

Learning Paper

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Towards Dealing with the Past in Greater Jonglei

Learning from the Pieri Action Plan for Peace

Michael Comerford¹

1 Introduction

The purpose of this paper is to critically reflect on the Pieri Action Plan for Peace² to explore learning to inform the direction of future organisational peace programming in Jonglei State. It does so by drawing on an established Dealing with the Past conceptual framework developed by Swisspeace and the Swiss Federal Department of Foreign Affairs (hereafter Swisspeace) which has been used in many conflict and post-conflict environments.³ This framework holds up a useful mirror to the Pieri Action Plan for Peace from which important lessons and recommendations for future programming emerge. The framework also has limitations and needs to be contextualised, particularly when applied in a sub-national context, but the key value in applying the framework is the peace conversation that surrounds the application of this analytical lens.

The Pieri Action Plan for Peace is a peace agreement and a roadmap for the Murle, Lou and Gawaar Nuer, and Dinka communities of Jonglei state, who have suffered the effects of inter-communal violence over decades and had seemed locked in continuous cycles of violence. The Action Plan for Peace is the result of a process of engagement between these three communities, a community-driven approach led by their traditional and spiritual leadership. It also articulated roadmap which peace actors in Jonglei have sought to support.

The Dealing the Past analytical framework posits a fundamental role for government in leading a community or nation out of violence. Such a central, foundational role for state is the key challenge with the mirror offered by the proposed analytical framework for two reasons. First, the state was not a significant point of reference for the Jonglei communities at the time they came together under the Pieri Action Plan for Peace. They explicitly expressed their desire that the state not be involved during

¹ Team Leader, Peacebuilding Opportunities Fund (POF). Produced with input and on basis of discussion with the wider POF and Peace Canal team.

² 'Pieri Action Plan for Peace' (2021), available at <https://www.peaceagreements.org/viewmasterdocument/2378>.

³ Swisspeace, 'A Conceptual Framework for Dealing with the Past' (2013), available at https://www.files.ethz.ch/isn/152127/Essential_3_2013.pdf.

the early stages of the process. Second, the state is generally either unable or unwilling to perform its roles as guarantor of citizen rights, as the benign actor presented within the framework. In some cases, it is more likely to be a sponsor or actor in the violence which has devastated local communities. This challenge reflects the specific context of Jonglei State and much of South Sudan, and presents a challenge that is deeper than the analytical construction of the Dealing with the Past framework; namely, how to support communities deal with their past and ensure the protection of citizen rights, in the absence of a properly functioning state apparatus? The Pieri Action Plan for Peace shows that initial engagement through community structures offers an important first step and valuable way forward that subsequently requires involvement from state authorities for the purpose of sustainability.

Key learning from the use of the Dealing with the Past analytical framework include:

- the importance of community ownership and leadership around which a peace process is built to address the decades of violence in Jonglei State;
- the need for sustained accompaniment of inter-communal engagement in an environment where relations are deeply fractured, and trust needs to be built;
- that community structures alone are insufficient to resolve the scale and complexity of conflict in Jonglei state, that government action and investment is required to complement a community-driven process;
- that peacebuilding engagement can be seriously and perilously undermined if not linked to development and livelihood initiatives that provide youth with a meaningful economic alternative to violence.

The paper is structured in two key sections. The first summarises the Dealing with the Past conceptual framework and background to the sub-national engagement of the Peacebuilding Opportunities Fund (POF), the second applies the framework to the Pieri Action Plan for Peace.

2 Dealing with the Past Conceptual Framework

The Dealing with the Past conceptual framework calls for programmatic engagement in four interconnected areas or pillars that provide an holistic approach to dealing with the past. The four pillars, visualised in diagram below, are:

- the right to know
- the right to justice
- the right to reparations
- the guarantee of non-recurrence.

These pillars are drawn from key principles endorsed by the UN Human Rights Commission in 1997, which has also done important work in this area.⁴

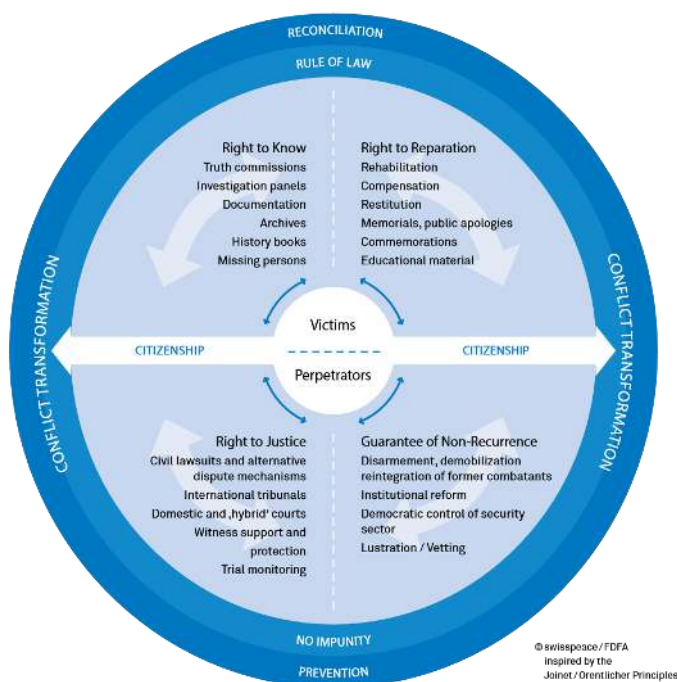
A brief explanatory note on each of the pillars is provided in the next section, including reference to important mechanisms that have been used in other contexts (South Africa, Rwanda, Sierra Leone, Bosnia, etc.) to support nations emerging from conflict. A key difference in this paper is that the Conceptual Framework is being applied to a sub-national conflict, in a context where implementation of the national level peace agreement (R-ARCSS) is delayed and partial, intended to address national conflict rather than the specific conflict dynamics in Jonglei State.

⁴ UN Document E/CN.4/2005/102/ Add.1, Report of Diane Orentlicher.

Because we are not dealing with a peace process where government was a central actor with responsibility for implementation of the agreement, some established ‘dealing with the past’ mechanisms are not relevant in the Jonglei context. However, for the purpose of completeness these will be highlighted, with analysis and discussion provided only on relevant aspects of the conceptual framework.

Dealing with the Past involves engagement with sensitive issues that require careful analysis and management. Working through local personnel from the three communities in conflict, POF (now working through Peace Canal) has undertaken detailed conflict analysis to understand the

Figure 1 - Conceptual framework for Dealing with the Past



operational environment, to identify issues and relevant entry points for peace engagement.⁵

As a result of this analysis, and reflection on where other attempts to build peace in Jonglei have failed to break the cycle of violence, a community-driven approach was adopted with traditional and spiritual leaders identified as the key entry point for engagement.

The communities themselves had insisted that government should not be included in the early stages of the process, as experience had taught that the intentions of community-led peacebuilding can be subverted and undermined by political involvement. The Lou Nuer prophet, Dak Kueth, was insistent that his involvement was conditional on an inter-communal

process led solely by leaders within the community. The process was subsequently expanded to include armed youth and women.

Activities undertaken were agreed by community leadership, initially within the Lou Nuer and Murle communities, and subsequently within the Dinka Bor community. This approach, and the Pieri Action Plan for Peace itself, was later endorsed by Jonglei State government in late 2021.⁶

The process also sought to strengthen trust by drawing on peace-making rituals familiar to the communities, with which they have self-identified for generations. This involved public oath taking and cursing, spear and sword ceremonies, sacrifice of animals and sharing of food, the symbolism of which was powerful in providing a common understanding of how to move forward and deal with past conflict.

As the Dealing with the Past manual points out:

‘Every context has its own history, culture, religions, languages and traditions which influence the ways a society may choose and is able to deal with the past. Dealing

⁵ Peace Canal, ‘Our Approach’, available at <https://www.peacecanal.org/our-approach>.

⁶ Peace Canal, ‘Government backs dry season dissemination of Pieri Peace’, available at <https://www.peacecanal.org/blog/government-backs-dry-season-dissemination-of-pieri-peace>.

with the Past processes should take these specific conditions into account. They should also make sure to strengthen existing local structures and mechanisms in order to build future capacity for constructively dealing with conflict.⁷

3 Pieri Action Plan for Peace – an analysis

3.1 The Right to Know

‘The right to know refers to the importance of individual and collective knowledge regarding the causes, experiences and legacies of human rights violations. The acquisition of such knowledge is not a simple fact-finding exercise and there are a variety of mechanisms which may be employed in order to contribute to a longer-term process of decision making regarding the different needs of individuals and societies in constructing knowledge and truths about the past. In doing so, it is hoped that memories can be preserved, documentation secured, and history protected from revisionist arguments.’⁸

Mechanisms: Search for Missing Persons; Truth Commissions; Commissions of Inquiry; Archives.

Of the various proposed mechanisms under the ‘Right to Know’, Pieri was deeply concerned with the search for missing persons, the most painful aspect of the conflict for the communities concerned. None of the other listed mechanisms were used by the communities. It should be noted that the traditional peacebuilding mechanisms utilised by the communities have a strong component of ‘truth telling’ and inquiry, but not as understood by the Conceptual Framework, where the South African Truth and Reconciliation Commission and UN Commissions of Enquiry are examples of their international usage. While no archives exist that could be consulted, the place of ‘oral archives’, consulting key stakeholders to understand the root causes of conflict, was important in informing the analytical foundations of peace programming.

A rather unique and disturbing characteristic of violence in Jonglei State, not prevalent in other states, is the abduction of women and children by young men carrying out attacks on neighbouring communities. Many thousands have been abducted, with a relatively small number successfully returned home.

While the practice of abducting and selling children is understood to have commenced with the Dinka Bor community, who exchanged children for cattle with the Murle community, the practice has become predominantly identified with Murle raiders, abducting from Nuer and Dinka Bor communities. All three communities engage in the practice of abduction, a form of human trafficking that the peace agreement wants ended, with those abducted returned home. In many contexts the ‘search for missing persons’ is associated with the recovery of people killed to facilitate closure for bereaved families. The Jonglei context is unique in dealing with bereavement of people known or assumed to be alive.

Underlining the central importance of this issue for all communities, the very first resolution in the Pieri Action Plan deals with the return of abductees, a process led by youth leaders. Women participated in the identification and recovery of children, with chiefs and local authorities overseeing the collection of children. Transition Centres were put in place in Pieri, Pibor and Bor, with NGOs supporting the process. Between March 2021 – April 2022, one-hundred and fifty abductees were reunited through the collective efforts of partners supporting the Pieri Agreement. This was a small but significant step in a much larger process.

⁷ Swisspeace, 15.

⁸ Swisspeace, 7.

3.2 The Right to Justice

‘The right to justice entails the duty of the state to hold accountable those who are responsible for human rights violations. International human rights and humanitarian law prescribe this duty and ensure that blanket amnesties for torture, crimes of genocide, war crimes and crimes against humanity are no longer possible. Fair and transparent trials are seen as the primary mechanism for ensuring legitimate accountability which can challenge cultures of impunity and ensure that victims have their harm legally recognised. For each society undergoing a Dealing with the Past process decisions need to be made regarding the type of trial best suited to achieving a meaningful and legitimate form of accountability in a given context.’⁹

Mechanisms: International Tribunals; hybrid/mixed tribunals; national prosecutions.

The intention of this pillar highlights a key challenge of the Dealing with the Past Framework in South Sudan, premised on the duty and the capacity of the state to uphold accountability and deliver justice for its citizens. This capacity, or indeed willingness of the state to ‘hold accountable’ and be ‘held accountable,’ runs the risk of denying justice to those seeking redress. At a national level, this has important implications for implementation of the R-ARCSS overall, specifically for the creation of key instruments contained therein, such as the Hybrid Court to prosecute crimes during the civil war.

With the context of this paper, of the three proposed mechanisms (international tribunals, hybrid/mixed tribunals, and national prosecutions) only the notion of a hybrid or mixed tribunal is relevant to the Pieri Action Plan for Peace. The Pieri resolutions requested support from ‘the international community with the transport and logistics of the Traditional Leaders’ Circuit Court’. The envisaged court would move:

‘through the three communities to address inter-communal issues. The court would be responsible for addressing issues of inter-communal raiding, abductions and violence, and disputes over abducted children and women.’¹⁰

The proposed court is not yet established, but a process moving in that direction was envisaged as part of a separate project funded by Swiss Development Cooperation (Community Governance Mechanisms). A weakness in the resolution calling for the Circuit Court is that certain aspects would only be possible with external funding and needed greater definition in terms of composition. The resolution also points to a common feature of many local peace agreements, which frequently allocate responsibility for key resolutions to actors who are neither present nor consulted. This undermines these agreements, elements of which are present within the Pieri Action Plan for Peace.

In the operational environment of the Pieri Action Plan for Peace, the right to justice is delivered not by the state, but through a customary court system led by traditional leaders. While the Local Government Act outlines a hybrid justice system built around the statutory and customary courts, the reality on the ground is that the statutory system is not functioning – and never did – in remote rural areas, and access to justice is sought through the customary system. As such, justice solutions require engagement with the customary systems of the relevant communities, and agreement on how peace violations and criminality should be addressed. The Action Plan for Peace did, for example, stipulate that compensation for people killed since the Pieri agreement would be paid in a fixed number of cattle.

⁹ Swisspeace, 9.

¹⁰ Pieri Action Plan for Peace (2021), available at <https://www.peaceagreements.org/viewmasterdocument/2378>, 4.3.

3.3 The Right to Reparation

‘The right to reparation refers to restitution, compensation or rehabilitation provided to victims of human rights violations. Such acts are intended to acknowledge harm suffered, promote dignity and support ongoing capacity building.’¹¹

Mechanisms: restitution of property and compensation; individual and collective reparations; symbolic reparations.

Traditional conflict management methodologies emphasise the importance of making amends, of reparation by offering compensation for the loss of life and livelihood suffered in violence. These methodologies are part of a restorative rather than a retributive justice approach. In the context of Jonglei, where conflict between communities had gone on for many decades, and where the focus was on how to move forward and live peacefully as neighbours, it was agreed to draw a line under the past, to absolve each other of the need for compensation. A sense of grievance was high across all three communities with each understanding itself as the victim. As such, none of the proposed pillar mechanisms were pursued within the Pieri Action Plan for Peace.

However, two comments can be made. Firstly, rather than reparation, a central theme of the Pieri agreement is redress, redress for decades of neglect that has fuelled the violence due to lack of opportunity and held back community development. The call for redress can be seen in agreement resolutions requesting roads to connect communities, support for livelihoods, investment in youth and women, education (particularly pastoralist education), micro-finance, etc. For those accompanying Pieri Action Plan for Peace, who continue to hear the calls for development investment within the Jonglei communities, the failure to provide meaningful ‘redress’ is a destabilising factor in the successful implementation of the agreement.

Secondly, the return of abductees to their home communities can be framed under reparation, as a way of making amends, of restitution. While this paper has framed ‘abductees’ under the ‘right to know’ pillar because we are dealing with ‘missing persons’, the reunification dimension of living persons with their families and communities could also be analysed here as reparation.

3.4 The Guarantee of Non-Recurrence

‘Dealing with the Past aims to contribute to the non-recurrence of past human rights violation. ... The non-recurrence of systematic human rights violations presupposes democratic structures, civilian oversight of security forces, a functioning judicial system and the rule of law. The establishment of such structures is an expensive and complex long-term process. This process often starts with demobilisation and disarmament programs, free and fair elections, followed by reforms of the security sector, constitutional reforms and the construction of a functioning and independent judiciary.’¹²

Mechanisms: Demobilisation and Reintegration of combatants; Elections and constitutional reforms; Reform of the security sector; Reform of the legal system; Lustration/Vetting.

While the conventional forms of the mechanisms under the ‘guarantee of non-recurrence’ pillar are less obviously applicable in the Greater Jonglei community level process, the broader principle is relevant.

¹¹ Swisspeace, 10.

¹² Swisspeace, 12.

The guarantee of non-recurrence is at the heart of the Pieri Action Plan for Peace, in that communities were genuine and sincere in their intent to end all violence against each other, to live peacefully together. There were specific exhortations to ending abductions, cattle theft and killing. However, these guarantees in themselves are insufficient without clear implementation of the inter-communal resolutions and satisfaction of the expectations generated within the communities. The naming of the peace agreement as an 'Action Plan for Peace' was intentional in order to emphasise the importance of delivery of commitments undertaken and the need for accompaniment of the communities.

While the armed youth that carry out the inter-communal violence are not trained or professional soldiers, they should be understood as 'combatants' because of their role as fighters. These are the ones who go to war on behalf of their community. Their social reintegration process may not be as obvious as formal processes undertaken by professional soldiers, rebel armies, etc, who receive training and education to return to civilian life and build a new productive life. For the armed youth who worked with the Pieri Action Plan, their desire to see an end to violence appeared genuine, aspiring to transition towards livelihoods as farmers, business owners or traders. They frequently requested support to do so, a helping hand to generate alternative livelihood opportunities.

4 Conclusion

This paper has sought to apply a Dealing with the Past conceptual framework identify to the Pieri Action Plan for Peace with a view to identifying lessons to strengthen peace programming in Jonglei State. A key priority at this stage of the implementation of the Action Plan for Peace is the importance of replacing violence (looting as livelihood) with alternative productive livelihoods.

The central position attributed to the state in facilitating a dealing with its past process was problematic in the operational environment of South Sudan. The state is seen as unable or unwilling to guarantee key rights which underpin the framework itself. Furthermore, the role of the state poses a dilemma for peace practitioners, in that its crucial role in supporting peace processes is often undermined by elements within the state which promote division and conflict for personal gain.

Though problematic, state intervention was needed to support a community-led peace process, which the communities themselves requested. Thus, while representing a vital first step, a community-led process alone is insufficient to resolve the scale and complexity of conflict in Jonglei state.

Finally, the importance of community ownership and leadership provided a window of opportunity to address the decades of violence in Jonglei State, a process that requires sustained accompaniment to address ongoing issues and foster trust in a complex and fractured environment.

5 Select Bibliography

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