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. 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.

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.

D. THE CASE OF A SUB-CHIEF IN KONGOR AREA

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.

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. 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.

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.

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 guerilla 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.

E. SPIRITUAL LIFE AND THE HUMAN SACRIFICE

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.

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. 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.

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 colonized, 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.

It was against this background that one spiritual leader made a human sacrifice in Tonj district in 1989. MABIORDIT⁴ 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

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'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.

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.

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. 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.

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.

2.3. THE BURDEN AND THE SACRIFICE

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.

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.

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?

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. 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.

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.

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 . . .⁵

⁵Dr. John Garang de Mabior ' THIS CONVENTION IS SOVEREIGN'
Opening and Closing Speeches to the first SPLM/SPLA national Convention (April
2nd 1994) p.4

CHAPTER THREE

THE SETTLEMENT OF COMMUNAL FIGHTS AND OTHER SOCIAL DISPUTES

3.1. INTRA-TRIBAL SETTLEMENTS:

While the special court started to settle the tribal fights in Tonj in 1985, it also considered individual cases as a court of first instance and examined appeals against the decisions of the regional courts and Legal Affairs Committees. I did not abandon the consideration of the cases in the panel of the special court until 1986 when I was reappointed by the order of the Chairman of the SPLA. I was made the judicial officer attached to the Shark Battalion, which had assumed the administration as well as the military operations in the Lakes Province. The special court was dissolved, and I continued to participate as secretary or chairman in the *ad hoc* general court martial or sit singularly in the capacity of the judicial officer. The latter's court is similar to the court of the district judge in the administration distributing the cases to the various courts and having jurisdiction on civil and criminal cases at first instance or appellate level.

The court was mobile, and we used to make trips on foot with litigants to solve their cases whenever the opportunity presented itself. I moved repeatedly across many villages and cattle camps in the three districts of Tonj, Rumbek and Yirol that constitute Lakes Province. I also used the liberated town of Yirol as the seat of the court several times during my service between 1986 and 1989.

THE LOCAL PEACE CONFERENCES:

DONG

The special court held the first local conference at Dong village in Tonj District in May 1985. The conference was intended to reconcile the Dinka sections of Awan-parek of Chief Philip Bol Parek and Lon-Pahr of Chief Wol Lual. The two sections, which share a common border, had clashed a few months earlier consequent to individual fights that occurred between their youths. The series of wider clashes that followed left a number of dead and injured from both sides. These two communities, that have intermarried extensively and shared several cattle camps, were interested in a quick settlement and the restoration of free movement in their areas especially for the youth that need to move widely with the cattle.

Thus, the two senior chiefs, with the assistance of Chiefs Joseph Maduot and Mario Malok, were keen to enhance the execution of the court orders in regard to compensation for the death and injuries caused. The fines in cattle imposed on the convicts were met in a relatively short time.

KUEC-THIIK

The conference at Kuec-thiik village in Tonj District was convened in June 1985. It involved the Dinka sections of Lon-pahr of Chief Wol Lual and Apuk-paduoc of Chief Kuol Yak. The two sections have common borders and the youth clashes also led to the sectional confrontation. The court implemented the compensations for the dead and the injured and fined the culprits accordingly. In December, the special court had to return again to resolve the renewed fighting between the same sections that erupted in November 1985. Having imposed the compensations and fines on the convicts, the court fined the chiefs of both sections for dereliction of the duty to discourage such fighting.

WANTH-ALEL

This conference, which was held in September 1985, was for the resolution of the fight that involved Thuony of Chief Cinyuoc Buongnyang on one side and the sections of Yar and Juwiir on the other. The conference was welcomed by both sides and the court orders were promptly met. It served the interest of both parties that live closely to each other in the same Tonj District to have a peaceful relationship. During the subsequent years, the SPLA administration widened to cover many of those rural areas in which the sectional fights used to happen. That development prevented further tribal fighting and none was reported in the district until I left the Lakes Province in 1989.

AKOT

The conference at Akot Village in Rumbek District was held in September 1987. It dealt with a fight that happened some years earlier between the Dinka sections of the Apak of Yirol District and Agar of Rumbek District. By the time the conference was held, the peace had already been realised by the efforts of the chiefs, and a previous special court that attempted to consider the claims in 1985 but could not take its task to the required conclusion. The teams of the chiefs that pressed for a final settlement of the claims were led by Chief Majok Derder from the side of Agar section and Chief Stephen Thiongkol from Apak section. The claims were largely for compensations for the injured and the dead, because of cattle raids and looting of property which are contrary to rules of conduct of such sectional fighting. The court settled the claims in the beginning of 1988 at Lake Nyibuor where many people from the two sections keep their cattle during the dry season.

3.2. INTER-TRIBAL SETTLEMENT:

The tribal borders between the Nuer section of Bantiu District and the Dinka section

of Tonj District were volatile shortly before the SPLA assumed control of the area. The two districts fall within Western Upper Nile and Lakes Provinces respectively. The period between the government's failure to provide security in the area and the readiness of the SPLA to fill the gap, bred intensified cattle raids and tribal fights. The last border conference was organized in the border village of Ganyliel in 1981 before the inception of the SPLA. However, that could not prevent the eruption of cattle rustling or fights in the long troubled borders once the government's control had weakened.

In 1985, at the institution of our special court in Tonj District, Lt.Col. Martin Makur Aleyou informed us of the series of wireless contacts he had made with Lt. Col. Paul Dor Lampur, the SPLA commander for Western Upper Nile. The communication was intended to bring peace to the tribal populations and arrange for a border conference to resolve the claims that had arisen during the few years of hostility. The border cattle raids and fights came to an abrupt end with the establishment of the SPLA authority in Bantiu and Tonj under the aforementioned commanders. However, the reconciliation and remedy of the consequences of those raids were only reached in 1987, after Lt.Col. Bona Bang Dhol and Dr. Riek Macar Teny had become the commanders of Lakes and Western Upper Nile Provinces respectively.

MAL VILLAGE CONFERENCE

Following the arrangement of the two commanders, I went to meet with Judge Telar Deng, the judicial officer in Western Upper Nile, at Paliang village in Tonj District. We then proceeded to the border village of Mal, in his area, where we convened a special court in January 1987 to settle the claims and counter claims of cattle robbery, bodily injuries and deaths ensued in the feuds between Luanyjang-Dinka of Tonj District and a number of Nuer sections of Bantiu District.

The court, which was presided over by Judge Telar Deng, comprised members from

the two districts. I acted as the court secretary. All of the twelve chiefs of Luanyjang and the chiefs of the Nuer sections involved in the case had to attend the court hearings and decision. They were also actively involved in the execution proceedings which amounted to exchanging thousands of heads of cattle in restitution and compensation. The court proceedings that extended for the period of six months were resented by certain parties which benefited from the breakdown of security. However, the chiefs and the majority of the population of both sides were in favour of the reconciliation achieved through the court. The two neighbouring communities needed each other for adequate seasonal water and pasture for the herds, and for seeking food stuff from any of the areas at times of shortage or crop failure. The intermarriages, friendships, and acquaintances across the two communities also begged for peaceful coexistence.

Although the court insisted on the restoration of the exact number of the robbed cattle, it was impossible to trace this exactly and to provide for the offspring. The court also fixed the compensation for the dead at fifteen heads of cattle for reasons of expediency, as the number of dead people was large, and the ultimate objective was the reconciliation rather than the redress of every single damage. That decision seemed to 'go down well' with the parties. The blood cattle are thirty in Lakes Province and fifty or more in Western Upper Nile, and the adoption of either figure would have rendered the execution the judgement impracticable. The special court executed its decision with the close support of the SPLA commanders in the two areas, and the population on both sides was soon able to enjoy the benefits of peaceful coexistence and mutual cooperation.

3.3. OTHER SOCIAL DISPUTES:

The institution of marriage among the local communities is one of the social aspects that

have been influenced by the war situation. The SPLA army, which has so far intermingled with the local populations, is an expression of the different cultures to which the soldiers belong. Their varied backgrounds have certainly eased the attitude towards the intermarriages especially in the local communities of southern Sudan, the Nuba mountains, and the Ingessena Hills. Yet, this rapid evolution has not entirely wiped out some conservative views in relation to the price of marriage and the suitability of the candidates. For instance, in 1986, when a young officer proposed to marry a girl from his community in Yirol, he was rejected by the family on the grounds that the life of a soldier is too risky for their daughter and themselves to entertain. In another case around the same time, a soldier from the Dinka Community of Tonj District eloped with a girl from the Wira, a farmers' community in Mundri District. The court, which considered the case in Yirol, decided to send back the girl to her relatives on grounds of failure of marriage before the court. It ordered the soldier to give a heifer to the relatives of the girl as compensation for not belonging to the same Dinka communities. Further illustrations are found in the following cases:

ADUT-DIT

Adut-dit was an old woman from the area of Chief Gum Mading in Tonj District. She was rich with cattle and decided to marry off a girl by the name of Achol to bear children in the name of her deceased husband. Adut-dit had born girls but not a single son with her deceased husband. She therefore thought that a young bride might realise what her own marriage could not achieve.

When the marriage was concluded, Adut-dit invited Deng, a male relative, to share the bed with Achol for the intended children. Deng, who was a former government soldier, joined the SPLA and decided to carry along with him the young wife Achol and the baby son to which she had given birth. Adut-dit notified both Deng and Achol that she would not accept the

movement of Achol and the child to the SPLA camps, and that Achol owed her some domestic services that would be jeopardised by her absence from the household. The couple emphasised to Adut-dit that they were in love, and if she could not understand their movement together, then Deng would pay her back the number of cattle she gave in bride wealth to Achol and the couple would have their independent marriage.

Adut-dit subsequently instituted a suit before the special court in September 1985 to divorce Achol, and recover the cattle and the baby son who was at the weaning age. The court found that the grounds on which the divorce was invoked were customarily admissible. Deng had no authority on Achol, save sharing the bed with her. The decision of the couple to desert Adut-dit's household without her consent, and the movement of the couple at will, exposed the marriage to dissolution by Adut-dit. On the insistence of Achol not to return to Adut-dit's household, the court ordered the divorce. Adut-dit was entitled to the cattle and the baby son on payment of the child's cattle to Achol's relatives.

WAL

Wal was an SPLA officer stationed in 1992 at Nzara town in Western Equatorial Province. During his stay in Nzara, he befriended a girl who was engaged to a civilian that worked in a garage in the nearby Yambio town. The distance between the two towns is about twelve miles and the civilian used to visit the girl in Nzara. When the girl became pregnant she told her relatives that she had conceived through the SPLA officer, Wal. The officer was transferred to the war front before he could get into any marriage negotiations with the relatives of the girl. Some weeks later, he was reported killed in the battle between the SPLA and government army at Buo bridge on the borders between Western Equatorial and Western Bahr el Ghazal Provinces. The relatives of Wal then approached the girl and her relatives to consider the future of the, hitherto, unborn baby. The girl declared that she was conceived by

the civilian, and not by Wal as she earlier represented. The relatives instituted the claim for the child before the judicial officer in Yambio. The girl insisted before the court that she was conceived by the civilian engaged to her. The court adjourned its decision until the child was born and the mother could then emphasize her testimony on oath.

When the parties appeared before the court a few months later, the child's mother persisted on her first statement. She testified on oath that the child belonged to the civilian and not the deceased SPLA officer. The court endorsed her statement and ordered that the civilian was the legal father to the child.

AROB LUAL

Arob Lual, a Dinka of Chief Wol Lual of Tonj District, married a girl from the Nuer tribe of Bantiu district. He paid the necessary bride cattle and took his wife in return. The couple lived in Tonj District where Arob had his other wives. The couple quarrelled some years later after they had two daughters. Consequently, the wife collected the two young daughters and went with them to her relatives in Bantiu District. She did not return, and Arob neither asked for nor followed her and the children. The first daughter became of age and was married to an SPLA officer in 1985. The officer, in line with tradition, sent a message to Arob notifying him of the marriage. Arob went to Bantiu district to collect the bride cattle from the officer. In the process, he found out that his wife had borne two other daughters with another man. Arob instituted court proceedings before the judicial officer, Telar Deng, in order to recover:

- a.- Compensation cattle from the second man for adultery.
- b.- His wife and her second daughter.
- c.- The two younger daughters who were about 12 and 9 years of age which his wife bore with the defendant.

There was no dispute on the validity of the marriage, and Arob's entitlement for his first and

second daughters. The issue was then based on the third and fourth daughters who had never seen Arob before the court proceedings.

The court argued that, since the mother's bride cattle were never recovered by Arob, the latter was the legal husband and father of any child born before the marriage tie was revoked. The defendant, from whom the relatives of the woman did not collect any cattle, was convicted of adultery. However, the court relinquished the compensation for Arob due to the trouble the adulterer undertook in bringing up the children for over ten years. The case was settled in 1987 when I was attending the border conference at Mal. As the plaintiff was from Lakes province, he joined our team with his wife and daughters after the court proceedings. The woman and her daughters were distraught by the order of their transfer from the Nuer community, to that of the Dinka which was completely strange to the three girls. The court decision nevertheless prevailed.

MAKER

Maker and Bap were young men of about 25 and 23 years of age. The two were citizens of Luanyjang-Dinka of Chief Aguer Adel in the Tonj District. Maker married the sister of Bap and gave enough bride cattle which were shared by the relatives of Bap. After the marriage, Maker and his pregnant young wife moved to the cattle camps at the borders with the Nuer tribe of Bantiu District. One night, the Nuer tribesmen attacked the cattle camps where Maker stayed with his wife. Maker's cattle were robbed and his pregnant wife were among the people that were left dead in the attack. The incident which took place in 1984, was one of a series of incidents that were to be considered later in 1987 by the Mal Tribal Conference. In 1985 Maker sought recovery of his bride cattle from Bap and his relatives. He did not succeed because customarily the blood cattle of a murdered wife are supposed to be sought before the husband recovers the bride cattle. When he failed before the chief court he appealed to the

special court, but the custom was asserted. The court also informed Maker of the prospect of a peace conference where the compensation for the murder of his wife could be resolved.

Maker and Bap made their trip together from their area in Tonj District to site of the special court, at the time, in Rumbek District. They also travelled back together after they had been to Rumbek town that was captured briefly by the SPLA in March 1986. However, when the two were close to their home area, Maker stabbed Bap to death, while the latter was asleep during the night. Maker then ran stealthily to the byre of their spiritual and Paramount Chief Aguer Adel. He entered the byre and remained there to escape the vengeance of the relatives of the deceased. The community strongly believes in the protective power of the chief's byre, and Maker was only brought out and put under arrest by the SPLA several months after the incident.

Maker was then tried at Mal before a general court martial that sentenced him to death for the murder at the same time the conference was in motion to resolve the border clashes in 1987. He was executed at the same place as the peace conference. The blood cattle of Maker's wife were later delivered to the paternal relatives of Maker's wife on condition that the bride cattle should be given back to the relatives of Maker.

3.4. THE SPLA AND THE LOCAL POPULATION:

The relationship between the SPLA soldiers and the civilian population in the areas I have served may generally be described as peaceful. However, there has been some open hostility, though usually limited in time and scope, in some areas where the populations were insufficiently convinced concerning the role of the SPLA in other localities. The association of the soldiers with their distinct training backgrounds, unique field experience, and guerrilla-like tactics expose some contradictions, especially in individual relationships, between the

soldiers and civilians. The latter are accustomed to their own traditional ways of living. The commanding officers and administrators in SPLA areas are expected to balance civilian interests with their military objectives in the exercise of their duties. At times, these interests are in conflict with one another. The struggle to meet the pressing needs of the war and the necessity to preserve the public order among the civilians inevitably leads to mistakes. Some are committed by unscrupulous individuals. The following, drawn from such experiences, illustrate some of the problems that occurred in the interaction between members of the SPLA and the local citizens.

CHIEF MARIAL CILIEP

In March 1995, Lt. Col. Martin Makur Aleyou, the commander of SPLA Rhino battalion, camped with his troops at "Kuowic" village in the in Rumbek District. That area was shared by the Dinka sections of Panyar of Chief Marial Ciliep and Waat of Chief Majuec Rilpuou. The troops had walked long distances to reach the place. They were exhausted and hungry. The commander appointed a messenger to inform Chief Marial Ciliep, who was in the vicinity, to provide some bulls as rations for the troops. The messenger was sent at about 4:00 p.m. and the distance to the chief's cattle camp was about one hour's walk.

At midnight, the chief came empty-handed and reported to the commander that the time was not enough for him. He needed further time to convince his people to contribute the animals. He added that he would finalise the matter and provide the required number in the morning. The chiefs and their communities have internal rules to which they have agreed to supply the SPLA with provisions in lieu of the taxes that they used to collect for the local government authorities. The commander was infuriated as the troops had been patiently waiting for their food having expected that the bulls would be brought from the nearby cattle camps. The commander ordered the chief to be punished with twenty lashes for failure to

provide the bulls. The chief was stunned and could not say a word after he heard the pronouncement. I was in the company of the commander and heard the order against the chief whom I knew while I was serving in Rumbek town. When some soldiers went out to fetch the canes, I approached the commander and asked him if he could pardon the chief, on condition that he would provide the bulls in the same night. The commander, with amazing promptness, called off his order and allowed me to emphasize to the chief the need for him to get the bulls within the same night. The chief complied.

The commander was an experienced army officer and a former local government administrator. His background should have informed him to know what it would mean to flog a chief. He was also aware of the negative impact and the strain the act could have on the relationship between the SPLA and the people in the locality. But, clearly he was under pressure as well, because some of the troops would not tolerate the conditions they were enduring without getting food. Discipline disintegrates if the commander does not show strictness and dedication to the soldiers' welfare.

CHIEF GUM MADING

Our special court was convened at "Wunlit" village in the area of chief Gum Mating when the following incident occurred. Captain Thuc Majok was the officer in charge of the SPLA troops in the Tonj District. Although "Wunlit" village is in the same district, the captain was in a base located closer to Tonj town and was about seventy miles away from the village. Captain Thuc had earlier been to Wunlit village, in which his forces shot dead a citizen on the charge of spying for the enemy. The incident generated consternation and dismay in the locality. As we were still in the village, a squad of SPLA soldiers came to arrest Chief Gum Mading. The sergeant leading the squad showed me the written orders of Captain Thuc for the arrest. There was an indication in the written orders that the chief would have to answer

for being in Wau town, an enemy garrison, before the SPLA came to his area and the Tonj District. This implied the charge of spying, regardless of the fact that some citizens continued to visit the town unhindered.

Apprehension spread through out the community. The peaceful atmosphere in which the court operated was evidently disturbed. There was no way for the court to stop the arrest because it was within the powers of the commander of the district to effect such arrest on security grounds. He had the discretion to refer the case to the court for trial if he deemed appropriate. However, we felt in that particular instance that the chief's rights might be infringed if the court did not take quick action. After consultation with the court members, I decided to immediately make a trip to the base of Captain Pagan Amum in Rumbek District. The two captains were under the same command, but Pagan was senior to Thuc in their military ranking. Besides, we counted on Pagan's position as the senior political commissar for the forces that were in Bahr Elghazal region at that time. Captain Pagan would have leverage in this matter and might be more sensitive to the mood of the public on the question of such arrests. In the morning in which the chief was taken away from the village, I left with one body guard in the direction of captain Pagan Amum. I had planned to reach his base on the third day or so. However, I met with him that same evening, in the middle of the forest. He was travelling with a group of soldiers in the opposite direction, for political meetings with the civilian populations in Tonj District. It was a coincidence that saved me from a long journey and served the purpose of the mission.

We went to the village together in the second day. Captain Pagan listened to some notables in the area and was able to gauge the attitude of the public on the chief's arrest. He subsequently despatched his messenger to Captain Thuc and the chief returned, free and safe, to the village a few days later.

BOL

Sometimes the local citizens offer to help the trekking SPLA soldiers with their loads or personal effects. The citizens walk for brief distances and return. The practice is so common in some areas that some soldiers began to think it was a norm and their right. In 1986, a soldier by the name of Bol, tried to force a citizen to take some of his luggage to a certain distance. The soldier went to talk to some other people, and the citizen decided to march away. When he returned, he found that the citizen was already far from the luggage. The soldier called for the citizen to stop but the latter started to run away. The soldier loaded his rifle and fired a shot at the citizen. The man was hit by the gunshot and he fell dead on spot.

The soldier was arrested and presented before the general court martial in Yirol town in 1986. He stood trial on the charge of murder. The Court found him guilty of murder. He was sentenced under section (55) of the penal and disciplinary laws of the SPLM in 1984. However, the soldier did not know his age, and it appeared to the court that he could be below 18 years of age. The same laws preclude the application of death sentence to persons under that age. He was, therefore, ordered to pay 30 head of cattle in blood compensation to the relatives of the deceased. He was also fined by the court.

In another incident in the same district, a soldier forced a sick man to carry a heavy load for a couple of days. He threatened to beat the man if he insisted on feigning illness. The civilian man, who had a chest disease, grew worse and began vomiting blood on return to his home. His relatives reported the incident to the chief. The man, who was being treated locally, died on the day following his return due to the absence of health facilities. His relatives sued the soldier for having caused the deceased's death. The soldier confessed that the deceased complained to him, but he did not know that he was so seriously sick. He was not on duty at the time and was taking some food stuff home. Upon examination of the witnesses, the court

established that the acute chest illness was genuine and the load was too heavy for the deceased to carry for days. The accused soldier was held to have caused the death of the deceased. The court passed that he should pay 30 head of cattle to the relatives of the deceased in compensation. He was also fined in kind by the court.

3.5. CASES INVOLVING NGOs' EXPATRIATE AGENTS:

Western Equatorial Province was liberated by the SPLA in 1990. In early 1991, several NGOs started to engage in delivering emergency relief supplies, especially to the internally displaced that flocked to the province from parts of Upper Nile and Bahr Elghazal regions. Some of the NGOs established their residential compounds and stores in the towns of Yambri, Nzara, Tamburu, Maridi and Mundri. Expatriate agents were accommodated in those compounds with attached local staff to assist in domestic services and keep security against intruders.

The relationship between the NGOs and the local SPLA administrations is regulated and supervised by the Sudan Relief and Rehabilitation Association (SRRA), the humanitarian wing of the liberation movement. The SPLA administrations are bound by the ground rules that have been endorsed by the representative NGOs and SRRA with regard to matters that concern the NGOs field operations.

Administrative disputes are normally referred to the SRRA headquarters for resolution. However, I encountered a few instances where the involvement of the court became imperative in resolving issues that included the expatriate agents on the one hand, and local citizens on the other. Despite the sensitivity of the NGOs to have their agents entangled in local courts proceedings, the following cases may illustrate the possibility of having individual problems resolved without necessarily affecting the course of official duties of the agent or the

organisation.

THE CASE OF MSF-FRANCE IN YAMBIO

The organization of MSF-France was running the emergency health relief services in Yambio town. In 1993, the logistics officer, who was an expatriate agent, invoked a situation that gave rise to a court case. A number of pornographic pictures came into the hands of the SPLA security officers. The pictures depicted the MSF agent and two local girls nude in several obscene postures. The officers lodged a criminal case against the expatriate in the police station for the possession of obscene documents. The girls were charged with the abetment of the offence. The two girls (aged between 20 and 25), were arrested and investigated by the police. The investigator sought the statement of the agent on the matter through the MSF field manager's office in Yambio. The police report was brought to the court for cognisance with the information that MSF was concerned for the personal security of their agent and was considering his immediate departure to Nairobi, Kenya. I issued a summons to the MSF manager in order to brief him on the court proceedings in case the accused agent left Yambio before the conclusion of the court proceedings. The manager came to the court and did not contest the charge against his officer. Despite the fact that he was restless about the manner in which the pictures were picked up from the agent's room, the manager undertook to meet any legal liability that may arise. The manager made it clear that he was determined to take administrative measures against one of the local staff whom they suspected to have picked up the pictures while cleaning the accused agent's room. That was not an issue for the court to respond to, because the (SRRA) was the office that catered for the welfare of local staff employed by the NGOs.

On the day the girls and their relatives appeared before the court, the expatriate agent had already left Yambio. The relatives of the two unmarried girls, upon learning of the

pictures, raised a charge of fornication against the accused. Their case was attached to the principal one. The second charge involved customary claims for damages. Every male who takes an unmarried girl to bed risks the charge of fornication against himself. The charge is traditionally called "Kasirbet" which literally means house breaking or house trespass. Such unmarried girls are presumed to be part of the house-hold that nobody should breach before some conventional requirements are met. The consent of the girl to relationship does not absolve the man from liability.

The girls admitted to having had a sexual relationship with the agent on several occasions. They added that the agent asked them to take the pictures alternatively. The agent kept all the copies of the instant pictures. The agent did contest the charges in his statement and the court found the three accused guilty of the charges upon confession. The court ruled as follows:

- The agent was to pay "Kasirbet" compensation the relatives of the girls.
- The two girls were sentenced to three weeks' imprisonment for the abetment of the offence.
- The court ordered the pictures to be destroyed.

NOTE: The total of the compensation and the fine paid by the expatriate agent amounted to about 600 US dollars.

The MSF office in Yambio met the order on the agent's behalf.

CASE OF THE AGENT OF CARE INTERNATIONAL

In 1994, I went to Tambura town to consider a case instituted against an expatriate agent of the organization of CARE International which operated there. I was in Yambio when the case arose and was investigated in Tambura. When the report went to the main office, the organisation sent some of its officers from Nairobi to meet the SPLA administrators in Yambio. These officers were to proceed on the same day to Tambura in order to withdraw the

accused agent from that station. The arrangement was made so that I could also board the plane with the officers at Yambio to spend a few hours in Tambura settling the case. I was to alight in Yambio later before the plane proceeded to Kenya with the CARE officers including the agent.

There were two male complainants against the accused agent when the court was convened in Tambura. The accused agent was present. One of the complainants contended that the agent had committed adultery with his wife. The other complainant said the accused had committed fornication with a girl relative. The wife and the girl were also in the court. Both complainants charged the accused agent with "Kasirbet" compensation which is normally demanded in the case of the married or unmarried female with variation in value. The response of the agent was the denial of the two claims. However, the two females admitted having the relationship with the agent at different occasions. Both females were Christians and they had to confirm their testimonies under oath. Their testimony in that order, according to the customary laws, was sufficient to hold the accused liable for the charges despite his denial. The time span could not allow for the hearing, the preparation of the court findings, and the declaration of the decision. The organisation's officers understood that they would comply with the court ruling in absence of the agent. I returned to Yambio where I prepared the court decision and communicated it to the parties through the SPLA administration and the NGO's CARE office.

The expatriate agent was found guilty of both counts of adultery and fornication on the evidence of the female parties. The court ordered him to pay "Kasirbet" compensation to the two complainants. He was also to pay a fine. The total amount he paid was about 500 US dollars. The two females were ordered to pay nominal fines.

It is worth mentioning that neither of the two cases affected the operation of either

organization in the two areas. Any person familiar with the traditional life in the area could not conceive of any hostility against the accused agents after they met their liabilities towards the relatives of the women. Some of the relatives of the unmarried girls would even have had a positive attitude in favour of the agents if any of the agents pursued a declared and open relationship subsequent to the court settlement.

TRAFFIC ACCIDENT

The organization of CARE International established offices and residence compound in Yambio town in 1993. It had some of the stores in the neighbouring Nzara town. The staff used to communicate frequently between the two towns in the course of the duties. The local people held weekly market gatherings at different locations along the main road between the two towns. The road was usually crowded with people when the market was on.

On the day of the traffic accident, a certain expatriate agent by the name of Solomon was driving his Toyota car from Nzara to Yambio. He approached a curve on the road at a busy market point. The grass and wood were high and thick on the sides of the narrow road. Mr Solomon was just driving through the curve when he ran over a cyclist that was riding from the opposite direction. The cyclist jumped off the bicycle to one side of the road at the point of the collision. However, his bicycle was damaged, and the radio in the bicycle's carrier was smashed. The cyclist escaped injury to his body.

Mr Solomon insisted on taking the cyclist to the hospital after they had seen the police in Yambio town. The police investigated the accident and assessed the degree of damage to the personal property of the cyclist.

The case was presented before the court. Mr Solomon contended that the cyclist was on the wrong side of the road at the time of the accident and that the bend was so sharp that he could not avoid the collision. The cyclist stated that the market point was so noisy that he

could not hear the sound of the approaching car engine. He added that Mr Solomon did not slow down enough or blow the horn to alert him.

In absence of written traffic laws in the liberated areas, the court considered the claim against Mr Solomon along the customary procedures of a tort suit. The court established on the evidence of the police and the witnesses who corroborated the cyclist's testimony, that Mr Solomon was negligent at the time when his car approached the curve. In addition to the unreasonable speed, he did not blow the horn despite the visible presence of the crowd of people.

- The court ordered Mr Solomon to pay compensation to the cyclist for the damaged bicycle and radio.
- A fine was also imposed on Mr Solomon.

He satisfied the court orders and continued to carry on with his work in the area normally.

THE CASE OF GUNTER

This case did not reach the court, despite the fact that the expatriate agent by the name of Gunter was put in police confinement for a few days. Mr. Gunter was working for a Nairobi based humanitarian organization.

The agent drove into Yambio town through Uganda without Sudanese permit papers. At the time of his arrival, the senior SPLA administrators of Yambio and myself were away from the town. We had gone to Tambura town on duty for one week. The distance between the two towns is over a hundred miles. The agent who arrived to Yambio one day after our departure worked for an NGO that had no operational commitments in Western Equatorial province. He had already covered over two hundred miles and passed through several towns in the Sudanese territory before he came to Yambio. When he reported himself to the local SRRA office, he failed to produce the necessary permit that the SRRA offices in Kenya and

Uganda issue for the entry of the NGO agents into the SPLA controlled areas. The SRRA officer reported the matter to the police while he continued to communicate the information by wireless to the administrators that were on a visit to Tambura.

The administrators instructed their juniors in Yambio that the agent should be confined to the guest house in Yambio and not be allowed to mix with anybody including the other NGO agents resident in the town. His car was to be attached to the police station awaiting the clearance of the matter by the SRRA office in Nairobi.

The response of the SRRA office in Nairobi took about three days before the decision came that Mr. Gunter should drive back immediately without being allowed to doing whatever he purported to do in his mission.

CONCLUSION:

The administration of Justice in the SPLA liberated areas is implemented within the realities and constraints of a liberation movement. The serious shortage of trained legal staff and the scarcity of the courts' supporting material are exacerbated by the limits of areas controlled by the movement and the large populations that require judicial services. The range of responsibilities that the chiefs have assumed has increased as a consequence of the war. The presence of the SPLA soldiers and their interactions with the populations in rural areas have increased social problems requiring intervention. The chiefs are faced with the task of balancing the interests of their people and the problems created by the liberation army. This unusual situation also involves SPLA civil administrators and its judicial officers who attempt to keep public order and create the grounds for the administration of justice. The impact of the long civil war on the lives of the societies in southern Sudan, however, remains a process characterised by the movement of the populations, and changes in customs and social practices.