

South Sudan, The Nuer “White Armies”

Introductory text: *In South Sudan’s conflict, the role of community defence forces has been magnified. This case focuses on one of such community defence forces commonly referred to as “White Armies” of the Nuer ethnic group and discusses their involvement in the conflict and their level organization.*

Case prepared by Mr. Fekade Abebe, LL.M student at the Geneva Academy of International Humanitarian Law and Human rights, under the supervision of Professor Marco Sassòli and Mr. George Dvaladze, research and teaching assistant, both at the University of Geneva.

N.B. As per the disclaimer, neither the ICRC nor the authors can be identified with the opinions expressed in the Cases and Documents. Some cases even come to solutions that clearly violate IHL. They are nevertheless worthy of discussion, if only to raise a challenge to display more humanity in armed conflicts. **Similarly, in some of the texts used in the case studies, the facts may not always be proven;** nevertheless, they have been selected because they highlight interesting IHL issues and are thus published for didactic purposes.

A. Report of the Commission on Human Rights in South Sudan

[Source: “Report of the Commission on Human Rights in South Sudan,” Human Rights Council, A/HRC/37/71, 13 March, 2018, available at <https://www.ohchr.org/EN/HRBodies/HRC/Pages/Home.aspx>]

[...]

IV. Context and Background

18. There are currently three armed structures in South Sudan claiming the heritage of the Sudan People’s Liberation Army: the Government forces (known as SPLA), the SPLA-in-Opposition, loyal to Riek Machar (SPLA-IO/RM) and the SPLA-in-Opposition, loyal to First Vice-President Taban Deng (SPLA-IO/TD). The SPLA and the SPLA-IO/RM are supported by militias — the Dinka Mathiang Anyoor (now largely integrated into the SPLA) and the Nuer White Army, respectively. [...] The Shilluk Agwelek militia has fought at different

times alongside both SPLA and SPLA-IO/RM and is primarily focused on the defence of Shilluk lands.

19. Since its outbreak in December 2013, the conflict has evolved beyond the power struggle between President Salva Kiir Mayardit and Riek Machar. Despite the signing of the Conflict Resolution Agreement in August 2015, the conflict has spread and is no longer one single conflict, but a series of inter and intracommunal conflicts, reigniting and encompassing historical localized conflicts and contests over land, resources and power.

20. SPLA suffered numerous defections, while SPLA-IO split into two factions in July 2016. The split served to strengthen the SPLA, as the SPLA-IO/TD supports the Government. SPLA and the SPLA-IOs demonstrate established hierarchical organizational structures that facilitate command and control and operational flexibility through the use of sectors, divisions, brigades and battalions. The majority of operations employ light infantry tactics, often with fire support from artillery and tanks. Priority is given to attack and, upon capture, little thought is given to defence against counter-attack. Inclusive planning, intelligence gathering, and effective communication facilitate the exercise of command. Commanders on both sides have made use of poorly trained and undisciplined militias, which they have chosen to exploit rather than control.

21. New armed groups, currently estimated at 40, continue to emerge, mainly as a result of the spread of the conflict to the Equatoria region and the northern part of the Upper Nile. The fragile situation has been exacerbated by the creation of 28 — and later 32 — states along ethnic lines by Presidential Order. During 2017, a number of senior officers defected from SPLA and the two SPLA-IO factions to form and join these new groups. There are also a large number of other armed groups participating in the revitalization process.

22. There have been numerous violations of the cessation of hostilities agreements since 2014. The latest Cessation of Hostilities Agreement came into effect on 24 December 2017, following the revitalization forum sponsored by the Intergovernmental Authority on Development (IGAD), which called upon all forces to “immediately freeze in their locations”, halt actions that could lead to confrontation and release political detainees, women and children. Violations of the ceasefire were reported shortly thereafter, which have been condemned by the African Union, the United Nations and IGAD.[...]

B. The Nuer White Armies: Comprehending South Sudan’s Most Infamous Community Defence Group

[Source: Ingrid Marie Breidlid and Michael J. Arensen, ‘The Nuer White Armies: Comprehending South Sudan’s most infamous community defence group,’ in ‘Informal armies: community defense groups in South Sudan’s civil war,’ report by Safer World, February, 2017, pp. 27-40 available at <https://www.saferworld.org.uk/>, footnotes omitted]

[...]

I. Introduction

[1] Within days of the outbreak of conflict in Juba on 15 December 2013, and the subsequent targeting of Nuer civilians by government security forces, armed Nuer civilian youth – commonly known as the White Army – mobilized on a massive scale to avenge the killings. In the following months, Nuer youth, fighting alongside the Sudan People's Liberation Movement/Army-in-Opposition (SPLM/A-IO), clashed with the government army (the SPLA) and its allies across the Greater Upper Nile region.

[...]

ii. Origins: kinship, conflict and community defence

[2] The name White Army, or *dec in bor* in Nuer, is commonly thought to derive from the ash youth cover their bodies with to protect against mosquitos. According to current and former White Army members, however, the term refers to their lack of uniforms and training, and contrasts with the Black Army, or *dec in char*, a Nuer term for trained soldiers in uniform. The White Army is not a single cohesive force but is comprised of various Nuer community defense groups in the Greater Upper Nile region. These forces might therefore more accurately be referred to as the White Armies.

[3] Although the name emerged at different times in various Nuer areas over the last few decades, the White Armies are continuations of traditional Nuer mobilization structures documented by the anthropologist Evans Pritchard in the 1930s. The involvement of Nuer youth in the White Armies is closely linked to their security responsibilities at home – to their role as cattle keepers and protectors of the family's cattle wealth. Similar to other pastoralist communities in South Sudan, after Nuer boys go through an initiation ceremony to become men, they are given the prime responsibility of protecting the family's cattle herd against wild animals and potential enemies. This can involve participating in 'blood feuds', inter-communal wars and revenge attacks.

[4] Nuer youth coordinate their protection responsibilities as part of territorial units at various levels – ranging from the smallest homestead unit to larger sections and even sub-ethnic groups. The Nuer ethnic group is divided into 11 different sub-ethnic groups – such as the Lou Nuer and Eastern Jikany Nuer to the east of the Nile, or Bul Nuer and Dok Nuer to the west. These groups are again divided into primary sections and sub-sections (or *cieng* in Nuer). [...] When faced with external threats [...] members of these groups often temporarily seek unity. Members of the Lou Nuer primary sections of *Gun* and *Mor*, for example – based in Greater Akobo – fight each other frequently, but unite when threatened or attacked by other ethnic groups (as they have done in response to the Murle in Pibor and Dinka in Bor) or sub-ethnic groups (such as the Jikany Nuer). On rare occasions, sub-ethnic groups like the Lou Nuer and Jikany Nuer – which fought

frequently between 1993 and 2010 – have also aligned. This was most recently illustrated in their joint mobilizations in support of SPLA-IO during the civil war. The ability to unify Nuer youth across sectional divides accounts for the White Armies significant mobilizing power. Efficient local leadership structures in place also play significant roles in large-scale mobilizations.

iii. Leadership, legitimacy and command and control

[5] Popular presentations of the White Armies as an unruly mob ignore the complex leadership structures regulating violence within and between Nuer communities and their neighbors. Leadership within the White Armies is flexible and has evolved over time in response to changing security risks and dynamics. [...] Recent research carried out among Lou and Jikany Nuer communities suggests that permanent leadership positions, known as *kuaar burnam*, were established in the 1960s and 1970s in several eastern Nuer locations in response to rising levels of insecurity, internal fragmentation among the Nuer, and local leadership vacuums. Similar leadership structures spread to western Nuer areas in the 1990s.

[6] The *kuaar burnam* structures have since come to play critical roles in mobilization and decision-making processes within the White Armies. Mirroring the hierarchical system of chiefs created by the British colonial administration, each unit of organization within local White Armies is represented by their own *kuaar burnam* – from the smallest territorial unit (the homestead) to the county level. Compared to Nuer war leaders in the past, [...] *kuaar burnam* today have an expanded range of security responsibilities during both war and peace time. [...]

[7] Hierarchies organizing the *kuaar burnam* enable efficient command and control, with representatives from smaller sections reporting to the representative a level above. Currently, the highest permanent *kuaar burnam* position within the largest and most active White Army group – the Lou Nuer White Army in Jonglei – is at the county level. However, in times of war, requiring the involvement of all Lou Nuer sections, an overall Lou Nuer White Army leader for Greater Akobo is selected among the county leaders. The leadership hierarchy enables Nuer communities to rapidly mobilize civilian fighters on a large scale. Despite being local initiatives, the White Armies efficient leadership and mobilization structures have made them desirable allies for military and political actors, as seen during the second Sudanese civil war and in the ongoing conflict.

[8] The increased decision-making powers of youth and their leaders within the White Armies has not eclipsed the role of elders and influential spiritual leaders, who continue to influence, both in terms of restricting and promoting, decisions to engage in violence.

[9] As in the past, Nuer prophets play important roles promoting internal peace and social cohesion among Nuer sections. Concurrently, some prophets have also promoted and morally sanctioned youths' participation in large-scale violence through guidance and blessings of youth fighters ahead of raids and offensives. Importantly, the powers and influence of prophets can extend beyond sub-ethnic and even ethnic lines.[...]

[10] In one of the most significant examples from the post-CPA period (post 2005), the Lou Nuer prophet Dak Kueth facilitated a military alliance between Dinka Nyareweng and Lou Nuer youth ahead of a major retaliatory attack on Murle communities in Pibor in December 2011. Although the attack was organized and led by the high-level leadership of the Lou Nuer White Army in coordination with Nyareweng Dinka youth, Dak Kueth played a significant advisory, spiritual, and unifying role before and during the offensive.

[11] Nuer prophets have continued to play an important role brokering and legitimizing violence in the current civil war. Military actors – including SPLA-IO leaders – have in turn sought to collaborate closely with Nuer prophets in order to increase their leverage over Nuer youths and their involvement in the war.

iv. History of involvement in government wars

[12] When war broke out in December 2013, Nuer White Armies in the Greater Upper Nile region fought alongside SPLM/A-IO in their battles over control of the three state capitals of Greater Upper Nile: Bentiu, Bor and Malakal. These combined forces perpetrated extreme violence, including killings and rapes of non-combatants seeking refuge in churches, mosques and hospitals.

[13] Revenge for atrocities committed against Nuer civilians in Juba in the first few days of the war no doubt motivated many fighters. Participation of the White Armies in the violence, however, also needs to be understood in the context of a longer history of involvement in political violence. Although the organization of the White Armies takes place at local levels, political and military actors have always had strong interests in using these structures to pursue their own political and military aims.

The second Sudanese civil war 1983-2005

[...]

The 'inter war' period (2005-2013)

[...]

The 'new' South Sudanese civil war

[14] The large-scale mobilizations of Nuer youth after the war broke out in December 2013 needs to be seen within this historical and socio-political context. As in the past, the White Armies organized and led by their respective youth leaders, participated in military battles both independently and in parallel with professional soldiers (Black Armies) in order to protect their communities and avenge atrocities perpetrated against Nuer civilians in Juba. In the early stages of the war, SPLA-IO military commanders organized military offensives against the SPLA in Bor and Malakal in coordination with local *kuaar burnam* and their White Army forces. Members of the Jikany Nuer White Army involved in the assault on Malakal in December 2013 claimed that

they – and not the SPLA-IO – were primarily responsible for capturing the town. Throughout the conflict, the Nuer White Armies of Upper Nile, Jonglei and Unity states were not fighting under a common command structure but continued to mobilize and organize youth fighters separately under their respective youth leaders: they were not, as such, a single fighting force.

[15] Although the SPLM/A-IO leadership depends on the military support of the White Armies; they do not always have control over the youth or even their leaders. Most youth, driven by local security obligations, have little interest in political agendas, long-term offensives, or being based in areas far away from home. [...] In an attempt to enhance control over the youth and encourage recruitment into its military units, the SPLM/A-IO military leadership, like the SPLA in the 1980s, has increasingly sought to integrate Nuer youth leadership into their command structures, with the top *kuaar burnam* in Lou Nuer areas receiving ranks, uniforms and training. The integration of former *kuaar burnam* has facilitated coordination between the White Armies and SPLA-IO during joint civil-military offensives. While new *kuaar burnam* have been selected to replace those recruited into the military, the integration of influential *kuaar burnam* may at the same time reduce internal control within local White Armies, as the new leaders do not always have the influence or experience of those they have replaced.

[16] Commitment to their communities continues to motivate the White Armies and their leaders. As part of their social obligations to protect their communities, attempts to rescue Nuer civilians vulnerable to attack or displaced by fighting have been an important driver for mobilization. The White Army leader of Akobo County at the time, as well as other members, claimed in interviews that a failed offensive by the Lou Nuer White Army against the capital Juba in December 2013 was motivated not only by revenge but also by a desire to protect Nuer civilians. [...]

v. Conduits of an ethnic war? White Armies' motivations for participating in violence

[17] The White Armies involvement in violent conflict – in the current war and in the past – largely reflects their social obligations to protect their families and livestock. Community defense and justice provision, in the form of revenge, has long been one of the strongest motivators for participation in the White Armies. Economic and social incentives – including opportunities to loot and raid cattle, access guns and ammunition, and obtain status and respect – also encourage many Youth to participate in violence.

[18] Elders and chiefs frequently complain about their 'unruly' and 'disrespectful' youth. While engagement in warfare and looting, combined with the status and power accorded to the *kuaar burnam*, increased the socio-economic independence of youth, at the same time inter-generational interactions are marked by collaboration and mutual support.

[19] This is demonstrated in regular consultations between White Army leaders, elders and local authorities on matters pertaining to security, as well as the widespread communal support for youth fighters ahead of

large-scale raids and revenges, in the form of logistical support, food, and blessings. While participation in the White Armies is mainly voluntary, during times of high intensity conflict every able-bodied male is expected to join local units, from boys as young as ten to men in their late forties. [...] Over the past decade and in the current civil war participation has expanded: involvement in large-scale attacks is no longer limited to young men in cattle camps but also includes educated town youth and military veterans.[...] Uninitiated boys, some as young as eight, are also occasionally brought along to observe and assist. From December 2013, support for and participation in the White Armies expanded further as many SPLA-IO soldiers, preferring to fight close to their home territories and alongside their kin, joined their ranks.

[...]

[20] Military cooperation with professional soldiers, who frequently engaged in socially unacceptable forms of extreme violence, inevitably contributed to influence the tactics of some White Army fighters. As seen in the past and in recent warfare, military and political actors' manipulation of local grievances and ethnic identities also contributed to intensify local and political violence.

[...]

Discussion

I. Classification of the situation and applicable law

1. (*Document A, paras 18-21; Document B, paras [1] and [11]*) How do you classify the situation in South Sudan since December 2013? Is there an armed conflict? If yes, who are the Parties to it? What additional information would you need to make such a determination? What is the law applicable to the situation? Is APII applicable? Does IHL apply to the entire territory of South Sudan? (GC I-IV, Art. 2, 3; PII, Art. 1)

2. (*Document A, para. 20; Document B, paras [2]- [11]*) What are the criteria under IHL to determine the existence of a NIAC? What are the indicators for the organization of armed groups? (GC I-IV, Art. 3, PII, Art. 1; ICTY, *The Prosecutor v. Tadić*)

a. Based on the information provided in the document, are the factions of the SPLA/IOs sufficiently organized?

b. Based on the information provided, can "white armies" be considered as one or several organized armed group(s) for the purposes of IHL? Is a single unified command required by IHL to determine organization? In your opinion, could the "white armies" be considered as subjected to responsible command? Would the kuaar burnam structure satisfy this test? Would the fact that kuaar burnam's wide ranging responsibilities

beyond mobilization of the youth in war affect your assessment? Could the Nuer prophets be considered responsible commanders?

c. Could the fact that the “white armies” are fighting on behalf of the SPLA-IO make them belong to that Party to the conflict? Would their motivation to fight on behalf of SPLA-IO have to be taken into account?

d. If the “white armies” are not organized armed groups parties to the NIAC, are their members nevertheless bound by IHL? In which circumstances?

II. Protection of children

3. (*Document B, Paras[17]- [20]*) In general, may children under 18 participate in armed conflict? Under IHL? Under IHRL? Is the obligation of state armed forces and organized armed groups the same when it comes to prohibition of enlisting of children? Assuming that “white armies” are an organized armed group for the purpose of IHL, what would be their obligation regarding participation of children? (PI, Art. 77; PII, Art. 4; CIHL, Rules 135, 136, 137; CRC, Art. 38; OPAC, Art. 1-4; ICC, *The Prosecutor v. Lubanga*)

III. Conduct of hostilities

4. (*Document B, paras[3]- [5]*) Assuming that “white armies” fulfil the organization threshold, could all initiated Nuer youth be considered as legitimate targets? Under which circumstances? (ICRC Interpretive Guidance on DPH)

5. (*Para.[10]*) Assuming that the incidents described in the Report were carried out against the SPLA by the “white armies”, would they amount to direct participation in hostilities for the purposes of IHL? (ICRC Interpretive Guidance on DPH)