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The Center collaborates with other partners such as Japan, the United Kingdom, Germany, Canada, and the United States of America.

About the Paper

This paper presents the challenges of state and nation building in South Sudan. South Sudan is in a unique position where two major national re-(construction) processes takes place simultaneously. The current best practices of state and nation-building point to a participatory approach where the government and communities collaborate fully in charting a course for the new nation. This paper examines the state and nation-building processes in South Sudan with a view to assessing their successes and challenges within the context of national construction/reconstruction and development.

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State and Nation Building in South Sudan after the Comprehensive Peace Agreement

Joseph Kioi Mbugua

Enhancing Capacity for Peace & Security through Peace Operations Training

State and Nation Building in South Sudan after the Comprehensive Peace Agreement

Joseph Kioi Mbugua

Editorial Advisory Board

Editor

Foreword

This publication is one of IPSTC's contributions to understanding the conflict situation in South Sudan. The role of the International Peace Support Training Center (IPSTC) as a regional center of excellence is to contribute to the preparedness of the Eastern Africa region in addressing peace and security challenges. This demanding and extensive task comprises two essential aspects; namely the ability to raise awareness about problems that may affect the region, and the identification of possible ways to address them.

The complex conflict situation in the Great Lakes region and the Horn of Africa calls for knowledge based policy making on pertinent issues of peace and security. Specifically the post conflict situation in South Sudan calls for profound research and analysis of the current conflict dynamics. Given the fragility of the new nation and the immense challenges of providing security and basic services to the entire country and initiating development amidst scarce resources; South Sudan requires reliable knowledge of conflict prevention, management and resolution.

State and Nation Building in South Sudan after the Comprehensive Peace Agreement; presents the challenges of state and nation building in South Sudan. South Sudan is in a unique position where two major national re-(construction) processes takes place simultaneously. The challenge of finding space for traditional structures of governance in the new dispensation is also discussed in this paper.

The International Peace Support Training Center has made considerable contribution in research and training on peace support issues in the Great Lakes region and the Horn of Africa. The research products inform the design of our training modules.

I would like to thank the Government of Japan and the United Nations Development Programme (UNDP) for supporting the research and publication of this booklet.

IPSTC will continue to collaborate with development partners to publish high quality research products on topical issues of peace and security in the region.

Brigadier R. G. Kabage

Director

IPSTC

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Introduction

The signing of the Comprehensive Peace Agreement (CPA) in Nairobi in 2005 not only ended the long war with the North but also ushered in a new era of hope for reconstruction and development in South Sudan. There are a number of state and nation-building processes that are on-going such as the making of a new constitution, establishment of institutions, recreating civil society, disarmament and demobilization, redefining the role of the military and police service, providing transitional justice and reconciliation, addressing the needs of the vulnerable sectors and groups, and reintegrating internally and externally displaced populations. The current best practices of state and nation-building point to a participatory approach where the government and communities collaborate fully in charting a course for the new nation. This paper examines the state and nation-building processes in South Sudan with a view to assessing their successes and challenges within the context of national construction/reconstruction and development. The paper comprises 4 sections. Section 1 presents the introduction where the research problem is stated and purpose of the study explained. Section 2 presents the theoretical framework where state and nation building are defined and explained. Section 3 outlines the effects of state and nation building on the traditional structures. It also analyzes the role of local governments; civil society; and impediments to state and nation building in South Sudan. Section 4 presents the conclusion.

1.1   Statement of the Problem

South Sudan faces the double challenge of simultaneously building a viable state and cohesive nation, especially after the signing of the CPA in Nairobi in 2005. However, seven years down the line, state and nation-building processes continue to be plagued by a myriad of barriers. As in most African countries, South Sudan is made up of a mosaic of ethnic groups and nationalities, and the idea of bringing these diverse peoples to think and act towards the same horizon within a single national framework is a formidable challenge in itself. At the same time, institutions have to be designed to take into account this diversity and to provide a framework for solving inter-communal conflicts that plagued South Sudanese unity during the war against the North. In South Sudan, state and nation-building are interrelated processes that have to be addressed in juxtaposition. During the war, as the authorities in Khartoum failed to the reach rural areas, and as communities were often engaged in fratricidal conflicts, the role of the traditional

governance mechanisms became predominant. Yet, adoption of externally driven development paradigms is often not questioned in post-conflict countries that are in dire need of humanitarian and development services. Local administration and legal systems are ignored and mostly not utilized to handle reconstruction and development challenges.[1] Today, with the installation of new governance mechanisms and the influence of new thinking from outside the country, through the presence of foreign-educated South Sudanese elites, the traditional governance systems that prevailed at the local level appear to be fading and giving way new Western-derived forms of governance. This brings about the risk of national disintegration in post-conflict societies as the conflict- generating factors continue to stalk state and nation-building processes. There are heavy demands on the new government to deliver social services and reintegrate communities in a short period but the nascent state lacks adequate capacity and resources.

1.2   Research Questions

The study, from which this paper emanates, was driven by the following two research questions:

(i)   Why do the processes of state and nation-building in South Sudan remain elusive seven years after the signing of the Comprehensive Peace Agreement (CPA) in Nairobi in 2005?

(ii)   Why have the strategies employed by the GOSS and its partners in these processes remained ineffectual?

1.3   Objectives of the Study

(i) To investigate why the processes of state and nation-building in South Sudan continue to remain elusive seven years after the signing of the Comprehensive Peace Agreement (CPA) in Nairobi in 2005?

(ii) To assess the effectiveness of strategies employed by the GOSS and its partners in these processes.

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[1]Danne, A. P., *Customary and Indigenous Law in Transitional Post- conflict States: A South Sudan Case Study*, p. 1.

1.4 Scope of the Study

This study examines how inter-communal relationships (and conflicts) affect the state and nation-building processes. It examines the impact of state-building on traditional governance structures and hence the ability of South Sudan to manage inter-communal conflicts. For instance, until now, the problem of pastoralist migration in Sudan was managed by traditional structures that defined the routes. However, the introduction of state structures derived from Western models seems to be affecting the legitimacy and effectiveness of these traditional governance mechanisms.

2 Theoretical Framework

2.1 State and Nation-building

The origins of the modern state may be traced to the ancient Greek *polis* or nation-state (Vincent, 1987). Plato, Aristotle, Machiavelli eulogized the state due to its ability to meet most of the needs of the citizens especially the ability to practice politics. Hobbes, Locke and Rousseau gave it a new dimension when they emphasized the need for the citizens to enter into a social contract whereby they would willingly surrender the power to rule themselves to a governing authority in the name of government. The state comprises five main ingredients: a population of citizens, geographical territory, government, sovereignty, resources and symbols. State-building therefore refers to purposive action to develop the capacity, institutions and legitimacy *"of the state in relation to an effective political process for negotiating the mutual demands between the state and societal groups".[2]* In other words, state-building refers to an institutional process, while "nation-building" refers to the construction of the soul of a nation. In most countries, these two processes are not simultaneous. Most countries have an established and usually accepted constitutional order, state structures and institutions around which the various ethnic components generate a national spirit. Institutions do take into account the diversity of the country and are instrumental in promoting this "national spirit". Nation-building on the other hand refers to the process of constructing or structuring a national identity within the framework of a state. This process aims at the unification of the people within the state so that it remains politically stable and viable in the long run. It includes also the development of behavioural attributes, values, language, institutions and physical structures that elucidate history and culture to protect the present and ensure the future identity and independence of the nation.[3] In South-Sudan, "nation-building" is therefore closely related to the resolution of inter-communal conflicts.

In South Sudan, "state-building" and "nation-building" are bound to occur simultaneously as they are interrelated. Institutions cannot work without a sense of nationality and nationhood that goes beyond tribal identities and loyalties. It must be mentioned here, however, that the idea of "nation-building" in South Sudan is new. Although the international community

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[2] Concepts and Dilemmas of State-building in Fragile Situations: From fragility to resilience, OECD, Journal on Development 2008, Volume 9, No. 3, P?

[3] www.wikipedia.org/wiki/Nation-building, retrieved November 8th, 2012

understood the SPLM/A struggle as geared towards the birth of a South Sudanese identity, the initial objectives of the SPLM may have been different. The name SPLM/A, namely Sudan People's Liberation Movement/Army (and not South Sudan People's Movement/Army) suggests that the objective of John Garang may have been to change leadership in the entire Sudan, rather than establishing a new government in Juba. This may also explain the reason for the deployment of the "New Sudan Brigade"[4] in Ethiopia that was designed to operate in North Sudan. In fact, the concept of "nationality" in South Sudan emerged quite late as a result of the inability of South Sudanese forces to create a breakthrough that would jolt the regime in Khartoum.

2.1.1 Nation-building as a Pre-requisite for Sustainable Peace and Stability

Soon after the signature of the CPA, John Garang, the leader of the SPLM/A, held that although a signatory of the peace agreement, his movement would never have the legitimacy to represent the South Sudanese population as a whole. In other words, engaging in state-building required legitimacy that would go beyond the Dinka and Nuer communities and this required the conclusion of the inter-communal conflicts that plagued South-Sudanese unity during the conflict and threatened the authority of the South Sudanese authorities in Juba. According to the CPA, the integration of "Other Armed Groups" (OAG) in South Sudan was the key to national unity. However, the antagonistic posture of OAG was the result of complex factors that could hardly be solved through a political process. The allegiance of some OAGs to the government of Sudan was not simply political, but often opportunistic or motivated by personal and sometimes emotional grievances that could not find their solution in a political process.

In order to address this complex process of creating South-Sudanese national unity, Garang championed the so-called "South-South Dialogue" (SSD) that was designed as a platform for all stakeholders to reconcile former enemies into a "South-South consensus"[5]. The SSD was initiated a few months after the signature of the CPA in a Conference held from 18 to 21 April 2005, in Nairobi, under the auspices of the former Kenyan President Daniel Arap

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[4] This brigade, that was not structured as a guerrilla unit, but as a conventional mechanized brigade was redeployed in South Sudan in January 2006.

[5] Press Release, South Sudan Democratic Front (SSDF), 14 October 2008

Moi's peace initiative through the Moi Africa Institute (MAI). This conference led to the signature of the "South-South Covenant" that institutionalized dialogue as one of the principles of South Sudanese unity. This first step led eventually to the Juba Declaration in January 2006 that provided the platform for integrating OAGs into the SPLM. However, by 2012, although most of the OAGs may have joined the government (i.e. SPLM/A), some groups remain reluctant. Furthermore, in some regions, the necessary trust between the population and the government does not exist and this hampers the effective implementation of disarmament and demobilization processes.

2.1.1.1 House of Nationalities

Besides the South-South Dialogue that focused on bringing together OAGs with the SPLM/A, another process developed, focusing on including the South Sudanese civil society into a reconciliation dialogue. This was the House of Nationalities. The concept of the House of Nationalities first emerged in November 2000, during a workshop held in Kenya under the auspices of the Swiss Embassy in Nairobi. Its aims were to:

(i)   Provide the space for representatives of all ethnic communities of the South Sudan to meet in a spirit of mutual respect and recognition;

(ii)   Promote the dignity and culture of all South Sudanese communities, and the preservation of their languages and customs;

(iii)   Gain the state's recognition of the different ethnic communities in South Sudan;

(iv)   Be a body to be consulted by the government before laws or policies that affect the communities are adopted, in particular those concerning culture, communal land, laws and customs;

(v)   Lay the foundation for a new concept of nation-state by creating a truly inclusive national identity which proudly builds on both group and individual equality; and

(vi)   Serve as a venue for the settlement of disputes. It would empower communities to solve conflicts themselves while protecting their cultural and ethnic diversity from political manipulation. In time,

it could become the supreme arbitration authority for all communities in South Sudan.[6]

The House of Nationalities is made up of community elders to advocate for the traditional rights of communities and to build peace in the country.[7] It is supposed to represent all the ethnic groups in the country and provide an innovative structure for governance in South Sudan. It also enhances participation, consultation with the government, dignity and recognition of culture and promotion of peaceful co-existence among communities. A number of conferences bringing together leaders of different nationalities have been held to preserve traditions and to cement their role in conflict resolution. In Eastern Equatoria there is a Traditional Council of Elders that deals with settlement of community disputes. The traditional council of elders evaluates the role of traditional structures in Eastern Equatoria with the aim of identifying more areas of collaboration with the local government to improve service delivery. The Council reviews negative cultural practice such as blood money. It also sensitizes the local community on matters of conflict resolution. There is a legal system of handling conflicts that incorporates traditional structures in South Sudan from the grass roots levels such as Boma, Payam, Paramount Chief, County and the Supreme Court.[8] This structure is however still embryonic and as such, research and reforms are needed to improve its effectiveness and efficiency.

2.1.2 State-building Precedes Nation-building

State-building must be driven by a strategy that minimizes potential conflicts. The design of institutions must provide a "fool-proof" platform to address known sources of conflict. All conflicts need not end in violence. The weaknesses of traditional structures that were designed to address local issues must be complemented by sound state-level mechanisms that can add new openings rather than circumvent local mechanisms. One of the main services provided by the state is security. Security is also the most widely accepted service among populations across the world. However, security is

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[6]See objectives of the House of Nationalities, www.houseofnationalities.org, accessed 24 July 2012.

[7]Since 2000, these efforts have been supported by Switzerland through enhancing discussions among Southern Sudanese about how to link traditional structures, governance and peace building.

[8]Adauto Drali Jomason – Local Government Chief and Chairman, Council of Traditional Authorities, Eastern Equatoria, HQS Torit, Interview, 23 August 2012.

not sustainable without trust between the authorities and the population. This is the reason why in most countries, state-building was accompanied by the establishment of national armies. This process needs to be understood within the context of South Sudan too. The transformation of SPLA into a professional South Sudan Armed Forces (SSAF) with which every South Sudanese can identify themselves is a major step in creating a sense of "common nation" or nationhood through institutional construction.

2.2 State-building in South Sudan

State building is easier than nation-building. It does not necessarily require the consent of the governed except when the process of forming government is informed and guided by democratic principles. For South Sudan, de-linking from Khartoum and building capacity for the traditional governance mechanisms are major challenges. Given the unique nature of the State building in South Sudan, whether it can be best described as "construction" or "re-construction" is an open debate. The current situation is that the new state requires institutions that were non-existent or ineffective at the time of the signature of the CPA, in 2005. In the period during which the authorities of Southern Sudan were still under the tutelage of the Khartoum government (but supported by the international community), the main focus of the SPLM was the establishment of a national dialogue in order to pave the way for the referendum and to (re)-establish authority. The real work however could only start after the referendum i.e. once the fate of the Southern part of Sudan was defined. The challenge was to balance a top-down and bottom-up approaches to state-building after independence from Khartoum. In the following subsections, we examine the roles played by the constitution, legislature, federal system, and the United Nations in this process.

2.2.1 The Constitution and National Institutions

The establishment of the Transitional Constitution of the Republic of South Sudan (TCRSS/2011) was the first step in initiating a top-down approach in institution building. There is a clear commitment in the constitution on the devolution of power and on the establishment of a pluralistic and democratic system. A decentralized system based on the principle of subsidiarity is best placed to integrate the fragmented and diverse South Sudanese society and to find adequate, just and sustainable solutions to local conflicts that arise within communities. The Constitution guarantees an extensive bill of rights, including collective and individual rights. With respect to women, the

constitution states *inter alia*, that all levels of government in Southern Sudan shall:

(a) Promote women's participation in public life and their representation in the legislative and executive organs by at least twenty-five per cent; and

(b) Enact laws to combat harmful customs and traditions which undermine the dignity and status of women". The Judiciary and the respective law enforcement agencies, especially the police, have the task to guarantee and enforce these rights.

One of the main features of the Constitution is its definition of a Federal System that would govern the relationships between Juba and the various parts of the Country.[9]

2.2.2 The Legislature

The South Sudan Legislative Assembly is the main tool that connects the federal states to the national (central) governance mechanisms and as such, is a major tool for conflict resolution in the country. The 170 Members of Parliament are elected to represent the States. Around 20% of the parliamentarians are women. In this sense, different constituencies and communities are directly involved in the legislative process and in overseeing the work of the government. Regional, ethnic and community-related aspects of conflict can thus be addressed in the parliamentary committees.[10] There are parliamentary oversight committees for various ministries that enhance the accountability of the government to the people but they do not have adequate capacity to monitor government activities and bring about change.

A number of independent commissions have been established by the government of South Sudan in order to regulate specific sectors. These commissions have regional offices at the state level. With respect to national peace-building processes, the major commissions are:

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[9]According to TCRSS, Article 47, South Sudan shall have a decentralized system of government; a) the national level, b) the state government and local government. Article 49 describes the relationship between these government levels.

[10]Ibid., p. 14

(ii)   The ***Land Commission***, which is mandated to entertain claims in respect of land, be they against any level of government or other parties interested in the land; to arbitrate between willing contending parties on claims over land, and to enforce the law applicable to the locality where the land is situated. The ***Land Act*** was enacted in 2009 and a land policy is in the offing. The commission continues to assist the nation in the resettlement of returnees and IDPs. However, there is still a lot to be done in harmonizing national laws and customary land law administration. The land law has not been well disseminated but some civil society organizations have taken the responsibility of educating the public about its content. There are still major land problems such as the issues of migrants from the violence-prone Upper Nile settling in Juba and Nimule against the wish of local communities. The GOSS has also been accused of grabbing land belonging to communities without following the legal procedures.[11]

(iii)   The ***South Sudan Peace Commission***, which advises the government on matters pertaining to peace; supports the peaceful co-existence of all communities in South Sudan and oversees peace building policies and activities.[12]This Commission is facing challenges associated with continued conflict with Sudan, inter-community competition for national resources after the independence, the expectations of the populace for peace dividends, competition among the elites for positions in government, fear of marginalization among communities, nepotism and failure to follow meritocracy in public service recruitment. It facilitates peace conferences in various regions of the country. The responsibility of peace-making cannot however be handled by a single organization. All the various ministries of the GOSS must work hand in hand to bring peace and development to the country.

2.2.3 The Federal System

The very idea of the federal system is to grant some decision-making autonomy to the States. The ten States have their own governance structure articulated according to the separation of the three powers (Executive, Legislative, and Judicial) following the pattern of the national level. Each of

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[11]Mathias Donas Tombe, Human Rights, South Sudan Human Rights Commission, Interview 13August 2012, Juba

[12] Hon. Petter Gwang Akich, Deputy Chairperson, The South Sudan Peace Commission, Juba. Interview, 16August 2012

the ten States has drafted its own constitution that is consistent with the national Constitution. The State Legislative Assembly is smaller than the national one but has similar functions. In Unity State, for example, an inclusive constituent legislature shall be composed of forty-eight members nominated by their respective constituencies and confirmed by the governor after broad consultation and on the basis of the CPA power sharing agreement.[13]Some of the national independent commissions are mirrored at State level. Administratively, the States are divided into Counties (a total of 92 counties in South Sudan), Payams and Bomas.[14]These small units of local government were set up in the former SPLM/A liberated areas and were officially recognized by the interim constitution. However in most areas, the shape and extent of the Bomas are not clear, the borders have never been mapped and are often subject to disputes between the local chiefs. Payams are run by "Payam Administrators" and the Bomas are headed by the Chiefs. At these levels the formal administrative structure interacts and sometimes tends to overlap with traditional authority.[15]

2.2.4 The United Nations

The United Nations is a leading partner of the GOSS in state and nation-building. The UNMISS in collaboration with the Department of Peace Keeping Operations (DPKO) and UNDP have been implementing long term Disarmament, Demobilization and Reintegration (DDR) projects in South Sudan. They have also provided post-intervention support in employment creation, acquiring land in urban areas and establishing cooperatives. The DDR was put in place to reflect the independence of South Sudan in July 2011. Collaboration with local DDR commissions in South Sudan has faced challenges but regular efforts are made to improve communication.[16] Sometimes activities of the international community are not well coordinated. Efforts to coordinate these through a World Bank-led Medium Term Development Framework (MDTF) proved ineffective. Funds were not efficiently disbursed and therefore targets were not met. Integration of the traditional structures into international development has also not been well

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[13]Ibid., p. 15

[14]Payam means "district" and Boma means "village" in Dinka language.

[15]Customary courts at Boma and Payam levels often judge according to customary law, sometimes the senior judge is also the local chief.

[16]Ryan Nicols, DDR in South Sudan, Too Little Too Late; Small Arms Survey, HSBA, SWP No. 24, 2011, p. 21

undertaken. International standards and expectations have not been harmonized with the reality of government weakness. Many donor projects are short-term and therefore cannot have durable impact on the transformation of society.

3 Traditional Structures and the State-building Process

Traditional structures in South Sudan range from the institution of chiefs, conflict resolution mechanisms, customary law, practices and beliefs. It is generally agreed that this system is under pressure to change by forces of modernization. However, the desire in South Sudan is to control the pace of this change and to inform the change from below.[17] The forces of change are not only being influenced by the international community but also by the diaspora who are returning with varied values and traditions from different corners of the globe. The diaspora is expected to strike a common chord with the international community due to education, language and exposure. Most of them are settling in urban areas thereby influencing demographic shifts in the country.[18] A main bone of contention regarding traditional governance mechanisms at the local level is their degree of compatibility with the laws and principles of the modern state, derived from the constitution. In other words, the traditional governance systems with a bottom-up approach need to be reconciled with government's "top-down" process of state-building. Further, the international community has come with modern technology which has revolutionized information systems. This technology has an influence on the traditional structures, customs and practices. Young people will be empowered with new knowledge that their elders cannot fathom. Women are accessing formal jobs and will define their role in the family a new. 'Old customs' will be questioned and their relevance dismissed by the young people. The potential for conflict in families and community will increase and the effects on the traditional structures will be enormous.[19]

Indigenous conflict management and resolution mechanisms use local actors and traditional community-based judicial and legal decision-making mechanisms to manage and resolve conflicts within or between communities. Local negotiations can lead to practical agreements which keep broader inter-communal relations cordial such as in restoring mutual sharing of water and grazing land. Traditional conflict resolution is often based on mediation aimed at restoring social harmony and consensus within communities instead

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[17]Ibid., p. 26

[18] Mrs Jane Surur, Secretary General, Women's Association of Eastern Equatoria, Torit, Interview, 23 August, 2012

[19] Ibid., p. 28

of retribution. Customary law is context-specific and flexible. The aggrieved party is compensated especially among the pastoralists. Compensation for crimes and unjust action is often paid in cattle.

Custom might be defined as *"an unwritten law which lays down how things are usually done and have been done since time immemorial; or it is a rule of conduct obligatory on those within its scope established by long usage"*.[20] Southern Sudan has a huge variety of customs and traditions. Every ethnic group and sub-group has its own body of traditions. However, there are some similarities within the Nilotic and non-Nilotic sections of society. There are also similarities within groups that have a central authority system, such as the Shilluk, Anyuak and Zande kingdoms, and decentralised systems such as the Dinka, Nuer and Bari. In centralised systems, traditional leaders are often appointed by and dependent on the king while in decentralised systems, traditional leaders are chosen by their respective communities according to personal attributes and skills.[21] The role of spiritual leaders is to intercede between man and the divine, while chiefs, sub-chiefs, elders and village headmen are tasked with the responsibility of conducting civic affairs of the community. Both are involved in decision-making and normally command high respect and moral authority and therefore are important pillars of the traditional conflict-resolution mechanisms.

Traditional institutions and regulation of social behaviour have undergone radical change after the civil war. Chiefs and other traditional leaders lost influence over their subjects. Parallel leadership emerged as local parties aligned with the wider war. Commanders of armed groups, such as the *Jeish Mabior* (White Army) and *Niggas*, substituted the traditional leaders, especially in the Upper Nile region of Southern Sudan. Other traditional chiefs were compelled to undergo military training to ensure the execution of orders from the side of the war they belonged to.[22] According to Francis

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[20]A.H. Abdel Salam and Alex de Waal (ed.): The Phoenix State: Civil Society and the Future of Sudan, Justice Africa 2001, p. 179

[21]Traditional mechanisms of conflict resolution are mostly based on social harmony, consensus and reconciliation using methods of arbitration, mediation and compensation. Actors range from village and clan headmen to paramount chiefs and kings depending on the level of centralization of society and the type and intensity of the conflict. Often the "mediator" is supported by a court which encompasses respected personalities such as spiritual leaders and elders (mostly men, although there are some village headwomen, female chiefs and queens).

[22]Hon. Petter Gwang Akich (Deputy Chairperson) - The South Sudan Peace Commission, Juba, Interview, 16 August, 2012

Mading Deng (a renowned South Sudanese scholar), the social norms of the traditional society expressed in customs and traditions, is so deeply ingrained that any reconstruction initiatives that disregard it cannot find their way into the hearts and minds of the people.[23] Successful attempts have been made to document, enact and harmonize the customary conflict resolution practices prevalent among different ethnic groups, such as between the Luo, Dinka and Fertit and between Dinka, Nuer and Shilluk. Similar documentation has been done for the Kakwa, Kuku, Pajulu, Kaliko and Lugbara ethnic groups found in the Yei and Kajo-Keji Counties of Central Equatoria.[24] Such documentation enables harmonization with the modern practices. Traditional values are still viewed as vital to inform the hybrid governance systems especially in the emerging socio-economic and political context in South Sudan.

3.1 The Institution of Chief

Chiefs were an important focal point for resolving individual and community conflicts in South Sudan. Their authority was undermined by the long war whereby emphasis was put on the SPLA military law and tribunal at the expense of customary law and practices. The AK47 and green jungle jacket replaced the fly whisk and the walking stick as symbols of authority. The military continues to play a major role in governance, prosecution of crime and execution of justice. This military influence continues to undermine the role of traditional structures such as that of chief at the Payam level. This interference is not in tandem with the democratic tradition or good governance where the local people must have a major say in shaping their daily lives and destiny.

3.2 Traditional Peace-building Mechanisms

Peace-building mechanisms have included community-driven peace building activities at grassroots level. They are inclusive by bringing together ethnic groups and engaging civil society, traditional leaders and leaders of SPLM/A and other military factions. Mobilizing local communities and their leadership helps the warring factions to focus on political and social reconciliation through conflict resolution. The process was mainly facilitated

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[23]Justice Aleu Jok: A Study of Customary Law in Contemporary Southern Sudan, 2004, p. 25

[24]Ibid., p. 21

by the New Sudan Council of Churches (NSCC) with support from development partners. Local peace committees and councils were established during reconciliation meetings and community development programmes were also initiated.[25] Pastoralist communities in South Sudan usually engaged in dialogue after fighting over resources such as water, pasture or cattle. In the deliberations, the root causes of the conflict are identified. Community representatives meet for about three days inside a sacred area such as a forest or hill to deliberate on the issues. Communities are represented by elders who have gained respect and wisdom over time. The peace ceremony is accompanied by rituals, symbols and interpretation of myths. A specific type of goat or cattle is sacrificed to cast away the evils of conflict from the society.[26] The words of the traditional elders are also binding to all the communities in conflict through a curse. When young warriors violate the terms of the peace treaty, they are bound to suffer repercussions.

Peace conferences have been held by the Akobo community in Jonglei for a long time. The conferences have been held to reconcile ethnic groups such as the Jikany and the Lou Nuer. The conferences resolve disputes regarding water, grazing lands, fishing points and the maintenance of peace and security. The agreement is usually sealed by the sacrifice of two bulls; rituals conducted to call for divine intervention and curses pronounced to the violators of the agreement. Women "Maan naaths" (mothers of the nation) shout down people who give false evidence. The most recent one was held in May 2012 in Bor, Jonglei State. It was meant to reconcile politicians in the area and the meeting ended up with the reconciliation of the leaders who vowed to support the government of President Salva Kiir Mayardit. Leaders of the greater Akobo community and the governor of Jonglei Lt. General Kuol Manyang lauded the meeting for bringing about peace necessary for the region to engage in development.[27]

Traditionally the Dinka and Misseriya who live along the north/south border developed peace agreements that spelt out the use of resources such as grazing routes but of late, conflict between north and South Sudan and violent conflict between armed militias in the region have complicated the

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[25]Barbara Unger and Oliver Wils, *Systemic Conflict Transformation and Inclusive Governance in Southern Sudan*, 2007, p. 22

[26]Traditional conflict resolution, op. cit., p. 3

[27] Martin Gada Gabriel, South Sudan; Greater Akobo Peace Conference Resolve to Support President Salva Kiir, All Africa.com, 25May 2012

relationships. In customary resolution of disputes, disputes are resolved outside the courts.

> *"Reconciliation is sought through the payment of damages by the family of the guilty party to the family of the victim. Such damages, known generically as 'Dia' are paid in a 'currency' and according to a scale laid down under individual customary law systems. In Dinka society such damages, known as 'Apukare' always paid in cattle and depend on the social status of the victim and the circumstances of the murder but normally are around thirty cows for a person's death".[28]*

Traditional dispute resolution mechanisms put emphasis on reconciliation as opposed to the Western judicial systems that are based on retribution. Resolving of disputes is faster and less expensive. These conferences have been hampered by the current fighting along the north/south Sudan border but they remain a potential institution of conflict resolution. This system can find its place in the new South Sudan judicial system to complement the nascent sector. The GOSS has recognized the important role played by chiefs in peace making and reconstruction.[29]

3.3 State-building at Local Government Level

The local government is handles most of the community conflicts and takes the responsibility for conflict resolution. The objectives of local government is to promote self-governance and the establishment of institutions as close as possible to the people; promote social and economic development, self-reliance, reconciliation and peaceful coexistence among communities. Local authorities also acknowledge and incorporate traditional authorities and customary law in the local government system.[18] Therefore, at the Payam and Boma levels, the courts shall apply customary law subject to the constitution. Furthermore, legislation at the national and state levels is expected to recognize traditional authority.

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[28] Justice Aleu Jok, *A Study of Customary Law in Contemporary Southern Sudan*, 2004, p. 40

[29] Alexander P. Danne, *Customary and Indigenous Law in Transitional Post-conflict States: A South Sudan Case Study*, Monash University Law Review, (Vol. 30 No. 2),2004, p. 13

At the GOSS level, ministers lack the capacity to implement their mandate and the same applies at both the state and local government levels.

3.4 Civil Society and State-building

Civil society refers to the arena, space or associations that take place between the family and the state. This broad definition brings together modern non-governmental organizations, professional societies and traditional societies.[30] This constituency is vital for democratic accountability and respect for human rights. Civil society has a great potential to contribute to effective state-building in South Sudan. Many organizations have been established with the return of the diaspora to the country. Many of these civil society organizations (CSOs) are affiliated to different communities and regions in the country. This makes them accessible to the people and therefore better placed to understand the problems and devise appropriate solutions to the problem affecting their people. CSOs have also come back with additional knowledge, skills and values from the diaspora that is vital in building a more human rights respecting, democratic, peaceful and development oriented society.

CSOs provide different kinds of service ranging from relief and humanitarian assistance to research on reconstruction and development issues, health, education, governance and other essential public services. Organizations such as the South Sudan Council of Churches (SSCC) had built some capacity for peace building by organizing a number of peace conferences even before the CPA of 2005. The SSCC continues to promote inter communal-dialogue in conflict-prone areas especially in Jonglei and Central Equatoria.[31]

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[30]In 'The Paradox of Civil Society', Michael Foley and Bob Edwards wonder whether the markets (private sector) and political unions are part of civil society. There is no universally agreed definition of civil society, 2006

[31]Rev. Mark Aketch Cien (Acting Secretary General) South Sudan Council of Churches (SSCC), Interview, 13 August 2012, Juba

3.5 Barriers to Effective State and Nation-building in South Sudan

3.5.1 Post-Traumatic Stress Disorder (PTSD)

Communities that were attacked by armed groups during the war period in South Sudan continue to experience post-traumatic stress disorder. Often, soldiers who committed crimes during the war fear retaliation from the community and therefore prefer to settle in urban areas.[32] Elderly people find difficulties in getting married thereby facing discrimination socially and economically. The same applies to women who got children with different men. Many people lived outside their communities for long and acquired new habits that are frowned upon back home.[33] There are also challenges of changing from a military culture to the new civilian administration. This entails understanding nation-building, public administration, devolved government, human rights and electoral processes. Post-traumatic stress disorder, which can lead to depression, isolation and aggression, is a widespread problem and there are no formal structures to deal with it.

> *"There are also great expectations in society of what the soldiers take home in the DDR programmes. Reconciliation and trauma healing are necessary for both the soldiers and civilians who went through the war atrocities."[34]*

There has not been a comprehensive strategy for transitional justice and reconciliation in South Sudan. People are understandably not willing to discuss past atrocities while violent conflicts abound. It is however necessary for the GOSS to have a long term plan of addressing transitional justice and especially community healing and reconciliation. Sustainable national cohesion and integration will depend on how ethnic groups have come to terms with atrocities committed against each other, repentance, and forgiveness and forging a new chapter in their relationships.

> *"Given the low business skills among the reintegrated soldiers, it will be difficult for them to be the expected*

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[32] HSBA Sudan Working Papers 21, p. 32

[33] Pantuliano et al, p. 21

[34] Geoffrey Lou Duke, South Sudan Action Network on Small Arms Control (SSANSA), Interview, 14 August 2012, Juba

> *catalysts for economic growth, to improve security in their communities or contribute to the demilitarization of society. Public expectations of economic recovery and peace dividends have been slow to come."[35]*

There is no proper understanding of the DDR among the SPLA. Some of the demobilized soldiers have returned to the SPLA's payroll, others have moved away with their guns and uniforms.[36] There have been cases of dissatisfaction with the DDR process among the demobilized soldiers mainly due to lack of information about the whole process. Dissemination of information has however been enhanced through radio (UNMISS), visual materials (UNDP) and using local languages (SSDDRC) and public forums.[37]

> *"The amount of money given to demobilized soldiers SDG 860 (US$ 345), equivalent to less than three months salary of an average SPLA soldier is regarded as inadequate to appease ex-combatants and furthermore it treats all soldiers equally irrespective of their ranks. The UN IDDRS standards should not be blindly applied in every case. It has been reported that the application of some aspects in South Sudan has been misplaced and unnecessary."[38]*

New measures have been taken to provide gender-sensitive approaches. Women have been provided with special NFI kits. The psycho-social needs of ex-combatants have not been well addressed though a number of surveys have been carried out to ascertain the extent of psycho-social needs among the community.[39] Many of SPLA soldiers are yet to be demobilized due to the GOSS's reluctance to disarm soldiers while the threat of war with the north remains. It has also been noted that the GOSS has no confidence in the DDR process's capacity to sustain the lives of demobilized soldiers. There are also many returnees who do not own land and have no livestock, placing

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[35] Ibid.

[36] Mathias Donas Tombe, *Human Rights, South Sudan Human Rights Commission*, 13 August 2012, Juba

[37] Ibid., p. 41

[38] HSBA SWP 24 DDR in Sudan, p. 38

[39] This information is also corroborated by Hon. Petter Gwang Akich, Deputy Chairperson, The South Sudan Peace Commission, Juba, Interview, 16 August 2012

enormous strain on the host communities.[40] The implementation of DDR process has been an uphill task mainly due to a long period of war, lack of basic services and infrastructure, economic and political instability, and internal and external threats.

3.5.2 Traditional Institutions, Attitudes and Beliefs

There is a lack of true cohesion in rural communities to support state and Nation-building. There is evidence of extensive change in social attitudes among returnees in the countryside, and these changes need to be understood and built upon state-building is threatened by undemocratic procedures, villagers' lack of knowledge of their rights, and lack of local capacity to handle the DDR project's inputs. State-building is threatened by corruption where public oversight mechanisms are still not effective. State-building implies that development actors, both international and local, need to develop new roles and skills, a change that may not always be forthcoming. There are no harmonized customary laws for prevention of human rights abuses. There is hardly any justice for victims of murder, which often leads to revenge killings. The institutions dedicated to peace building are still weak and ineffective.

> *"A large number of people have not received psychosocial support to address the trauma caused by the long war. This psychological disposition is not conducive to reconciliation and trust building."[41]*

Ad hoc meetings called to address conflict issues do not address the root causes of conflict. Local initiatives of reconstruction build confidence and self-esteem. This enables the society to be resilient using the locally available resources.

3.5.3 Erosion of the Authority of Traditional Structures

The authority of cultural institutions of peace building was eroded during the war period. The South Sudan Rehabilitation and Reconciliation Commission

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[40] World Food Program, 'Emergency Food Security Assessment for Returnees in South Sudan' (February 2011) 5

[41] Hon. Petter Gwang Akich, Deputy Chairperson, The South Sudan Peace Commission, Juba, Interview, 16 August 2012

(SSRRC) has tried to revitalize these institutions but much remains to be done to make them work effectively with the formal institutions. New practices have emerged demanding new approaches in the interpretation and execution of traditional law and practices. In Western Equatoria, a region where many small ethnic groups and internally displaced people reside, new customary practices have emerged to reflect the changing ethnic dynamics. It is important to note that the traditional lower courts dealing with customary issues handle about 95% of all legal cases in South Sudan.[42] As the judicial use of modern legal practices expands in the country, there is need for creative interfacing of traditional and modern legal practices in order to create effective conflict resolution institutions and practices.

3.5.4 Poverty and Insecurity

Inter-communal conflicts destroyed the means of livelihood and rendered most people dependent on humanitarian aid. Most resources were diverted to the conflict. The people could not farm or engage in business and livestock was always at risk of theft. Rampant unemployment exacerbates the already fragile economic situation. Insecurity among the pastoralist communities in South Sudan has been occasioned by inter-communal conflicts over access to water and pasture. Land degradation and desertification due to overgrazing and tree felling have also exacerbated the problem. Migration to other regions such as Upper Nile State increased conflicts with the local people. In 2009, the United Nations estimated that 2,500 people died in cattle-related ethnic violence in Southern Sudan. This is a great loss of manpower for reconstruction of the country. South Sudan continues to suffer chronic insecurity at the community level. Security is further threatened by the existence of armed groups operating outside South Sudan Armed Forces (SSAF) and the proliferation of small arms and light weapons (SALW). The widespread culture of violence inhibits socio-economic progress. Some ethnic groups such as the Murle feel marginalized in South Sudan. Most of them do not access education and have few of their representatives in the GOSS. This vulnerability drives them more towards reliance on the gun and local militias for protection, thereby undermining the legitimacy of security institutions.[43] Youth vulnerability is heightened by rural-urban migration

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[42] Justice Aleu Jok: A Study of Customary Law in Contemporary Southern Sudan, 2004, p. 30

[43] Amanda Hsiao et al, Urgent Steps to Counter Inter Communal Violence in South Sudan, 2012, p. 2

which tends to generate informal settlements and subsequent loss of the required labour in the rural areas.

3.5.5 Weak Governance and Peace-building Institutions

The contribution of civil society organizations (CSOs) to state-building remains a big challenge in South Sudan. While organisations have come into existence and Diaspora organisations are now functioning; they don't have an effective voice yet to make clear demands for accountability of the new government institutions. Development partners have not provided assistance to CSO with the same resources and impetus as the institution building on the government side. NGOs have been limited to a role of service providers. There are still no strong institutions of resolving conflicts through peaceful means as a result of the existence of insurgent armed groups and a history of warfare. Inter-ethnic political competition and alignment are still based on ethnic and militia mobilization rather than on open political space for sharing different perspectives. Political competition among the leaders, alliances and personality clashes continue to surface within South Sudan.

The new nation still suffers from a large democratic deficit. There are still no checks and balances on the GOSS due to lack of separation of powers among the legislature, executive and Judiciary. There are no effective oversight systems, human rights and law enforcement mechanisms such as parliamentary committees, Ombudsman and independent police oversight authority. Armed conflicts have also weakened the power and legitimacy of state institutions, democracy and development. There is low awareness on civic responsibilities in a democracy.

3.5.6 Low Capacity of Security Services

Arms proliferation, cycles of inter-communal conflict and the presence of armed groups threaten not only the overall stability but also subject the civilian population to severe levels of crime and violence. There has been serious inter-communal violence in several states partially fuelled by forced civilian disarmament processes conducted by the SPLA between 2006 and 2009.[44] The GOSS is unable to maintain law and order with a police service

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[44]Wolfram Lacher, *South Sudan, International Peace building and its Limits*, SWP Berlin, February 2012

of about 28,000 officers who are ill equipped and not well trained.[45] Given the prevalence of cattle raiding practices among the communities, there is genuine concern for insecurity in some communities where disarmament has not been consultative, legal, inclusive and voluntary. Proliferation of small arms and light weapons coupled with lack of government security made the people vulnerable to attacks and unable to engage in productive activities. Poor infrastructure continues to hinder provision of security and other services.

3.6 Opportunities for State and Nation-building

The international community needs to continue offering support through a consultative process aimed at building local ownership. Coordination with the relevant ministries of the GOSS and the SSDDRC should be enhanced to overcome many obstacles on the road to recovery and integration in South Sudan. The international community can support strengthening of the positive aspects of traditional systems such as promoting access, restorative justice, legitimacy, value for local customs and mediation. Traditional systems can be improved on promotion of human rights, children's and women's rights. New space for the traditional systems can also be found in the new constitutional dispensation of South Sudan. Strengthening the institutions of Chief, Boma and Payam to effectively deal with customary cases is vital. Training customary leaders such as chiefs, youth and women leaders and providing means for documentation and dissemination of traditional conflict resolution systems are also critical. These measures will ensure that traditional institutions will continue to provide a source of social stability and cultural identity to the South Sudanese peoples. This should provide foundations for the development of a democratic and human rights-respecting country grounded on indigenous knowledge and practices.

The GOSS has enacted legislation to revitalize the institution of Chiefs as a crucial administrative level in the country. There are attempts to build capacity of chiefs to lead peace building and reconstruction work at the village level. The devolved government structure in South Sudan offers the necessary levels of government for resolving different levels of conflict. However, a lot remains to be done to forge closer working relationships with

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[45]John Young, *The South Sudan Defense Forces in the Wake of the Juba Declaration*, 2006; OXFAM, *South Sudan Facing Most Violence Since the End of Civil War*, 2011

traditional structures and the national security sector. The SPLA needs to be convinced to buy the DDR programme. Generally, the performance of the DDR programme in South Sudan has been dismal.[46]   More effective collaboration between the development partners, SSDDRC and South Sudan Armed Forces (SSAF) will make a difference in DDR implementation. There is need for further development of DDR in collaboration with UNICEF to include child soldiers and increase linkages to on-going community security and small arms control initiatives. Restoration of traditional leaders' authority will go a long way in creating partnerships between the national government, local authorities and communities. The youth in South Sudan must be provided with education, relevant skills and employment opportunities for durable peace. Youth bulge combined with poor economic performance is said to be a cause of conflict.[47]

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[46]Ibid.p.42

[47] See Henrik Urda, *Devil in the Demographics: The Effects of Youth Bulges on Domestic Armed Conflicts*, 1950-2000, 2004

4 Conclusions

State-building is essentially a top-down process that needs to incorporate bottom-up initiatives that elevate the traditional role of local authorities in forging community identities that feed into nationhood. Thus, in as far as South Sudan is concerned, state-building and nation-building need to be concurrent rather than simultaneous. Harmonizing the traditional structures and mechanisms with the modern concept of statehood remains a major concern of the Juba authorities. With regard to the law reform process, specific technical committees have been established to harmonize systems that were not designed to be compatible. Further, the legitimacy of the two "systems" must be clear to the local population so that the process of state-building does not disrupt the communal sense of identity, which can in turn trigger conflict. An essential component of the solutions to this complex problem is the harmonization of traditional and modern institutions through participatory democracy and local governance. Processes for peace-building including dispute resolution mechanisms should also be put in place to address problems pro-actively.

Support to the GOSS in strengthening the existing traditional mechanisms is a key factor for long term and sustainable stability. The test is to have an inclusive approach to systems and mechanisms that may seem contradictory because they are based on different principles. The peace negotiations with Joseph Kony's Lord's Resistance Army (LRA) mediated by Riek Machar in 2006 are a case in point. Kony would have agreed to surrender if he could be judged according to the Acholi traditional courts, but the principles on which the Acholi traditional justice are based did not match the expectations of the international community that expected exemplary punishment, and the deal did not materialize. At the end, the negotiation was a contest between principles and peace, and the principles won the battle at the cost of peace. Currently, the challenge for the Juba authorities is two-fold: installing the instruments of the state from a top-down perspective (state-building) and bringing together a diverse mosaic of populations with often incompatible governance systems and mechanisms into a viable nation using a bottom-up approach (nation-building). The optimal balance will be hard to achieve and the slightest variation may have an impact on human and national security.

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